

United Nations Working Group on Arbitrary Detention

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Phil Hong (Republic of Korea) Mr. Sètonджи Adjovi (Benin)

In the Matter of

Tito Elia Magoti, Citizen of the United Republic of Tanzania

v.

Government of the United Republic of Tanzania

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/71¹

Submitted By:

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION²

I. IDENTITY

1. Family name: **Magoti.**
2. First name: **Tito Elia.**
3. Sex: **Male.**
4. Birth date or age (at the time of detention): **March 13, 1993.**
5. Nationality/Nationalities: **Tanzanian.**
6. (a) Identity document (if any): **Passport.**
(b) Issued by: **Government of Tanzania.**
(c) On (date): **N/A.**
(d) No.: **TAE 038517.**
7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Mr. Magoti is a lawyer employed as a Program Officer (Mass Education) by the Legal and Human Rights Centre (LHRC), a Tanzanian based organization that works to empower the public, promote, reinforce and safeguard human rights and good governance in the country.³

8. Address of usual residence:

N/A.

II. Arrest⁴

1. Date of arrest:
December 20, 2019.
2. Place of arrest (as detailed as possible):

² This questionnaire should be addressed to the Working Group on Arbitrary Detention. Office of the High Commissioner for Human Rights, United Nations Office at Geneva, 8-14 avenue de la Paix, 1211 Geneva 10, Switzerland, fax No.(41) (0) 22 917.90.06, E-mail: wgad@ohchr.org; and, urgent-action@ohchr.org.

A separate questionnaire must be completed for each case of alleged arbitrary arrest or detention. As far as possible, all details requested should be given. Nevertheless, failure to do so will not necessarily result in inadmissibility of the communication.

³ Legal and Human Rights Center, available at <https://www.humanrights.or.tz/page/introduction>.

⁴ For the purpose of this questionnaire, “arrest” refers to the initial act of apprehending a person. “Detention” means and includes any deprivation of liberty before, during and after trial. In some cases, only section II or III may be applicable. Nonetheless, whenever possible, both sections should be completed.

PUMA Petrol Station located along Mwenge and Bagamoyo Road, within the District of Kinondoni, a region in Dar es Salaam, Tanzania.⁵

3. Forces who carried out the arrest or are believed to have carried it out:

Unidentified police officers.

4. Did they show a warrant or other decision by a public authority?

No.

5. Authority who issued the warrant or decision:

Mr. Magoti was arrested without a warrant.

6. Reasons for the arrest imputed by the authorities:

Mr. Magoti was arrested around 10:00am on December 20, 2020. At the time he was taken into custody, he was not immediately informed of the reason for his arrest. His family was also not informed that he had been taken into custody. It was only around 10.00pm (almost twelve hours after his arrest) that the Dar es Salaam Zone Police Commander appeared in a televised press conference, confirming that Mr. Magoti had been arrested and was being investigated for certain criminal offences.⁶ No specifics were given as to the nature of the alleged crime.

Mr. Magoti advised LHRC that during his detention, he was questioned on his use of social media and his association with certain citizens who have been public in their criticism of the Tanzanian government.⁷

7. Legal basis for the arrest including relevant legislation applied (if known): **Unknown.**

Mr. Magoti has been charged with 3 counts of :

- 1. Leading organized crime in terms of paragraph 4 (1)(a) of the First Schedule to and Sections 57 (1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002].**
- 2. Possession of a computer program designed for the purpose of committing an offence in terms of Section 10 (1)(a) of Cyber Crimes Act, No. 14 of 2015 as read with paragraph 36 of the First Schedule to, and Sections 57 (1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002].**

⁵ Tanganyika Law Society, Statement of the National Bar on the Abduction of Mr. Tito Magoti, the Program Officer Legal and Human Rights Centre, December 24, 2019.

⁶ Id.

⁷ Legal and Human Rights Centre (LHRC), Statement, Taarifa Kutoka Mahakamani Kuhusu Kesi Ya Ndugu Titio Magoti Na Theodory Faustin, December 24, 2019, available at <https://www.humanrights.or.tz/posts/b/News/updates-from-the-court-on-the-case-of-tito-elia-magoti-and-theodory-faustin-givan>.

3. **Money laundering in terms of Sections 12(d) and 13(a) of the Anti- Money Laundering Act, 2006 read together with paragraph 22 of the First Schedule to, and Sections 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002] as amended.**

Attached hereto as Annexure “A” is a copy of the Charges. ⁸

III. Detention

1. Date of detention:

December 20, 2019.

2. Duration of detention:

Mr. Magoti has been detained since December 20, 2019. He will continue to be detained till his trial as he has been accused of a crime that excludes him from applying for bail.

3. Forces holding the detainee under custody:

Prison services.

4. Places of detention (indicate any transfer and present place of detention):

Mr. Magoti states that between December 20, 2019 and December 23, 2019, he was transferred to Tazara Police Station and later to Mbweni Police Station.⁹

Mr. Magoti is currently being detained at Segerea Remand Prison.

5. Authorities that ordered the detention:

Unknown.

6. Reasons for the detention imputed by the authorities:

Investigation for certain offences.

7. Legal basis for the detention including relevant legislation applied (if known):

Unknown.

IV. Describe the circumstances of the arrest.

On December 20, 2019, Mr. Tito Magoti, a young lawyer employed as a Program Officer for Mass Education with the LHRC, was reportedly abducted in Dar es Salaam by four unidentified men,

⁸ In the Resident magistrates Court of Dar es Salaam at Kisutu, Economic Crimes Case no. 137 of 2019, Republic versus Tito Elia Magoti & Theodory Faustin Giyan.

⁹ Legal and Human Rights Centre, Statement, *supra* note 7.

handcuffed and driven off in what seemed to be a civilian vehicle.¹⁰ Immediately after he was taken, members of LHRC and other human rights organizations visited various police stations in search of Mr. Magoti but were unable to locate him.¹¹ Many people feared he had been abducted.¹² Eventually, in the evening of December 20, 2019, the Dar es Salaam Zone Police Commander, SACP Lazaro Mambosasa released a press report indicating that Mr. Magoti, had not been abducted but was in police custody with several other arrested individuals.¹³ No mention was made of where he was being detained or what allegations he was facing.¹⁴ The names of the other arrested individuals were not released. Despite the authorities acknowledging that they were holding Mr. Magoti in detention, his family, employer and legal representation were not informed of his whereabouts nor were they allowed to speak to him.¹⁵ The uncertainty of Mr. Magoti's whereabouts was heightened by the contradictory statement by the Regional Police Commander for Kinondoni (the region where Mr. Magoti was arrested), alleging that he had no knowledge of Mr. Magoti's arrest.¹⁶

