

**THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS LEGAL
LIMITATIONS IN TANZANIA**

**THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS LEGAL
LIMITATIONS IN TANZANIA**

BY

Bufungile Kilala

A Research Dissertation Submitted in Partial Fulfillment of the requirements for
Award of the Degree Master of Laws (LLM. IL) of Mzumbe University

2016

CERTIFICATION

We, the undersigned, certify that having keenly and thoroughly read hereby recommend for acceptance by Mzumbe University, Morogoro Campus a dissertation entitled **the right to freedom of assembly and its legal limitations in Tanzania**, in partial fulfillment of the requirements for award of a degree of Master in International Law (LLM in IL) of Mzumbe University.

.....

Major Supervisor

.....

Internal Examiner

Acceptance for the Board of Faculty of Law

.....

Dean of Faculty

DECLARATION AND COPY RIGHT

I, **Bufungile Kilala**, do hereby declare that this thesis is my own original work and that it has not been presented and will not be presented to any other University for a similar or any other degree award.

Signature.....

Date:

©

This Dissertation is a copyright material protected under the Berne Convention, the Copyright and Neighbouring Rights Act, 1999 Cap 218 R.E 2002 and other national and international laws on intellectual property. This dissertation may not be reproduced by any means mechanically or electronically, in full or in part without the written permission of the Author or Mzumbe University on that behalf.

ACKNOWLEDGEMENTS

There are many people to whom I owe a great debt of gratitude for their help during the research and writing of this thesis. The first word of thanks must go to my supervisor, Mr. Benjamin Jonas. I am so fortunate to have had such an eminent scholar to direct and shape my work. No matter how “raw” the material showed Mr. Benjamin both patience and encouragement. His comments always cut to the heart of the issue and I was privileged to have such an immense intellect coupled with such kindness to guide me through this process. My admiration, respect and gratitude cannot adequately be expressed to Mr. Benjamin Jonas. I am proud to have been his student.

I also thank all Academic Staff within the Faculty of Law at Mzumbe University, Main Campus for their positively contributing comments when I presented my work to the Faculty discussion. I am grateful for their time and consideration. Particular thanks to Faculty Dean, Professor Cyriacus S.M Binamungu, who has at every stage provided both inspiration and wisdom whilst ensuring that my workload never overburdened me whilst I was researching.

Special thanks must go to my colleagues LLM 2014/16 for their moral and material contributions to this work. We have journeyed the path of research together and it is unlikely that I would have succeeded without their inspiration and encouragement. Their intelligence, perception and thoughtful comments on every draft have made this report so much easier.

Finally, for my wife Sakina, my son Jaffar Kilala Shimiya and my daughter Jasra Kilala Shimiya, I cannot adequately express my thanks or my love. They have made untold sacrifices and their help and encouragement, together with their understanding and unswerving belief has made this whole research possible. It is to them that I humbly appreciate them.

DEDICATION

I dedicated this work to my late parents Mr. Bufungile Shimiya and Mrs. Hawa Freruzi Makanza who first sent me to school.

ABBREVIATIONS

ACHPR	-	African Charter on Human and Peoples Rights
ACHPR	-	African Commission and African Court on Human and Peoples' Rights
AU	-	African Unity
CA	-	Court of Appeal
Cap.	-	Chapter (of the Series of the Laws of Tanzania)
CPA	-	Criminal Procedure Act
CCM	-	Chama Cha Mapinduzi
CHADEMA	-	Chama Cha Demokrasia na Maendeleo
CHRAGG	-	Commission for Human Rights and Good Governance
CHRGG	-	Commission for Human Rights and Good Governance
CUF	-	Civic United Front
CURT	-	Constitution of the United Republic of Tanzania
Ed.	-	Editor
Edn	-	Edition
EFDs	-	Electronic Fiscal Devices
FFU	-	Field Force Unit
FoL	-	Faculty of Law
H.C.T	-	High Court of Tanzania
HESLB	-	Higher Education Students Loans Board
Hon	-	Honorable
HRC	-	Human Rights Committee
ICCPR	-	International Covenant on Civil and Political Rights
IDEA	-	International Institute for Democracy and Electoral Assistance
IGP	-	Inspector General of Police
LHRC	-	Legal and Human Rights Centre
LRT	-	Law Reports of Tanzania
Ltd	-	Limited
Misc	-	Miscellaneous
MPP	-	Members of Political Parties

NGOs	-	Non Governmental Organisations
No.	-	Number
OCD	-	Officer Commanding District
OCS	-	Officer Commanding Station
Op cit	-	Opere Citato
p.	-	Page
pp.	-	Pages
R	-	Republic
R.E	-	Revised Edition
SAC	-	State Attorney Chamber
Sect.	-	Section
TANU	-	Tanganyika African National Union
TLR	-	Tanzania Law Reports
TPF	-	Tanzania Police Force
TRA	-	Tanzania Revenue Authority
UDHR	-	Universal Declarations of Human Rights
UN	-	United Nations
URT	-	United Republic of Tanzania
v.	-	versus
Vol.	-	Volume

ABSTRACT

The study focused on the right to freedom of assembly and its legal limitations in Tanzania. The right is one of the civil and political rights guaranteed in the Constitution of the United Republic of Tanzania 1977.

The objectives of the research were based on three fold: firstly, to examine permissible limitations on the right to freedom of assembly and the observation of democratic system in Tanzania; secondly, to examine the protection of the right to freedom of assembly in a practical sense and thirdly to observe the powers and duties of the Police in relating to freedom of assemblies.

The study involved an extensive description and analysis of single situation in Dar es Salaam region as a case study. The study deployed both primary and secondary data to review relevant sources of material. Questionnaire and interview were used to collect primary data. Sample size selected were 100 respondents, but only 85 respondents actually responded. Among them 15 were interviewed, 70 through questionnaire. Also, secondary data were reviewed and collected in the libraries as well as in different websites. The study deployed a detailed library research which involved analysis of the problem through statutes, text books; journal articles, case law and relevant website were accessed. The presentations of data finding were converted into percentage to bring the impression of the result. The major finding is that the weakness of the law has led to misinterpretations of the reasons of the allowable limitations clause of the right to freedom of assembly.

The research was recommending that Tanzania government authorities and police institution should implement effectively their power granted by law and protecting participants of public assemblies, rather than infringing their rights. Also, government should amend limitations in the Police Force and Auxiliary Services Act, cap 322 RE 2002 that are too vague and can therefore result in an overly restrictive and/or arbitrary application of the law. Therefore, it should carry out a comprehensive review in order to abolish provisions of the law which infringes the right to freedom of assembly.

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION AND COPY RIGHT	ii
ACKNOWLEDGEMENTS	iii
DEDICATION	iv
ABBREVIATIONS	v
ABSTRACT	vii
TABLE OF CONTENTS	viii
LIST OF FIGURES	xi
LIST OF CASES	xii
LIST OF INTERNATIONAL INSTRUMENTS	xv
LIST OF STATUTES	xvi
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.1 Introduction	1
1.2 Back ground of the study	1
1.3 Statement of the problem	4
1.4 Objectives of the study	6
1.4.1 General objectives	6
1.4.2 Specific objectives	7
1.5 Research questions	7
1.6 Significance of the study	7
1.7 Literature review	7
1.8 Research design and Methodology	12
1.8.1 Research design	12
1.8.2 Case study	12
1.8.3 Sampling techniques and Sampling procedure	12
1.8.4 Sample size	13
1.8.5 Data collection methods	13
1.8.5.1 Primary data	13

1.8.5.1.1 Interview	14
1.8.5.1.2 Questionnaire	14
1.8.5.2 Secondary data	14
1.8.5.2.1 Electronic sources	14
1.8.5.2.2 Documentary review	14
1.8.6 Data processing and analysis	15
1.9 Scope of the study	15
1.10 Conclusions	15
 CHAPTER TWO	16
CONCEPTUAL FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS PERMISSIBLE LIMITATIONS.....	16
2.1 Introduction	16
2.2 The right to freedom of assembly	16
2.3 Forms of exercising the right to freedom of assembly.....	18
2.3.1 Assembly/Assemblies	18
2.3.2 Procession	19
2.3.3 Protest.....	19
2.3.4 Demonstration	20
2.4 Core contents of the right to freedom of assembly	21
2.5 Limitations clause of the right: Nature and Scope of allowable limitations	23
2.6 Conclusion	33
 CHAPTER THREE	34
LEGAL AND INSTITUTIONAL FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS PERMISSIBLE LIMITATIONS.....	34
3.1 Introduction	34
3.2 Scope of the right to freedom of assembly under international instruments	34
3.3 Brief history of the right to freedom of assembly in Tanzania	38
3.4 Status of law on the right to freedom of assembly.....	39
3.5 Institutional framework on the right to freedom of assembly.....	52
3.6 Conclusion	56

CHAPTER FOUR.....	57
DATA ANALYSIS, FINDINGS AND DISCUSSIONS	57
4.1 Introduction	57
4.2 General Overview	57
4.3 Presentation of Findings and Discussions.....	57
4.4 Conclusion	66
CHAPTER FIVE.....	67
CONCLUSION AND RECOMENDATIONS.....	67
5.1 Introduction	67
5.2 Conclusion	67
5.3 Recommendations	68
BIBLIOGRAPHY	73

LIST OF FIGURES

Figure 4.1: Unauthorised assemblies in Dar es Salaam	59
Figure 4.2: Public assembly 2015 in Dar Es Salaam	60
Figure 4.3: Scenes of public rallies and demonstration in Dar es salaam.....	65

LIST OF CASES

LIST OF FOREIGN CASES

Amnesty international and Others v Sudan (1999) comm. 48/90 50/91, 52/91 and 89/93.

