

**THE RIGHT TO PEACEFUL ASSEMBLY AND DEMONSTRATION IN
TANZANIA: A COMPARATIVE STUDY WITH GHANA AND SOUTH
AFRICA**

A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF
PRETORIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF
(LLM IN HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA)

BY

CHEGGY CLEMENT MZIRAY

PREPARED UNDER THE SUPERVISION OF

PROF. K. QUASHIGAH

AT THE FACULTY OF LAW, UNIVERSITY OF GHANA
30 OCTOBER 2004

ABBREVIATIONS

CCM	Chama cha Mapinduzi (the ruling party in Tanzania)
CPA	Criminal Procedure Act
CUF	Civic United Front (opposition party in Tanzania)
CURT	Constitution of the United Republic of Tanzania
DSM	Dar es Salaam
ECHR	European Court of Human Rights
FFU	Field Force Unit
FIDH	Federation Internationale des Ligues des Droits de l' Homme
ICCPR	International Covenant on Civil and Political Rights
LHRC	Legal and Human Rights Centre
NGO's	Non Governmental Organisation
POP	South African Public Order Police
RSP	Republic of South Africa
SAP's	South African Police Service
UDHR	Universal Declaration of Human Rights
URT	United Republic of Tanzania

LIST OF CASES

Acting Superintendent General of Education of Kwazulu Natal v Ngubo and Others, 1996 3 BCLR 369 (N)

Bowman v United Kingdom, ECHR 4 [1998]

Christine Mulundika and 7 Others v The People (1995) Supreme Court of Zambia, Appeal No 90 of 1995

Christians against Racism and Fascism v. United Kingdom (1980)21 D.R

Handyside v United Kingdom [1979] 2 EHRR 245

Julius Ishengoma Francis Ndyanabo v Attorney General, Civil Appeal No. 64 of 2001

Kivenmaa v Finland, Communication No 412, 1990, U.N DOC CCPR/50/D/412/1990 (1994)

Media Rights Agenda v Nigeria, Communication 141/94

Mabere Nyaicho Marando and Edwin Mtei v The Attorney General, High Court of Tanzania at Dar es Salaam, Civil Case No. 168 of 1993

New Patriotic Party v Attorney General (Ciba case) Supreme Court of Ghana Law Reports [1996-1997] SCGLR

Platform "Artze fur das Lenen" v Austria (1991) 13 EHRR

Pumbun & Another v Attorney General and Another, Court of Appeal of Tanzania at Arusha, Civil Appeal No 32. of 1992, reported in {1993} 2 LRC 317

Raj, Allmond and "Negotiate Now" v United Kingdom (1995) 81 D.R 146

Rev. Christopher Mtikila v Attorney General, High Court of Tanzania Civil Case No 5 of 1993

Sir Dawda K. Jawara v The Gambia, Communication 147/95

S v Walters & Another CCT 28/2001

R v Makwanyane 1995 (3)SA

R v Wilfred Rwakatare & 9 Others, District Court of Bukoba, Criminal Case 196 of 2003

The Sunday Times v United Kingdom, (1979) 2 EHRR, 245

United Communist of Turkey v Turkey, ECHR [1998]

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION

1. 1	Background of the Study.....	1
1. 2	Statement of the Problem.....	2
1. 3	Research questions.....	3
1. 4	Objective of the Study.....	4
1. 5	Hypothesis.....	4
1. 6	Relevance of the Study.	4
1. 7	Highlights on Literature Review.....	5
1. 8	Methodology.....	7
1. 9	Limitations of the Study.....	7

CHAPTER TWO: INTERNATIONAL AND REGIONAL STANDARDS OF FREEDOM OF ASSEMBLY AND DEMONSTRATION

2. 1	The Right to Peaceful Assembly and Demonstration under the ICCPR.....	8
2. 2	The Overlap Relationship Between Freedom of Expression and the Right to Peaceful Assembly and Demonstration.....	9
2.2	The African Charter.....	12

2.3	European Jurisprudence and the Right to Peaceful Assembly and Demonstration.....	14
2.4	Conclusion.....	15

**CHAPTER THREE: TANZANIAN’S EXPERIENCE AND THE RIGHT TO
PEACEFUL ASSEMBLY AND DEMONSTRATION**

3.1	Brief Historical and Political Background.....	17
3.2	The Law.....	22
3.3	Case Law Study.....	
3.3	Police Conducts.....	27
3.4	Conclusion.....	29

CHAPTER FOUR: PROGRESSIVE LEGAL REGIMES/REFORMS

4.1	Introduction.....	31
4.2	Ghanaian Experience.....	31
4.3	South African Experience.....	34
4.4	Conclusion.....	39

**CHAPTER FIVE: DEVELOPING DEMOCRATIC AND HUMAN RIGHTS
ORIENTED POLICING**

5.1	Introduction.....	40
-----	-------------------	----

5.2	Institutional Problems Encountered by Police Officials.....	40
5.3	Towards Democratic and Human Rights Oriented Policing...	41
5.4	Conclusion.....	43
CHAPTER SIX: CONCLUSION AND RECOMMENDATION		41
6.1	Conclusion.....	44
6.2	Recommendations.....	45
BIBLIOGRAPHY.....		48

CHAPTER ONE: INTRODUCTION

1. 1 Background of the Study

In 2001 after the 2000 election in Zanzibar, The Civic United Front (CUF) began planning a series of peaceful demonstrations to protest alleged fraud in the October 2000 presidential elections, calling for a rerun of the elections and constitutional reforms. The CUF notified the police of their intended routes, both the government officials and police immediately responded and announced that the demonstrations were banned.¹ Police were ordered to use all force necessary to break up the demonstrations. The Tanzanian Prime Minister was recorded as stating that force would be used to break up the demonstration. According to him, "government has prepared itself in every way to confront whatever occurs... any provocation will be met with all due forces of the state".² CUF demonstrations, which were widely supported, took place on 27 January 2001 and as the unarmed demonstrators walked peacefully toward the four designated meeting grounds, security forces intercepted and opened fire without warning. They attacked the civilians, ordered them to disperse firing and beating.³

The exact numbers of those killed and injured in the violence remained unknown, and the numbers provided by the government and opposition differ. Government report of the Independent Presidential Commission reveals a total number of 31 deaths and 581 injured.⁴ Human Rights Watch estimates that at least 35 people were killed and over 600 injured while CUF claimed that more than 45 people were killed.⁵

¹ See LHRC, State Ban on Peoples Demonstration, Press Release of 25 January 2001, as quoted from the Fact Finding report by LHRC and FIDH 'Wave of Violence" on Election Mismanagement and Police Brutality in Zanzibar', June 2001, available at <www.fidh.org> (Accessed on 14 July 2004).

² Also reported, the late vice president Dr. Omar Ali Juma in a press conference prior the demonstrations stating "the Government of the United Republic of Tanzania has the means to deal with any situation, including this demonstration So that citizens do not suffer." *'Waislamu watawanyike baada ya swala ya Ijumaa'*, *Nipashe* Newspaper, January 26, 2001.

³ See Amnesty report 'The Sad Story of Peaceful Demonstrations Turning Bloody in Tanzania, 30 January 2001 See also Human Rights Watch Report, 'The Bullets were Raining', (April 2002).

⁴ Report of the Presidential Probe Commission investigating 26-27 January 2001, events in Zanzibar, Government Printer 2002.

⁵ See S Hamad (Secretary General of CUF), 'From Violence to Reconciliation?', The Implementation of the Muafaka Accord in Zanzibar, presented at Norwegian Centre for Human Rights, Oslo, 20 April 2004. Accessed at <www.unpo.org> (Accessed on 15 August 2004)

Following the event Tanzania security officers were publicly congratulated by the head of state in Zanzibar for what he described as an excellent job in restoring order in the islands.⁶ Also the Union president, Benjamin Mkapa commended the police for doing a fine job, in his speech to the Nation, following the events.

It is alleged that several senior police officers were promoted shortly after the demonstrations and at least 8 officers who had refused to participate in the violence were arrested and fired for disobeying the order.⁷ Tanzania officials claimed that police who utilized lethal force did so without orders, and that poor training and bad luck caused the deaths.⁸

1. 2 Statement of the Problem

All these events occurred in the face of the fact that, the Constitution of the United Republic of Tanzania (CURT) provides for freedom of assembly⁹. The requirement of permits has been removed and section 40 of the Police Force Ordinance and 11(1) of the Political Parties Act were declared void on grounds that the requirement for a permit to hold an assembly infringed the freedom of peaceful assembly and procession enshrined in article 20(2) of the CURT.¹⁰

However the government limits these rights in practice, police have authority to deny permission to hold an assembly on public safety and security grounds. The relevant provision is section 41 of the Police Force ordinance which permits any police officer to stop the holding of any assembly. The situation has not improved for opposition parties seeking to hold assemblies because of the way the police apply section 41. Rather than invoking this provision only in extraordinary situations as required, the police once served with a notice of a planned meeting issued prohibition orders claiming that they had information that the meeting was likely to cause chaos, but without giving evidence.¹¹ For example, regarding the January 2001

⁶ See '*Karume apongeza polisi*', *Nipashe*, January 29, 2001, see also 'Mkapa blames press for distorting facts on killings', *The Guardian* February 1 2001 citing, BBC Hard Talk Program of 31 January 2001, also Speech by President Mkapa to the Nation on 3 February 2001, quoted from LHRC and FIDH Report, (n 1, above)

⁷ Human Rights Watch report (n 3 above) 4

⁸ As above.

⁹ Article 20 of the Constitution of the United Republic of Tanzania.

¹⁰ *Rev Christopher Mtikila v the Attorney General High Court of Tanzania* at Dodoma, Civil case No. 5 of 1993.

¹¹ A Mrema, 'Holding Peaceful Demonstrations a Right?', *The Guardian* 6 May 1997. See also the

events, Permanent Secretary of the Ministry of Home Affairs said this while interviewed by the HRW:

“The best way to think about the demonstration is that it was an attempted *coup d’etat* to take over the island of Pemba, which is part of Tanzania and police did the very best that they could to see that they were not successful. The government has the discretion to use its forces as needed. [Y]ou must manage the reckless or there will be no country to manage”.¹²

These restrictions on the right to freedom of assembly and the excessive use of force by police officials as depicted in the above recounted incident and others of its kind violate numerous provisions of international legal instruments to which Tanzania is a party. The Universal Declaration of Human Rights (UDHR) guarantees for the right to freedom of peaceful assembly and association, as does the International Covenant on Civil and Political Rights (ICCPR).

The African Charter limits the right to assemble subject to necessary restrictions provided by law, in particular those enacted in the interest of national security and the safety, health, ethics and the rights to freedoms of others. But the African Commission has interpreted these claw back clauses to mean that the limitations must be in accordance with international law and thus the standards developed under the ICCPR, especially, would be relevant in determining when the rights to assemble may be limited.¹³

The exercise here is to examine the nature of the Tanzanian laws on the right to peaceful assembly and demonstration in the light of police practice having regards to the nature of the right as guaranteed under international human rights instruments.

1. 3 Research Questions

- Whether the law in Tanzania is sufficiently tailored to achieve the protection of the right to peaceful assembly and demonstration.
- Whether the laws on the right to peaceful assembly and demonstration in Ghana and South Africa are such that could offer some lessons to Tanzania.

¹² HRW Report (n, 3 above)42

¹³ M Evans & R Murray, ‘The African Charter on Human and Peoples Rights’, Cambridge University Press, 2002, at 170.

1.4 Objective of the Study

To suggest possible law reforms and police conduct in Tanzania.

1.5 Hypothesis

Freedom of assembly is not adequately protected by law and respected by the Tanzanian government because the entrenchment of this right has not been followed by the creation of an enabling environment in law and practice.

1.6 Relevance of the Study

Abuse of the fundamental rights to freedom of peaceful assembly is predominant throughout Africa. These abuses continue despite the fact that freedom of association and assembly are enshrined in the constitutions of most African states. "Without the full exercise of these rights, freedom of expression itself cannot be guaranteed."¹⁴ This is especially so in Africa, where face-to-face communication remains the principal method of transmitting ideas and information for the majority of the population, who do not have access to newspapers, radio, TV or the Internet.

In a democratic and accountable society, that is open to change the freedoms enjoyed by any particular group or the majority are dependent on how the law treats such protests in the context of public order. A wide variety of political causes or beliefs may attract public protest, which may take the form of public meetings or processions. A responsibility rests on the police to fulfil their general function of keeping the peace but there is a need to limit the powers of the police to maintain public order for the interests of society to ensure freedom of expression, assembly and demonstration.

