UNITED REPUBLIC OF TANZANIA

COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE

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THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE POSITION STATEMENT ON HUMAN RIGHTS AND GOOD GOVERNANCE ISSUES ARISING FROM THE TREASON PROCEEDINGS AND JUDGMENT INVOLVING HON. TUNDU ANTIPHAS LISSU

1.0. INTRODUCTION

The Commission for Human Rights and Good Governance (CHRAGG), established in 2000 pursuant to Articles 129 and 130 of the Constitution of the United Republic of Tanzania, 1977, as amended by the Thirteenth Constitutional Amendment, is mandated to promote and protect human rights and uphold the principles of good governance. The Commission combines the functions of a National Human Rights Institution (NHRI) with those of a national Ombudsman, the latter having previously been discharged by the Permanent Commission of Enquiry before the repeal of the Permanent Commission of Enquiry Act, No. 25 of 1966.

Pursuant to Article 130(1) of the Constitution and section 6(1) of the CHRAGG Act, Cap. 391, the CHRAGG is empowered, among other functions, to receive, examine and investigate complaints concerning alleged human rights violations and contravention of principles of good governance; advise on human rights and good governance matters; review legislations; and address systemic institutional concerns through monitoring, research, public inquiries, public education and other lawful interventions.

Against this institutional and legal background, CHRAGG issues this Position Statement following the Judgment delivered by the High Court of Tanzania on 6 November 2026 in the criminal proceedings involving Hon. Tundu Antiphas Lissu, National Chairperson of Chama cha Demokrasia na Maendeleo (CHADEMA).

Accordingly, CHRAGG's consideration of the proceedings extends beyond their outcome to the human rights and good governance implications arising from the exercise of public authority and the institutional safeguards governing the administration of criminal justice. In this regard, CHRAGG seeks to assess matters within its jurisdiction on the basis of applicable law, the records and information examined, and other verifiable evidence.

CHRAGG emphasizes, however, that its oversight mandate is distinct from the judicial function. It does not confer appellate jurisdiction or empower CHRAGG to review, reverse, invalidate or substitute its determination for that of a competent court. CHRAGG's intervention is therefore confined to examining human rights and good governance concerns arising from the conduct of public institutions, subject to the jurisdictional limitations

prescribed by the Constitution and its enabling legislation. Its approach neither seeks to interfere with judicial independence nor prejudge matters reserved for determination by competent courts.

2.0. BROADER HUMAN RIGHTS AND GOOD GOVERNANCE CONSIDERATIONS

On 6 November 2026, the High Court of Tanzania at Dar es Salaam, in *The Republic v. Tundu Antiphas Lissu*, Criminal Session No. 000019605 of 2025, acquitted Hon. Tundu Lissu of treason but convicted and sentenced him to four years' imprisonment for the offence of incitement.

The proceedings and judgment involving Hon. Tundu Antiphas Lissu have generated considerable domestic, regional and international reactions concerning the right to a fair hearing, personal liberty, freedom of expression, political participation, judicial independence and public confidence in State institutions. CHRAGG has taken note of views by the Government of Tanzania, Chama cha Mapinduzi (CCM), CHADEMA, ACT Wazalendo, the Tanganyika Law Society (TLS), regional political leaders, the American Bar Association's Center for Human Rights, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), jointly with the Legal and Human Rights Centre (LHRC), the United Nations Working Group on Arbitrary Detention (UNWGAD), the United Kingdom's Foreign, Commonwealth and Development Office (FCDO), the International Democracy Union (IDU) and the Pan-African Solidarity Network (PASNet).

2.1. Arrest, Committal Proceedings and Full Trial

CHRAGG examined the arrest, committal proceedings and full trial of Hon. Tundu Antiphas Lissu. The assessment was guided by Articles 12(1), 13(1), 13(6)(a) and (b), 15, 107A and 107B of the Constitution of the United Republic of Tanzania, 1977; the CHRAGG Act, Cap. 391; the Criminal Procedure Act, Cap. 20; the Penal Code, Cap. 16; Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR); and Articles 5, 6 and 7 of the African Charter on Human and Peoples' Rights. Monitoring indicates that Hon. Lissu was arrested on 9 April 2025, presented before the Kisutu Resident Magistrates' Court on 10 April 2025 and subsequently tried before the High Court. The High Court acquitted him of treason but convicted him of incitement under section 390 of the Penal Code, applying section 319(1) and (2) of the Criminal Procedure Act, and sentenced him to four years' imprisonment under section 35 of the Penal Code.