Amnesty International v Zambia, Comm 212/98(1999).

Attorney-General v Dow, Botswana, Court of Appeal (1992).

Beatty v Gillbanks (1882) 9 QBD 308.

Christians against Racism and Facism v United Kingdom (1980) 21 DR 138, 148

Christine Mulundika and 7 Others v The People (S.C.Z, Judgment No. 25 of 1995) (1996) ZMSC 26.

Cisse v. France (2002), EHRR.

Collin v. Chicago Park District, (1972) 460 F.2d 746.

Constitutional Rights Project and Others v Nigeria, Comm 140/94, 141/94 and 145/95 (1999).

Ezelin v France (1992) 14 EHRR 362.

G v. The Federal Republic of Germany (1989), the European Comm.

Goodwin v United Kingdom (1996) 22 EHRR 123.

Handyside v. United Kingdom, European Court, (1976) 1 EHRR 737.

Hubbard V Pitt (1976 QB 142.

International Pen and other (on behalf of Saro Wira) v Nigeria (1998) Comm no 137/94.

Jawara v The Gambia, Comm 147/95 & 149/96 (2000).

Kaira v Attorney-General (1980) ZMHC 17; (1980) Z.R. 65 (H.C.) (8 August 1980).

Karker v France, 30 October 2000.

Malawi African Association and others v Mauritania, Comm.54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000).

Media Right Agenda v Nigeria, ACHPR Comm... no 140/94.

Muwang Kivumbi v. Attorney General (Constitutional Petition No. 9 of 2005) (2008) UGCC 4 (27 May 2008).

N. P. and C in Steel and others v United Kingdom, 1998 28 EHRR 603.

New patriotic Prty V Inspector General of Police, (2000) Ghana Supreme Court.

Norris v. Ireland (1988).

Obbo and Anther v Attorney-General, (2004) Supreme Court of Uganda.

Plattform "Arzte fur das Leben" v Austria (1991) 13 EHRR 204.

Purohit and Another v The Gambia, (2003) Comm. 241/2001.

Redmond-Bate v DPP (1999) 163 JP 789; (1999) Crim LR 998.

Refah Partisi (the welfare party and others) v Turkey Appl. No 41340/98.

Thappar v State of Madras S.C.R (1950) 594 Supreme Court of India 603.

The Law Society of Zimbabwe v The Minister of Transport and Comm. and Another, (2004), Supreme Court of Zimbabwe.

The Sunday Times v United Kingdom (2)(1992) 14EHRR 229.

LIST OF LOCAL CASES

Christopher Mtikila v. Attorney General (1993) Tanzania Law Report, Civil Case No. 5 of 1993 High Court of Tanzania at Dodoma.

Chumchua Marwa v. Officer i/c of Musoma Prison and Attorney General, Miscellaneous Criminal Case No. 2 of 1988, High Court of Tanzania at Mwanza (Unreported).

Daudi slo Pete v. The United Repuhlic of Tanzania, High Court Miscellaneous Criminal Cause No. 80 of 1989, Mwanza Registry (Unreported).

Dishona Susa Yamo and John Yamo v. United Republic of Tanzania (1985) TLR119.

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

Kukutia Ole 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.

Lohay Akonay and Another v. The Hon. Attorney General, Civil Appeal No. 31 of 1994, Court of Appeal.

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

Mariam Mashaka Faustine and Others v Attorney General and the Director General of PCCB, Civil Case no. 88 and 95 of 2010 (unreported)

Mwalimu Paul Mhozya v. Attorney General, [1996] TLR 229.

N.I.N Munuo Ng"uni v. Judge i/c and the Attorney General, (1998) TLR 464.

Peter Ng"omango v. Gerson Mwangwa and Attorney General (1993) TLR 77.

Republic v Mbushuu Dominic Mnyaronje and Another HCT Case no 44 of 1991.

R v G. 2573 PC Pacificus Cleophance Simon case no. 45 of 2013 HC of Tanzania at Iringa.

Thabit Ngaka v. Regional Fisheries Officer of Morogoro (1973) LRT

LIST OF INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights, 1948 Adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris.

International Covenant on Civil and Political Rights, 1966, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.

African Charter on Human and Peoples Rights, Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 59 (1982).

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984 Annex, U.N. Doc E/CN.4/1984/4 (1984).

Basic Principles on use of Force and Firearms, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169, 1979.

LIST OF STATUTES

Constitution of the United Republic of Tanzania, 1977, Cap. 2 (R.E. 2002).

Basic Rights and Duties Enforcement Act, 1994; Cap. 3 (R.E. 2002).

The Penal Code, cap 16 (RE 2002).

Criminal Procedure Act, 1985, Cap 20 (RE 2002).

Political Parties Act Cap 258 (R.E 2002).

The Police Force and Auxiliary Services Act cap 322 (RE2002).

Commission of Human Rights and Good Governance Act, 2001; Cap 391 (RE2002).

Newspaper Act, Act No. 3 of 1976.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The right to freedom of assembly is the fundamental right enjoyed by all people in any democratic society. In regard to this right, the people in a society have the opportunity to express their opinions in the topic of public concern. The right might be exercised freely but is subject to other laws of the land which provides limitations clauses for its enjoyment. Therefore, this study attempted to explore the imposed limitations on the freedom of assembly in Tanzania. The study considered not only whether a right has been infringed, but also whether the infringement is justifiable for the reasons allowed in the limitation clause

1.2 Back ground of the study

The right to freedom of assembly is constitutionally guaranteed under Article 20 of the Constitution of the United Republic of Tanzania 1977 which enshrines the right for people; “to freely and peace assemble, associate and cooperate with other persons.” This right is subjected to other legal limitations for certain purposes, including ensuring public safety, public order or where it is in the public interest.¹

Freedom of assembly is also enshrined in international legal instruments binding on Tanzania.² These instruments include Article 20 of the Universal Declarations of Human Rights (UDHR), Article 21 of International Convention on Civil and Political Rights (ICCPR)³ and Article 11 of The African Charter of Human and Peoples Rights (ACHPR)⁴. Thus, UDHR, ICCPR and ACHPR provides the requirement for the right to freedom of assembly to be “peaceful”.⁵ The term ‘peaceful’ is interpreted to refer only to the circumstances under which the right to freedom of assembly

¹ Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,” Dar es Salaam. pp 72-73.

² The United Republic of Tanzania ratified (UDHR) and (ICCPR) on 11th June, 1976 and (ACHPR) in 1986.

³ (ICCPR) in 1966.

⁴ (ACHPR) in 1986.

⁵ Article 20, UDHR, and Article 21, ICCPR.

extends in respect of a “peaceful” nature.⁶ The scope protects only peaceful assemblies, which means that non-peaceful assemblies are not protected.⁷ An assembly should be deemed peaceful if its organisers have peaceful intentions.⁸ But it must be kept in mind that even peaceful assemblies may be restricted, even banned, if it does not meet the requirements of the limitations clause provided by the law,⁹ particularly those enacted in the interest of national security and the safety, health, ethics and the rights and freedoms of others.¹⁰ Therefore all instruments on the above has provides identical limitation clause on the right to freedom of assembly.¹¹ Hence these treaties encourage domestic legal systems only to allow limitations which are provided by law, serve a legitimate aim, and are necessary, and proportionate in a democratic society.

The limitations prescribed by law, mean the limitations in the law should not be ambiguous, accessible, drawn narrowly and with precision so as to enable individuals to anticipate whether a particular action is unlawful.¹² The law must provide for adequate safeguards against abuse, including prompt, full and efficient judicial scrutiny to validity of the restriction by an independent court or tribunal.¹³ Further, limitations must be with legitimate aim, it mean the law imposes restrictions for the interest of the state including 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.¹⁴ Also, limitations necessary in a democratic society, is when

⁶ Partsch, K. (1981). ‘*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.

⁷ Salát, O. (2014). “*Comparative Freedom of Assembly and the Fragmentation of International Human Rights Law*,” *Nordic Journal of Human Rights*, Vol. 32, No.2, p. 142.

⁸ *Cisse v.. France* (2002), para. 37, the European Court of Human Rights stated that, “In practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants *intended* [emphasis added] to use violence.” Also *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that peaceful assembly does not cover a demonstration where the organisers and participants have violent intentions that result in public disorder.

⁹ Erasmus, D. (2001). ‘*The Bill of Rights Hand Book*’, Juta Publishers.

¹⁰ Article 11 ACHPR

¹¹ Article 20, UDHR, and, ICCPR, Article 21 and Article 11 ACHPR.

¹² *Goodwin v United Kingdom* (1996) 22 EHRR 123 para 140.

¹³ *Refah Partisi (the welfare party and others) v Turkey* Appl. No 41340/98 at para. 57.

¹⁴ Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,” Dar es Salaam. pp. 72-73.

meet a legitimate purpose whose function is to promote democracy and human rights, rather than serve the narrow interest of the government.¹⁵ Again the limitation must be proportionate to achieve the objective between the requirements of the interest sought to be protected.¹⁶

The Tanzanian Court of Appeal dealt with limitation in the case of *Kukutia Ole Pumbun v Attorney General and Another*,¹⁷ in this case the Court of Appeal held that a law that seeks to limit rights of the individuals on the grounds of public interests, will only meet Article 30(2) of the Constitution if; the law provides effective controls against arbitrary abuse of the law; and the limitation in the law must be reasonably necessary to achieve a legitimate objective. The Court also held that any law that seeks to limit the fundamental rights of the individual must be construed strictly to make sure that it conforms to these requirements.¹⁸

In the case, the principles of necessity, proportionality and legitimate aim commented on the law regulating any rights, must not be drafted too widely so as to meet the demands of the members of society. This includes limitation imposed by law must not be more than is reasonably to achieve the object. The Court therefore may declare the law null and void if infringes a basic right which does not meet both requirements saved by article 30(2) of the Tanzania Constitution.

