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CITY BAR

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By Email

His Excellency Dr. John Pombe Joseph Magufuli
President of the United Republic of Tanzania
1 Barack Obama Drive
Dar es Salaam
Tanzania

Your Excellency:

We write on behalf of the New York City Bar Association (the “Association”) concerning recent events in Tanzania, including the attempted assassination of Mr. Tundu Lissu, the President of the Tanganyika Law Society, the apparent bombing of the prominent law firm, IMMMA Advocates, and growing concerns with governmental restrictions on freedom of speech and retaliation against dissenting opinions. In its 56 years of independence, Tanzania has served as a model for peace and stability, and we applaud your efforts that have contributed to Tanzania’s stability; however, we urge you to take action regarding these issues.

Tanzania’s democracy and rule of law are endangered by the recent acts of violence referenced above, as well as by governmental actions suppressing freedom of expression and punishing government critics. These actions contravene the Tanzanian Constitution, the International Covenant on Civil and Political Rights, and the African (Banjul) Charter on Human and Peoples’ Rights. We ask that you (1) undertake a full and transparent investigation of the recent acts of violence; (2) confirm that citizens have the right to express their opinions without fear of arrest; and (3) support institutional reforms to ensure that Tanzania’s laws reflect, and are enforced in a manner that respects, the rights of all citizens, consistent with Tanzania’s Constitution and the international agreements to which Tanzania is a signatory.

The New York City Bar Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights and the rule of law. This history includes engagement with Africa notably through the Committee on African Affairs, which closely monitors and responds to legal developments in Africa. The Committee on International Human Rights investigates and reports on human rights conditions around the world. Our Task Force on the Independence of Lawyers and Judges monitors situations in which lawyers and judges experience harassment and intimidation. In addition, the Association’s Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession.

Events occurring in Tanzania over the last year that raise serious concern include:

- The attack on Mr. Tundu Lissu in what appears to be a politically-motivated attempted assassination;¹
- Explosions that hit the law firm, IMMMA Advocates;²
- The closing down of newspapers and radio stations, the halting of live broadcasts of parliamentary sessions, the ban on opposition rallies and raids on media organizations;³
- The enforcement of Tanzania's Cybercrimes Act and Media Services Act, 2016, for the purpose of curbing media independence and suppressing criticism of the government, including charging media groups and citizens with spreading "false information" online or "insulting" the President.⁴

A failure thoroughly to investigate and bring to justice those involved in the attempted assassination of Mr. Tundu Lissu and the bombing of IMMMA Advocates threatens the rule of law, fundamental human rights and the independence of the legal profession in Tanzania and the East African community. We understand that, to date, the authorities have made no arrests in connection with either incident.⁵

Mr. Lissu, the President of the Tanganyika Law Society and prominent opposition member of Parliament, has been an outspoken critic of your administration, and was arrested numerous times prior to his attempted assassination, including for his comments describing you as a "dictator."⁶ There are reports that, before the shooting, Mr. Lissu complained of "being trailed by

¹ Aggrey Omboki, *Outrage After Gunmen Injure Tanzanian Opposition Leader*, THE EAST AFRICAN, Sept. 9, 2017, available at <http://www.theeastafrican.co.ke/news/Gunmen-shoot-Tanzanian-opposition-leader-/2558-4088130-gdqc1m/index.html>; Tanzania: *Opposition MP Tundu Lissu Wounded by Gunmen*, AL JAZEERA, Sept. 7, 2017, available at <http://www.aljazeera.com/news/2017/09/tanzania-opposition-mp-tundu-lissu-wounded-gunmen-170907131959935.html>.

² Deogratus Kamagi, *Dark Cloud Hangs on Law Firm Attack*, THE CITIZEN, AUG. 27, 2017, available at <http://www.thecitizen.co.tz/News/Dark-cloud-hangs-on-law-firm-attack/1840340-4072654-smh77z/index.html>; Tanzania: *Law Firm Hit by an Explosion*, THE CITIZEN, Aug. 26, 2017, available at <http://www.thecitizen.co.tz/News/Tanzania--Law-firm-hit-by-suspected-bomb-blast-/1840340-4071592-3oqkfx/index.html>.

³ Committee to Protect Journalists, *Tanzania Police Raid Popular Website's Office in Effort to Learn Users' Identities*, Dec. 14, 2016, available at <https://cpj.org/2016/12/tanzania-police-raid-popular-websites-office-in-ef.php>; Nicholas Wong, *Tanzania Leader's Aside on 'Limits' of Freedom Raises Fears*, INTERNATIONAL PRESS INSTITUTE, April 19, 2017, available at <https://ipi.media/tanzania-leaders-aside-on-limits-of-freedom-raises-fears>; *John Magufuli is Bulldozing the Opposition and Wrecking the Economy*, THE ECONOMIST, Oct. 19, 2017, available at <https://www.economist.com/news/middle-east-and-africa/21730424-african-socialism-did-not-work-tanzania-last-time-either-john-magufuli>.