¹⁴ XIX, Article 19, Freedom of Association and Assembly in Sub Saharan Africa, March 2000.

1. 7 Highlights on Literature Review

In Africa the concept of human rights emerged from struggle, in particular struggles against colonialism and the remnants of colonialism.¹⁵ For instance part of the Declaration of the 1945 Pan African Congress reads:

“We are determined to be free. [W]e want education; we want the right to earn a decent living; the right to express our thoughts and emotions. We will fight in every way we can for freedom democracy and social betterment.”¹⁶

In the process of trying to develop the standards of human rights, a lot of difficulties have arisen and even as we enter into the era of implementation and enforcement of the universally agreed standards, conceptual wars regarding the several aspects of human rights continue.¹⁷

Peter¹⁸ traces the history of the development of human rights in Tanzania, which is shown to have been a struggle throughout the process. Despite the major achievement of the incorporation of the Bill of Rights in the constitution the major achievement of the enjoyment of human rights still remains a dream because there are hindrances and obstacles in the way. He examined the three areas where fundamental rights and freedoms of the individual are completely disregarded and compressed by the agents of the regime. Among the issues touched upon were the requirement of the consent to sue the government, restriction on the freedom of association, contempt of court, political scandals and loss of legitimacy. He acknowledges the need for constant pushing in order to do any pro-human rights action. In the spirit of the “struggle approach to human rights”, this work tends to cover right to peaceful assembly and demonstration, an area, which was not, covered extensively in the book ‘Human Rights in Tanzania’, the major useful source of information of the subject of human rights in Tanzania.

Article 19’s¹⁹ recent report on Freedom of Association and Assembly in Sub Saharan Africa set out the constitutional foundations of freedom of assembly and association in 5 Sub Saharan countries including Tanzania, Ghana and South Africa. They also, examined the

¹⁵ C Heyns, *A Struggle Approach to Human Rights*, Kluwer Academic Publishers, (2001).

¹⁶ El Obaid (1996) 823 as quoted from C Heyns (above).

¹⁷ M Hansungule, *The Concept of Human Rights and Its Implications*, Centre for Human Rights, University of Pretoria, 2004, unpublished, manuscript on file.

¹⁸ C Peter, *Human Rights in Tanzania, Selected Cases and Materials*, Richarz Publications Service, Köln: Koppel, (1997).

¹⁹ Article 19, (n 14, above)

extent the legal environment and government practice facilitate or hinder freedom of association in three main areas of association life: politics, NGOs (Non Governmental Organisations) and labour spheres.

In addition, the extent to which associational activities are affected by the relevant laws relevant to freedom of assembly, particularly public order laws were also dealt with. They are of the view that the rights to freedom of assembly and association have not been enjoyed widely in Sub Saharan Africa because of the inadequacy of the laws that are supposed to give effect to these constitutional rights; oppressive practices by ruling parties against opposition groups; and legal regimes relating to public order. Apparently the report is not suggesting any significant reforms of law or administrative actions to give effect to these constitutional rights, which is an objective of this study.

The 2003 Blackstone police manual²⁰ agrees on the need for public authorities such as police service, to understand the extent of their powers not to interfere with the freedoms and rights of the citizens. The author still insist on the old language of balancing between civil liberties and social order which police in Tanzania for example can hardly balance without infringing the rights.

Some authors²¹ are of the view that the grounds for imposing restrictions on the right to peaceful assembly and demonstration are much wider than the apprehension of a serious breach of the peace or public disorder. Hence the role of the court has proved problematic, on the one hand the courts may be invited to consider the legality of police powers, and on the other hand the courts have not provided much oversight of police operational practices.

It is the aim of this work to challenge the practice and conducts of police in Tanzania from the legal point of view and suggests the possible reforms both in law and practice guided with some few examples of progressive legal regimes like Ghana and South Africa. J Van Der Walt²² describes the South African Regulation of Gatherings Act 205, of 1993 which came into force in 1996, as not only a leading international measure of statutory regulation of public protest and demonstration today, but also an important stage for the executive to act out its commitment to the promotion of fundamental rights and freedoms.

²⁰ Blackstone's Police Manual: General Police Duties, Fraser Sampson, (2003).

²¹ J McEldowney, Public Law, Sweet & Maxwell, (1994).

²² J Der Walt, 'Maintenance of Public Order Versus Freedom of Expression' (South African Experience), Operational Response Services, South Africa Police Service, (2000).

1. 8 Methodology

The research will be conducted by using library research with special focus on the relevant statutes, books, journals, case law and reports from the media and different human rights organizations. The methodology will also include the use of the Internet.

1. 9 Limitations of the Study.

The study shall be limited to the law and practice in Tanzania, with an objective of recommending changes and development of the law, citing South Africa and Ghana as examples.

CHAPTER TWO: INTERNATIONAL AND REGIONAL STANDARDS OF FREEDOM OF ASSEMBLY AND DEMONSTRATION

2. 1 The Right to Peaceful Assembly and Demonstration under the ICCPR

The ICCPR uses the word assembly which can be interpreted as an intention of joining together for a common purpose of at least two persons, for a limited duration and that includes processions and demonstrations.²³ For the purposes of this paper we shall only deal with the right to assembly and demonstration.²⁴

The right to peaceful assembly and association is protected under article 21 of the ICCPR, which provides that:

“The right to **peaceful** assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in **conformity with the law** and which are **necessary in a democratic society** in the **interest of national security** or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” (emphasis added).

The term ‘peaceful’ is interpreted to refer to the circumstances under which the assembly is held.²⁵ But it must be kept in mind that even peaceful assemblies may be restricted, even banned, if the requirements of the limitation clause are met.²⁶ The focus here is on the intention of the organizers that, is to communicate their beliefs. Thus the European Commission of Human Rights (ECHR) held that:

[t]he right to freedom of peaceful assembly is secured to everyone who has the intention of organizing a peaceful demonstration... the possibility of violent counter demonstrations, or the possibility of extremists with violent intentions...joining the demonstration cannot as such take away that right.²⁷

²³ See also *NPP v IGP* [192-93] GLR 620-621 in which a Ghanaian Appeal Court Justice Amua-Dekyi defined freedom of assembly as “[t]he right of individuals to come together and to take part in processions and demonstrations in support of or in opposition to, a cause, policy or event”.

²⁴ See also J Brabyn, (The Fundamental Freedom of Assembly and Part III of the Public Order Ordinance) *Hong Kong Law Journal*, Sweet &Maxwell, Asia, 2002.

²⁵ See K Partsch, ‘Freedom of Conscience and Expression, and Political Freedoms’, in Louis Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights*, New York: Columbia University Press, 1981

²⁶ D Erasmus, ‘The Bill of Rights Hand Book’, Juta Publishers, 2001, at 335.

²⁷ *Christians against Racism and Fascism v. United Kingdom* (1980)21 D.R.

2. 2 The Overlap Relationship Between Freedom of Expression and the Right to Peaceful Assembly and Demonstration.

Article 19 of the Universal Declaration of Human Rights (UDHR) provides for the right to freedom of opinion and expression while article 20 declares that everyone has the right to freedom of peaceful assembly and association. The International Covenant on Civil and Political Rights (ICCPR) **provides** for the rights to freedom of expression and association²⁸ and **recognize** the right to peaceful assembly. In this respect it appears that the drafters of the ICCPR did not reconcile as to whether freedom of assembly needed its own article and therefore some scholars have been arguing as to whether the freedom does have a life and character of its own.²⁹ Scholars have increasingly realized and agree on the existence of this most important right in an overlap relationship with freedom of expression.

In principle every act by which a person attempts to express some emotion, belief or grievance should qualify as an 'expression'. The Human Rights Committee once decided that "the right to peaceful assembly would seem to be just one facet of the more general right to freedom of expression".³⁰

An assembly is a means of expressing a common opinion, facilitating the collecting voicing of opinions and grievances. Assembly give the minorities, especially those who belong to a certain group and share religion, culture or political beliefs a medium to advance their agendas and to protect their interests.³¹ Public assemblies enable people who feel strongly to express and demonstrate the depth of their feelings to themselves and others, perhaps discovering the empowering experience of realizing they are not alone, are relatively cheap, accessible and effective in targeting audience attention.³² Moreover, article 19(2) of the ICCPR provides that ideas and information maybe received or transmitted orally, in writing or in print, in the form of

²⁸ Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, morally, either in writing or in print, in the form of art, or through any other media of his choice. whilst article 22(1) states that, everyone shall have the right to freedom of association with others, including the right to form and join the trade unions for the protection of his interests.

²⁹ See E Barendt, 'Freedom of Assembly', in J Beatson & Y Cripps (eds), *Freedom of Expression and of Information, Essays in Honour of Sir David Williams*, Oxford, 2000. See also K Partsch (n 28, above) as quoted from J Brabyn (n 27, above)

³⁰ *Kivenmaa v Finland*, Communication No. 412/1990, U.N Doc. CCPR/5/1990(1994)

³¹ D Erasmus, (n 26, above) 333.

³² As above, also see J Brabyn (n 24, above)

art or through any other media; the emphasis here is on the choice of the communicant because the list of means is not exhaustive.³³

On the other hand, demonstrations are thought to be the only way to urge the government into action or to discourage it from implementing certain plans. As Lord Denning recognized, “the right to demonstrate and the right to protest on matters of public concern.....are often the only means by which grievances can be brought to the knowledge of those in authority”³⁴. The ultimate target of assembly and demonstration at the end is freedom of expression.

2. 2. 1 Legitimate Restriction on Freedom of Assembly and Demonstration under the ICCPR

a) Limitations Prescribed by Law

It is always objective to avoid arbitrary restrictions on rights by requiring that the limitation be established by general rule. The term “prescribed by law” has been defined to mean “provided by law”.³⁵ If the relevant public authority cannot pinpoint to a legal regulation that allows it to interfere with a right, it will be in breach of its obligations.³⁶ The ECHR (European Commission for Human Rights) decided that the law must be adequately accessible and there must be sufficient precision to enable the citizen to regulate his conduct. “He must be able, if need be with appropriate advice to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.³⁷

b) Limitations Necessary in a Democratic Society

The state may interfere with or limit certain rights where there is substantial risk of grave injustice. In *Handy side v United Kingdom*³⁸, it was decided that freedom of expression may be subject to such restrictions as “necessary in a democratic society” if there is a social need

³³ Article 19 (n 14 above)2

³⁴ *Hubbard v. Pitt* as quoted from, F. McEldowney ` *Public Law*`, Sweet and Maxwell 1994.

³⁵ See ECHR interpretation in *Sunday Times v United Kingdom* (1979)24 EHRR, 523.

³⁶ See also the Blackstone 2003 Police manual (n 20 above)

³⁷ *The Sunday Times v United Kingdom*, (1979) 2 EHRR, 245.

³⁸ *Handyside v United Kingdom* [1979]2 EHRR 245, 281.

sufficiently pressing to outweigh the public interest in freedom of expression. The case further held that, it is for the national authority to make the initial assessment of the reality of the pressing social need, a term implied by the notion of necessity.

In *Rai, Allmond and "Negotiate Now" v United Kingdom*³⁹ the Commission held that the Regulation adopted to refuse permission for all demonstrations relating to Northern Ireland in Trafalgar Square was necessary to prevent an outbreak of violence. And in *Platform "Artze fur das Leben" v Austria*⁴⁰ the court held that there is some measure of positive obligation on the state to protect those exercising their right of peaceful assembly from violent disturbance by counter-demonstrators.

c) Limitations Must be Proportional

In every case it must be determined whether there was a need to limit the fundamental freedom of assembly to some degree in order to achieve a specific permissible objective and whether whatever done or proposed to be done is not more than what was required to achieve the specific objective.

Accordingly every condition imposed on any fundamental freedom must be proportionate to the legitimate aim pursued. Proportionality implies for example the relationship between the means the police apply during the public order situation, and the end sought to be achieved.⁴¹ The Appeal Court of Tanzania defined the principle of proportionality as follows:

..." a law which seeks to limit or derogate from the basic right of the individual on grounds of public interest ... will be saved by article 30(2) of CURT only if it satisfies two essential requirements; First such law must be lawful in the sense that it is not arbitrary, it should make adequate safeguards against arbitrary decisions, and provide effective controls against abuse by those in authority when using the law. Secondly, the limitation imposed by such law must not be more than is reasonably necessary to achieve the legitimate object; this is what is known as the principle of proportionality."⁴²

In *Bowman v. United Kingdom*, the defendant, a pro-life campaigner, had distributed leaflets during an election campaign setting out the candidates' voting record on abortion. She was prosecuted under section 75 of the Representation of the People Act 1983 for an offence of

³⁹ *Rai, Allmond and "Negotiate Now" v United Kingdom* (1995)81 D.R 146.