Undoubtedly in the Pumbun case, the Court of Appeal has not only clarified the effect of limitation clauses, but also married the articulation of the principles involved in the interpretation of limitations clause in any fundamental rights including right to freedom of assembly. Thus, the requirement as to the absence of arbitrariness, presence of adequate safeguards against arbitrary decisions and control against abuse by those in authority using their limitations in the law, exactly tally with the High Court's position in *Christopher Mtikila v. Attorney General*.¹⁹ Briefly

¹⁵ *Media Right Agenda v Nigeria*, African Commission on Human and Peoples Right Comm. no 140/94 para 42, Also *The Sunday Times v United Kingdom* (1992) 14EHRR 229 at para 50.

¹⁶ Siracusa Principle on the limitation and derogation of provisions in the International Covenant on Civil and Political Right.

¹⁷ (1993) 2L.R.C.317.

¹⁸ (1993) 2L.R.C.317

¹⁹ *Christopher Mtikila v. Attorney General* (1993) Tanzania Law Report, Civil Case No. 5 of 1993 High Court of Tanzania at Dodoma.

Rev Mtikila filed a case before the High Court of Tanzania and asked the Court to declare the Police Force Ordinance unconstitutional because it prohibited Tanzanians from exercising their constitutional right to freedom of assembly by making this right subject to permission from the Police Force. Until 1995 Judge Lugakingira held section 40 of the Police Force Ordinance unconstitutional which curtailed the right to freedom of assembly guaranteed under the Constitution.²⁰ The decision made an amendment and change of the law from the Police Force Ordinance to Police Force and Auxiliary Services Act.²¹

Although the law requirement for permits has been removed, life has not become any easier for organiser seeking to hold exercise freedom of assembly because the Police have now applying Section 43 of the Police Force and Auxiliary Services Act arbitrary abuse the right²² by issuing prohibition orders claiming that they had information that the meetings were likely to cause breach of peace, but without giving any evidence.²³ Therefore, there is the huge increase of abuse of the law based on interpretations of the reasons for limitations excessively onerous procedures, and use of excessive force has sharply increased in violations of right to freedom of assembly.²⁴

Hence, due to approach pointed out above, there is no doubt that Tanzania Constitution guarantees the right to freedom of assembly; however, the enjoyment of the rights has long been partial, and often perilous, for government critics.²⁵

1.3 Statement of the problem

The constitution guarantees freedom of assembly, but the government can limit this right since all assemblies require police approval and critical public assemblies are at

²⁰ *Christopher Mtikila v. Attorney General* (1993) Tanzania Law Report, Civil Case No. 5 of 1993 High Court of Tanzania at Dodoma.

²¹ Cap. 322 (RE2002).

²² Cap. 322 (RE 2002).

²³ Mwambande, L, 'Cancelling Rallies was Arbitrary-Marando' in *The Guardian (T)* 16 September. 2003

²⁴ Amnesty International, report 'The Sad Story of Peaceful Demonstrations Turning Bloody in Tanzania', 30 January 2001.

²⁵ Tanzania adhere a mechanism based on the observance of democratic system of Government committed to the rule of law.

times actively discouraged.²⁶ The right is inherent and as such has to be respected, promoted and upheld by the three organs of the state.

The Police Force and Auxiliary Services Act,²⁷ impose conditions which ban the exercise of the rights to freedom of assembly. Section 43 of the Police Force and Auxiliary Services Act,²⁸ interfere the enjoyment of the fundamental right and freedom by preventing the right to freedom of assembly in contravention of Article 20 and 30(2) of the Constitution of the United Republic of Tanzania 1977.

The interpretation to give notification to the police forty eight (48) hours in advance uphold as authorising the police to prevent assemblies which are inconsistent with the provision of constitution which guarantee the enjoyment of the freedom to assemble.²⁹ In addition, there is no exception to the notice requirements for spontaneous assemblies which may arise immediate reaction to some event, where the giving of notice is impracticable.³⁰

In totality the Police are vested with very broadly discretion powers when interpreting the reasons for limiting freedom of assembly including public morals, public safety, and public order or where it is in the public interest.³¹ In having this “limitations clause” the law has often been used arbitrary and unreasonable to infringe the right to freedom of assembly.³²

²⁶ 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), 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. Also, A joint opposition rally led by UKAWA was banned in September 2014. Protests nevertheless continued to be held that month, and Police arrested several pro-opposition demonstrators.

²⁷ Cap. 322 (RE 2002).

²⁸ Cap. 322 (RE 2002).

²⁹ Section 45 of the Police Force and Auxiliary Services Act, 2002.

³⁰ Disabled persons conducted demonstrations after being demolished their business places, Jamii Forum 2015.

³¹ Section 43 the Police Force and Auxiliary Services Act, 2002.

³² UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, para 15, available at: <http://www.unhcr.org/refworld/doc/4672bc122.html> [accessed 2 July, 2012] Also Art. 20 and 30 (1) of the CURT of 1977. Also UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on

The limitation clause is also based on the remedies to appeal decisions denying the authorization to hold freedom of assembly. The enjoyment of the right is limited in the sense that the participants of public assemblies may appeal against the order to the Minister responsible, whose decision is final.³³ The Act lack remedies to appeal to the judicial court when there is the violation of right.³⁴

Also, the arrest of participants of public assembly amount to arbitrary use of force and detention³⁵ which amount to arbitrary use of force and firearm by the Police during the dispersal of public assemblies causes the loss of lives, harassment, and being subjected by intimidation which *prima-facie* contravene with the Constitution of the United Republic of Tanzania 1977.³⁶ Moreover, the Tanzania Penal Code³⁷ and the Police Force and Auxiliary Services Act,³⁸ does not complying with international human rights law³⁹ both because it obstructs and punishes the exercise of freedom of assembly⁴⁰ and because it establishes procedures infringing on the actual ability to enjoy the right to peaceful assembly.⁴¹

Therefore, the study critically examine the limitation clause of the right to freedom of assembly as guaranteed in international and regional human right instruments as well as in Tanzania national laws.

1.4 Objectives of the study

1.4.1 General objectives

- i. The general objective of this research is to examine the right to freedom of assembly and it's imposed legal limitations based on the observance of democratic system in Tanzania.

Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, para 15, available at <http://www.unhcr.org/refworld/docid/4672bc122.html> (accessed 2 July, 2012).

³³ Section 43(6) of the Act cap 322 RE2002.

³⁴ Articles 30 (3) and 107A of. the Constitution of the United Republic of Tanzania. 1977.

³⁵ Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,” Dar es Salaam. p. 97.

³⁶ Articles 12, 13, 14, 15, 16, 17, 20, and 21 of. the Constitution of the United Republic of Tanzania. 1977.

³⁷ The Tanzania Penal Code Cap. 16 (RE 2002).

³⁸ Cap 322 (RE 2002).

³⁹ The Tanzania Penal Code Cap. 16 (RE 2002).

⁴⁰ Sections 74 and 75 of the Tanzania Penal Code Cap. 16 (RE 2002).

⁴¹ The Police Force and Auxiliary Services Act, Cap. 322 (RE2002).

1.4.2 Specific objectives

- i. To examine the protection of the right to freedom of assembly in a practical sense.
- ii. To examine the powers and duties of the Police in relation to freedom of assemblies.

1.5 Research questions

This study was guided by the following tentative questions

- i. Whether the power vested to police by the Police Force and Auxiliary Services Act, Cap. 322 RE 2002 in Tanzania are too wide to allow the arbitrary denial of rights to freedom of assembly.
- ii. Whether the imposed limitations requirements is justifiable for the reasons allowable in the limitation clause.

1.6 Significance of the study

The study provide useful information on promoting and protecting of right to freedom of assembly in order to establish the balance between the individual right and the interest of the society. The study helps to the legislature and the government in improving the laws and suggests possible measures to be taken by the government on the management of public assemblies. It may also be useful to the Police Force in adhering to the standards of protecting human rights in dealing with Public assemblies when discharging their responsibilities.

1.7 Literature review

Peter, C. M⁴² traces the history of the development of human rights in Tanzania, which is shown to have been a struggle throughout the process. The development grow with the incorporation of the Bill of Rights in the constitution in 1984, but the enjoyment of human rights still remains a dream because there are hindrances and obstacles in the way. He examined the one area where fundamental rights and

⁴² Peter, C. M. (1997). “*Human Rights in Tanzania*,” Selected Cases and Materials, Richarz Publications Service, Koln: Koppel.

freedoms of the individual are completely disregarded and compressed by the agents of the regime. He pointed out the right to associate as one of the most important fundamental rights today. It is a right which brings people together in order to pursue common interests and common goals. This right goes hand in hand with the right to organise and assemble freely to discuss and communicate on issues of common interest. He acknowledges the need for constant pushing in order to do any pro-human rights action. Furthermore, he is of the view that meeting together and associating is one of the avenues for attainment of social progress.⁴³ In the spirit of the work tends to cover right to peaceful assembly.