On December 23, 2019, LHRC filed an urgent petition against the Dar es Salaam Special Zone Police Commander and the Attorney General demanding the release of Mr. Magoti whose whereabouts and charges had yet to be divulged.¹⁷ It is only after this application that Mr. Magoti together with his colleague who had also been arrested, Mr. Theodory Faustin Giyan, a software developer, were brought before the Kisutu Resident Magistrate Court in Dar es Salaam, on December 24, 2019. LHRC subsequently withdrew the urgent petition. LHRC later learnt that Mr. Magoti had received a text message from his colleague Mr. Giyan which was used by the police to lure him to the place on his arrest.¹⁸ Mr. Magoti was blindfolded as he was first transferred to Tazara police station and then to Mbwani station.¹⁹

V. Indicate reasons why you consider the arrest and/or detention to be arbitrary²⁰. Specifically provide details on whether:

- (i) The basis for the deprivation of liberty is authorized by the Constitution or the domestic law?
- (ii) The reason the individual has been deprived of liberty is a result of the exercise of his or her rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal

¹⁰ Tanganyika Law Society, Statement, *supra* note 5.

¹¹ Id.

¹² Nasdaq, Tanzania activist abducted from Dar es Salaam street, rights group says, December 20, 2019, available at <https://www.nasdaq.com/articles/tanzania-activist-abducted-from-dar-es-salaam-street-rights-group-says-2019-12-20>. LHRC was advised by Mr. Magoti's family that the public transport driver who dropped off Mr. Magoti witnessed his abduction by the unknown assailants and subsequently raised the alarm.

¹³ The Citizen, Police bosses differ over knowledge over Tanzanian rights activist Tito Magoti arrest, December 2019, available at <https://www.thecitizen.co.tz/news/1840340-5395966-9wuow7/index.html>.

¹⁴ Id.

¹⁵ Legal and Human Rights Centre, Statement, *supra* note 7.

¹⁶ The Citizen, *supra* note 13.

¹⁷ The Citizen, Tito Magoti: Case filed against Dar Police Chief and the AG over his detention, December 23, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5395848-format-xhtml-imvy00/index.html>.

¹⁸ Legal and Human Rights Centre, Statement, *supra* note 7

¹⁹ Id.

²⁰ Copies of documents that prove the arbitrary nature of the arrest or detention, or help to understand the specific circumstances of the case, as well as any other relevant information, may also be attached to this questionnaire.

Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights?

- (iii) The international norms relating the right to a fair trial have been totally or partially observed, specifically, articles 9 and 10 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 9 and 14 of the International Covenant on Civil and Political Rights?
- (iv) In the case of an asylum seeker, migrant or refugee who has been subjected to prolonged administrative custody, if he or she has been guaranteed the possibility of administrative or judicial review or remedy?
- (v) The individual has been deprived of his or her liberty for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status which aims towards or can result in ignoring the equality of human rights?

LHRC submits that Mr. Magoti's detention constitutes an arbitrary deprivation of his liberty under Category 1, II, III and V as set out by the UN Working Group on Arbitrary Detention (WGAD) above, as well as Universal Declaration of Human Rights (UDHR)²¹, the International Covenant on Civil and Political Rights (ICCPR)²² the African Charter of Human and People's Rights (African Charter)²³ and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)²⁴.

As highlighted above, Mr. Magoti was arrested on December 20, 2019 after which he was moved from one police station to another.²⁵ LHRC believes that this was a deliberate act by the government to prevent his lawyers and family from immediately accessing him. On December 24, 2019, he was brought before the Magistrate Court in Dar es Salaam where he was charged with (i) leading organized crime; (ii) possession of a computer program designed for the purpose of committing an offence; and (iii) money laundering.²⁶ He was not immediately informed of the reason for his arrest and for four days he was also not allowed access to his lawyers and family, nor were the latter informed of the place of his detention.²⁷ He was also questioned in relation to his online activities and associations with fellow citizens who have been advocating for democracy, accountability and

²¹ Universal Declaration of Human Rights (UDHR), 1948.

²² International Covenant on Civil and Political Rights (ICCPR), Article. 19, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171. Tanzania acceded to the ICCPR in 1972.

²³ African Charter on Human and Peoples Rights (African Charter), Article 1, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 1982, entered into force 21 October 1986. Tanzania ratified the African Charter in 1984.

²⁴ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), Adopted by General Assembly resolution 43/173 of 9 December 1988.

²⁵ Legal and Human Rights Centre, Statement, *supra* note 7.

²⁶ Id. See also Charge Sheet, *supra* note 8.

²⁷ Legal and Human Rights Centre, Statement, *supra* note 7.

transparency in Tanzania.²⁸ His case has since been postponed thrice, on January 7, 2020, January 21, 2020 and February 5, 2020 due to the prosecution still finishing its investigations.²⁹ It is currently scheduled for February 19, 2020. LHRC thus respectfully raises the following points:

- (i) The basis for the deprivation of liberty is authorized by the Constitution or the domestic law?

The manner in which Mr. Magoti was taken into custody is inconsistent with Tanzania's national laws. Mr. Magoti was arrested without a warrant.³⁰ He was handcuffed, blindfolded and forced into a civilian vehicle in a manner that was tantamount to an abduction.³¹ The Constitution of Tanzania mandates that a person may only be deprived of his liberty in a manner that is prescribed by the law.³² Generally, the Criminal Procedure Act provides that for most crimes, other than crimes committed in the presence of a police officer, arrests shall be made subject to an arrest warrant based on sufficient evidence.³³

Mr. Magoti was not immediately informed of the reasons for his arrest nor was he promptly informed of the charges he was facing. This was in violation of his due process rights.³⁴ Mr. Magoti was held in detention for four days where he was interrogated without being granted access to a lawyer or his family. Section 53 of the Criminal Procedure Act provides that a police officer shall not ask a detained person any questions unless the person has been informed of his right to communicate with a lawyer or a friend.³⁵ The police also failed to bring Mr. Magoti before a court of law within the prescribed twenty-four-hour period or as soon as was practicable.³⁶ His detention for four days without charge, with no access to his lawyers or family and without being presented before a court within the prescribed time was thus in violation of Tanzania's national laws. Furthermore, the use of a blindfold on Mr. Magoti was cruel and inhuman. Section 55 of the Criminal Procedure Act specifically provides that "[a] person shall, while under restraint, be treated with humanity and with respect for human dignity" and that "[n]o person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment".³⁷

²⁸ Id.

²⁹ Legal and Human Rights Centre, Press Release, Court Orders Prosecutors to Finalize investigations of Magoti and Theodory Case, February 5, 2020, available at <https://www.humanrights.or.tz/posts/b/News/court-orders-prosecutors-to-finalize-investigation-of-magoti-and-theodory-case>. See also Amnesty International, Tanzania: Release human rights lawyer Tito Magoti immediately and unconditionally, January 21, 2020, available at <https://www.amnesty.org/en/latest/news/2020/01/tanzania-release-human-rights-lawyer-tito-magoti-immediately-and-unconditionally/>.