⁴⁰ *Platform "Artze fur das Lenen" v Austria* (1991) 13 EHRR 204 at para. 32

⁴¹ See J A Van Der Walt (n 22, above) 13

⁴² *Pumbun and Another v Attorney General and Another*, Court of Appeal of Tanzania at Arusha, Civil Appeal No. 32 of 1992, reported in {1993}, 2 LRC 317.

incurring unauthorised expenditure. The court held that the prosecution was a disproportionate interference with her right to freedom of expression. It was accepted that the legislature pursued a legitimate aim namely to control expenditure of individual candidate but the statutory restriction of expenditure preceding an election was disproportionate to this aim. They said:

“It is was particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely, the applicant is entitled to disseminate factually accurate information to the local electorate during the crucial period when their minds were focussed on their choice of representative”.⁴³

In case of assembly and demonstrations the scope is limited to its legitimate aim that is to communicate ideas and not to intimidate in order to ensure compliance with demands. Justice Hurt had this to say on his dictum when defining the right to freedom of expression and assembly in the South African context:

“[I]mplicitly extends no further than is necessary to convey the (demonstrators) message. I do not consider that there is any basis for concluding that the implicit limits the right to assemble and demonstrate are any more extensive than those of the right to freedom of speech and expression. It follows that I cannot conceive of any situation where the right to assemble and demonstrate can be so extensive as to justify harassment, tortuous actions or criminal actions”.⁴⁴

2. 2. The African Charter

The African Charter provides for freedom of expression under article 9 and the right to assemble freely with other is under article 11.⁴⁵ In its decisions the African Commission once held that:

“Freedom of expression is a basic human right, vital to an individual’s personal development and political consciousness, and participation in the conduct of public affairs in his country. Under the African Charter, this right comprises the right to receive information and express opinion”.⁴⁶

⁴³ *Bowman v United Kingdom*, ECHR 4 [1998]

⁴⁴ *Acting Superintendent General of Education of Kwazulu Natal v Ngubo and Others*, 1996 3 BCLR 369(N) AT 3751

⁴⁵ Article 9 of the ACHPR states that: every individual shall have the right to express and disseminate his opinions within the law and respectively article 11 states that: every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

⁴⁶ Communications 140/94, 141/94, 145/95 Constitutional Rights Project, *Civil Liberties Organization and Media Rights Agenda/Nigeria, Institute for Human Rights and Development (IHRD)*, ‘*Compilation of Decisions on Communications of the African Commission on Human and Peoples Rights*’, 1994-2001, at 248.

The African Charter is the only instrument that does not use the term peaceful, it makes the exercise of the right to assemble subject to necessary restrictions provided for by law. However as explained in the previous chapter, the African Commission has interpreted the claw back clauses to mean that the limitations must be in accordance with International law, that is to say the standards developed under the ICCPR would be applicable in Africa.⁴⁷

Accordingly in its jurisprudence the African Commission has made it clear that the protection offered to individuals through the African Charter cannot be undermined by lesser protections at the national level and therefore called upon African states to bring their national laws in conformity with the Charter.⁴⁸ In *Sir Dawda K. Jawara v. The Gambia*, the Commission found that a ban on political parties violates the right to assemble freely as guaranteed by Article 11 of the Charter.⁴⁹

The African Commission also reiterates in the recent Declaration of Principles on Freedom of Expression in Africa adopted at its 32nd Ordinary Session in October 2002 that: states shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.

However the Article 19 report is arguing that the Commission has not been deploying its mandate in ensuring that states fully protect fundamental human rights as enshrined in the Africa Charter. For example under article 45(1) of the Charter the Commission has a mandate to collect documents, undertake studies and research on African problems in the field of human rights. The commission should have used this provision to undertake reviews of domestic legislation affecting freedom of expression, assembly and demonstration and then recommend to the relevant governments for appropriate action.⁵⁰

⁴⁷ Communication 48/90, 50/91, 52/91 and 89/93, *Amnesty International, Comite Loosli Bachelord, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa / Sudan*. (IHRD above) 335, See Also M Evans & R Murray, 'The African Charter on Human and Peoples' Rights', Cambridge University Press 2002, at 170.

⁴⁸ See decisions 92/1996 *John K. Modise/Botswana*, 211/98 *Legal Resources Foundation/Zambia*, 212/98.

⁴⁹ *Communications* 147/95 and 149/96 IHRD (n 48, above) 119

⁵⁰ Article 19 (n 14, above) at 95

Further the Commission could have developed guidelines as to how the provisions relating freedom of expression, assembly and demonstration under the African Charter should be interpreted. Section 45(1) empowers the commission to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples rights and fundamental freedom upon which member states base their legislation. The commission should develop guidelines for controversial areas such as the regulation of public assemblies and rallies to reduce the incidences of mistreatment and injustices.⁵¹

2.3 European Jurisprudence and the Right to Peaceful Assembly and Demonstration

Article 10 of the European Convention on Human rights provides for the right to freedom of expression whilst article 11 provides for the right to peaceful assembly and freedom of association and the justification for the limitations.

The European jurisprudence commonly applies “the principle of proportionality” and “the margin of appreciation doctrine” introduced as part of the on going constitutional process of dialogue, integration and fusion of human rights when deciding to what extent the Convention has been violated by public policy.⁵² The doctrines rationale during and after the process of integration is to enable the Court to provide endorsement of the maintenance of cultural diversity, ensuring to the citizens of Europe the means to articulate and practice their preferred values within multi cultural democracy.

An analysis of case law suggests that the Strasbourg organs have singled out certain rights as belonging to fundamental rights in a democratic society and apparently placing them in a higher position in the hierarchy of rights. This means that the margin of appreciation allowed to national authorities tends to narrow in cases involving these fundamental rights as the restrictions of these rights are considered to pose a threat to the healthy operation and governance of democracy.⁵³

⁵¹ As above, at 96

⁵² See Blackstone 2003 Police Manual (n 20 above) Also Y Takahashi, ‘The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR’, Intersentia, 2002.

⁵³ See for instance, *Manoussakis and Others v Greece*, where the court stressed “the need to secure true religious pluralism, an inherent feature of the notion of a democratic society” in delimitating the margin of appreciation and striking a proportionate balance: Judgment of 26 September 1996 para. 44. As quoted in Y Takahashi (n 52, above)

Strasbourg organs have elevated the threshold of protection afforded to Article 11 rights and in particular freedom of peaceful assembly to a high level. *The United Communist Party of Turkey case*⁵⁴ represents a crucial turning point for the review policy under Article 11 of the ECHR; it shifted the tendency as it employed an “intense standard of proportionality” leaving only a limited margin of appreciation.

The court adopted the principle of maximum protection and apparently stretches the scope of protection provided by Article 11 as far as possible. Ideally, this would mean that even those political parties, whose aims and objectives appear doubtful and contradictory to the constitutional structure of the Member State, should not automatically be deprived of their Article 11 rights, and their compatibility with the Convention must be examined solely on the basis of their actions rather than their objectives.⁵⁵

However, the European doctrine of margin of appreciation has been criticized that it leaves wide appreciation to the national authorities who interfere with the fundamental basic rights and thus undermines the foundation of democracy by paving a way for governmental abuse and arbitrariness and may abridge the protected sphere of individual autonomy.⁵⁶ The counter argument against the critique is that the notion of democracy in the Convention sense implies dynamic, rather than static nature of democratic societies.⁵⁷

The organs have repeatedly stressed, that the Convention requires the states to apply a narrow interpretation to any restriction imposed on convention Rights to be realized in a practical and effective, rather than theoretical or illusory manner. Member States have a duty to adduce convincing and compelling reasons warranting restrictions. Eventually member states would have to bear both the onus and a high standard of proof.⁵⁸

2.3 Conclusion

Freedom of speech, assembly and demonstration is no doubt the very foundation of every democratic society, and one can conclude that there is broad consensus on the importance of this right on different jurisprudences. The next chapter will discuss the law and practice in

⁵⁴ *United Communist of Turkey v. Turkey*, ECHR [1998]

⁵⁵ See Y Takashi (n 52, above)

⁵⁶ J Brabyn, *The Fundamental Freedom of Assembly and Part III of the Public Order Ordinance*, Sweet and Maxwell, 2002, see also Y Takahashi (n 52, above)

⁵⁷ Y Arai-Takarashi, (n 52, above)

⁵⁸ See *United Communist Party of Turkey and Others v Turkey*, 30 January 1998 and *Sidiropoulous and Others v Greece*, 10 July 1998.

Tanzania to find out whether the country has a profound commitment to ensure that the right to peaceful assembly and demonstration is fully protected and respected. And as to whether there is a divergence in the practical enforcement and observance of the right.

CHAPTER THREE: THE TANZANIAN'S EXPERIENCE AND THE RIGHT TO PEACEFUL ASSEMBLY AND DEMONSTRATION

3. 1 Brief Historical and Political Background

The United Republic of Tanzania is a merger of the former British territory known as Tanganyika and Zanzibar, and got its independence in 1961. Zanzibar is a semi autonomous constituency of the United Republic of Tanzania, arising from the political merge between Tanganyika and Zanzibar on 26 April 1964. Specific areas remained under the jurisdiction of Zanzibar including a president, legislature (House of Representatives) and judiciary while others are to be dealt with as union matters under exclusive jurisdiction of the United Republic of Tanzania.⁵⁹

On the protection and promotion of human rights, Tanzania mainland and Zanzibar have had very distinct histories, at independence in 1963 Zanzibar had fundamental rights and freedoms entrenched into the Constitution through a Bill of Rights. That constitution did not last for more than a month; it was discarded after the 1964 revolution and Afro Shiraz Party (ASP) ruled vide decrees. On the mainland the efforts were frustrated quite early and the nationalists led by the Tanganyika African National Union (TANU) argued that such a Bill would hamper the new government in its endeavours to develop the country. And thus it was therefore perceived that protection of fundamental rights and freedoms in that period was the possibility of invocation of inherent powers by the courts of law, courts would have frustrated the government through declaring most of its actions unconstitutional. The arguments were accepted by the British and thus Tanganyika became independent without a Constitution that guarantees the fundamental rights and freedoms.

After independence freedom of assembly and the right to association which the nationalists struggled for was enjoyed by all and there were a number of political and civil organizations. For example in Zanzibar the political parties included the Zanzibar Nationalist Party (ZNP) and Zanzibar and Pemba Peoples Party (ZPPP), the non political parties included, Dock Workers Union, Zanzibar and Pemba Federation of Labour and All Zanzibar's' Journalists Association.

⁵⁹ Article one of the CURT provides that: Tanzania is one party State and is a sovereign United Republic, see also article 4(3) stated: for the purposes of the efficient conduct of public affairs in the United Republic and for the allocation of powers among the organs specified in this Article, there shall be union matters as listed in the First schedule and there shall also be non-union matters which are all other matters not so listed.

At the time of independence the dominant political party at the Mainland was the Tanganyika African National Union (TANU) which had been formed in 1954 through the transformation of the Tanganyika African Association (TAA) under the leadership of Julius Nyerere. There were other political parties including United Tanganyika Party (UTP) set up to defend settler colonial interests and the All Muslim National Union of Tanganyika (AMNUT)

At the independence the government enacted a series of very oppressive and objectionable laws for instance power was given to certain sections of the Executive arm of the State to detain individuals without due process. The legislation included the Preventive Detention Act, 1962⁶⁰, Regional Commissioners Act, 1962⁶¹, and Area Commissioners Act, 1962⁶²

The movement from a plural society which existed in the country immediately after the independence to a “democratic” one party system was not a smooth and a peaceful affair.⁶³ The 1965 Interim Constitution of Tanzania declared Tanzania a one-party state and the same provision acknowledge the existence of two political parties, Tanganyika Africa National Union (TANU) and ASP in Zanzibar.⁶⁴ The arrangement continued for 12 years and in 1977 *Chama cha Mapinduzi* (CCM) was born as a merger of the two parties.

Perhaps the presence of a Bill of Rights in the Constitution from time of independence could have acted as a check on some of the many undemocratic decisions made in the early period and cemented the culture of non-respect of fundamental rights and freedoms of the people. Because undemocratic regime can freely do whatever it likes, without the people having opportunity to contribute to the issue concerning their very welfare.