Mapunda, B T⁴⁴ examines freedom of association as one of the fundamental rights provided for in the Bill of right. The freedom of association the right entails the right to interact with other members of the community in any form for the purpose of pursuing a common interest. It is therefore a right which enables people to come together without fear of persecution. This monopoly had extended even to informal association in the form of assemblies and procession in public place. Such assemblies could only be organised subject to the government permission issued by Police.⁴⁵ However, after the introductions of multi -partism in 1992 the situation has changed under which the organisers of rallies are required to give a forty eight hours to the police. Due to restrictions pointed out above many otherwise peaceful assemblies are taken by the organs to be breach of the peace. For these reasons the definitions of breach of the peace is of cardinal importance considering the limitations of freedom of assembly.

Shivji⁴⁶ explore the modern states which are the most centralized expressions of the use of force in disperse the public assembly. That there are two types of forces, the legal force and illegal force. However, this does not mean that even legal force is necessary legitimate, this is to be balanced in the concept of Human Rights. He

⁴³ Peter, C.M. (1997). “*Human Rights in Tanzania*,” Selected Cases and Materials, Richarz Publications Service, Koln: Koppel p 649-650

⁴⁴ Mapunda, T. B. (1998) *Personal Freedom and Police in Tanzania*, in Juma, I. H. Fundamental Human Right in Tanzania Dar es Salaam, Mkuki & Nyota Publisher p 143- 150

⁴⁵ Section 40 of the Police Force Ordinance, 1953

⁴⁶ Shivji, I.G. *State Coercion and Freedom in Tanzania* p.10.

pointed out the exercise of powers by the police, he is wary of killings done by the police. He gives out an example of Kilombero killings of 1986. In this matter the workers of Kilombero Sugar Company 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. Later the Field Force Unit (FFU) was called. On arrival at the scene, it said FFU fired some tear gas bombs, thus dispersing the mob. Immediately thereafter, they started firing bullets indiscriminately, chasing and pushing the protesters to their place of residence. In the course of this process four persons (among of the workers) were killed and sixteen others were severely injured.

Mashamba, C. J⁴⁷ addresses the judiciary protection of civil and political rights and justification of those rights in Tanzania tracing the history of human right after introduction of multi-partism in 1992. He set out restrictions imposed by law to civilians when exercising the rights to freedom of peaceful assembly. It is submitted that the right is of political nature in any democratic country. For these reasons, the right is importance against oppression, repression and other undemocratic tendencies around them.

Kabudi, P. J⁴⁸ further managed portrays the essential of human rights jurisprudence in protection of freedom of association, expression and assembly. The protection those rights ensure the ability to express the opinions of the people against the government policies and plan. Also the freedoms can properly motivates and balance the public interest and the government for better democratically governed.⁴⁹ Therefore, has been described the freedom of assembly is similar to freedom of expression and it is the essential element in any democratic society.⁵⁰ The views and

⁴⁷ Mashamba, C. J. (2010) ‘‘*Judicial Protection of Civil and Political right in Tanzania Cases*,’ Materials and Commentary, Nola: Dar es Salaam. p. 115.

⁴⁸ Kabudi, P.J.(1995) *Human Rights Jurisprudence in East Africa: A Comparative Study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda*, Nomos Verlagsgesellschaft, Baden-Baden: p. 282.

⁴⁹ Kabudi, P.J. (1995) *Human Rights Jurisprudence in East Africa: A Comparative Study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda*, Nomos Verlagsgesellschaft, Baden-Baden: p. 282.

⁵⁰ Kabudi, P.J. (1995) *Human Rights Jurisprudence in East Africa: A Comparative Study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda*, Nomos Verlagsgesellschaft, Baden-Baden: p. 282.

comments of the people make the objectives and interests to the government measures.⁵¹ He managed to show the essence of freedom of an assembly in any democratic state, but he didn't address the limitations imposed on the exercise of that rights being reasonable and the favor enjoyed by the ruling party over the opposition party on political gathering, that being the core of the researcher role.

Kijo-Bisimba and Peter⁵² discusses the concept of fundamental rights and freedom. It is argued that the position of the bill of rights in restricting liberty depends on the judiciary approach. Through judicial activism the court plays an important role to realise the spirit of the Bill of Rights in Tanzania. Furthermore, they argue that fundamental human rights jurisprudence is ever changing as contrasting to the wording of the Bill of Rights. The judiciary may adapt to the changing circumstances by assigning constructive statutory interpretation. It further pin points some legal pitfalls in the protecting the fundamental rights in Tanzania. Among other things pinpoints the question of claw back clauses in the Constitution of Tanzania.

Wambali Michael K.B⁵³ explored the scope of the rights provided in the bill of rights. He said the bill of right usually exists in every country all over the world, pointing the two rights of association and free assembly being the sister's rights. The rights is basically occurs as the basis of traditional civil and political liberties rights develops with the human being discourse. It is the part and parcel in grow with the developments of the human being history, but it qualifies with the certain specific limitations clause in its enjoyments. The limitations are enshrined in the relevant international instruments, in the written constitutions subject with other legislation which regulates the exercise of the rights. It is argued that, the ways these rights are articulated in political practice of Tanzania, the government is required to refrain from developing the machinery to protect human rights in the bills. This aid was useful to this work in examining the limitations of right to assembly in Tanzania.

⁵¹ Kabudi, P.J. (1995) *Human Rights Jurisprudence in East Africa: A Comparative Study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda*, Nomos Verlagsgesellschaft, Baden-Baden: p 297

⁵² Kijo-Bisimba, H. and Peter, C. M. (2005) *Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James Mwalusanya and Commentaries*, Dar es Salaam.

⁵³ Wambali, K.B. (2009) Michael Taking stock of the law and practice of the right to freedom of political association in Tanzania Law Reformer Journal Volume 2 No. 1 p 26

Kibwana. K⁵⁴ analysis, the freedom assembly as the Man's early history of attests the need of individual nature within the context of the community. In his arguments he said the freedom of assembly was define the Africa people by the colonial government because it was clear that the granting of the right would result in the effective organisation of the people by their leaders in a challenge to the government. According to the author, he tried to find the meaning of freedom of assembly to refer to the right to come together for brief moments particularly in meeting within the political parties, trade union, and other unrequested group. It will be noted that the rights to assembly does not only give citizens the rights assemble but also the right not to assemble at all. For this reason, enjoying the right to freedom of assembly governed in the constitution to provide the ample opportunity of actualising the right. The constitutional also provide limitations to freedom of assembly and where such laws are reasonable required in the interest of defense, public safety, public order, and public morality of public health of the laws are reasonably required for the purpose of protecting the rights or freedom of other persons. In these perspectives the researcher will use this work to address much the acceptable and imposed restriction in respect to freedom of assembly.

Fox H.G, and Roth R. B⁵⁵ in exploring some of central aspect of the relationship between Democratic Government and International Law, this work reflects a diversity of Scholarly interpretations. The book as a whole seeks reflection on the "democratic entitlement" in international arena as grounded in the rights to political participation. Yet the right to political participation, at least as interpreted through the lens of democratic entitlement, is unlike other human rights, its individual enjoyment in inseparable from its collective effect. The individual right provides for only the most limited remedies and notoriously lacks efficacious enforcement mechanism; one might well imagine that the specification of its requirements in respect of political participation, as in respect of freedom of assembly or speech would be a development of limited significance of international law to take part government, but also of the principle that "the will of the people shall be the basis of

⁵⁴ Kibwana, K. (1990) "*Fundamental Rights and freedom in Kenya*" pp. 43, 47.

⁵⁵ Fox, H. G. and Roth, R. (2000) *Democratic Government and International Law*, p.5.

the authority of government on the fulfillment of liberal democracy participatory standards.⁵⁶ The study used this aspect touched on the existence of appropriate participatory mechanism of the right public assembly.

1.8 Research design and Methodology

This section consists of seven subsections which are: research design, sampling techniques and procedures, sample size, data collection methods, data processing and analysis, scope of the study and lastly the conclusion. The details are provided as follows:

1.8.1 Research design

The study used empirical design. Empirical research design was used by studying and reviewing different documents to acquire data. The empirical method was chosen ideally to get wide knowledge and understanding of the subject. The study intends to make a comprehensive and systematic investigation of the right of freedom of assembly and its legal limitations as far as the law of Police Force and Auxiliary Service Act regulates the public assemblies, thus the study concentrated to find out the theory providing for approach of the right to freedom of assembly.

1.8.2 Case study

The research used a case study to design questionnaires and interview guides for data collection. The study was conducted in Dar es Salaam region as a case study, where the researcher had the opportunity to collect data relevant to the study. The study was limited in Temeke, Ilala and Kinondoni area where there was sufficient availability of the resources of data.

1.8.3 Sampling techniques and Sampling procedure

The selection of respondents entailed purposive and simple random sampling techniques so as to get the required data. The sample however was drawn from

⁵⁶ Fox, H. G. and Roth, R. (2000) *Democratic Governance and International Law* p.10.

relevant authorities such as Tanzania Ministry of foreigner affairs, Commission for Human Rights and Good Government (CHRAGG), Courts, State Attorney Chamber (SAC), Tanzania Police Force, Legal and Human Rights Center (LHRC), and Political parties.

1.8.4 Sample size

The targeted groups of people were in Dar es Salaam Region. The number of targeted research subjects comprised 100 persons, but only 85 respondents actually responded. Among them 15 were interviewed, 70 through questionnaire. The turnout was as follows: 1 out of 2 Members of Commission for Human Rights and Good Governance (CHRAGG) responded, 1 out 2 Judges responded, 2 out 2 Members of Legal and Human Rights Center (LHRC) responded, 4 out 6 Counsel in different Firms responded, 5 out 8 Journalist responded, 8 out 10 Ordinary People from the community responded, 16 out 20 Members of Political Parties (MPP) responded, and 48 out 50 Members of Tanzania Police Force (TPF) were involved in data collection and responded. Through this sample size, study the study gathered sufficient information relevant to the topic.