³⁰ Tanganyika Law Society, Statement. *supra* note 5.

³¹ Id. See also Legal and Human Rights Centre, Statement, *supra* note. 7.

³² The Constitution of the United Republic of Tanzania, 1977 (as amended). Section 15 (2) (a).

³³ Criminal Procedure Act, (unofficial version) available at http://www.tanzania.go.tz/egov_uploads/documents/CRIMINAL%20PROCEDURE%20ACT.pdf. Section 13 and 14. See also U. S State Department Report 2018, Section D, Arrest Procedures and Treatment of Detainees, available at <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/tanzania/>. See also Tanganyika Law Society, Statement, *supra* note 5.

³⁴ The Criminal Procedure Act, Section 23(1).

³⁵ Id. Section 53(c) (iii).

³⁶ Id. Section 32 (1). See also Section 33. An Officer in Charge of a police station is also required to the nearest magistrate within twenty-four hours or as soon as practicable, cases of all arrested persons within his jurisdiction.

³⁷ Id. Section 55(1) and (2).

Attached hereto as Annexure “B” is a statement made by the Tanganyika Law Society outlining their concerns over the irregular manner of Mr. Magoti’s arrest and detention.

LHRC submits that Mr. Magoti’s arrest unfortunately fits a pattern where authorities have failed to follow due process procedures. In a similar case, journalist Erick Kabendera was arrested by unknown police officers and taken to an undisclosed location where in the early stages of his arrest, he was denied access to his lawyers or family and not immediately informed of the reasons for his arrest or the charges he was facing.³⁸ In a joint press statement by the U.S Embassy and British High Commission to Tanzania, the missions expressed concern over the “steady erosion of due process in Tanzania, as evidenced by the ever more frequent resort to lengthy pre-trial detentions and shifting charges by its justice system.”³⁹ The statement expressed particular concern over the “irregular handling of the arrest, detention and indictment of investigative journalist Erick Kabendera, including the fact he was denied access to a lawyer in the early stages of his detention, contrary to the Criminal Procedure Act.”⁴⁰ Whilst this submission relates to Mr. Magoti only, the LHRC wishes to bring the case of Mr. Kabendera to the attention of the WGAD as it sets out the societal context in which Mr. Magoti’s abduction took place.

- (ii) The reason the individual has been deprived of liberty is a result of the exercise of his or her rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights?

The government of Tanzania has come under strong criticism for its increasing clampdown on human rights defenders, civil society, journalists, bloggers, opposition politicians and their supporters, the media and other dissenting voices in Tanzania. Several organizations have documented and expressed serious concern over the country’s declining human rights situation. In May, 2019, 38 human rights organizations wrote to the permanent representatives of the United Nations Human Rights Council raising concerns over the increased restrictions on civic space in Tanzania, and highlighted the passing of “draconian legislation, legal and extrajudicial methods being used to harass HRDs, threaten independent journalism, and restrict freedom of opinion and expression, peaceful assembly and association”.⁴¹

³⁸ U.S Embassy, British High Commission, Statement, August 9, 2019, available at <https://tz.usembassy.gov/joint-statement-of-concern-over-the-erosion-of-due-process-in-tanzania/>

³⁹ Id.

⁴⁰ Id.

⁴¹ Human Rights Watch, UN Human Rights Council Should Address Tanzania Crackdown, Preventative Engagement with, and Action on, Tanzania at the Human Rights Council’s 41st session, May 13, 2019, available at <https://www.hrw.org/news/2019/05/13/un-human-rights-council-should-address-tanzania-crackdown>.

See also ABA Joint Fact-Finding Mission Report: Warning Shots, Threats to the Independence of the Legal Profession in Tanzania, available at [file:///C:/Users/nyaundim/Downloads/IBAHRI-Report-Warning-Shots-Threats-to-the-Independence-of-the-Legal-Profession-in-Tanzania-April-2018%20\(2\).pdf](file:///C:/Users/nyaundim/Downloads/IBAHRI-Report-Warning-Shots-Threats-to-the-Independence-of-the-Legal-Profession-in-Tanzania-April-2018%20(2).pdf)

In October, 2019, Amnesty International and Human Rights Watch respectively released separate but similar reports, one titled :“The price we pay: Targeted for dissent by the Tanzanian State” and the other: “As long as I am quiet, I am safe: Threats to Independent Media and Civil Society in Tanzania”.⁴² Both reports documented “[t]he regressive policies and actions of the authorities that have stifled the media, sown fear among civil society, and restricted the playing field for political parties in the lead-up to elections.”⁴³ Most recently, 28 civil society organizations wrote to the United Nations and African Commission Special Rapporteurs on the Situation of Human Rights Defenders, urging them to urgently intervene in the case of Mr. Magoti and other perceived critics of the government who are detained and facing criminal prosecution.⁴⁴

LHRC strongly believes that the allegations against Mr. Magoti are in retaliation for the exercise of his right to freedom of expression. In particular, during Mr. Magoti’s unlawful detention, he was reportedly questioned for his use of social media (Twitter) and his association with media owner and activist Maria Sarungi-Tsehai; former Tanganyika Law Society President Fatma Karume; and opposition politician Zitto Kabwe⁴⁵, all of whom are vocal critics of the Tanzanian government, and are all currently facing various forms of retaliation for demanding government accountability and transparency.⁴⁶ Ms. Maria Sarungi-Tsehai is the Director of Kwanza Broadcasting Limited operating Kwanza Online TV which was in 2019 suspended for 6 months by the Communications Regulatory Authority for failing to publish their editorial statement and charter, in alleged violation of regulations under the Electronic and Postal Communications Online Content Regulations 2028.⁴⁷ The suspension of Kwanza Online TV was condemned by press freedom organizations including Reporters Without Borders.⁴⁸ Ms. Fatuma Karume, who is the former president of the Tanganyika Law Society, and a renowned human rights lawyer, was in September 2019, arbitrarily suspended

⁴² Amnesty International, Tanzania: Climate of Fear and Repression Mount, October 28, 2019, available at <https://www.amnesty.org/en/latest/news/2019/10/tanzania-climate-of-fear-censorship-as-repression-mounts/>. See also Human Rights Watch, As long as I am quiet, I am safe: Threats to Independent Media and Civil Society in Tanzania, October 28, 2019, available at <https://www.hrw.org/report/2019/10/28/long-i-am-quiet-i-am-safe/threats-independent-media-and-civil-society-tanzania>.