⁴ *Fourth Tanzanian Newspaper Banned for 90 Days Over 'False' Publication*, AFRICANEWS, Oct. 24, 2017, available at <http://www.africanews.com/2017/10/25/fourth-tanzanian-newspaper-banned-for-90-days-over-false-publication/>; Hannah McNeish, *Tanzania Accused of Making Laws on the Hoof in 'Kafkaesque' Curb on Free Speech*, THE GUARDIAN, July 8, 2015, available at <https://www.theguardian.com/global-development/2015/jul/08/tanzania-laws-curb-free-speech-social-media-jamii-forums>; Committee to Protect Journalists, *supra* note 3; Wong, *supra* note 3, THE ECONOMIST, *supra* note 3.

⁵ THE ECONOMIST, *supra* note 3.

⁶ AL JAZEERA, *supra* note 1; *Tanzanian Outspoken Opposition Politician Shot and Wounded by Unidentified Gunmen*, AMNESTY INTERNATIONAL, Sept. 7, 2017, available at <https://www.amnesty.org/en/latest/news/2017/09/tanzania-outspoken-opposition-politician-shot-and-wounded-by->

state security vehicles.”⁷ The attack bears every resemblance to an attempted assassination as Mr. Lissu was gunned down in broad daylight with a spray of machine gun bullets.⁸ Mr. Lissu’s shooting raises fears concerning the personal safety and well-being of all opposition members, legal professionals and government critics. Your government must act to address these concerns. Furthermore, the government’s decision not to hire outside, independent investigators⁹ leaves the government open to allegations of a cover-up in the event that local investigators conclude the government was not involved, regardless of whether the conclusion is right or wrong. There is an inherent conflict of interest in having an arm of the government investigating this incident when the government may be implicated. We urge a thorough, transparent, and independent investigation into Mr. Lissu’s attempted assassination.

We likewise urge such an investigation into the apparent bombing of the law firm, IMMMA Advocates, which took place less than two weeks before Mr. Lissu’s shooting.¹⁰ Reports that persons dressed in police uniforms entered the premises shortly before the explosion, and the absence of any explanation for the explosion,¹¹ raise serious concerns. Furthermore, it is noteworthy that Mr. Lissu himself questioned the police’s involvement in the explosion just eleven days before he was shot.¹² The government must take steps to ensure that those responsible for the explosion are brought to justice.

We also note the disturbing disappearance in the past year of several individuals who are members of the opposition party, including the personal assistant of Freeman Mbowe, the leader of Chadema.¹³ The government should investigate and report publicly on Mr. Mbowe’s disappearance without delay.

The recent acts of violence in Tanzania have occurred amid mounting concerns over governmental actions that constitute political repression, infringements on the rights of free expression, and serious threats to opposition members, critics of the government, and the legal profession.

The February 2017 threat by the Minister of Constitutional and Legal Affairs, Dr. Harrison Mwakyembe, to abolish the Tanganyika Law Society for allegedly engaging in political activism,¹⁴

[unidentified-gunmen/](#); Martina Schwikowski, *Tanzania: Political Climate Worsens Amid Crackdown on Opposition*, DEUTSCHE WELLE, Sept. 8, 2017, available at <http://www.dw.com/en/tanzania-political-climate-worsens-amid-crackdown-on-opposition/a-40422844>.

⁷ Omboki, *supra* note 1.

⁸ George Njogopa, *Tanzania: No External Investigators in Lissu Shooting, Says Govt*, THE CITIZEN, Sept. 27, 2017, available at <http://www.thecitizen.co.tz/News/No-external-investigators-in-Lissu-shooting--says-govt/1840340-4113784-buuny0z/index.html>; Omboki, *supra* note 1, Schwikowski, *supra* note 6.

⁹ Njogopa, *supra* note 8.

¹⁰ Kamagi, *supra* note 2.

¹¹ *Id.*

¹² Louis Kolumbia, *TLS Blames Police for Blasts at Law Firm Offices*, THE CITIZEN, Aug. 28, 2017, available at <http://www.thecitizen.co.tz/News/TLS-blames-police-for-blasts-at-law-firm-offices/1840340-4073614-13oitfg/index.html>.

¹³ THE ECONOMIST, *supra* note 3.

¹⁴ Beatrice Materu, *Tanzania Threatens to Ban Law Society Over ‘Politiking,’* THE EAST AFRICAN, Feb. 20, 2017, available at <http://www.theeastafrican.co.ke/news/2558-3820956-9rvli9z/index.html> Deogratius Kamagi,

represents a serious risk to the independence of the legal profession. That this threat came at the same time that Mr. Lissu announced his candidacy for president of the Law Society only deepens concerns regarding the government's actions.