1.8.5 Data collection methods

The study involved extensive and thorough review of the relevant material by considering two types of data, namely primary and secondary data.

1.8.5.1 Primary data

Primary data was collected from the field for the purpose of answering research issues/ questions. Questionnaire and interview are the common research tools used to collect primary data. They were applied in this study in obtaining the required information from the respondents. The two methods are explained in detail as follows:

1.8.5.1.1 Interview

The researcher used interview as method of collecting data. Interview method was applied to get comprehensive information since the method is flexible and allows the researcher to keep on modifying questions.

1.8.5.1.2 Questionnaire

The researcher supplied the questionnaires to the relevant personnel from the aforementioned institutions and organisations that have rich knowledge on the freedom of assembly and collect necessary information and ideas concerning freedom of assembly. The questionnaires supplied were both close-ended questions for simple analysis of data and open-ended questions with the aim of acquiring critical views of the respondents.

1.8.5.2 Secondary data

Secondary data was collected through documentary review and electronic sources of relevant materials such as government policies, Case laws, official files, Research reports and different websites. Libraries were fully utilised. The logic behind using this method is related to knowledge gaining, to grasp the extent of the problem and to examine what is known to people and what is not known.

1.8.5.2.1 Electronic sources

Electronic sources made a significant contribution in this study, various Websites, Electronic Journals, Books and Reports were accessed.

1.8.5.2.2 Documentary review

Documentary review gave a significant contribution to this study. This was a descriptive study, describing the efficacy of laws. The Libraries were visited in order to gather secondary data to enrich this study. These libraries are the Legal and Human Rights Centre (LHRC) Documentary and Research Centre as well as the Commission for Human Rights and Good Governance (CHRAGG) library both located in Dar es Salaam as well as Mzumbe University Library.

1.8.6 Data processing and analysis

The collected data was scrutinised and examined in detail before being analyzed. After data collection the study spend several days scrutinising and sorting out the data ascertaining which data are relevant to the objectives of the study. The study involved qualitative analysis in order to give a picture of the right to freedom of assembly and its legal limitations in Tanzania.

1.9 Scope of the study

The study covered only the right to freedom of assembly, which is one of the civil and political rights. Therefore, this study attempted to explore the imposed limitations on the freedom of assembly in Tanzania.

1.10 Conclusions

This chapter has covered the general introduction which consists of the background of the problem, statement of the problem, objectives of the study, significance of the Study, literature review, research design and methodology, data processing and analysis scope and limitations of the study. The back ground of the study it begins with history of man life's in nature of public assemblies whereby the problem have been developed and procedures of exercising the freedom of assembly was contravene with the Articles of the of the Constitution of the United Republic of Tanzania 1977. The general objective of this research is to examine the right to freedom of assembly and it's imposed legal limitations based on the observance of democratic system in Tanzania. The study provide useful information on promoting and protecting of right to freedom of assembly in order to establish the balance between the individual right and the interest of the society

CHAPTER TWO

CONCEPTUAL FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS PERMISSIBLE LIMITATIONS

2.1 Introduction

The conceptual framework expounds concepts, opinions, principles, and a set of theories. This chapter digests the key concepts the fundamental freedom of assembly, forms of exercising the freedom of assembly, core contents of the right, state obligation towards freedom of assembly, nature and scope of allowable limitations and reasons on limitations to freedom of assembly.

2.2 The right to freedom of assembly

The right to freedom of assembly is a fundamental right, which is inalienable, independent, universal, and equal to all human being inherently. The right is exercised and enjoyed by individuals, groups, unregistered associations, registered associations, and corporate bodies.⁵⁷ However, enjoyment of this right is executed as the right to conduct meeting, rallies, parade, picket, to demonstrate to go in procession, and to protest on matter of public concern.⁵⁸

The right to freedom of assembly rest as the core functioning democratic systems together can be exercised with other essential cornerstone of democracy such as freedom of expression and freedom of association. As such, freedom of assembly is related with the right to challenge the leading views within society, which promote the views of minority or majority interests in the marginalised part of society, thus it present alternative opinions by providing an opportunity to express their ideas in public, regardless of their status, wealth or power.⁵⁹ The protection of freedom of assembly conveys the practices and policies which creates a vital tolerant and

⁵⁷ OSCE ODIHR, (2010) *Guidelines on Freedom of Peaceful Assembly*, Warsaw 2ed, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) p. 15.

⁵⁸ Judicial interpretation by Lord Denning in *Hubbard V Pitt* (1976) QB 142 at p. 176.

⁵⁹ Handbook on Monitoring Freedom of Peaceful Assembly (2011) Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) p. 7.

pluralistic society to exist peacefully together.⁶⁰ The public assembly takes place in public area conducted by different political, social and cultural must indicate the tolerance and respect with the given practices and beliefs.

The right to freedom of assembly always is articulated in a collective manner. The collective manifestation of views may be perceived as particularly threatening the government.

Based on the government approach as a theory to freedom of assembly, the theory provides a clear idea of the respect that the state has the duty on protection of basic fundamental rights. In protecting the rights in the context of freedom of assembly entails both negative and positive obligations.

The positive obligation of the State is actively protecting the peaceful public assemblies. The obligation can include both the protection of organiser and participants peaceful assemblies either allowed or not allowed. The obligation aim in controlling policy of the public assemblies by putting the State to ensure implementations of mechanisms to prohibits unlawful assembly in effective manner.

The State also has a negative obligation not to improperly interfere with the exercise of the freedom of assembly. The obligation is based on the regulatory authorities' principles providing assembly with the reasons for the imposition of limitations. Therefore, the state is obliged to avoiding from causing harm to its own national or other persons during holding of public assemblies. The state is supposed to protect people from the arbitrary arrests, torture, police brutality, extra judicial killings, be free from cruel, inhuman and degrading treatment to the participants of the public assembly.⁶¹

Moreover, it is the obligations of the State to make sure there are the sufficient mechanisms and procedures which effluences the enjoyments of the right in practice and is not subjected to any discriminatory bureaucratic set of laws. It allows the law

⁶⁰ OSCE ODIHR, (2010) *Guidelines on Freedom of Peaceful Assembly*, Warsaw 2ed, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) p.15

⁶¹ Article 5 of the Declaration and 7 of the CCPR of 1966.

be enacted with the full reasonable requirements in line with international human rights standards.

Freedom of assembly enables individuals who feel strongly to express their feelings to the government.⁶² The right often is the political right used various group to get popularity on their political campaigns especially on election campaigns on time of political tension.⁶³ It can be also an important system of demanding changes of political revolution where more institutional system for effecting social change is not available.⁶⁴

2.3 Forms of exercising the right to freedom of assembly

Among the forms of exercising the freedom of assembly is by way of assembly, procession, protest, and demonstration.

2.3.1 Assembly/Assemblies

There is no ambulatory common law definition of assembly. The concept is obviously closely akin to that of a 'meeting'. However, the term 'meeting' connotes prior or contemporaneous organisation, with an order of business however informal and the transaction of business including delivery of speeches and the passing of resolutions. The concept of assembly is probably wider and includes any coming together of persons. An assembly is also an intended and temporary meeting in a private and public space for a specific purpose.⁶⁵ An assembly is a static means of expressing a common opinion, facilitating the collecting voicing of opinions and grievances. Assembly gives 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.⁶⁶

⁶² Brabyn, J.(2002) *The Fundamental Freedom of Assembly and Part III of the Public Order Ordinance* Hong Kong Law Journal, Sweet &Maxwell, Asia.

⁶³ Handbook on Monitoring Freedom of Peaceful Assembly (2011) Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) p. 8.

⁶⁴ Political revolution in Egypt, Algeria, and Libya.

⁶⁵ A/HRC/20/27, para 24.

⁶⁶ Erasmus, D.(2001) *The Bill of Rights Hand Book*, Juta Publishers.

2.3.2 Procession

Procession is a form of right to freedom of assembly. Procession means a group of people or things moving forward in an orderly and organised fashion.⁶⁷ Another definition refers to any procession consisting wholly or partly of persons, ceremonial procession, vehicles or animals. The terms “assembly” and “procession” are not defined in the Police Force and Auxiliary services Act,⁶⁸ but the law provides some requirements of these form of freedom to be regulated in a public place.⁶⁹ A public place is defined in the Police Act as:

*any highway, public park, common or garden, any sea, beach, or lake shore, and any public bridge, road, street, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any place, whether a building or not, to which for the time being the public have or are permitted to have access, whether on payment or otherwise.*⁷⁰

2.3.3 Protest

Protest refers to an expression of by words, conduct, opposing, and objection, to particular matter, policies or situations. Protests can be exercised in many different forms from an individual statement to mass protests. Protesters may exercises a protest in a public by making their views to be heard in an attempt challenge the government policy or need of social changes in the society.

Right to protest is one of human rights which empower people to exercise such right by objection or disapproval of certain action, policy, law or plan of government or any organisation which is against public interest, or can be defined as the right to protest against unjust action or law.

Sometime the right to protest can take the form of civil disobedience. Actually they are not the same: civil disobedience is a deliberate but nonviolent act of lawbreaking

⁶⁷ Section 22 of Public Order Act (Sierra Leone) 1965.

⁶⁸ Cap. 322 (RE 2002).