⁴³ Id.

⁴⁴ DefendDefenders, Joint Letter: Urgent Request for Intervention in the Case of Human Rights Defender, Tito Magoti, January 10, 2020, available at

⁴⁵ Legal and Human Rights Centre, Statement, December 24, 2019, available at <https://defenddefenders.org/joint-letter-urgent-request-for-intervention-in-the-case-of-human-rights-defender-tito-elia-magoti/https://www.humanrights.or.tz/posts/b/News/updates-from-the-court-on-the-case-of-tito-elia-magoti-and-theodory-faustin-givan>.

⁴⁶Kwanza Broadcasting Limited whose director is Ms. Maria Sarungi was earlier in the year suspended for 6 months by the Communications Regulatory Authority for allegedly violating regulations under the Electronic and Postal Communications Online Content Regulations 2028. See Reporters Without Boarders, Tanzania Slaps Harsh Sanctions on three online TV Channels, September 30, 2019, available at <https://rsf.org/en/news/tanzania-slaps-harsh-sanctions-three-online-tv-channels>. Ms. Fatuma Karume, who is the former president of the Tanganyika Law Society, was recently arbitrarily suspended from practicing law in mainland Tanzania for her submissions in a constitutional court case challenging the appointment of the Attorney General. See The Citizen, Uproar over Fatma Karume Suspension, September 22, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5282716-9d4ama/index.html>. Mr. Zitto Kabwe is currently facing criminal charges following statements he made demanding police accountability for extra-judicial killings. See also The EastAfrican, Zitto Kabwe charged with incitement, freed on bail, November 2, 2018, available at <https://www.theeastafrican.co.ke/news/ea/Tanzania-opposition-MP-charged-with-incitement/4552908-4834324-m74a5jz/index.html>.

⁴⁷Kwanza Online TV along with two other stations were alleged to have violated policy regulation by failing to publish their user policies. The Authority also accused Kwanza Online TV of publishing misleading information. See Committee to Protect Journalists, Tanzanian authorities ban Online TV station, fine 2 others, January 8, 2020, available at <https://cpj.org/2020/01/tanzanian-authorities-ban-online-tv-station-fine-2.php>. See also Reporters Without Boarders, Tanzania Slaps Harsh Sanctions on three online TV Channels, September 30, 2019, available at <https://rsf.org/en/news/tanzania-slaps-harsh-sanctions-three-online-tv-channels>.

⁴⁸ Id.

from practicing law in mainland Tanzania for her submissions in a constitutional court case challenging the appointment of the Attorney General.⁴⁹ The United Nations Special Rapporteur on the Independence of Judges and Lawyers has expressed his concern over reports of Ms. Karume's arbitrary suspension.⁵⁰ Mr. Zitto Kabwe is currently facing criminal charges following statements he made demanding police accountability for extra-judicial killings.⁵¹

As the WGAD will be aware, freedom of expression, particularly on matters of public interest, is not only a basic individual right but necessary to a free and just society. The United Nations Human Rights Committee, the body charged with authoritative interpretation of the ICCPR, has succinctly explained: "Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights."⁵² The right to freedom of expression, is guaranteed in several major international human rights treaties to which Tanzania is a party, including Article 19 the ICCPR and Article 9 of the African Charter.⁵³ Tanzania therefore has an obligation to respect the right to freedom of expression. In addition to freedom of expression, regional and international human rights treaties recognize the rights of citizens to freely associate with likeminded citizens and collectively or individually, participate in matters of public interest.⁵⁴

LHRC also points out that Mr. Magoti is a young lawyer who has in his professional and personal capacity worked to promote human rights in Tanzania and has publicly engaged in matters of public interest. The United Nations Basic Principles on the Role of Lawyers (UN Basic Principles) which was adopted by member states to the United Nations in recognition that lawyers play a fundamental role in the protection of human rights and the application of the rule of law, provides that: "[l]awyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering

⁴⁹The Citizen, Uproar over Fatma Karume Suspension, September 22, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5282716-9d4ama/index.html>. The American Bar Association, Center for Human Rights submitted the case of Ms. Fatma Karume to the mandate of the United Nations Special Rapporteur on the Independence of Judges and Lawyers raising concern over her suspension without a hearing and the continued delay in scheduling a hearing in the matter. It is feared that her suspension is an indirect means of silencing her.

⁵⁰ Diego Garcia-Sayan, Twitter Account, #Tanzania: @fatma_karume is an admirable and prominent lawyer, with a relevant contribution to the Rule of Law and human rights in her country. I express my concern for her alleged arbitrary suspension. Lawyers should be free to practice law. #IndependenceLawyers, available at <https://twitter.com/UNIndepJudges/status/1190031776409935872?s=20>.

⁵¹ See also The EastAfrican, Zitto Kabwe charged with incitement, freed on bail, November 2, 2018, available at <https://www.theeastafrican.co.ke/news/ea/Tanzania-opposition-MP-charged-with-incitement/4552908-4834324-m74a5jz/index.html>.

⁵² United Nations Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, September 2011.

⁵³ African Charter, Article 9, *supra* note 23. See also ICCPR, Article 19, *supra* note 22. See also UDHR, Article 19, *supra* note 21.

⁵⁴ Article 19(2) of the ICCPR, clearly outlines that "[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Article 9 of the African Charter

professional restrictions by reason of their lawful action or their membership in a lawful organization.”⁵⁵

LHRC submits that prosecuting an individual for engaging in matters of public interest and associating with citizens of similar views is in violation of international law, particularly the rights to freedom of expression; political participation and freedom of association.⁵⁶

- (iii) The international norms relating the right to a fair trial have been totally or partially observed, specifically, articles 9 and 10 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 9 and 14 of the International Covenant on Civil and Political Rights?

There have been several violations of Mr. Magoti’s right to a fair trial as detailed below:

- (a) **The right to be informed of the reasons for arrest; right to be promptly informed of the charges; and the right to be promptly brought before a court.**

Mr. Magoti was arrested on December 20, 2019. At the time of his arrest he was not informed of the reason for his arrest.⁵⁷ He was detained for four days before he was eventually brought to court on December 24, 2019, and for the first time, he was informed of the charges against him.⁵⁸

Article 9(2) of the ICCPR specifically requires that anyone arrested “shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”⁵⁹ Article 9(3) further states that anyone arrested “shall be brought promptly before a judge or other officer authorized by law”.⁶⁰ The latter provision is meant to ensure that anyone arrested or detained is entitled to a judicial hearing to determine the lawfulness of his or her detention.⁶¹ While the exact meaning of “promptly” may vary depending on objective circumstances,⁶² the United Nations Human Rights Committee, has explained that delays should not exceed a few days from the time of arrest⁶³ and that 48 hours is ordinarily sufficient.⁶⁴ Any delay longer than 48 hours

⁵⁵ United Nations Basic Principles on The Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990.