3. 1. 1 The Entrenchment of the Bill of Rights

The Bill was incorporated into the CURT (Constitution of the United Republic of Tanzania) in 1984 following the Fifth Amendment of the Constitution.⁶⁵

⁶⁰ Chapter 490 of the Revised Laws of Tanzania Mainland.

⁶¹ Chapter 461 of the Revised Laws of Tanzania Mainland.

⁶² Chapter 466 of the Revised Laws of Tanzania Mainland.

⁶³ C Peter (n 18 above) 5

⁶⁴ See article 3(1) of Act no 43 of 1965 and Chapter 596 of the Revised Laws of Tanzania mainland.

⁶⁵ Article 3(1) of the CURT states that the United Republic is a democratic and socialist state which adheres to multi-party democracy.

But the justiceability of the provisions of the basic rights and freedoms in the courts of law was suspended for a period of three years by the Constitution (Consequential Transitional and Temporary Provisions) to provide the government with time to clear the way for the smooth operation of the Bill of Rights. It was expected that during the three- year grace period various government agencies would take the necessary actions especially the most relevant institution which was the Law Reform Commission; but nothing came from the Commission and some of the most oppressive laws were still in the book after the expiry of the grace period.

What followed thereafter was the option to allow the constitutional provisions on the Basic Rights to be fully justiceable. This shifted the burden to the judiciary to determine the constitutionality in actions brought before the court. This meant that the laws which were not challenged in the courts would remain in the statute books even if they were unconstitutional. The interesting part of it was the co-existence of one-party system with Bill of Rights between 1984 and 1992.⁶⁶ Article 20 of the then Constitution provided that:

Subject to the laws of the land, every person is entitled to freedom of peaceful assembly, association and public expression, that is to say, the right to assemble freely and peaceably, to associate with other persons and, in particular to form or belong to organizations or associations formed for the purpose of protecting or furthering his or any interest.

Yet formation of political parties was prohibited in the country and those who agitated for their formation were arrested, detained or internally deported. It was a taboo to talk of multi-party political system in the country.⁶⁷

3. 1. 2 Re-Introduction of the Multi-Party System and Subsequent Amendments of the Constitution

The inclusion of the Bill of Rights and the subsequent Constitutional amendment was viewed by many as huge historical event that necessitated the rewriting of the constitution. A commission was formed thereafter (the Nyalali Commission) under the chairmanship of the then Chief Justice of Tanzania Honourable Francis Nyalali. Its members were drawn from the

⁶⁶ C Peter (n, 18 above) 5

⁶⁷ S Shivji, 'State Coercion and Freedom in Tanzania, Maseru: Epic printers, 1990.

Party, government and private sector in Tanzania mainland and Zanzibar. The commission was given one year to collect the views of the people and advise the government accordingly.⁶⁸

The Nyalali Commission recommended to the government to adopt multi-party system of democracy in the country and went further into identifying all the laws in the country offending fundamental rights and freedoms of the people and good governance and make specific proposals in respect of each of the 40 laws which were identified. For instance the Societies Ordinance was critically reviewed and various provisions were found not in conformity with the constitution as they infringe the right to peaceful assembly, association and public expression. The commission explains that:

“It makes it extremely difficult to form and run civil associations by the masses.... [It] gives the office of the Registrar of Societies wide powers to register or refuse to register any association. The Registrar of Societies has total discretion in this respect. In that way political pressure or influence is easily applied to him in reaching his decision to ... refuse or grant registration of any Society”⁶⁹

In the 8th Amendment of the Constitution, which became effective on 1st July 1992, the government accepted the main recommendation of the Nyalali Commission and re-introduced the multi-party system. But the amendment did not include everything recommended by the Nyalali Commission. Since then, there have been a number of changes, both political and legal, which at least in theory were intended to generate democratic government that is in response to the needs of the society.

In addition to the Nyalali Commission recommendations, the president appointed another committee in 1998 to “coordinate views on the constitution” under the supervision of an Appeal Court Justice, Robert Kisanga. This committee was to collect public views on 19 issues raised in Government Paper⁷⁰. These issues include among others: issues of separation of powers; the 40 laws condemned by the Nyalali Commission; human rights and the entrenchment of socialism and self-reliance as national ideologies.

⁶⁸ See “Team of Political Debate Formed”, Sunday News (Tanzania) 24 February, 1991, cited from C Peter (n 18 above)

⁶⁹ See Government of the United Republic of Tanzania, *Tume ya Rais ya Mfumo wa Chama Kimoja au Vyama Vingi vya Siasa*, Tanzania, 1991(*Kitabu cha Tatu*). Among the oppressive laws identified were :Preventive Detention Act 1962; Registration and Identifications of Persons Act, 1986; Human Resources Deployment Act, 1983; Corporal Punishment Ordinance, 1930(Chapter 17 of the Revised Laws of Tanzania Mainland); Removal of Undesirable Persons Ordinance, 1954 (Chapter 104 of the Revised Laws of Tanzania Mainland and Economic and Organized Crime Control Act, 1984, (Act No. 13 of 1984)

⁷⁰ Government Paper No. 1 of 1998.

The report of the above committee brought into existence the Tanzania Commission on Human Rights and Good Governance as watchdog that incorporates the previous functions of the Permanent Commission of Inquiry. The Human Rights Commission has been entrusted with the task of promoting and promoting human rights. The commission is a constitutional⁷¹ and legislative⁷² creation. The main function of the Commission is to receive complaints from the members of the public, investigate such complaints and recommend corrective action.

3.1.3 Democracy on the Ground

The experience of the 1995 elections raised several constitutional issues, which were also seen in the 2000 elections. During the 1995 elections, the first multi-party elections, the ruling party was condemned heavily by different internal and external observer teams for manipulating the whole process, specific in Zanzibar.⁷³ Despite the alleged manipulation the ruling party (CCM) proclaimed a victory of only 0.2% of all votes in Zanzibar, where they got 50.2% of all votes and CUF got 49.8%. CUF disputed the results and refused to recognize the president and his government.⁷⁴ The then Commonwealth Secretary General made an effort to find a common ground between the two parties and after 3 years of tough negotiations, an agreement called '*Muafaka*' was reached June 9 1999, signed by both parties.⁷⁵

However, this important agreement failed with the ruling party flouting some of the terms of agreement, the reason being lack of legal basis. There was no legal remedy against the party which failed to accomplish the agreement. The country had to face the 2000 elections with none of the safeguards to ensure free and fair elections on the ground.⁷⁶

The 2000 presidential and parliamentary elections in Tanzania and Zanzibar invited so many comments as well, from different Observer groups including the Commonwealth Observers Group who simply identified the elections as "shambles". Amnesty International report recalled it was a "total flaw" and accordingly the government was advised to cancel the election results and hold fresh elections.

⁷¹ Article 129-131 of the 1977 CURT.

⁷² Commission for Human Rights and Good Governance Act No.7 of 2001 as amended by Act No 16 of 2001.

⁷³ See LHRC and FIDH Fact Finding Report (n 1, above) 12

⁷⁴ As above.

⁷⁵ S Hamad (n 5, above)

⁷⁶ As above.

The blatant mistreatment of the opposition, especially in Zanzibar, was one of the main causes of clashes between 26-27 January 2001 that led to loss of life of many Tanzanians. It was due to such happenings that the two political parties CCM and CUF (Civic United Front) decided to have dialogue that successfully led to a political accord named MUAFAKA II. The new agreement was based on common understanding between the two parties that the paramount objective of the exercise was to establish a firm system of politics that allows among other things:

- Enjoyment of human rights as provided by the CURT by all citizens.
- Ensure that the state organs conduct themselves in accordance to the ethics governing such organs and should not favour one political party.
- Ensure the maintenance of peace, order and stability in Tanzania.
- As for the 2000 elections, the parties agreed to the setting up of a Joint Presidential Supervisory Commission (JPSC) with full legal powers.

Since the signing of the agreement, a number of agreed reforms have been carried out. These include the setting up of the new Electoral Commission in Zanzibar and the appointment of the probe commission to investigate the events of January 2001, the Commission has already submitted its report referred to in the first chapter.

3.2 The Law

Section 20 of the CURT provides for freedom of assembly and demonstration but in practice these rights are limited because sections 41, 43 and 52 of the Police Ordinance are still considered by the court as constitutional. These sections refer to the need and the authority of the police to determine a potential breach of the peace and stop a rally or demonstration from taking place.⁷⁷

Other relevant public order laws include the Public Order Ordinance, Cap 304 and the Local Government (District Authorities Act) No. 7 of 1982, which deal respectively with prohibition,

⁷⁷ Section 41 of the Police Ordinance, Cap 322 thus provides that: 'The officer in charge of police, any police officer above the rank of inspector may stop or prevent the holding of any assembly in any place whatsoever, whether or not a permit in respect thereof is required or has been issued under this Section, if in the opinion of such officer or magistrate the holding continuance, as the case may be of such assembly or procession is imminently likely to cause a breach of peace, or to prejudice the public safety or the maintenance of public order to be used for any unlawful purpose, and may, for any of the purposes aforesaid, give or issue such orders as he may consider or expedient, including orders for the dispersal of any such assembly or procession aforesaid'.

regulation, and control of public meetings, processions, dances, parties and other assemblies that are likely to cause breaches of the peace.⁷⁸ Section 75 of the Penal Code provides for the punishment for conducting an ‘unlawful assembly’ described under section 74.⁷⁹

3.3 Case Law Study

The first decision touching on issues of the right to peaceful assembly was that of High Court of Tanzania at Dodoma in *Rev. Christopher Mtikila and 3 others v. Republic*.⁸⁰ In this case the four appellants were convicted by the trial magistrate on 3 counts two being, convening a meeting or assembly after being warned not to do so by the police officers contrary to section 41 and 42 of the Police Force Ordinance and holding unlawful assembly contrary to section 74 and 75 of the Penal Code, 1945. In his decision the High court judge construed section 41 of the Police Force Ordinance which require one to obtain a permit in order to hold meetings or organize processions to be void and that it should be deleted from the statute book. In addition the court held that sections 40(6) of the Police Ordinance, 1953 and 43 of the Police Ordinance as well as Section 11(1) of the Political Parties Act, 1992 that empower police officers to interfere in respect of public rallies, are sufficient provisions for the purpose of maintenance of law and order. In his reasoning the judge had this to say:

“its one of those provisions which the constitution (Consequential, Transitional and Temporary Provision) Act, 1984 had in mind, under section 5(1) to enjoined the courts to construe them with such modifications adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of the Bill of Rights. [s]uch laws might have been the intention of the colonial administration during the post-independence era, but certainly not when the Bill or Rights was introduced in our constitution”

⁷⁸ Rules 55 and 59 respectively, Similar provisions are under the Local Government (Urban Authorities) Act, No. 8 of 1982, Highways Ordinance (sec 39) which criminalizes obstruction of highways and the Road Traffic Act, No 30/1973 whose Section 66 requires a permit by the IGP before a procession of more than 200 people or 50 vehicles can take place.

⁷⁹ Section 74 of the Penal Code provides ‘when three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighborhood reasonably to fear that the persons so assembled will commit a breach of peace. Or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of peace or will by such assembly needlessly and without reasonable occasion provoke other persons to commit breach of peace, they are an unlawful assembly. It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

⁸⁰ High Court Criminal Appeal No 90. of 1992.

The High Court judge nullified the trial magistrate's decision for the reason that the appellants were denied access to the documents they required for their defence, and in his reasoning that was said to be a fundamental defect, which is not curable.

In another case *Rev. Mtikila v Attorney-General*⁸¹, the petitioner sought a declaration to the effect of the amendments of the constitution which infringe the right of participation in national public affairs as guaranteed by Article 21(1) of CURT. Among the issues raised was that of Sections 40, 41, 42 and 43 of the Police Ordinance as well as Section 11(1) and (2) of the Political Parties Ordinance. The issue was raised again for matters of clarification as to whether the requirement of the permit can be expelled from the law without prejudicing the rest of the provisions. Again section 40 of the Police Ordinance was declared unconstitutional, and it was held that, all the provisions relating thereto and connected therewith shall be read as if all the reference to permit were removed until the legislature makes appropriate arrangements for this purpose. In his reasoning the judge said this:

“Where, as in the above provision, the enjoyment of a constitutional right is “right to the laws of the land”, the necessary implication is that those laws must be lawful laws. A law which seeks to make the exercise of those rights subject to the permission of another person cannot be consistent with the express provisions of the Constitution for it makes the exercise illusory. In this class are section 40 Of Police Ordinance and section 11(1) of the Political Parties Act. Both provisions hijack the right to peaceful assembly and procession guaranteed under the constitution and places it under the personal disposition of the District Commissioner”.⁸²

As for section 41, the judge was of the view that the provision does not operate to take away the right to hold assemblies or procession because it only empowers the police and the magistracy to step in for the preservation of peace and order. He went saying that section 41 is conditioned on a clear and present danger where the substantive is extremely serious and the degree of imminence extremely high. In responding to the petitioner's prayer to the court that the court should declare that a citizen has a right to convene a peaceful assembly or public rally without a permit, the judge had this to say:

“I would not wish to believe that by this prayer it is intended that the **police should attend assemblies and processions to applaud the actors and fold their arms** in the face of an imminent breakdown in law and order. I am satisfied that Section 41 is a valid provision.” (Emphasis added).