⁶⁹ Sections 43-45 Cap 322 (RE 2002).

⁷⁰ Section 2 Cap. 322 (RE 2002).

to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality.⁷¹

A spontaneous protest is the type of protests frequently occurs suddenly after a triggering event. It is an event in which the right may be exercised without the prior notification of the participants on the protest. This happen when the written notification is impracticable, because of the nature of the protesting, that means does not open the room to notify the police officer. In this type of protesting there is no recognized organiser of the event because it moves too fast. Indeed, the occurrence of the spontaneously protest has been described as an essential element of freedom of assembly; therefore the authorities are likely facilitate spontaneous protests healthy democracy.⁷²

In practice, many legal regimes treat spontaneous protests as unlawful or illegal. In some cases, the authorities are entitled legally to disperse the participants by force, and the arrested people are charged with criminal offence. In Tanzania Police Force and Auxiliary services Act is silent on the enjoyment of spontaneous assembly.

2.3.4 Demonstration

A demonstration is a form of assembly whose aim is to express of the opinions to the authority for which a communication is intended be delivered. It is an expression of one's feelings by outward signs. Demonstration may be expressed form of a mere wearing of a badge, show up some posters, even a silent assembly. This form of assembly may always incriminate the authority with the persons who are opposed to the ideas. In this kind of assemble the does not fear subjection from the government apparatus.⁷³

Counter-demonstrations, this occurs when two events demonstrating simultaneously which are organised to express disagreement with another assembly. In this scenario

⁷¹ Black Law Dictionary, (2004) 8th Ed.

⁷² OSCE ODIHR, (2010) *European Commission for Democracy through Law*, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) , CDL-AD 16, §36.

⁷³University of Macedonia, Thessaloniki, Greece, for Thessaloniki International Student Model United Nations, *The Protection of Human Rights in peaceful protests and the fight against Extremism* (2012) All Rights Reserved. www.thessismun.org. p. 5.

the authority should intervene to rescue the possibility of parties to battle. The protection of counter-demonstration should fall within sight and sound of one another demonstrations arranging in particular, adequate policing resources that allow both demonstrations.

It must be noted that counter-demonstration occur on the same locations solely can cause disproportionate and discriminatory between the parties. Hence the counter demonstration are not comparable and to accommodate both must treated differently by the national authorities.⁷⁴ With this form of right in Tanzania there are no any laws that protect the exercise of counter-demonstrations yet still it is conducted in the different situations.⁷⁵

2.4 Core contents of the right to freedom of assembly

Freedom of assembly is a significant basic individual liberty which shows balancing of social development rule of law and democracy. As far as the right of freedom of assembly is concern there are four elements forming the core contents of the freedom including: the expression of views by meeting participants to freely use, build-up to express those opinions, peaceful in nature, by the influence on the course of public affairs in the country. This core contents are explained as follows in detail:-

First, the right must be the expression of views by meeting participants to freely use. In fact, the freedom of assembly covers a wide range of gatherings, including: static assemblies, such as mass demonstrations, rallies, meetings together, pickets and flash mobs; moving assemblies, such as marches, parades, and processions; and combinations of static and moving assemblies.

Second, right must build-up to express opinions. The right to freedom of assembly evolves the expression of the opinion, ideas, views, information gathering, and the defense of common interests, celebration, commemoration, picketing. Freedom of

⁷⁴ OSCE ODIHR, (2010) *Guidelines on Freedom of Peaceful Assembly*, Warsaw 2ed, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 18.

⁷⁵ In 2012 CHADEMA launched a political campaign called “Movement for Change” (M4C) through public rallies and demonstration. Also, In a Non Political Demonstration on 22nd February, 2012 citizens in Songea conducted a peaceful demonstration towards the Regional Commissioner (RC) offices to register their complaints over unchecked incidents of witchcraft killings in the region.

assembly is significantly to the maintenance and development of culture and in the preservation of minority identities.

Third, the right must be peaceful in nature. The protection of freedom to assembly extends only in respect of a “peaceful” nature. An assembly should be deemed peaceful if its organisers have peaceful intentions.⁷⁶ This notion does not cover public assemblies where the organisers have violent intentions (non-peaceful assemblies) which result in public disorder. “Peaceful” in this context typically means “without violence,”⁷⁷ that is, without the use of unlawful⁷⁸ physical force, in relation to people and property belonging to others, and possibly also “non-threatening”, at least in terms of threatening immediate violence towards specific persons or property.⁷⁹ Three points should be noted.

One, “peaceful” is intended to refer only “to the circumstances under which the assembly is held ... [not] the object for which the assembly is called or to the opinions which may be expressed on that occasion.” Two, a participant in an assembly whose conduct and intentions are at all relevant times peaceful remains within the freedom of assembly, notwithstanding the violent conduct or intentions of other participants in the same assembly⁸⁰ or participants in a counter-assembly or hostile audience.⁸¹ Three, a peaceful assembly is entitled to protection,⁸² notwithstanding that it is said to be unlawful by some domestic law, at least where

⁷⁶ *Cisse v. France* (2002). para. 37, the European Court of Human Rights stated that, “In practice, the only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants *intended* [emphasis added] to use violence.” Also *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that peaceful assembly does not cover a demonstration where the organisers and participants have violent intentions that result in public disorder.

⁷⁷ Nowak, M. (1993). *U.N. Covenant on Civil and Political Rights*, Commentary (Kehl: NP Engel, p. 375.

⁷⁸ That is, force used other than within the recognised boundaries of self-defense, crime prevention or necessity.

⁷⁹ Partsch, K.J. (1981). “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, pp. 209, 231.

⁸⁰ *Ezelin v France* (1992) 14 EHRR 362, *Christians against Racism and Facism v United Kingdom* (1980) 21 DR 138, 148.

⁸¹ Nowak, M. (1993) *U.N. Covenant on Civil and Political Rights*, Commentary (Kehl: NP Engel, pp. 375-376, also *Plattform “Arzte fur das Leben” v Austria* (1991) 13 EHRR 204, para 32, Also, *Beatty v Gillbanks* (1882) 9 QBD 308; *Redmond-Bate v DPP* (1999) 163 JP 789; [1999] Crim LR 998.

⁸² Article 21 of the ICCPR 1966.

the sole basis for the characterisation is a failure to notify relevant authorities as required or some similar reason.⁸³

However, although the freedom of assembly is peaceful nature might still potentially be unlawful. This could be because the assembly does not conform to the requisite preconditions recognized by domestic law in which the right is compatible with international human rights standards; it pursues a purportedly unlawful objective.⁸⁴ Clearly, the public assemblies that are deemed non-peaceful can also be unlawful because of the existence of a compelling and demonstrable threat of imminent dangers. Non peaceful gathering of persons includes the committing either a crime involving force or a noncriminal act in a manner likely to terrify the public the public peace. This situation may amount to penalisation disorderly assemblies often reflect the breach and threats of the peace.⁸⁵

Fourth, the right must be by the influence on the course of pulic affairs. As such, freedom of assembly comprises a form of direct democracy. It assists dialogue within political leaders, government, civil society, as well as between civil societies. The right comprises holding opinions, receiving views, conveys information without any interference to the authority despite of interest arose to the public. This right is also complimented by other rights include freedom of expression, freedom of association, and freedom conscience. As such, freedom of assembly is the basic human right amounting to the welfare of the society, the personal development, human dignity, and fulfillment of every individual progress.⁸⁶

2.5 Limitations clause of the right: Nature and Scope of allowable limitations

Limitation clause refers as the justifiable infringement of fundamental rights and freedoms.⁸⁷ Limitation as the term implies, does not mean a total deprivation of

⁸³ *G v Federal Republic of Germany* (1989). 60 DR 256, p. 263.

⁸⁴ OSCE ODIHR, (2010). *Guidelines on Freedom of Peaceful Assembly*, Warsaw 2ed, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), p. 27.

⁸⁵ Encyclopedia Britannica.

⁸⁶ Fenwick, H. (1999). "*The Right to Protest, the Human Rights Act and the Margin of Appreciation*", *Modern Law Review*, Vol.62.

⁸⁷ Currie, I. and De Waal, J. (2005). *The Bill Of Rights Handbook*, p. 165.

rights whether that deprivation is permanent or temporary.⁸⁸ The term denote the same as the term “Restriction” (Clause) or “Claw back clause” the form of recognition that not all rights are absolute and that most rights are actually *prima facie* rights that can be limited.⁸⁹ Limitation is strictly construed against the State which balances of the governments’ requirements and the need for operation of individual freedom. The concept of limitation clause is an exception to any protection of basic rights and freedom.⁹⁰ However, it should be noted that limitation is different from the term derogation. Limitation can be imposed in normal situation for indefinite period while derogation is justified only in an emergency situation as temporary measures.⁹¹ Nevertheless limitation helps constitutional rights to be partially restricted with the specified extent of the democratically justifiable purposes, while prohibiting restrictions that are dangerous to democracy by reasons on their purpose, extent and nature.

There are two clauses exist in International, regional sub regional human rights instruments and constitutions; namely general limitation and specific clauses (claw-back clause).⁹² Both two ways of limitation clauses, general and specific limitation clauses is estimated in the theory of constitutional law as the best part of human rights protection.⁹³ Most of the governments limit fundamental rights through general or specific limitation clauses in the constitution.⁹⁴ General limitation clause is contained in a separate provision and applies to all rights in a constitution or in a particular instrument. The provisions which guarantee rights may also contain a specific limitation clause that applies to that specific provision only. The constitution may contain specific limitation clauses together with a general limitation clause or it

⁸⁸ Ali, J. A. (2012). *Distinguishing limitation on constitutional rights from their suspension: a comment on THE CUD CASE* .