⁵⁶ ICCPR, Article 22 (freedom of association) and Article 25 (right to political participation). See also African Charter, Articles 10 (freedom of association) and Article 13 (right to political participation).

⁵⁷ Legal and Human Rights Centre, Statement, *supra* note 7.

⁵⁸ *Id.*

⁵⁹ ICCPR *supra* note. *Id.* Article 9(2). See also ICCPR art. 14(3)(a) (stating “that an accused person should be promptly informed in detail in a language which he understands the nature and cause of the charge against him”).

⁶⁰ *Id.* Article 9(3).

⁶¹ *Id.*, Article 9(4).

⁶² *McLawrence v. Jamaica*, H.R. Comm. 702/1996, paragraph 5.6 (July 18, 1997); *Kovalev v. Belarus*, H.R. Committee. CCPR/C/106/D2120/2011 paragraph 11.3 (Nov. 17, 2012).

⁶³ *Marques de Morais v. Angola*, H.R. Committee. 1128/2002, paragraph 6.3 (2005); *Terán Jijón v. Ecuador*, H.R. Committee. 277/1988, paragraph 5.3 (1992)(five days not prompt); *Freemantle v. Jamaica*, H.R. Committee. 625/1995, paragraph 7.4 (2000)(four days not prompt).

⁶⁴ *Kovsh v. Belarus*, H.R. Committee. 1787/2008, paragraph 7.3–7.5 (2013).

must remain absolutely exceptional and be justified under the circumstances.⁶⁵ The Committee went on to note that longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment.⁶⁶ The African Commission on Human and People’s Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Commission Guidelines) as well as the Body of Principles have echoed similar guarantees of an accused’s right to be informed of the charges and to be promptly brought before a court.⁶⁷

(a) (i) Insufficient details of in the criminal charges

LHRC submits that while Mr. Magoti was eventually informed of the charges against him, the Charge Sheet fails to meet international standards. Article 14 (3) (a) of the ICCPR provides that in the determination of a criminal charge, an accused person shall be entitled to “...be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”.⁶⁸ The United Nations Human Rights Committee has elaborated on this provision to mean that the charges must include “both the law and the alleged general facts on which the charge is based”.⁶⁹ The Yugoslavia Tribunal has clarified that where it is alleged that an accused has personally committed a crime, material facts such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be set out in detail.⁷⁰ The tribunal also clarified that in large-scale crimes, and broad crimes, “[i]t is not acceptable for the Prosecution to omit the material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds”.⁷¹

As is clear from the charge sheet, exhibited in Annexure “A”, there is clearly insufficient information on the facts to support the allegations. The facts giving rise to the charge of “leading organized crime” state that Mr. Magoti and his co accused, Mr. Giyan, on diverse dates between February 2019 and December 2019, in Dar es Salaam, organized a criminal racket, namely the possession of a computer program for the purpose of committing an offence thereby acquiring the sum of 17, 354,535 million Tanzanian Shillings.⁷² No information is given on the nature of the computer program, the crime that was committed through the computer program and how the computer program was used by the two men to acquire the alleged sum. As such, Mr. Magoti lacks adequate

⁶⁵ Id. See also *Fillastre and Bizouarn v. Bolivia*, H.R. Committee. 336/1988, paragraph 6.4 (1991) (budgetary constraints did not justify 10-day delay).

⁶⁶ See concluding observations: Hungary, CCPR/CO/74/HUN, paragraph 8 (2002).

⁶⁷ African Commission Guidelines, *supra* note 75. See also Body of Principles, *supra* note 24.

⁶⁸ ICCPR, *supra* note 22.

⁶⁹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), Section V. Rights of persons charged with a criminal offence.

⁷⁰ Prosecutor v Kupreškić et al, (IT-95-16-A), ICTY Appeals Chamber (23 October 2001) Section 88-124 (quoting from section 92). See also Amnesty International, Fair Trial Manual, Second Edition, page 76, available at <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> (quoting the Tribunal).

⁷¹ Id.

⁷² Charge Sheet, *supra* note 8.

information about the scope of the case against him, thereby severely undermining his ability to prepare for trial.

(c) The right to access a lawyer

During the 4 days that Mr. Magoti was detained, he was denied access to his lawyer during which period he was interrogated.⁷³ Article 14 of the ICCPR provides everyone facing criminal charges the right to defend one's self in person or through legal assistance of his own choosing.⁷⁴ This is a fundamental aspect of access to justice such that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, require that member states "ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence... is entitled to legal aid at all stages of the criminal justice process."⁷⁵ The African Commission Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that an arrested person must not only have the right to legal representation of their choice but the facilities to exercise that right.⁷⁶ The fundamental right to legal counsel as well to an accused person's family is also outlined under Principles 17, 18 and 19 of the Body Principles.⁷⁷ The LHRC therefore submits that the Tanzanian authorities failure to ensure that Mr. Magoti was allowed legal representation during four days of interrogation violates his rights as set out above.

(d) The accused's right to inform family members the place of detention.

During Mr. Magoti's four-day detention in police custody, he was not afforded an opportunity to notify his family of his arrest and where he was being detained. He was also blindfolded and transferred from police station to police station.⁷⁸ The African Commission Guidelines state that "[a]nyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody".⁷⁹ Furthermore, Principle 16 of the Body of Principles provides that "...after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody".⁸⁰ It is internationally recognized that "torture is most frequently practiced during incommunicado detention" and "it is in the period immediately following deprivation of liberty that the risk of intimidation and physical

⁷³ Legal and Human Rights Centre, Statement, *supra* note 7. See also Tanganyika Law Society, Statement. *supra* note 5.

⁷⁴ Article 14(3)(d). ICCPR. See also Article 7(c), African Charter.

⁷⁵ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UNODC (2013), available at https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf (resolution adopted by the General Assembly on the report of the Third Committee (A/67/458)).

⁷⁶ African Commission on Human and People's Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003.

⁷⁷ Body of Principles *supra* note.

⁷⁸ Legal and Human Rights Centre, Statement, *supra* note 7.

⁷⁹ African Commission Guidelines, *supra* note 75.

⁸⁰ Body of Principles, *supra* note 24.

ill-treatment is the greatest.”⁸¹ Access to a lawyer and to family members immediately after detention is a fundamental safeguard against torture and other ill-treatment. The LHRC therefore argues that Tanzania has violated Mr. Magoti’s rights.