⁸¹ High Court of Tanzania at Dodoma, Civil case No. 5 of 1993.

⁸² As above.

The two judgements stand as a very good start in the realization of this fundamental right. But as we have learnt from the experience several police interventions on demonstrations/assemblies seem not to hold any legal base and instead resulted into blatant mistreatment of innocent civilians. Should any matter of this nature come to the court, emphasis should be put on interpreting the rights to be realized in a practical and effective, rather than theoretical or illusory manner. The role of state actors like police should be redefined in situation of public management, to enable the citizens to enjoy this right in full.

We can also learn from the European jurisprudence as to how much emphasis is put on the word 'peaceful'. As recounted in the previous chapter, Strasbourg organs lifted up these fundamental rights to a higher position, because, these rights are considered to pose a threat to the healthy operation and governance of democracy.⁸³

However, courts in Tanzania are facing some very serious challenges. Strict interpretation of the concept of separation of powers where one functionary is not allowed to encroach on the other has not been very possible in Tanzania. The recent debate started by Hon. Pius Msekwa, Speaker of the National Assembly of Tanzania proves the above statement.⁸⁴ The honourable speaker is questioning the power of the court to declare a law made by Parliament to be unconstitutional and illegal. He alleges the courts for interfering with the functions of the Parliament. In recent cases where the courts have struck down laws for being unconstitutional, parliament has moved swiftly to nullify the effect of the court decisions. In the first case of 1995 the High Court declared the banning of independent candidates in the national elections unconstitutional and illegal.⁸⁵ The parliament thereafter changed the law to retain the previous position not to allow independent candidates contesting in elections.

In another 2002 Appeal court decision, the requirement to pay a huge deposit for costs in order to bring an election petition to contest the validity of an election result was declared unconstitutional.⁸⁶ This was considered by many, as the landmark decision of the court, but the Honourable speaker had this to say:

⁸³ See for instance, *Manoussakis and Others v Greece*, ECHR Judgement of 29 August 1998, where the court stressed "the need to secure true religious pluralism, an inherent feature of the notion of a democratic society" in delimitating the margin of appreciation and striking a proportionate balance: Judgment of 26 September 1996 para. 44.

⁸⁴ See Hon. P Msekwa (Speaker of the National Assembly) ,“ Parliament’s dilemma caused by the Court of Appeal of Tanzania”, *Bunge* (Parliament) News Bulletin Vol. 16 of July 2002.

⁸⁵ *Rev. Christopher Mtikila v. Attorney General*, High Court of Tanzania, Civil Case No 5. Of 1993.

⁸⁶ *Julius Ishengoma Francis Ndyanabo v Attorney General*, Civil Appeal No. 64 of 2001.

“I strongly believe that this so-called landmark judgement of the Court of Appeal is an appropriate and an ideal case where parliament should exercise its constitutional check on the judiciary, by quickly enacting a new law which will undo the damage caused by this particular judgement”⁸⁷

Such a statement from the Speaker of the National Assembly “whose knowledge and experience with parliamentary affairs is so vast that he has no competitor” is taken to be a reflect of the mainstream views of the assembly itself.⁸⁸ And as Prof. Shivji observes:

“this is a very dangerous trend, as we all know that in the party-based parliamentary system, it is the executive belonging to the ruling party that controls the parliament. If the judiciary too can be silenced in this fashion, what will be the citizens’ resort to challenge injustices and abuse of power whether executive or legislative? Once limits are placed on the powers of state authorities, you need an authority to declare whether or not the limits have been exceeded.”⁸⁹

There is also a controversy of article 30(5) of the constitution which takes away the powers of the court to strike down provisions of law it finds to be unconstitutional and substituting them with a duty to advice the Parliament to amend the offending law.⁹⁰ This provision was inserted by the 11th Constitutional Amendment and it was once observed that article 30(5) was an “absurdity” and could not be applied to any judicial decision because the constitution gives the judicature final authority on the dispensation of justice and adjudication of rights and obligations.⁹¹

⁸⁷ See the *Bunge* (Parliament) News Bulletin Vol. 16 of July 1992.

⁸⁸ T, Mihayo, (President of Tanganyika Law Society)’Statement on the Article by Hon.Pius Msekwa published in the Daily News of 26 February 2002’, 28 February 2002.

⁸⁹ I, Shivji, ‘Constitutional Limits on Parliamentary Powers’, The Tanzania Lawyer, Special Edition of October 2003.

⁹⁰ Article 30(5) of the CURT states that: “where in any proceeding it is alleged that any law enacted or any other authority abrogates or abridges any of the basic rights, freedoms and duties set out in Articles 12 to 29 of this constitution, and the High Court is satisfied that the law or action concerned, to the extent that it conflicts with this Constitution, is void, or is inconsistent with this Constitution, then the High Court, if it deems fit , or if the circumstances or public interest so requires, instead of declaring that such law or action is void, shall have power to decide to afford the Government or other authority concerned an opportunity to rectify the defect found in the law or action concerned within such period and in such manner as the High Court shall determine, and such law or action shall be deemed to be valid until such time the defect is rectified or the period determined by the High Court lapses, whichever is the later”.

⁹¹ (n 89, above)

3. 4 Police Conducts

The handling of incidents of breach of peace is covered mainly by two pieces of legislations: the Criminal Procedure Act (CPA) and the Penal Code. The CPA gives every police officer power to intervene for the purpose of preventing a breach of peace. In order for a police officer to exercise his powers to prevent a breach of peace, the officer concerned must, honestly and reasonably believe that there is a real breach of peace directed to person not to property.

The use of these powers by police have a history of problems in Tanzania, different reports reveal brutal conducts of police towards participants at prohibited (or even on occasion at non-prohibited meetings) like beatings, torture and killings.⁹² Police authorities have encouraged their officers to use all force to break up gatherings. For example, according to the report by Human Rights Watch, police were once told that it was better for them to kill than to return with their weapons and bullets. One officer was reported giving orders to his subordinates that “kill, bring back the bodies, then we will know that you have done your job”.⁹³ To mention few, there are several incidences in which police have been acting arbitrarily, infringing people the right to peaceful assembly and demonstration.

On 27 July 1986 approximately 500 sugar cane labourers at Kilombero Plantations in Morogoro refused to go to the fields demanding explanation for short payments. They gathered at the gate of the factory and prevented company officials from entering; some threw stones and happen to break a windscreen of one of the official’s car. Later the Police (Field Force Unit - FFU) were called. On arrival at the scene the FFU first fired some tear gas bombs, thus dispersing the crowd, they started firing bullets indiscriminately and chasing and pursuing the protestors to their places of residence. In the course of this process four people were killed and sixteen others severely injured.⁹⁴

On January 26, 2001 following Friday prayers at Mwembe Tanga Mosque in Zanzibar, worshippers gathered outside the mosque in conversation, as a custom following a service on their holy day. Twenty police armed with rifles arrived at the mosque and ordered those gathered there to freeze; what followed was the shooting of the mosque’s imam, Juma

⁹² (n 3 & 4 above)

⁹³ Human Rights Watch Report (n 3 above) 11

⁹⁴ I Shivji, ‘State Coercion and Freedom in Tanzania’, Maseru: Epic printers, 1990, as quoted from B Mapunda, ‘Personal Freedom and Police Powers in Tanzania’, Mkuki and Nyota Publishers, Dar es Salaam, 1998.

Mohamed Khamis who was shot on the face and was killed instantly. Two other worshippers were also shot and one witness testified the following:

“We were sitting and chatting outside, as normal, when all of a sudden police appeared. They did not give any order for us to leave or disperse. They came there and right away started shooting, not using sticks or anything like that but live weapons. They did not shoot in air, if they had shot in the air we would have run away, they were shooting at people this side and that side. [I] know a police sergeant who was giving orders such as ‘shoot him, shoot that one’⁹⁵.

A man from Matangatuani recalled this, when he was interviewed about the events of January 27.

“We were a group of not less than 3,000 people coming out of the forest, we saw the police kneeling across the road. There were women among us so we put them in the middle, between us, and decided to go forward. After we had taken about four steps, the bullets were raining. An order came from our leaders that we should lie down. [I]t helped us who lay down, am telling you, they shot so many bullets’⁹⁶.”

On 11 February 2003 Police, Field Force Unit (FFU) dispersed a crowd of Muslim worshippers using tear gas and clubs and seriously injured three worshippers; two were injured after being shot by rubber bullets and another was injured on head. It was reported that Zanzibar Muslim’s leader *Mufti*, Harith bin Khalef, had instructed the FFU to disperse the believers because he had directed all Muslims to conduct Eid prayers only on 12 February 2003.⁹⁷

In September 2003, police in Dar es Salaam banned a demonstration by the opposition party Tanzania Labour Party (TLP). The Regional Police Commander told the reporters that he imposed the ban following the arrival of several African heads of state for the SADEC summit that he thought it would have been not proper for the party to demonstrate using the same route that would be used by the head of states.⁹⁸

⁹⁵ Human Rights Watch Interview, Zanzibar Town, August 1, 2001 cited from the HRW Report (n 3, above)

⁹⁶ (as above) See also, The Presidential Commission report of the January 26/27 events (n 4, above), which confirmed of the deaths, injuries and the violations committed by the police officers who instead of using their power to facilitate the transmission of demands, they suppressed them.

⁹⁷ LHRC fact-finding report on violation of freedom of worship in Zanzibar, 14 February 2003: “Police injure three in Eid el Haj commotion,” The Guardian, 12 February 2003. Cited from Tanzania Human Rights Report, LHRC March, 2004.

⁹⁸ ‘Police ban TLP demonstration’, in Daily News, 15 September 2003.

Such events and many others reported, see for example a Newspaper survey of January 1997 and December 1999 has reported on 13 events of death caused by Law Enforcers.⁹⁹ The 2004 Human Rights Reports shows that extra-legal killings seem to have escalated in the year 2003; again more than 10 incidents have been reported.¹⁰⁰ This has reduced the level of trust and confidence to this most important organ supposedly to be an agent of law, entrusted with a discretion that permit society to continue with order and values in order to bring peace and harmony in the society.¹⁰¹

3. 5 Conclusion

As one may expect, constitutions must be dynamic as the environment around them always is, the constitution of Tanzania is no exception and more changes are currently required and expected in the future. Restrictions to basic rights must be accompanied by adequate safeguard and effective control against arbitrary interference, not contrary to international human rights norms.¹⁰² The restriction even if justified to achieve one of the State purposes to maintain law and order, it must be framed not to limit the basic right more than is necessary.

The 2001 demonstration incidents may have therefore spoken louder about the need to re-examine parts of the Tanzanian Bill of Rights. Rights and freedoms enshrined in the constitution are not realized in practice because of the limitations provided by the same constitution and other subsidiary legislations. Police are vested with numerous powers from different statutes, where the law is not clear or does not provide for a proper guidance the discretion is left for them to measure their own acts, example on the use of force. It follows that police record of respect for human rights in Tanzania is very poor, as observed by different reports.¹⁰³ The findings of the 2001 commission indicate that the public is dissatisfied with the performance of police and that the relationship between police and the community is bad.¹⁰⁴

⁹⁹ LHRC Publication of, December 1998.

¹⁰⁰ LHRC, Tanzania Human Rights Report 2003, LHRC March 2004.