⁸⁹ Conda, V.H. (2004). *A Handbook of International human right terminology*, 2ed University of Nebraska Press, Lincoln and London. p. 152.

⁹⁰ Jayawickrama, N. (2002). *the Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*. p. 15.

⁹¹ Ali, J. A (2012). *Distinguishing limitation on constitutional rights from their suspension: a comment on THE CUD CASE*. p. 5.

⁹² Kwasi, H. (2006). Prempeh. Marbury in Africa: Judicial Review and the Challenge of Constitutionality in Africa. 80 Tul. L. Rev. 1239.

⁹³ Articles 20 and 30 of the Constitution of the United Republic of Tanzania 1977.

⁹⁴ Sara , S. D. (2010) *Limitation clause in National and International Human Rights Document Scope and Judicial Interpretation*, Harvad University. .

may contain specific limitation clauses alone.⁹⁵ However, it is also noted that the specific clauses must be harmonised with the general limitation clause.⁹⁶

Specific limitation clauses attached to particular rights while general limitation clauses are an overarching expression of the government's capability to limit freedoms. Whether specific or general, is for the social and public reasons is an extension of the State's responsibility to secure the limitation of fundamental rights of all. The government provides for potential imposition limitation clause on individual rights to benefit other individuals, the community or society.⁹⁷ In determining constitutionality of limitations the courts typically employ a necessity test and consider the proportionality of state action when policing public assemblies. In all cases rights must be subject to other laws of the land providing acceptable allowable limitations which must be applied generally and not solely to an individual issue or in essence be non-discriminatory. The court when determining said specific law in most cases requires that any move of limitation be necessary, minimally restrictive non- arbitrary and proportionate when viewing explicit state objective.

Despite the protection afforded on the right to freedom of assembly in international and regional human rights instruments. Limitations imposed on this right have been broadly applied to allow the right to be enjoyed and enforced. In particular, no limitations on freedom of assembly may be imposed unless the limitations meet the requirements set as in detail.

First, limitations should be prescribed by law.⁹⁸ The term prescribed by law has been defined to mean provided by law.⁹⁹ The requirement for limitations concerning

⁹⁵ Some international human rights instruments also contain general limitation clauses. e.g. Universal Declaration of Human Rights, Article. 29, International Covenant on Economic, Social and Cultural Rights, adopted in New York on 16 December 1966 and entered into force on 3 January 1976 (here after ICESCR). Article 4 African Charter on Human and Peoples' Rights, adopted on 27 June 1981 at Nairobi, Kenya and entered into force on 21 October 1986, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 ILM 58 (1982) (here after African Charter), Article 27(2).

⁹⁶ Zakolska, Z. (2008) *The Proportionality Principle in the Constitutional Court's Jurisprudence*, Warszawa, p. 111.

⁹⁷ Roza, P. (2005). *Rights and Their Limits: The Constitution for Europe in International and Comparative Legal Perspective*. 23 Berkeley J. Int'l L. 223 .

⁹⁸ UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984

freedom of assembly should be prescribed by law. Such laws should not be arbitrary or unreasonable or discriminatory actions.¹⁰⁰ The law in this perspectives should be accessible and with the clear language of sufficient precision to enable persons to regulate their conduct accordingly.¹⁰¹ The law regulating the right to freedom assembly in Tanzania is codified in English while the large number of people are using Kiswahili as the local language therefore this create an unclear of the law to those who wants pass through. Tanzania case of *Kukutia Ole Pumbun*¹⁰² has about to cite the limitations as requires the laws not to be drafted widely as to net every person in the society. In the case in Tanzania the law regulating the freedom of assembly is so broadly to allow the arbitrary use by the authorities. Constitutional jurisprudence from Africa has enabled to clarify this concept with the emphasising of the proper procedure which should have been followed in making the law, and by emphasising that overly broad limitations are illegitimate.¹⁰³ The African Commission has emphasised this requirement as well.¹⁰⁴

Second, the limitation must be necessary to protect state interest. In order to be permissible, limitations on the relevant human rights must conform to the strict test of necessity.¹⁰⁵ Necessity requires any restriction to be strictly indispensable to achieve the objective. Again in *Pumbun* case the court held that the limitation imposed in the law must not more reasonably necessary to achieve the objective.¹⁰⁶ This implies the existence of a pressing social need and a high degree of justification for the interference in questions.¹⁰⁷ The limitation of right is necessary, only when there is no other alternative legal state interest in the enjoyment of fundamental rights

⁹⁹ *Chunchua Marwa V. officer i/c of Musoma prison and Another* High Court of Tanzania at Mwanza Miscellaneous Criminal case no 2 of 1988.

¹⁰⁰ *Chunchua Marwa V. officer i/c of Musoma prison and Another* High Court of Tanzania at Mwanza Miscellaneous Criminal case no 2 of 1988.

¹⁰¹ *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another*, Supreme Court of Zimbabwe (2004), paras 21-22.

¹⁰² (1993) 2 L.R.C.317.

¹⁰³ *Obbo and Anther v Attorney-General*, Supreme Court of Uganda (2004), paras 52-56.

¹⁰⁴ *Jawara v The Gambia*, Comm 147/95 & 149/96 (2000); *Constitutional Rights Project and Others v Nigeria*, Comm 140/94, 141/94 and 145/95 (1999), para 40. *Amnesty International v Zambia*, Comm 212/98(1999), para 42; *Purohit and Another v The Gambia*, Comm 241/2001 (2003), para 64.

¹⁰⁵ General Comment 34, para. 22; HRC, General Comment 27: Freedom of movement (Article 12), 2 November 1999, paras. 11.

¹⁰⁶ *Kukutia Ole 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..

¹⁰⁷ *Handyside v. United Kingdom*, European Court, (1976) 1 EHRR 737.

and freedoms. In its enjoyment of the right a state must choose an alternative that less restricts the rights in question. If government objective is compelled to accomplish in a number of specific measure therefore the limitations of the right protected must be selected.¹⁰⁸ The same under the international human rights instrument it clearly involves the limitations being necessary in a democratic society.¹⁰⁹

Third, limitations must be proportionate purpose to be achieved.¹¹⁰ Proportionality requires that a balance be struck between the requirements of the interests sought to be protected and the essential elements of the recognised right. Thus, states should balance protection of legitimate state interest with protection of individuals' rights. As the Human Rights Committee has made clear, in order to meet these standard limitations must conform to the principle of proportionality: Proportionality implies for example the relationship between the means the police apply during the public order situation, and the end sought to be achieved.¹¹¹

In *Daudi Pete v. United Republic of Tanzania*,¹¹² the High Court introduced the proportionality principle as a means for striking the balance between individual and public interests. Justice Mwalusanya identified two tests. Finding inspiration from the Canadian case of *the Queen v. Big M Drug Mart Ltd.*,¹¹³ he established the first test as having to do with the legitimacy of the impugned legislation, while the second looks at the question as to whether the means adopted by such legislation bear a reasonable relationship to the object thereof.

In the High Court, Justice Mwalusanya did in *Peter Ng'omango v. Gerson M. K. Mwangwa and the Attorney General*,¹¹⁴ subscribe to the Court of Appeal's rat-trap

¹⁰⁸ *Handyside v. United Kingdom*, European Court, (1976) 1 EHRR 737 at 187. 18.

¹⁰⁹ Commonwealth Secretariat, (2002) Best practice: freedom of Expression, Association and Assembly, London: Commonwealth Secretariat, at p. 13.

¹¹⁰ The Siracusa Principles, note 12, para 10(d).

¹¹¹ Der Walt, J. (2000). 'Maintenance of Public Order Versus Freedom of Expression' (South African Experience) Operational Response Services, South Africa Police Service.

¹¹² High Court Miscellaneous Criminal Cause No. 80 of 1989, Mwanza Registry (Unreported).

¹¹³ (1985) 1 SCR 295.

¹¹⁴ (1993) TLR 77.

test, considering it akin to his proportionality test.¹¹⁵ The test was also applied by Justice Munuo in *Lohay Akonay and Another v. The Hon. Attorney General*.¹¹⁶

The South African Constitution provides a more various factors to be considered when testing the principle of proportionality. The most important thing to consider is the between the object and the purposes of limitations. This it include measuring the weight between the two aspects to be protected.¹¹⁷

Finally, the purpose of limitations must pursue a legitimate aim. Any restriction must be shown by the government to have the strong interest in the effect of protecting a legitimate aim including public interest, public order and right of others.¹¹⁸ This means protection of legitimate state interest continent.¹¹⁹ The concept of legitimacy aim broadly defining jurisdictions and powers of the authorities if it full within the ambit of the law here the language used should not be mistaken for a broad authorization, however; in each instance of potential limitation the state must clearly define the precise purpose served, as well as showing that the measure in question is necessary and proportionate. The African Commission has also found limitations to be a violation of rights where they do not have a legitimate purpose.¹²⁰

With the regard to the right of assembly, there are a number of reasons, either renders to the authorities to grant authorization or unauthorisation of public assemblies here are discussed below:-

National security: may be invoked only to protect a country's existence or its territorial integrity against the threats of peace or its ability to respond to the threat of

¹¹⁵ [1993] TLR 77 p. 5

¹¹⁶ Civil Appeal No. 31 of 1994, Court of Appeal.

¹¹⁷ South African Constitution, Article 36(1), The test formulated by Judge Dickson in the Oakes decision is also well known and has been cited in African jurisprudence; under that test, proportionality requires that "First, the measures adapted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.