(e) Denial of the right to bail

Section 148 (5) of the Criminal Procedure Act provides that a police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if that person is charged with certain crimes including ‘money laundering’ contrary to Anti-money Laundering Act, 2006.⁸² This provision thus provides for a blanket denial of bail for certain crimes and as such, Mr. Magoti is not entitled to bail and he remains in detention pending the finalization of his case.⁸³ LHRC submits that Section 148(5)(a) of the Criminal Procedure Act and the resulting denial of the right for Mr. Magoti to apply for bail is a violation of his due process rights as guaranteed under Article 9 and 10 of the UDHR, Articles 9 and 14 of the ICCPR, and Principles 38 and 39 of the Body of Principles.

In Tanzania, those charged with non-bailable offences, regardless of the frivolousness (baselessness) of the allegations, can spend years in pre-trial detention. Individuals charged with non-bailable offences have reportedly spent months and even years in detention without trial.⁸⁴ Most recently, Tanzania’s President Magufuli acknowledged in a public speech, that citizens charged with non-bailable offences such as money-laundering, were being held in detention for periods exceeding two years while the prosecution finalized investigations.⁸⁵ The President further stated that some of the cases were fabricated and that “[i]nnocent people are being punished for crimes they haven’t committed”.⁸⁶ As stated above, LHRC is concerned that the prosecution of Mr. Magoti is in retaliation for his public criticism of the government and that specifically charging him with money laundering is deliberately aimed at keeping him in prolonged pre-trial detention. Following Mr. Magoti’s appearance in court on December 24, 2019, his case was postponed to January 7, 2020. Since then the case was postponed three additional times as the prosecution claimed it was

⁸¹ Report of the United Nations Special Rapporteur (torture and other cruel, inhumane and degrading treatment or punishment) to the General Assembly, 1 September 2004, UN Doc. A/59/324, paragraphs 22 and 44.

⁸² Section 148 (5) (a)(v) of the Criminal Procedure Act lists money laundering as one of the non-bailable offences. Read also FB Attorneys, Non bailable offences in Tanzania, July 22, 2019, available at <https://fbattorneys.co.tz/qa-22-july-2019/>.

⁸³ The Citizen, Rights activist charged with money laundering, December 24, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5397074-9wvvi9/index.html>.

⁸⁴ The Guardian, Tanzanian journalist could face up to five years in jail, September 12, 2019, available at <https://www.theguardian.com/global-development/2019/sep/12/tanzanian-journalist-could-face-up-to-five-years-in-jail-without-trial-erick-kabendera>. See also U.S State Department Human Rights Report: Tanzania. Detainees charged with crimes generally waited three to four years for trial due to a lack of judges to hear cases, an inadequate judicial budget, and the lengthy time required to complete police investigations. <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/tanzania/>

⁸⁵ The Citizen, Magufuli laments dragging of case investigations, February 7, 2020, available at <https://www.thecitizen.co.tz/news/Magufuli--case-investigation-speed-too-low/1840340-5447556-7gtp04/index.html>.

⁸⁶ Id.

still carrying out its investigations.⁸⁷ Erick Kabendera, mentioned above, who was also charged with money laundering, has been in detention since his arrest in July 2019, with hearings postponed at least 11 times while the prosecution similarly “carries out investigations”.⁸⁸

Article 9(1) ICCPR states that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Principle 11 of the Body of Principles specifically outlines that a person “shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” and that a detained person and his or her counsel (if any) “shall receive prompt and full communication of any order of detention, together with the reasons therefor.”⁸⁹ Principle 11 also empowers a judicial or other authority “to review as appropriate the continuance of detention.”⁹⁰ The right to liberty under the African Charter is enshrined in Article 6 thereof. The right stems from the presumption that an accused person is innocent until proven guilty and, as such, the law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.⁹¹

Article 9(3) of the ICCPR thus provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”⁹² Detention in custody of persons awaiting trial should therefore be the exception rather than the rule. Each case must thus be judged on its own merits with courts taking into consideration factors such as (1) the seriousness of the alleged crime (2) whether there is overwhelming evidence against the accused (3) possibility of the accused interfering with witnesses and evidence; and (4) where the accused poses a flight risk or is a danger to the community if granted bail.⁹³

The United Nations Human Rights Committee in elaborating on the above, has specified that “detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight,

⁸⁷Legal and Human Rights Centre, Statement, *supra* note 7.

⁸⁸ BBC News, Tanzania journalist to spend Christmas in jail, December 18, 2019, available at <https://www.bbc.com/news/world-africa-50837986>.

⁸⁹ Body of Principles, *supra* note 24.

⁹⁰ *Id.*

⁹¹ American Bar Association, Criminal Justice Section Standards, Pre-Trial Release, available at https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/.

⁹² ICCPR, *supra* note 36, at art. 9(3).

⁹³ United Nations Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before the Courts and Tribunals and to a fair Trial, U.N. Doc CCPR/C/CG/32 (2007).

interference with witnesses and evidence or the recurrence of crime.”⁹⁴ The relevant factors should be specified in law and should not include vague and expansive standards such as “public security.”⁹⁵ The Committee has further stated that “pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁹⁶

Courts must strive to put conditions that favour the liberty of an accused in order to minimize the risk of an innocent person serving a sentence prior to conviction. As such, courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets, or other conditions would render detention unnecessary in the particular case. The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) call for the avoidance of pre-trial detention.⁹⁷ The rules provide that in cases where pre-trial detention is used, it should be a measure of last resort and should not last longer than is necessary.⁹⁸ The African Commission Guidelines echo international principles on the right to bail, providing that “unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.”⁹⁹ In addition, while the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa is not binding law, the declaration emphasizes the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment. One of the main strategies includes detaining persons awaiting trial only as a last resort and for the shortest time possible.¹⁰⁰

The detention of Mr. Magoti without the right to bail is a violation of regional and international standards and thus arbitrary. It is LHRC’s fear that Mr. Magoti will be held in prolonged pretrial detention as a form of extrajudicial punishment.

(f) Right to a Speedy Trial

As stated above, Mr. Magoti’s case has been in court three times. Following his first appearance on December 24, 2019, the case was first postponed on January 7, 2020 after the prosecution indicated that the case had reached a satisfactory stage, and requested that the hearing be moved to January

⁹⁴ Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person), paragraph 38, U.N. Doc. CCPR/C/GC/35 (December 16, 2014), <https://undocs.org/pdf?symbol=en/CCPR/C/GC/35>.

⁹⁵ Human Rights Committee, Concluding Observations: Bosnia and Herzegovina, paragraph 18, U.N. Doc. CCPR/C/BIH/CO/1 (Nov. 22, 2006), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBIH%2fCO%2f1&Lang=en.

⁹⁶ Human Rights Committee, *supra* note 55, at paragraph 38.

⁹⁷ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), paragraph 6, adopted by G.A. Res. 45/110, Dec. 14, 1990, <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>.