CHRAGG observes that Hon. Lissu was initially presented before the court on the day following his arrest, reflecting the prompt commencement of judicial proceedings. In assessing the circumstances surrounding his arrest and subsequent detention, CHRAGG further recognizes the importance of complementary safeguards, including timely access to legal representation, communication with family members and humane treatment while in custody. Accordingly, CHRAGG considers that any concerns raised regarding the observance of these safeguards, including allegations of excessive use of force, warrant objective and independent examination to establish the relevant facts and determine whether the applicable constitutional and legal standards were upheld.

Regarding jurisdiction, the principal charge of treason was not triable by the Kisutu Resident Magistrates' Court. The proceedings were therefore subject to the committal procedure under sections 261, 262 and 263 of the Criminal Procedure Act, Cap. 20, read together with the applicable provisions governing the jurisdiction of courts. The records examined indicate that the subordinate court undertook the preliminary procedural steps, while the substantive trial proceeded before the High Court, which had jurisdiction to determine the charge.

During the trial, the prosecution closed its case on 17 August 2026 after calling 17 of the 30 witnesses listed. On 21 August 2026, the High Court ruled that the accused had a case to answer and called upon him to present his defence. These stages fall within the framework of sections 312 and 313 of the Criminal Procedure Act, Cap. 20, concerning the closure of the prosecution case, the determination whether an accused person has a case to answer and the presentation of the defence. The records further indicate that the defence was concluded on 18 September 2026, followed by final submissions from the parties.

CHRAGG notes that the accused was afforded the procedural opportunity to respond to the prosecution case and present his defence. Nevertheless, the effective enjoyment of the right to a fair hearing must also be assessed in relation to access to legal representation, adequate time and facilities to prepare a defence, disclosure of relevant material and the opportunity to examine witnesses, in accordance with Article 13(6)(a) of the Constitution and Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

On 6 November 2026, the High Court acquitted Hon. Lissu of the principal charge of treason but convicted him of the alternative offence of incitement under section 390 of the Penal Code, Cap. 16, applying section 319(1) and (2) of the Criminal Procedure Act, Cap. 20, and imposed a sentence of four years' imprisonment under section 35 of the Penal Code.

CHRAGG acknowledges the existence of the statutory framework governing conviction for a minor or alternative offence. However, questions concerning the interpretation and application of section 319, including whether the accused received adequate notice of the alternative offence and a meaningful opportunity to defend himself against it, fall within the judicial process and any appellate proceedings properly instituted by the parties. The Commission will not substitute its assessment for that of the competent courts.

Accordingly, CHRAGG finds that the principal procedural stages documented in the records examined were conducted in accordance with the applicable criminal procedural framework. This finding relates specifically to the procedural steps evidenced by the records and is without prejudice to CHRAGG's assessment of compliance with the wider constitutional, statutory and human rights obligations governing the conduct of the institutions and officers involved.

The Commission therefore distinguishes between compliance with prescribed criminal procedural requirements and the effective protection of human rights throughout the administration of criminal justice. Procedural conformity in arrest, court presentation, committal and trial does not, by itself, resolve separate concerns relating to personal liberty, treatment in

custody, access to legal assistance, equality of arms or the effective opportunity to defend against the charges.

2.2. Personal Liberty and Protection Against Arbitrary Detention

CHRAGG affirms that the right to personal liberty and security, including protection against arbitrary arrest and detention, is guaranteed under Article 15 of the Constitution, Article 9 of the ICCPR and Article 6 of the African Charter on Human and Peoples' Rights. These guarantees are complemented by Article 13(6)(d) and (e) and Article 16 of the Constitution; Articles 7, 10(1), 17 and 18 of the ICCPR; and Articles 5, 7 and 8 of the African Charter, which protect human dignity, humane treatment, privacy, fair-trial safeguards and freedom of conscience and religion. Accordingly, CHRAGG emphasizes that these rights must be upheld throughout arrest and detention, including respect for the dignity, privacy and religious beliefs of persons in custody and protection against torture and other cruel, inhuman or degrading treatment, in accordance with applicable constitutional, statutory and international human rights obligations.

In exercise of its mandate under section 6(1)(h) of the CHRAGG Act, Cap. 391, to inspect prisons and other places of detention, the CHRAGG conducted an own-initiative inquiry on 27 June 2025 into allegations concerning the treatment of Hon. Tundu Antiphas Lissu during his custody.

CHRAGG notes that, these standards are also reiterated in Tanzania legal framework to guarantee the right to fair trial and provide for mechanisms in case of alleged violations. This is consistent with CHRAGG own initiative to conduct an inquiry on 27th June, 2025, regarding alleged violations of the

rights of Tundu Antiphas Mughwai Lissu while in custody. CHRAGG found out that accused's freedom to worship, right to privacy, right to communicate with lawyer or friend, right to perform physical exercises were being enjoyed as provided by the Constitution of URT and other legislative provisions.