¹⁰¹ See also the findings of the of the Presidential probe Commission report investigated the 2001 events (n 4 above) 169

¹⁰² The Sunday Times v United Kingdom (n 37 above)

¹⁰³ See Amnesty International and HRW (n 3 above)

¹⁰⁴ Presidential probe Commission report (n 4 above) 169

The building of democracy after years of authoritarian rule is not simply a matter of passing an act of parliament, it involves more work and real commitment for democracy to be nurtured and ultimately consolidated. Ignorance of the recommendations of different committees and agreement towards a more democratic regime has become a tendency of the government. Why all the trouble of establishing these commissions if we are not interested in implementing the outcome thereafter? This alone shows lack of seriousness and real commitment to these fundamental changes.

According to one opposition member of Parliament, the source of future conflicts in this country is not religion or ethnicity but democracy.¹⁰⁵ The single most important problem in Tanzania today is the lack of a clear and demonstrated commitment to democratization. This is reflected in the hesitant and disjointed constitutional reform process.¹⁰⁶

¹⁰⁵ M, Baregu, "Tanzanian's Hesitant and Disjointed Constitutional Reform Process", Presented at the Conference on Constitution Making Process in South Africa, Sheraton Hotel, Dar es Salaam, July 2000.

¹⁰⁶ As above.

CHAPTER FOUR: PROGRESSIVE LEGAL REGIMES/REFORMS

4. 1 Introduction

After learning about Tanzanian's defects on the law and practice regarding peaceful assembly, this chapter will now dwell on the Ghanaian and South African experiences. The two countries environment have been regarded as satisfactory and that the laws are in conformity with international standards.¹⁰⁷ However we shall also pinpoint to their criticisms by different authors to enable us to arrive at a standard conclusion recommended for reform.

4. 1. 1 Ghana

From 1971 Ghana was ruled by a military regime until the beginning of the 1990's when the constitutional reform started as a result of pressure from internal and international community. The then government of the Provisional National Defence Council (PNDC) headed by Flt.Lt.Jerry Rawlings embarked on a constitutional reform process which resulted in the making and adoption by a referendum on the Constitution of Ghana of 1992. The Bill of rights provisions were inevitably included into the constitution. Article 21(1) provides that all persons shall have the right to freedom of assembly including freedom to take part in processions and demonstrations.

The Public Order Act 1994 has a notable progress as opposed to the Tanzanian case. In Ghana police no longer have automatic powers to prohibit a peaceful assembly and demonstration as is the case in Tanzania. This follows a decision reached by seven justices of the Supreme Court in *New Patriotic Party v Inspector General of Police*¹⁰⁸, in which a plaintiff sought declarations in the Supreme Court on the law which conferred on the Minister of Interior power to prohibit the holding of public assemblies. The requirement to seek a permit to hold any form of meeting was also challenged in this case. The Supreme Court judged that the provisions challenged were in contravention of article 21(1) (d) of the 1992 Constitution and were therefore unconstitutional. Accordingly, Justice Archer commented, "police permits are colonial relics and have no place in Ghana in the last decade of 20th century; and he said,

¹⁰⁷ Article 19 (n 14 above) 5

¹⁰⁸ (1993-94)2 GLR 459

“those who introduced police permits in this country do not require police permits in their own country to hold public meetings and processions”.¹⁰⁹

Following that, the Public Order Act, 1994¹¹⁰ was enacted to repeal the 1972 Public Order Decree. As explained earlier police no longer have automatic powers to stop the public and instead may apply to court for an order prohibiting the holding of the special event or a relocation of it.¹¹¹

This has been interpreted as the effort to enjoin these officials to facilitate the exercise of freedom of assembly rather than to control it.¹¹² Article 19 report concluded that the legal environment relating to freedom of association and assembly is generally satisfactory and that the constitutional provisions are in consonance with international standards and so are the laws relating to formation of political parties and public order.

4. 1. 2 Police Conduct

The Ghana Police Force has had a negative public image for a long time. A recent survey study indicates that the majority of Ghanaians believe that there is still room for improvement and that police can maintain law and order.¹¹³ Like Tanzania the basic Police recruit training program, rules and regulations and procedures inherited from the British had remained without any significant change in form and content. However, there have been a number of events involving police, opening fire on unarmed civilians indiscriminately killing and injuring people like the case in Tanzania.

In 1995 for example, 4 people were killed including a 14 year old Junior Secondary School student in a mass demonstration against the introduction of VAT. In 1996, a University student was shot and wounded by police during a peaceful demonstration by students of the University of Ghana, Legon. In 1997 a total number of 5 people were killed and several injured through indiscriminate shootings by the police in attempts to control riots and demonstrations.¹¹⁴ Editorial of the Ghana Human Right Quarterly had this to say by the end of the yea 1997:

¹⁰⁹ (As above) 1

¹¹⁰ Act No. 491 of 1994.

¹¹¹ See Section 1(5) & (6) of the 1994 Public Order Act.

¹¹² Article 19, (n 18, above)

¹¹³ Center for Democratic Development: Ghana: Police-Community Relations in an Emerging Democracy, August 2003.

¹¹⁴ Human Rights Quarterly Vol 3, quarter 1997.

“Over the years, there have been cases of the police firing and killing civilians during peaceful protest. [B]ut the more we pray to see an end to the senseless killing of innocent citizens by trigger happy and often in disciplined policemen, the more such incidents occur”.¹¹⁵

In 2001, 130 people were killed when police used tear gas to disperse the crowd at the Accra Sports Stadium. This caused a stampede towards exits, which had been closed. The actions of the police were widely criticised and there were protests against the police and riots in which the police were targeted.¹¹⁶

Recently in Garu, police beat and drilled the NPP supporters demonstrating to present their petition against inability of the party to conduct primaries in the constituency and instead imposed the sitting independent member of parliament (MP) as the candidate. Ironically the incumbent MP is also the deputy Minister of Defence.¹¹⁷

However, the Police Unit has made a step to improve, for example setting up a Police Community Relations Unit. The aim is to interact closely with people in community under their areas of operations. This has so far succeeded in interaction/building up of constituency of popular support, involvement, and participation in police community affairs.

4. 1. 3 Challenges

The 1994 Public Order Act has been criticised as an invidious piece of legislation, crafted to confuse the public and presumably designed by stateliest to frustrate the remarkable step made by the Supreme Court in the public order case. Even though, according to the Public Order Act, the police officer may merely request the organs to postpone the special event to another date or to relocate it, there is no assurance in the Act that the request may not be repeated several times. Accordingly the provision requiring a resort to court by the police officer does not therefore in anyway remove the objectionable aspects of the Public Order Act.¹¹⁸

¹¹⁵ Editorial, “The Scourge of Stay Bullets”, *HR Quarterly Vol 3 quarter 1997*.

¹¹⁶ Ghana Country Assessment: Country Information and Policy Unit, April 2002. Accessed through <www.ind.homeoffice.gov.uk> accessed on 8 October 2004.

¹¹⁷ Ghana CCD/CODESRIA, Draft Summary Report of Election Monitoring Project, September 2004.

¹¹⁸ E Quashigah, The Constitutional Right to Freedom of Assembly and Procession in Ghana in the Light of the Decision in the Public Order Case and the Public Order Act, (1996-1999) 19 U.G.L.J, page 9

4. 2 South Africa Experience

4. 2. 1 Background

Prior to South Africa's transition to democracy, the South African Police (SAP) had a reputation for a heavy reliance on the use of force and high levels of brutality. More brutality appears to have been used in dealing with Black people.¹¹⁹ This brutality was evident in massacres such as that at Sharpeville in 1960¹²⁰, Soweto school student protests of 1976 and Daveyton battle of 1991¹²¹. Prior legislation (The Internal Security Act) provides for numerous powers to the Minister of Law/Magistrate/Police to prohibit/restrict freedom of assembly because of the apartheid policy. One of the characteristics of the apartheid regime was the use of law to proscribe political activity.¹²² Police had a legal duty to disperse “illegal gatherings” and where necessary use force to achieve the goal.¹²³

In 1991 the then President appointed the Goldstone Commission to investigate public violence in South Africa, its nature, causes and duties of the responsible officials.¹²⁴ The commission inquired into the regulation of gatherings and marches, to limit disruption and violence as much as possible. A panel of local and international experts undertook the inquiry and consulted

¹¹⁹ D Bruce, “New Wine from an Old Cask? The South African Police Service and the Process of Transformation”, Paper Presented at John Jay College of Criminal Justice, New York, 9 May 2002. Accessed through <www.csvr.org.za> accessed October 1, 2004.

¹²⁰ On 21st march 1960 about 20,000 people gathered at Sharpville police station protesting against various Apartheid laws including the pass laws. Police opened fire, 69 people were killed, 108 wounded and 11,727 detained.

¹²¹ On 24 March 1991, a group of approximately 200 ANC supporters gathered in Daveyton on East Rand with permission. Police arrived at the scene gave the group 10 minutes and immediately after opened fire. What followed was a battle, which resulted into the death of 12 ANC supporters and 27 injured.

¹²² Among such legislation were the Suppression of Communism Act 1950 and the Internal Security Act of 1982. Other laws include Criminal Law Amendment Act of 1953, the Riotous Assemblies Act of 1956. these laws empowered specified authorities to prohibit assemblies and public gatherings on various specified reasons all of which had a political and ideological flavor. As quoted from Article 19(n 18 above) 64.

¹²³ Section 46, 47, 48 and 49 of the Internal Security Act, 1982.

¹²⁴ See, D Meyer, “Public Order Police”, *African Security Review vol 8, 1999*. The government, in an attempt to terminate the violence which had already claimed many lives, held a National Peace Convention on 14 September 1991, this led to the drafting of a National Peace Accord. To further substantiate the intended purpose, Chapter 6 of the National Peace Accord makes provision for a Commission of Enquiry into the prevention of public violence and intimidation. In terms of the Prevention of Public Violence and Intimidation Act of 1991.

with interest groups such as the African National Congress (ANC), Department of Justice, and Police Force.¹²⁵

The Commissions final report commented in several aspects on prevention of public violence and operational planning for a gathering in South Africa. It also stated clearly, that political tolerance is the key factor in successful management of a crowd, a condition that was missing in South Africa at that point of time.¹²⁶ A draft bill was published, incorporating comments of more than 35 bodies and the result was the Regulation of Gathering Act 1993, which came into operation in 1996.¹²⁷

4. 2. 2 The Law in South Africa

The right to assemble and demonstrate is a qualified right in the Constitution of the Republic of South Africa (RSA) and is available to every person.¹²⁸ An assembly must be unarmed and peaceful in order to qualify for constitutional protection, armed/violent assemblies are not protected by the constitution but does not mean that they are illegal.¹²⁹ The effect of these qualifications is different from that of a limitation on the right.

As for the requirement of being peaceful for example in *Acting Superintendent-General of Education of Kwazulu Natal v Ngubo*,¹³⁰ the court did not embark on the right to have demonstrators dispersed after some of them disrupted the normal functioning of the college, damaged property and acted in an intimidating manner. The court ruled that the assemblers' actions did not fall within the scope of the right to assemble and further stated that the right itself does not extend further than is necessary to convey the demonstrators' message. In this case, it appeared that the demonstrators were not only satisfied with getting their message across but also trying to achieve their goal by way of demonstration.¹³¹

¹²⁵ J A Van Der Walt (n 22 above)

¹²⁶ See Heyman (ed) 'Towards Peaceful Protest in South Africa: Testimony of multinational panel regarding lawful control of demonstrations in the Republic of South Africa', 1992.

¹²⁷ Act No.205 of 1993.

¹²⁸ s. 17 of the RSA Constitution provides: everyone has the right, peacefully and unarmed to assemble to demonstrate, to picket and to present petitions.

¹²⁹ De' Waal Erasmus (n 26, above)

¹³⁰ *Acting Superintendent- General of Education of Kwazulu Natal v Ngubo* 1996 (3) BCLR 369 (N)

¹³¹ De 'Waal Erasmus (n 26, above)

The most noteworthy alteration of the 1993 Regulation Act is the creation of so called “safety triangle”; an appointment of a convener of a gathering, a responsible officer of the local authority and an authorized member of the South African Police Service. These three parties act as the main key players and form a “partnership” to manage the event. The local authority and the convener play a major part in the planning of the gathering, while the convener is involved in the actual control and management of the crowd. The act describes police powers to protect participants and non-participants, provide a framework for the use of force by the police and creates liability for organizers for riot damage. Furthermore, it creates offences and penalties and provides for interpretation guidelines. According to Van Der:

“It is quite apparent that the emphasis has shifted from the crowd *control* to crowd *management*. [I]n the past, control of crowd was a police function. The act now shifts this responsibility to the convener, who must appoint “marshals” to control the crowd and ensure compliance with the negotiated aspects as well as the law. This is a positive shift in the responsibility as the participants are more likely to adhere to the order from their own officials on the one hand, and officials of the organization are more likely to be tolerant of their own supporters on the other”.¹³²

Different human rights reports have acknowledged that, the law governing assemblies and demonstrations is balanced and is in keeping with the spirit of the RSA Constitution and later conforms to International standards. The Government generally respects this right in practice, political parties and organizations enjoy broad freedoms of assembly and association.¹³³

4. 2. 3 Police Force

The adoption of the Constitution and Bill of Rights fundamentally altered the political and legal landscape of South Africa. This profound change has far reaching implications for all sections of government and the public service, especially the police. Strong emphasis was put on the need for national security and social order considering the fact that South Africa was a new democratic state entailing legitimacy as part of the democratisation process.¹³⁴

When South Africa's first democratic constitution (generally referred to as the Interim Constitution) came into operation on April 1994, the SAP (South African Police) and 10 other 'homeland' police agencies were merged into the South African Police Service (SAPS).¹³⁵ The

¹³² Van Der (n 22, above)

¹³³ See also, U.S Department of State Country Reports, South Africa, February 2000.