⁹⁸ *Id.*

⁹⁹ African Commission Guidelines, *supra* note 75, Article M(1)(e) (emphasis added).

¹⁰⁰ African Commission on Human and Peoples’ Rights, *Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa*, adopted by ACHPR Res. 64 (XXXIV) 03, 2003, <https://www.achpr.org/legalinstruments/detail?id=42>.

21, 2020. However, on this date, the prosecution, requested a further postponement on the basis that although the investigation had reached a satisfactory stage, there were not complete. After listening to opposing arguments from both the prosecution and defense, the presiding magistrate, the honourable Ms. Janet Mtega postponed the matter to February 5, 2020. On February 5, 2020, the matter was again postponed to February 19, 2020.

One of the cardinal principles of the right to a fair trial, is the right to be tried within a reasonable time and this is guaranteed in both Article 14(3)(c) of the ICCPR and Article 7(1)(d) of the African Charter. Principle 11 of the Body of Principles provides that “[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law”. The African Commission has found that the undue prolongation of a case is contrary to the letter and spirit of Article 7 of the African Charter.¹⁰¹

While there is no settled definition of what constitutes a “reasonable time” in the fair trial context, the UN Human Rights Committee, has stated that “what is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities”.¹⁰² Regional courts have found violations of the right to be tried within a reasonable time where the prosecution or the prosecution’s witnesses cause a matter to be inordinately postponed.¹⁰³

In this case, while the actual length of time between charges and trial are relatively short, the repeated delays are contrary to the spirit of the general rule - which is to ensure that any delays are in the interests of justice and kept to a necessary minimum. The prosecution has thus far requested a postponement on three occasions on the basis that investigations are still underway. This is despite that the dates of January 7, 21 and February 5, 2020 were scheduled with their knowledge. On both occasions, Mr. Magoti and his counsel appeared in court prepared to proceed. It would seem that the police arrested Mr. Magoti in order to investigate which is contrary to best practice.¹⁰⁴ The right to a speedy trial is not only designed to avoid keeping persons too long in a state of uncertainty about their fate, but if a person is held in detention during the period of the trial, to ensure that such

¹⁰¹ See Communication 301/05 Haregowoin Gebre- Sellaise & Institute for Human Rights and Development in Africa (on behalf of former Dergue officials) v Ethiopia, November 7, 2011,

http://www.achpr.org/files/sessions/52nd/communications/301.05/achpr52_301_05_eng.pdf. See also Communication 199/97 Odjouoriby Cossi Paul v Benin (17th Activity Report 2003-2004).

¹⁰² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

¹⁰³ Waldemar Geronimo Pinheiro and Jose Victor Dos Santos v. Paraguay, Case 11.506, Inter-Am. Comm’n H.R., Report No. 77/02, (2002), <http://cidh.org/annualrep/2002eng/Paraguay.11506.htm>; Yaroshovets and Others v. Ukraine, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-158487>; Naimdzhon Yakubov v. Russia, Eur. Ct. H.R. (2015), <http://hudoc.echr.coe.int/eng?i=001-158487>;

¹⁰⁴ In the Zimbabwean case of *Mhari vs Mangoti*, the High Court Judge in a decision relating to the inordinate delay of a criminal case, specifically stated that police were not to arrest to investigate. *Mhari vs Mangoti*, HH-247-15. See summary of case available at Zimbabwe Legal Information Institute, <https://zimlil.org/zw/case-summary/2015/1-43>

deprivation of liberty does not last longer than necessary in the circumstances of the specific case.¹⁰⁵ Given that Mr. Magoti has been charged with an offence that automatically denies him the right to bail, it is in the interests of justice that his matter is not subject to undue delays.

The reason the individual has been deprived of liberty is a result of the exercise of his or her rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights?

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.¹⁰⁶

On December 23, 2019, having failed to locate their employee, LHRC filed an urgent petition against the Dar es Salaam Special Zone Police Commander and the Attorney General demanding the release of Mr. Magoti whose whereabouts and charges against him had still not been divulged.¹⁰⁷ The next day, December 24, 2019, the police presented him before the Kisutu Magistrate court in Dar es Salaam.¹⁰⁸ LHRC therefore withdrew its application.

On January 8, 2020, 28 Civil Society Organizations (CSO) wrote to the United Nations and African Commission Special Rapporteurs on the Situation of Human Rights Defenders, requesting an urgent intervention in case of Mr. Magoti and other defenders facing criminal prosecution for their legitimate human rights work.¹⁰⁹

VII. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible).¹¹⁰

¹⁰⁵ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

¹⁰⁶ Note that the Methods of Work of the Working Group do not require exhaustion of all available domestic remedies for the communication to be admissible for consideration by the Working Group.

¹⁰⁷ The Citizen, Tito Magoti: Case filed against Dar Police Chief and the AG over his detention, December 23, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5395848-format-xhtml-imvy00/index.html>.

¹⁰⁸ The Citizen Rights Activist Charged With Money Laundering, December 24, 2019, available at <https://www.thecitizen.co.tz/news/1840340-5397074-9wvvi9/index.html>.

¹⁰⁹ Letter by 28, Civil Society Organizations to United Nations and African Commission Special Rapporteur on Situation of Human Rights Defenders, Urgent Request for Intervention in The case of Human Rights Defender, Tito Elia Magoti, January 8, 2020, available at <https://www.thecitizen.co.tz/news/1840340-5397074-9wvvi9/index.htmlhttps://www.civicus.org/index.php/media-resources/news/4225-urgent-request-for-intervention-in-the-case-of-hrd-tito-elia-magoti>.

¹¹⁰ If a case is submitted to the Working Group by anyone other than the victim or his family, such a person or organization should indicate authorization by the victim or his family to act on their behalf. If, however the authorization is not readily available, the Working Group reserves the right to proceed without the authorization. All details concerning the person(s) submitting the information to the Working Group, and any authorization provided by the victim or his family, will be kept confidential.

Date: 02/12/2020 Signature:

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish.

Ms. Anna Henga

Director

Legal and Human Rights Resource Center

IN THE RESIDENT MAGISTRATE'S COURT OF DAR ES SALAAM
AT KISUTU

ECONOMIC CRIME CASE NO.137.....OF 2019

REPUBLIC

Versus

1. TITO ELIA MAGOTI
2. THEODORY FAUSTIN GIYAN

CHARGE

1ST COUNT

STATEMENT OF OFFENCE

LEADING ORGANISED CRIME; Contrary to Paragraph 4(1)(a) of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002] as amended.