2.3. Freedom of Expression and Political Participation and Peaceful Assembly

CHRAGG notes that Articles 18, 20 and 21 of the Constitution of the United Republic of Tanzania, 1977, guarantee freedom of expression, freedom of association and the right to participate in public affairs, subject to limitations prescribed by law. These rights constitute essential safeguards for democratic governance, public accountability and meaningful political participation.

In monitoring the human rights implications of the proceedings, CHRAGG underscores the importance of distinguishing the lawful exercise of political expression, peaceful advocacy for constitutional and electoral reforms, and participation in public affairs from conduct that constitutes a criminal offence under the law. CHRAGG further observes that any restriction imposed on the exercise of these rights must be legally prescribed, pursue a legitimate purpose and comply with the applicable constitutional and international human rights standards.

2.4. Equality Before the Law, Non-Discrimination and Institutional Transparency

CHRAGG recognizes equality before the law and equal protection of the law as fundamental principles governing the administration of criminal justice. Based on the records examined and the procedural stages monitored, CHRAGG observed that Hon. Tundu Antiphas Lissu was accorded the applicable procedural safeguards, with no documented indication of discriminatory treatment throughout the criminal proceedings. The records further established that the proceedings followed the prescribed judicial process, commencing with committal proceedings before the Kisutu Resident Magistrates' Court and subsequent transfer to the High Court of Tanzania, where the substantive trial was conducted and determined in accordance with the applicable law.

CHRAGG further observed that the institutions involved discharged their respective procedural responsibilities within the applicable legal framework, as evidenced by the records made available for monitoring. Accordingly, CHRAGG found no substantiated evidence of discrimination against Hon. Lissu or procedural opacity in the stages of the criminal proceedings examined.

CHRAGG nevertheless emphasizes that equality before the law, non-discrimination, institutional accountability and transparency remain continuing obligations of all public authorities. Their consistent observance is essential to preventing abuse of authority, upholding the rule of law and sustaining public confidence in the administration of justice.

2.5. Rights Enjoyed by the Accused Person While in Custody

Pursuant to Articles 129, 130 and 131 of the Constitution of the United Republic of Tanzania, 1977, read together with section 6(1), particularly paragraph (h), of CHRAGG Act, Cap. 391, CHRAGG visited the prison on 27 June 2025 to assess enjoyment of the rights of prisoners and remanded persons, including Hon. Tundu Antiphas Lissu while in custody. It was established that, during the period examined, he enjoyed his freedom of worship under Article 19 of the Constitution, right to privacy under Article 16, right to communicate with his legal team, though he was representing himself and other persons under Article 13(6)(a) and (b), and opportunities for physical exercise consistent with Article 13(6)(e). These guarantees are further reinforced by Articles 7, 9, 14 and 17 of the ICCPR, Articles 5, 6, 7 and 8 of the African Charter on Human and Peoples' Rights, and the United Nations Nelson Mandela Rules.

CHRAGG regards these findings as evidence of the observance of important custodial safeguards during the period examined. Nevertheless, the Commission emphasises that, under its statutory inspection mandate, custodial authorities remain obliged to respect, protect and continuously guarantee the fundamental rights and dignity of persons deprived of their liberty, subject only to lawful and necessary restrictions. The Commission therefore reaffirms its responsibility to monitor detention conditions, investigate alleged violations and recommend appropriate corrective measures in accordance with its constitutional and statutory mandate.

3.0. JUDICIAL INDEPENDENCE AND THE RULE OF LAW

CHRAGG recognizes the Judiciary as an independent arm of Government constitutionally mandated to administer justice and is the final and highest authority in the administration of Justice in the United Republic of Tanzania (Article 107A of the Constitution). Judicial independence, impartiality and respect for the authority of courts are fundamental principles of the rule of law and are essential to the proper administration of justice. Accordingly, all persons and institutions are required to respect the constitutional authority and independence of the Judiciary.

CHRAGG emphasizes that any dissatisfaction with a judicial decision should ordinarily be pursued through the remedies prescribed by law, including appeals and other applicable judicial procedures. At the same time, responsible public discussion and scrutiny of judicial decisions constitute legitimate expressions of public interest, provided that such engagement respects judicial independence and the authority of the courts.

Consistent with these constitutional principles, CHRAGG neither endorses nor challenges the conviction or sentence imposed on Hon. Tundu Antiphas Lissu. Its assessment does not extend to determining whether the High Court correctly interpreted or applied section 319(1) and (2) of the Criminal Procedure Act, Cap. 20, or section 390 of the Penal Code, Cap. 16, reassessing the evidence, determining the credibility of witnesses or pronouncing upon the legal correctness of the judgment. These matters fall within the jurisdiction and authority of the Judiciary and must be addressed through the judicial remedies available under the law.