¹³⁴ See D Meyer (n 124 above)

¹³⁵ The process of amalgamation lasted over an extended period but was to some extent consolidated by the

government decided to maintain a separate specialized Public Order Unit (POP) formerly known as Internal Stability Division (ISD). The following initiatives have been taken to restructure the force.¹³⁶

- the development and introduction of a human rights training curriculum for current members of the service;
- the introduction, in 1997, of a code of conduct for the police;
- the implementation of a Special Service Order on the use of force in affecting arrest, intended to bring the regulatory framework relating to the use of lethal force more in line with the Constitution;
- the development and introduction of an anti-torture policy;
- the reorganisation and retraining of public order police; and
- The introduction of new, less than lethal weaponry in the form of the *tonfa* baton, intended partly to assist police in reducing reliance on lethal force.

With sufficient legislative framework and changes in the political environment, the relationship between the police and the public is far less confrontational than it used to be, deaths in demonstrations at the hands of POP have been reduced to a greater extent.¹³⁷ The POP no longer responds indiscriminately with brutal force towards crowds engaged in protests and demonstrations, only few incidents of injury resulted from police interventions. According to one recent study, members of SAPS displayed a new acquired tolerance towards disorderly crowds.¹³⁸

4. 2. 4 Challenges

Although researchers admitted that there has been a general change in the direction of greater civility and improved conduct on the part of the police in dealings with members of the public they have also noted several weaknesses. The transition to democracy also came with the public high expectations on the change of police conduct. Meanwhile, positive public attitudes

time of the passing of the South African Police Service Act in late 1995.

¹³⁶ South African Police Service (1996) Public Order Police Policy Document on Crowd Management, Pretoria, SAP See D Bruce (n 88 above) and also South African Police Service (1996) Public Order Police Policy Document on Crowd Management, Pretoria, SAP.

¹³⁷ See D Bruce (n, 119 above)

¹³⁸ M Marks, 'Shifting Gears or Slamming the Brakes?', A Review of Police Behavioral Change in a Post-Apartheid Police Unit, *Policing and Society* 13, 2003.

towards the police have not meant that policing has become a significantly safer job, with the rate of crimes accelerating to a higher degree.¹³⁹

While the political environment has changed and the police are better accepted in communities, policing has more difficult task especially for many police members who learnt their policing during the apartheid period. That brings us to another problem facing the police force - training. It is also noted that human right training provided is insufficient to sustain the changes. For example, an interviewed official in Durban had this to say; “we are instructed to hold participatory management meetings but we have never really been told what this means”.¹⁴⁰

Speaking of the management style, the new management style that is participatory management is not about simply allowing members to express their grievances; it is also about sharing a vision approach to problems encountered. Research in Durban has revealed that there is lack of performance in monitoring, for example on several occasions the POP are not briefed before being sent to their operations.¹⁴¹

Generally, the emphasis was placed on the creation of external checks on the conduct of the police; rather than the internal machinery. For example, it took so long for the government to address clearly the issue of the use of lethal force through a binding regulatory framework in the period from 1994-2001.¹⁴² The matter was argued in a constitutional court judgment of May 2002.¹⁴³ In this case Minister of Justice intervened and submitted an argument that section 49(2) of the Criminal Procedure Act 51 of 1977 is unconstitutionally wide as it justifies the use of force not only by police but also “any other person”. The Constitutional Court finds that section 49(2) authorizes the use of deadly force for arrests in circumstances that are so wide as to be constitutionally unjustifiable, for example, an arrest for a trivial offence like shoplifting or for a serious but non-violent one like fraud. This subsection was declared inconsistent with the constitution.

¹³⁹ See M Marks & J Fleming, ‘As Unremarkable as the Air they Breathe?’, Reform Police Management in South Africa, *Current Sociology*, Vol 52, No 5, 2004. See also Mayer and Bruce (n 124 & 119)

¹⁴⁰ As above.

¹⁴¹ As above.

¹⁴² See D Bruce (n 119 above)

¹⁴³ *S V Walters & Another*, CCT 28/2001.

4. 3 Conclusion

South Africa Police force and the government need to work out on the defects identified for the police organisation to be used most effectively and sustenance of the achievements so far.

Ghana and especially Tanzania can learn a lot from the South African system, which indeed has some significant improvements in dealing with crowds. We need a better-equipped and trained police force with sufficient skills not to use ammunition to disperse the crowds in Ghana and Tanzania as well.

CHAPTER FIVE

DEVELOPING DEMOCRATIC AND HUMAN RIGHTS ORIENTED POLICING

5. 1 Introduction

The previous chapter depicts an overall picture that there is distrust of police officials in their capacity as agents of law. Literature and studies pointed out to more institutional problems such as low salary levels and lack of proper equipment as important issues describing the relationship between police and the public. This chapter will outline the defects on the part of administration sector of the government and also the judiciary and suggest possible steps towards legitimacy, democratic and human rights oriented policing.

5. 2 Institutional Problems Encountered by Police Officials

5. 2. 1 Poor Salaries/Equipments

The result of the recent survey on the level of mistrust experienced by police officers revealed that the sense of being generally mistrusted is generally accompanied by awareness that they command little respect.¹⁴⁴ The authors concluded that:

For police officers, this lack of respect manifests itself in different ways: low salaries, absence of proper training, good cars, working conditions as well as lack of social security. All of these manifestations give officers the feeling that they are not valued by society. The organizational constraints under which they have to work are regarded as signs of the state's indifference towards them.¹⁴⁵

The higher the level of mistrust the larger the legitimacy problem with a large number of populations questioning their actual right to perform various duties set out in law. Police in Tanzania and Ghana lack buildings, equipments, transport and salaries are poor. Deprivation of all these undermine their morale and hinder efforts to improve the quality of policing. We cannot expect them to act in a consultative and democratic manner towards public if they are not accorded this same treatment within their own organisation; they say "charity begins at home".

¹⁴⁴ N Uildriks & P Van Reenen, Policing Post-Communities Societies: Police-Public Violence, Democratic Policing and Human Rights, Intersentia, 2003.

¹⁴⁵ As above.

5. 2. 2 Lack of Organization

There is also lack of structured organization to recognize performance of individual skills and good work. This also extends to also personal achievements. Recognition of good work or personal achievement is important to enhance individual motivation and commitment. The lack of co-operative management methods will severely inhibit the development of moral and social competencies that these new societies require.¹⁴⁶

5.2.3 Lack of Training

In Tanzania, for example most Police Colleges are performing below 50% of its capacity due to financial problems. In the year 2001/2002 DSM Police College was to train 1,700 officers but only 377 were trained and *Moshi* Police College was to train 7,105 but only 1,700 were trained.¹⁴⁷ This is a very serious problem which needs an urgent attention in Tanzania, as well as Ghana and to some extent South Africa.

5. 3 Towards Democratic and Human Rights Oriented Policing

There has been a growing awareness of the importance for the police to act in accordance with the rule of law and human rights standards.¹⁴⁸ There is also a newly found emphasis on being democratically and legally accountable.¹⁴⁹ Arguably the two can be combined because adherence to rule of law and human rights principles are among the characteristics of a democratic policing which has four characteristics to be met:¹⁵⁰

- The presence of a democratic political system - to provide legislative and legal framework in which legislative and legal framework in which legislative, executive, and judicial functions are separated.
- Police subordination to the law and Accountability to an Independent Judiciary - governance of the use of police powers and force and adherence to the principles of human rights

¹⁴⁶ See M Marks & J Fleming (n 139, above) 33

¹⁴⁷ Presidential probe Commission Report (n 4 above)

¹⁴⁸ As above, also see N Neyroud & S Beckley: Policing, Ethics and Human Rights, William Publishing, USA, 2001.

¹⁴⁹ (n 144, above) 35

¹⁵⁰ As above.

- The separation of policing and political responsibility: police must be operationally independent, non-political and non - partisan.
- Responsible to public needs – must be generally receptive to public and democratic opinion, and seek to provide a service to the community.

Control of police use of force and its limitations to minimum levels are of great importance for democratic policing because that encounters compliance to human rights standards and in accordance with the rule of law. Excessive use of force constitutes an infringement of human rights and is generally against the principles of “democratic policing”. This also entails legitimacy; excessive use of force is regarded by the population as inappropriate and has a negative impact on the legitimacy of the government and ultimately that of the police.

Amnesty International formulated 10 Basic Human Rights Standards for Law Enforcement Officials in 1998; among the most important rights are the proper use of force and prohibition to arbitrarily kill.¹⁵¹ Force should only be used when strictly necessary and to the minimum extent required under the circumstance.¹⁵² The European Commission for Human Rights held in *Stewart v United Kingdom*¹⁵³ that force will be absolutely necessary only if it is strictly proportionate to the legitimate purpose being pursued. In order to meet the criteria regard, one must consider:

- The nature of the aim pursued
- The inherent dangers to life and limb from the situation
- The degree of risk to life presented by the amount of force employed.

The above test applies, not only to cases where there has been an intentional taking of life, but also where there has been a permitted use of force that had led to the death of another.¹⁵⁴ However three more elements are also important in addition to the above test, the methods of force deployed, the competence of the officer and the strategic and legal societal framework.¹⁵⁵

¹⁵¹ Accessed through <www.amnestyinternational.org> accessed 20 September 2004.

¹⁵² Reference is also made to the UN Code of Conduct for Law Enforcement Officials 1979 and UN Basic Principles on the Use of Force and Firearms, 1990.

¹⁵³ EHCR [1995]197

¹⁵⁴ Blacktone’s Police Manual, Fraser Sampson, 2003.

¹⁵⁵ See N Neyroud and S Beckely (n 148, above)

It is virtually important to limit, to the greatest possible extent, indiscriminate use of firearms to disperse assemblies where such use is unnecessary and can result to arbitrary deprivation of life. The right to life is among the most important of all human rights the source of all other personal rights. By committing ourselves to a society founded on the recognition of human rights, we are required to value this right above all.¹⁵⁶

5. 4 Conclusion

A police officer is entrusted with a role of working out the immediate, proper and smoothest way for men to conduct themselves in our society. Efforts should be made by both the governments and officers themselves to arrive at a standard, organizational and professional model of policing operating in an effective legal and democratic framework.¹⁵⁷ Police should collaborate with political and legal authorities where necessary, in the effective operation of those means designed to secure accountability of police to the community through the democratic institutions of the government.¹⁵⁸ Judiciary should also play its role, for example back in 1992 the High Court Judge in Tanzania could have held differently, and strike down the provisions that conferred powers on police officials to stop and disperse any meetings or processions in any public.¹⁵⁹ Perhaps the 2001 events would have never emerged. Courts must give generous interpretation of this fundamental right.

¹⁵⁶ *R v Makwanyane* 1995 (3) SA 391 (CC), 1995 (6) BCLR 665.

¹⁵⁷ (n 144, above)

¹⁵⁸ R Crawshaw, T Williamson et al, 'Human Rights and Policing', Kluwer Law International, 1998.

¹⁵⁹ See *Rev.Mtikila & 3 others versus Republic*, High Court Criminal Appeal No 90 of 1992. In this case the provisions empowering police officers to interfere in respect of public rallies were retained and considered sufficient provisions for the purpose of maintenance of law and order.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6. 1 Conclusion

The proper protection of freedom of assembly and demonstration in Tanzania are dependent on the enactment of proper legislation and development of democratic and human rights oriented policing. The current protection of this right is narrower than the constitutional guarantee, and other Regional and International Instruments that Tanzania has acceded. Law and order are legitimate and indeed essential aspects of democracy, which only states that are both strong and responsive can assure¹⁶⁰.