PARTICULARS OF OFFENCE

TITO ELIA MAGOTI and THEODORY FAUSTIN GIYAN, on diverse dates between 1st February 2019 and 17th December 2019, at Dar es Salaam Region and various places within the United Republic of Tanzania, jointly and together with other persons not in court, willfully organized a criminal racket namely possession of a computer program that is designed for the purpose of committing an offence, thereby acquiring a sum of money amounting to Tanzanian shillings Seventeen Million, Three Hundred Fifty Four Thousand, Five Hundred Thirty Five [Tshs 17,354,535] only.

2ND COUNT

STATEMENT OF OFFENCE

POSSESSION OF A COMPUTER PROGRAM DESIGNED FOR THE PURPOSE OF COMMITTING AN OFFENCE; Contrary to Section 10(1)(a) of Cyber Crimes Act, No 14 of 2015 read together with Paragraph 36 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002] as amended.

PARTICULARS OF OFFENCE

TITO ELIA MAGOTI and THEODORY FAUSTIN GIYAN, on diverse dates between 1st February 2019 and 17th December 2019, at Dar es Salaam Region and various places within the United Republic of Tanzania, jointly and together with other persons not in Court, possessed a computer program that is designed for purposes of committing an offence.

3RD COUNT

STATEMENT OF OFFENCE

MONEY LAUNDERING; Contrary to sections 12(d) and 13(a) of Anti-Money Laundering Act, 2006 read together with Paragraph 22 of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002] as amended.

PARTICULARS OF OFFENCE

TITO ELIA MAGOTI and THEODORY FAUSTIN GIYAN, on diverse dates between 1st February 2019 and 17th December 2019, at Dar es Salaam and various places within the United Republic of Tanzania, jointly and together, acquired a total sum of money amounting to Tanzanian shillings Seventeen Million, Three Hundred Fifty Four Thousand, Five Hundred Thirty Five [Tshs 17,354,535] only, while they knew at the time of receipt that such money is proceeds of a predicate offence, namely; Leading organized crime.

Dated at Dar es Salaam this.....^{24th}.....day of ^{1st} December.....2019

.....
PRINCIPAL STATE ATTORNEY

The Tanganyika Law Society

The Bar Association Of Tanzania Mainland

STATEMENT OF THE NATIONAL BAR ON THE ABDUCTION OF MR. TITO MAGOTI, THE PROGRAMME OFFICER LEGAL AND HUMAN RIGHTS CENTRE (LHRC)

The Tanganyika Law Society (TLS) is the national bar association established by the Tanganyika Law Society Act Cap 307 RE 2002, with the following main objects among several others namely

- (a) To assist the Government and the Courts in all matters affecting legislation, and the administration and practice of the law in Tanzania;**
- (b) To represent, protect and assist members of the legal profession in Tanzania as regards conditions of practice and otherwise;**
- (c) To protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law.**

According to Eye witnesses who were present at the scene at the material date and time, On the 20th December 2019 on or about 10.30 Hrs. at PUMA Petrol Station, situate at Mwenge along New Bagamoyo Road, within the District of Kinondoni, Region of Dares salaam an employee of the Legal and Human Rights Centre (LHRC), holding the position of Programme Officer, Mass Education in the name of TITO MAGOTI was abducted by Four unidentified persons, handcuffed, and bundled in a Toyota Harrier SUV with personal registration numbers.

After the incidence news started going viral on Social media on the incidence and as a consequence thereof the employer, together with other institutions dealing with the protection of human rights started following up the issue and visited several police stations in Dar es salaam for purposes of ascertaining whether or not Mr. Magoti was arrested. The visit on the Police stations confirmed that Mr. Tito Magoti was not remanded in any of the police stations.

On the evening of 20th December 2019, the Dar es Salaam Zone Police Commander one SACP Lazaro Mambosasa vide press releases signed by him and vide a televised Press Conference confirmed unreservedly that Mr. Tito Magoti was not abducted but was arrested at Mwenge Area by the Police Force together with three others and they were investigated for criminal offences and further assured the Public that Mr. Tito Magoti is in safe hands.

Since then, ninety six (96) hours after his abduction, Mr. Tito Magoti has not been arraigned in any court of law in Tanzania. And in a very disturbing statement the Regional Police Commander for Kinondoni Region, which has jurisdiction on Mwenge area where Mr. Tito Magoti was arrested issued another statement stating that Mr. Tito Magoti has not been arrested by the police within his jurisdiction hence not in any stations under him.

The Tanganyika Law Society as mandated by law is seriously perturbed in the manner in which the Police Force has dealt with the matter relating to the arrest and or abduction of Mr. Tito Magoti

in that the whole process is against the laws of the Land, more so relating to criminal justice and the Constitution of the United Republic of Tanzania relating to the personal Liberty of the individual.

1. MANNER OF ARREST:

The manner of arrest is clearly provided for under the provisions of Section 10 of the Criminal Procedure Act No. 8 of 1985. The law requires that the police go to the scene of the commission of the crime or in the alternative by order in writing require the attendance before himself of any person living within the limits of the station of that police officer or any adjoining station. The procedure adopted by the police or any person ambushing the suspect is unknown in law and amounts to abduction.

1. RIGHT TO BE INFORMED BY POLICE OFFICER OF THE OFFENCE

According to the initial statement by SACP Lazaro Mambosasa tends to reveal that the Police Force, at least by Friday evening were not aware of what offence committed by Mr. Tito Magoti a blanket statement that he has been arrested for criminal offence is to say the least vague, and violation of the Criminal Procedure Act

2. RIGHT TO COMMUNICATE WITH RELATIVE OR COUNSEL

From the date of his arrest the suspect has not been allowed to communicate with his lawyers and or relative which is violative of the provisions of section 54(1) of the Criminal Procedure Act any interrogation or any investigative process without involvement of counsel is a gross violation of the law and the Constitution which lays down the right of representation. And the resulting charges thereof are illegal and null in void for being abrogating the due process.

3. RIGHT TO BE GIVEN POLICE BAIL

A suspect has the right to bail under the law, section 64 (1)(2)(3)(4) and (5) of the Criminal Procedure Act provides that any person under the police custody shall be entitled to bail, and in the event that the police in charge sees that he cannot grant bail the he shall arraign that accused person in the next sitting of a magistrate court or not later than 24 hours since his arrest.

4. PERIOD WITHIN WHICH AN ACCUSED SHOULD BE ARRAIGNED IN COURT

Section 67 (1) (2) and (3) of the Criminal Procedure Act clearly provides that where an accused is denied police bail, it shall be the duty of the arresting officer to take him to court in the next possible opportunity to do so and not later than the next sitting of a court which in our case should have been Monday 23rd day of December 2019.

It is for the reasons stated above we as the Bar Association of Tanzania condemns in the most strongest terms the manner in which the police have acted in the abduction and continued unlawful confinement of Mr. Tito Magoti as the acts are against the law and the Constitution. TLS will pray to join as an interested party in the matter which has been instituted a case in The High Court of