We further express our concern regarding the government's actions in closing down newspapers and radio stations, halting live broadcasts of parliamentary sessions, banning opposition rallies and conducting police raids on media organizations.¹⁵ We point to two incidents in particular: (1) the December 2016 raid on the offices of the online discussion site, *Jamii Forum*, and the detention of its co-founder, Maxence Melo, reportedly after users expressed views on controversial issues, including corruption in the government,¹⁶ and (2) the March 2017 raid on the media group, Clouds FM, reportedly by armed police led by Dar es Salaam's regional commissioner, Paul Makonda, who demanded that the media group broadcast material damaging to a political opponent.¹⁷ These events raise serious questions regarding freedom of the media, and intimidation of the government's critics.

Equally disturbing is the use of the Media Services Act, 2016, and the Cybercrimes Act to curb journalistic freedom and suppress criticism of the government, including by shutting down media publications and charging citizens with spreading "false information" online or "insulting" the President.¹⁸ There are also reports that citizens have been charged with insulting the President in circumstances extending beyond online speech, such as the recent arrest of Ms. Halima Mdee, Kawe member of Parliament, for publicly criticizing President Magufuli's statements opposing the rights of teen mothers to return to school after giving birth.¹⁹

These events are troubling signs of repression of the freedom of expression. They also are contrary to Tanzania's Constitution, which states:

Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associates or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.²⁰

The right to freedom of expression also is protected by both the International Covenant on Civil and Political Rights, and the African (Banjul) Charter on Human and Peoples' Rights to which Tanzania is a State Party. Tolerance and respect for political opponents are essential to the proper functioning of a democracy. Expressing viewpoints critical of the government and reporting on

Association of American Lawyers Expresses Concern on Tanzania Judiciary, THE CITIZEN, Aug. 17, 2017, available at <http://www.thecitizen.co.tz/News/Association-of-American-lawyers-expresses-concern-/1840340-4060712-miwc3uz/index.html>; Omboki, *supra* note 1.

¹⁵ Committee to Protect Journalists, *supra* note 3; Wong, *supra* note 3; THE ECONOMIST, *supra* note 3; AFRICANEWS, *supra* note 4; Hannah McNeish, *supra* note 4.

¹⁶ Committee to Protect Journalists, *supra* note 3.

¹⁷ Wong, *supra* note 3.

¹⁸ Committee to Protect Journalists, *supra* note 3; Wong, *supra* note 3; THE ECONOMIST, *supra* note 3; AFRICANEWS, *supra* note 4; Hannah McNeish, *supra* note 4.

¹⁹ *Kinondi DC Orders Arrest of Kaawe MP Mdee for Insulting the President*, THE CITIZEN, July 4, 2017, available at <http://www.thecitizen.co.tz/News/1840340-3999268-gst1r8z/index.html>

²⁰ United Republic of Tanzania Constitution, chapter one, part III, section 20(1) (2005), available at <http://zpsc.or.tz/documents/tanzania%20constitution-%202009.pdf>

possible government corruption are important functions of free speech and a free press that ensure a government's accountability to its citizens. Reports of unlawful governmental action or corruption are best countered with a thorough investigation of the alleged acts and, if proven true, a prosecution according to law.

We urge the government to take the following actions in order to fulfill its constitutional and international obligations:

- Establish full and transparent investigations of the assassination attempt on Mr. Lissu, the attack on IMMMA Advocates and the disappearance of opposition party members. Invite non-partisan external investigators to conduct the investigations to avoid real or perceived conflicts of interest.
- Create an atmosphere of safety and freedom for all citizens, including political opponents.
- Protect the independence of journalists, and respect the right to freedom of speech online and in other media publications, including those that criticize government policies or raise questions of corruption.
- Protect the independence of lawyers and judges and create an atmosphere free of harassment and intimidation.
- Discontinue the use of the Cybercrimes Act and the Media Services Act, 2016, as tools to curb free speech and suppress criticism of the government.
- Investigate and appropriately respond to allegations of unlawful government conduct or corruption.
- Respect the free speech of all citizens, even when such speech is critical of government officials, including the President.

The Association respectfully requests that you immediately undertake the above measures to ensure the personal safety of all Tanzanians, enable citizens to express their political opinions freely and protect Tanzania's democracy and rule of law.

Respectfully,



John S. Kiernan

Cc:

Hon. Professor Palamagamba John Aidan Mwaluko Kabudi (MP)
Minister for Justice and Constitutional Affairs

Mr. Godwin Ngwillimi
Vice President, Tanganyika Law Society

H.E. Kassim Majaliwa Majaliwa
Prime Minister of the United Republic of Tanzania

H.E. Dr. Ali Mohamed Shein
President of Zanzibar

Hon. George M. Masaju
Attorney General of the United Republic of Tanzania

Hon. Simon Sirro
Inspector General of Police, Tanzania Police Force

H.E. Ambassador Wilson Mutagaywa Masilingi
Ambassador of the United Republic of Tanzania to the United States

Hon. Commissioner Zeid bin Ra'ad Zeid Al-Hussein
High Commissioner of the UN Commission of Human Rights

Chargé d' Affaires Immi Patterson
U.S. Embassy Dar es Salaam, Tanzania

Hon. Rex W. Tillerson
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Ambassador Nikki Haley
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