However, one must commend the government of Tanzania for taking an initiative in establishing a commission to investigate the 2001 events. In line with its terms of reference the commissions report sought to establish the fact of the killing and recommend ways of preventing future violence. It will therefore make much sense if the government will work on implementing the recommendations as the country is approaching the next 2005 elections.

As for Ghana although the legal environment is better than that of Tanzania, in practice performance still indicates disregard for human rights in many respects. Having emerged from the military regime the state of police community relations has not always been cordial and therefore there is a need to fill the gap. A recent survey report indicates that the majority of Ghanaians are of the view that police can do better in maintaining law and order. It is high time for Ghana to join the current trend to become increasingly accountable to their citizens, having in mind that this cannot be done without the support of the police as agents of change.¹⁶¹

South Africa is highly commendable for its efforts involving all role players, which have created an enabling environment in both law and practice fostering the realization of the right to peaceful assembly and demonstration. However, much more effort should be deployed to embark on the more long-term project of building a police service based on principles of integrity, specific on training, more participatory management and improved supervision.

¹⁶⁰ E Hutchful, Militarism and Problems of Democratic Transition, Codesria 8th General Assembly on Crisis, Conflicts and Transformations: Responses and Perspectives, Dakar, June 1995.

¹⁶¹ See D Meyer (n 124, above)

Lastly as the Ghanaian Supreme judge has observed¹⁶², we should be able to tolerate the little inconveniences that come with occasional exercise of the right to freedom of peaceful assembly, procession and demonstration by others. It is in the free exercise of these and other rights that society faces its shortcomings and re-directs them for the benefit of us all, therefore a small price for the bigger benefit of democracy.

6.2 Recommendations

a) Governments

- Tanzania government should carry out a comprehensive review in order to abolish provisions which impinge the right to peaceful assembly and demonstration.
- Tanzania government should create a legal framework that emphasises reasonableness in limiting the use of force with the necessity of action. There should be a clear framework of accessible and availability of law governing the use of force in dispersing crowds like that of South Africa.
- Governments should improve the institutional framework in which the police function. In order to obtain democratic legitimacy the police are mainly dependent on the government, and the population. The bigger the gap between the police and the population the more difficulty for a country to adhere to the rule of law as a value of a democratic society.
- Governments should introduce effective complaint system with an independent element to deal with investigation, discipline and monitoring of police officers. In Russia for example, there are three state institutions involved in the investigation and control of police abuse.¹⁶³ Of relevance, is the Russian Prosecution Department, responsible for the investigation of criminal allegations against police and all incidents involving the police use of force resulting in death or injury. The Special service Internal Security is another department whose functions include: carrying out internal investigations into serious crimes committed by police officials that have provoked widespread public reaction or involved professional misconduct and law breaking. During the period 1998-2000, for example, the units received 78,219 complaints against the police and “communications” from citizens. As a

¹⁶² *NPP v IGP* (n 23 above) 87

¹⁶³ (n 144, above) 35

result 17,193 officers became answerable for their actions, 4598 dismissed, 1134 were demoted and 5,093 resulted in the initiation of criminal proceedings.¹⁶⁴

b) Police Institutions

- Police institutions should incorporate the human rights aspects into their curriculum. In addition to the trainings offered by different non governmental organizations. Police should be trained on the tactical and operational methods to minimize the use of force. The idea is to make them “highly skilled” rather than “highly professional” in dealing with crowds. It is also important for the officials to appreciate fully that this right and indeed all human rights are entitlements, and not privileges granted by the government.
- Establishing methods like “peer group control” basing on the fact finding that police officers regularly discuss their involvement in violent incidents with each other, and that officers are to a certain degree receptive to the opinions and criticism of fellow colleagues in the domain of their own use of force.

c) NGOs/Community Based Organisations (CBOs)

Advocacy of “shared visions” strategy to link police and the public, police should be seen as members of the community rather than separate, unrelated entities who advance only personal interests.¹⁶⁵

d) Donors/International Community

In addition to the crucial role that they play resulting into several democratic changes, donors are urged to ensure that the democratic rights they helped to constitutionalise are entrenched in practice. For example spending millions of US \$ on monitoring and observance of elections is not ideal because election campaigns are not likely to do much for the little-known opposition parties when they have been denied the right to mobilize. It should be noted that democracy is not an event, it is a process.¹⁶⁶ There should be

¹⁶⁴ As above.

¹⁶⁵ R Wirrer, “Shared Visions for the Police Service: A joint Approach for Making a Philosophy More Feasible”: Policing in Central and Eastern Europe, 2000 cited from Policing Post-Communist Societies, n 33 above.

¹⁶⁶ Article 19 (n 14, above) 5

continuous efforts to give effective protection to especially, the right to peaceful assembly and demonstration.

Word Count: **17, 040**

SELECTED BIBLIOGRAPHY

A. BOOKS

- Allen M (et al), *Cases & Materials on Constitutional & Administrative Law*, 4th Edition Blackstone Press Limited, 1996.
- Crawshaw R (et al), *Human Rights and Policing*, Kluwer Law International, 1998.
- Culberston R & Weisheit R, *Order Under Law*, 3rd Edition, Waveland Press, 1988.
- De Waal J (et al), *The Bill of Rights Handbook*, 4th Edition, Juta & Co Ltd, 2001.
- Emmerson B & Ashworth, C (Ed) *Human Rights and Criminal Justice*, Sweet & Maxwell, London, 2001.
- Heyman PB (ed), *Towards Peaceful Protest in South Africa: Testimony of multinational panel regarding lawful control of demonstration in the Republic of South Africa*. HSRC Publishers, 1992.
- McEldowney J, *Public Law*, Sweet & Maxwell, London, 1994.
- Murray R & Malcom E, *African Charter on Human & Peoples Rights. The system in Practice, 1986 – 2000*, Cambridge University Press, 2002.
- Neyroud P & Beckley A, *Policing Ethics and Human Rights*, Willan Publishing, Oregon, USA, 2001.
- Peter C, *Human Rights in Tanzania, Selected Cases and Materials*, Richarz Publications Service, Köln: Koppel, 1997.
- Philips O, *Leading Cases in Constitutional and Administrative Law*, Sweet & Maxwell, London 1967.
- Sloan K, *Police Law Primer*, 3rd Edition, Butterworth, London, 1987.
- Smith D, *Constitutional and Administrative Law*, 5th Edition, Penguin Books, 1998.
- Supperstone M, *Law of Public Order & National Security*, Butterworth, London, 1981.
- Takahashi Y, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Intersentia, 2002.
- Uildriks N & Van Reenen P, *Policing Post-Communities Societies: Police-Public Violence, Democratic Policing and Human Rights*, Intersentia, 2003.

B. ARTICLES/ CONTRIBUTIONS

- Baregu M, 'Tanzania's Hesitant and Disjointed Constitutional Reform Process', Presented at the Conference on Constitution Making Process in South Africa', Sheraton Hotel, Dar es Salaam, July 2000.
- E Barendt, 'Freedom of Assembly', in Beatson J & Cripps Y, (eds), *Freedom of Expression and of Information, Essays in Honour of Sir David Williams*, Oxford, 2000.
- Brabyn J, 'The Fundamental Freedom of Peaceful Assembly and Part III of the Public Order Ordinance', *Hong Kong Law Journal*, Sweet & Maxwell Asia', 2002.
- Bruce D, 'New Wine from an Old Cask? The South African Police Service and the Process of Transformation', Paper Presented at John Jay College of Criminal Justice, New York, 9 May 2002.
- Quashigah E, 'The Constitutional Right to Freedom of Assembly and Procession in Ghana in the Light of the Decision in the Public Order Case and the Public Order Act', (1996-1999) *19 U.G.L.J.*
- Hansugule H, 'The Concept of Human Rights and Its Implications', January 2004. Unpublished, Manuscript on file.
- Heyns C, ' "A Struggle Approach" to Human Rights', Pluralism and Law, Kluwer Academic Publishers, Netherlands, 2001.
- Jagne F, 'Freedom of Expression in Africa', Presented at the Centre for Human Rights (LLM Student and Democratization Program) University of Pretoria, April 2004.
- Marks M & Fleming J, 'As Unremarkable as the Air they Breathe?', *Reform Police Management in South Africa*, Current Sociology, Vol 52, No 5, 2004.
- Partsch K, 'Freedom of Conscience and Expression, and Political Freedoms', in Henkin L (ed), *The international Bill of Rights: The Covenant on Civil and Political Rights*, New York, Columbia University Press, 1981.
- The Tanzania Lawyer, 'Parliamentary Powers v The Judiciary', *Special Edition October 2003*.
- Weiss J, 'A Road Not Taken', *Seton Hall University School of Law*, 2002.
- XIX, Article 19, 'Freedom of Association and Assembly in Sub Saharan Africa', March 2001.

C. REPORTS

- Amnesty International Report, 'The Sad Story of Peaceful Demonstrators Turning Bloody in Tanzania', 30 January 2001.

- A Newspaper Survey Report No 3, 'The Police and the Media', LHRC, Dar es Salaam, January – December 1998.
- A fact finding report of LHRC and FIDH, 'Wave of Violence on Election Mismanagement and Police Brutality in Zanzibar', June 2001.
- Annual Human Rights Conference Report, 'Human Rights Challenges in a Developing Country, Options and Strategies', Dar es Salaam, Tanzania, LHRC , 10 -11 December 2002.
- Human Rights Watch, 'The Bullets were Raining', April 2002.
- Report of a Sub- Regional Workshop, 'Democratic Policing in West Africa', CDD-Ghana, February 25 – 26, 2004.
- Report of a Presidential probe Commission investigating 26 – 27 January 2001 events in Zanzibar, Government Printer, 2002.
- Tanzania Human Rights Report, LHRC, Dar es Salaam, 2003.

D. LEGAL INSTRUMENTS

International/Regional Instruments

- Universal Declaration of Human Rights.
- International Covenant of Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.
- The African Charter on Human and Peoples' Rights.

Tanzania

- Criminal Procedure Act, 1985, No. 9.
- Local Government (District Authorities) Act No 7 of 1982.
- Local Government (Urban Authorities) 1982, Act No 8.
- Government Paper, 1998, No 1.
- Newspaper Act, 1976, No 3
- Police Force, CAP 322, 1959.
- Political Parties Act 1992, No 5.
- Tanganyika Societies, CAP 337, 1964.

- The Constitution (Consequential, Transitional and Temporary Provision, Zanzibar) Act, No. 3 of 1992
- The 1977 Constitution of the United Republic of Tanzania.
- The Fifth Constitutional Amendment Act, No. 2 of 1992
- The Sixth Constitutional Amendment Act, No 13. of 1992
- The Road Traffic Act No 30 of 1973.
- Written Laws (Miscellaneous) Amendment No 2, 1994.

Ghana

- Police Service Act, 1970, Act No 350.
- The 1992 Constitution as amended by Act, 1996, No 527.
- Public Order Act, 1994, No 491.

South Africa

- South African Police Act 1995, No. 68 of.
- The Constitution of the United Republic of South Africa, Act 1996, No 108.
- The Regulation of Gathering Act, 1993, No. 205

E. List of Websites

- Amnesty International website <www.amnestyinternational.org>, accessed on 2 February 2004.
- *Federation Internationale des Ligues Droits de l'Homme* < www.fidh.org> accessed on 2 October 2004.
- Human Rights Watch website <www.hrw.org> accessed on 16 March 2004.
- Ghana Police Force website <www.ghanapolice.org> accessed on 15 September 2004.
- The Guardian Tanzania limited <www.ippmedia.org> accessed on 17 July 2004.

- Legal and Human Rights <www.lhrc.org>, accessed on 15 July 2004.
- United Republic of Tanzania parliament website <www.parliament.go.tz>, accessed on 20 August 2004.
- United Republic of Tanzania National Website <www.tanzania.go.tz>, accessed on 20 August 2004.

F. Newspapers Referred

- *Alasiri* – Local Daily Newspaper Published by the Guardian Limited, DSM, Tanzania.
- Daily News – Local Daily Newspaper published by Daily News, Tanzania.
- *Nipashe* – Local Daily Newspaper Published by the Guardian Limited, DSM, Tanzania.
- The Guardian – Local Daily Newspaper Published by the Guardian Limited, DSM, Tanzania.
- The Human Rights Observer – Published by SAHRINGON Regional Office, Lusaka, Zambia.