In determining its institutional position, CHRAGG is guided by the constitutional framework governing the separation of powers, the administration of justice and judicial independence. In particular, Article 4(1) and (2) of the Constitution of the United Republic of Tanzania, 1977, provides for the division of State authority among the Executive, Legislature and Judiciary. Article 107A (1) vests the Judiciary with responsibility for the administration of justice, while Article 107A (2) prescribes the fundamental principles governing the determination of civil and criminal matters. Furthermore, Article 107B guarantees the independence of the Judiciary in exercising its judicial authority, while Article 108(1) and (2) provides for the jurisdiction and judicial authority of the High Court.

These constitutional provisions are read together with section 2(1) of the Judicature and Application of Laws Act, Cap. 358, which provides for the exercise of judicial jurisdiction in civil and criminal matters, subject to the Constitution and other applicable laws.

Accordingly, CHRAGG's human rights and good governance oversight is exercised with due regard to the constitutional independence of the Judiciary and the institutional boundaries separating judicial determination from the Commission's monitoring mandate

4.0. CHRAGG'S CONSTITUTIONAL AND STATUTORY LIMITATIONS

In exercising its mandate, CHRAGG was bound by the constitutional and statutory limitations governing its jurisdiction as hereunder:

a. Article 130(5) of the Constitution prohibits CHRAGG from inquiring into a decision of a Judge, Magistrate or Court made in the exercise

of judicial functions. Accordingly, CHRAGG cannot investigate or review the merits of the High Court judgment, reconsider its interpretation of the law, reassess the evidence or determine the validity of the conviction or sentence; and

b. Article 131(2)(a) of the Constitution, read together with section 17(2)(a) of CHRAGG Act, Cap. 391, restricts CHRAGG from inquiring into matters that are before a court or other judicial tribunal. The CHRAGG must therefore establish whether any relevant appeal or other judicial proceedings are pending before deciding whether a particular complaint or issue is amenable to investigation.

However, the limitations do not extinguish CHRAGG's broader mandate to promote human rights and good governance, undertake appropriate research and education, monitor public institutions, receive admissible complaints and make recommendations on systemic institutional deficiencies, provided that such activities do not amount to an inquiry into a judicial decision or a matter pending before a court.

CHRAGG also emphasizes that its recommendations cannot be used to set aside judicial decisions, order the release of a convicted person, grant bail, direct the withdrawal of criminal charges or compel a court to reconsider its decision. Such remedies fall within the jurisdiction of the competent courts.

5.0. INDEPENDENCE, IMPARTIALITY AND POLITICAL NEUTRALITY

CHRAGG reiterates its independence and impartiality as the National Human Rights Institution. In accordance with Article 130(2) of the Constitution and section 15 of the CHRAGG Act, Cap. 391, CHRAGG

performs its functions independently and is not subject to the direction or control of any person or authority in the exercise of its mandate.

Consequently, CHRAGG does not endorse or oppose any political party, political leader or political position. It does not adopt stakeholder opinions as its own findings without independent assessment. Its institutional responsibility is to uphold the Constitution, promote respect for human rights, strengthen good governance and encourage accountability by all public institutions.

CHRAGG's position is therefore guided by the principle that human rights protection, judicial independence, the rule of law and institutional accountability are complementary pillars of constitutional governance.

6.0. NATIONAL COHESION, DIALOGUE AND CONCLUSION

CHRAGG considers that issues arising from the criminal proceedings involving Hon. Tundu Antiphas Lissu should be addressed within the broader constitutional framework of justice, equality before the law, democratic participation, peaceful coexistence and national unity.

CHRAGG calls upon all stakeholders, including public institutions, political parties, civil society organisations, international organizations, professional bodies, religious institutions, the media and members of the public, to promote constructive dialogue, mutual respect and peaceful engagement. Differences of opinion concerning judicial decisions and matters of public interest should be addressed through lawful, constitutional and democratic means.

CHRAGG recognises that respect for judicial independence is compatible with legitimate institutional oversight of human rights and good governance. Equally, the exercise of its constitutional monitoring mandate must respect the independence of the Judiciary, preserve the proper administration of justice and avoid encroachment upon judicial functions or remedies available through the courts.

CHRAGG maintains that the protection of human rights and the rule of law require both compliance with prescribed criminal procedures and effective observance of constitutional and statutory safeguards throughout the administration of justice. Procedural compliance must be accompanied by institutional accountability, respect for human dignity, access to legal remedies and the effective protection of fundamental rights and freedoms.

CHRAGG reaffirms its commitment to discharging its constitutional and statutory responsibilities independently, impartially and without fear or favour, in the promotion and protection of human rights, the advancement of good governance, the upholding of the rule of law and the strengthening of public confidence in national institutions.

DUNFORD GEORGE MPELUMBE

CHAIRMAN

THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE

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