¹¹⁸ As the Human Rights Committee has noted, any limitations "for the purpose of protecting morals must be based on principles not deriving exclusively from a singly tradition on'. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination." HRC General Comment No 34, para 32, HRC General Comment No 22, para 8.

¹¹⁹ *Ndyababo v Attorney General*, Tanzania Court of Appeal (2002).

¹²⁰ *Malawi African Association and others v Mauritania*, Comm . 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), para 111. For further emphasis on the need for limitations to be imposed in defence of a legitimate purpose.

force, whether from an external or internal source.¹²¹ The tension between public order and national security arises in many different contexts. For instance the public assemblies which contain speech that criticises the government may be suppressed by government officials on the grounds that it may threaten national security.¹²² As an example, the leader of political party want to present a speech about the list of shame in the government in this sense the government may limit the public meeting to keep it top secret on the national security grounds. Admittedly, since national security is a pre condition for the full enjoyment of all human rights including the right to freedom of assembly, some degree of secrecy is appropriate in specific circumstances.

In Siracusa Principles also noted national security cannot be used as an excuse for imposing vague and may only be invoked when there sufficient safeguards and efficient remedies against abuse.¹²³ It is important to reflect on the Siracusa principles,¹²⁴ attempting to provide an analytical balance in the tension between the public order and national security. The test of proportionality, in that must be a reasonable relationship between the interference and the legitimate aim based on the freedom of assembly. The interest of the society as the whole must be balanced against the interests of the individual. Only limitations that do not go beyond what is strictly necessary to achieve the legitimate aim pursued by the State can be permitted in a democratic society.¹²⁵ States may be invoked to justify measures limiting certain rights only when they are taken to protect the territorial integrity or political independence against force or the threat of peace.¹²⁶

¹²¹ The Johannesburg Principles on national Security, freedom of Expression and Access of information, November 1996.

¹²² Zanzibar yearbook of law volume 2 (2012) p. 214.

¹²³ Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, E/CN.4/1985/4, annex, para 31.

¹²⁴ UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984.

¹²⁵ Zanzibar yearbook of law volume 2 (2012) p. 214.

¹²⁶ Zanzibar yearbook of law volume 2 (2012) p. 214 para.29. Also Human Rights Committee, Communication No. 833/1998, *Karker v France*, 30 October 2000.

Public order: defined as a set of fundamental principles on which society are founded therein. It amount the rules which guarantee the functioning of society.¹²⁷ Public order may be invoked only where individuals hearten the very functioning of society. Also public order on the other way inspire the fundamental principles on which society is founded, such as the respect of human rights and rule of law.¹²⁸

Public order is among the accepted reasons which limit the enjoyments of freedom of assembly.¹²⁹ On the one hand, public order seems to be an obvious limitation safeguard the rule of law and referring to state's role of preventing disorder. This limitation justifies for example to prohibit any persons to hold a public demonstration at an important intersection area.

Public safety: This ground creates the overlap between public-safety considerations and those relating to the maintenance of public order. The concerns of public-safety arise when extra precautionary measures are needed preferred restriction. The siracusa principles characterised protection of danger to the safety of persons as well as serious damage to properties.¹³⁰

In the Zambian case of *Kaira v Attorney-General*¹³¹ Cullinan, J. referred to the Indian "Basu's Commentary on the Constitution of India", for the definition of public safety and public order:

*"Public Order also includes public safety in its relation to the maintenance of public order... offences against public safety would include - creating internal disorder or rebellion, interference with the supply or distribution of essential commodities or services, inducing members of the Police to withhold their services or inducing public servants engaged in services essential to the life of the community to withhold their services"*¹³²

¹²⁷ Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, E/CN.4/1985/4, annex, para 22.

¹²⁸ Report on the Rule of Law, Adopted by the Venice Commission, 86th plenary session, (Venice, 25-26 March 2011).

¹²⁹ Article 21 of ICCPR and 11 of ACHPR.

¹³⁰ Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, E/CN.4/1985/4, annex, para.33.

¹³¹ *Kaira v Attorney-General* (1980) ZMHC 17; (1980) Z.R. 65 (H.C.) (8 August 1980).

¹³² Basu's Commentary on the Constitution of India Vol. I at p. 627.

This definition implies that prejudicing the public safety would include relatively serious matters such as creating a rebellion; interference with the supply or distribution of commodities or services; inducing the police to withhold their services.

Public health: This reason for limitation is widespread. It can apply if there is a threat to person's health whether is about to affecting or is affecting the society the authority might restrict public assemblies. Thus, authority with supportive of an experts on the prevailing issue limits the exercise of public assembly to protect public health, similar restrictions should also have been applied to attendance at school, sports events concerts, and other such activities at which people ordinarily gather. The limitations might also be justified on occasions where the health of participants in an assembly becomes seriously compromised.

Public health may be invoked in demonstrator only if evidence-based and dealing with a serious threat to health. The measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured, and simultaneously applied in the case of other activities for which people ordinarily gather. In the case of *Mwanza RPC Charles Mkumbo and Attorney General (AG) v Chadema*¹³³ RPC Charles Mkumbo barred Mwanza residents from gatherings to pay their last respects to the Chadema fallen chair Alphonse Mawazo, citing cholera outbreak in the region as the main reason.

Public morals: The protection of public morals occurs in order to rescue wrong behavior in the prevailing society. This sometimes cited as grounds to limit rights to be enjoyed for certain period for the purpose of public morals; for instance, it may be used to limit freedom of assembly in conveying the interests of regulating pornography. Therefore, the measures purporting to maintain public morals must be tested against an objectives normal situation in the society, whether may comply with

¹³³ *Attorney General (AG) and RPC of Mwanza, Charles Mkumbo v Chadema*
The High Court in Mwanza Civil cases 2015 (unreported)

the limitations principles which meets a burning social need.¹³⁴ Moreover, the protection of morals should not ordinarily be observed as an appropriate basis for imposing limitations on freedom of assembly.¹³⁵

Generally public morals may be measured only if the limitation is demonstrably essential to the maintenance of respect for the moral values of the community, with the respect to human rights principles of non-discrimination. Given the evolving nature of morality, limitations should never derive exclusively from a single community and should never be used to justify immoral behaviours which promotes intolerance.¹³⁶

The rights of others: This involves the protection of the rights and freedoms of others. The authority has a responsibility to strike a proper balance between the important freedom to assembly and the competing rights of those who trade work, shop, live and carry on business in the locality affected by an assembly.¹³⁷ That balance should recognise other activities taking place in the same space without imposing unreasonable burdens.¹³⁸ Temporary disruption of vehicular or pedestrian traffic may not amount the reason being imposed on an assembly.¹³⁹

¹³⁴ *Norris v. Ireland* (1988), paras.44- 46 It is noteworthy that “public morals” as a legitimate ground for limiting freedom of assembly is not synonymous with the moral views of the holders of political power.

¹³⁵:<<http://www.bahrainrights.org/node/208>;<http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>>. Manfred Nowak’s commentary on the ICCPR cites assemblies near or passing “holy locations or cemeteries” (in relation to morality).

¹³⁶ As the Human Rights Committee has noted, any limitations ‘for the purpose of protecting morals must be based on principles not deriving exclusively from a singly tradition on’ any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.” HRC General Comment No 34, para32, quoting HRC General Comment No 22, para 8.

¹³⁷ U.N. Covenant on Civil and Political Rights CCPR Commentary, Manfred Nowak, at p. 382-383. Also *Hksar v Au Kwok Kuen & Others* (2010) 3 HKLRD 371, at para. 53 where the court held that property right and the right to privacy at one’s home are also constitutionally protected rights and the right to demonstrate stops, so far as physical and geographical limits are concerned at the boundary of private residential property belonging to other, in the absence of any permission to enter.

¹³⁸ *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972), it was held that there was a right to assemble in open areas that park officials had designated as picnic areas.

¹³⁹ *Eva Molnar v. Hungary* (2008), para.34: “The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others, with a view to preventing disorder and maintaining the orderly circulation of traffic.” As Nicholas Blomley argues, “traffic logic serves to reconstitute public space ...Public space is not a site for citizenship, but a mere ‘transport corridor’”

2.6 Conclusion

The right to freedom of Assembly is the right which brings people together in order to pursue common goals and common interests. It is also another essential component of political related rights which rests in the vital performance of the democratic systems. In its enjoyment of the right a state must choose an alternative that less restricts the rights in question.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSEMBLY AND ITS PERMISSIBLE LIMITATIONS

3.1 Introduction

This chapter examines the principles that apply legally binding obligations towards the right on the freedom of assembly. It refers to both legal and institutional frameworks and must be based on an existing or emerging practice, coming from international treaty bodies, Tanzania institutions, intergovernmental organisations, international, regional or domestic courts jurisprudence or scholars.

3.2 Scope of the right to freedom of assembly under international instruments

The international and regional standards regarding the right to freedom of assembly derive mainly from three major instruments; the Universal Declaration of Human rights (UDHR),¹⁴⁰ the International Covenant on Civil and Political Rights,¹⁴¹ and the African Charter on Human and Peoples Rights (ACHPR).¹⁴² The significance of these international instruments derives, in part, from the jurisprudence developed by their respective monitoring treaty bodies—the UN Human Right Committee, and African Commission on People and Human Right Chapter. These two monitoring body are an integral to the interpretation of the treaties and should be fully understood by those charged with compliance with the domestic laws on the right to freedom of assembly.

The adoption of the Universal Declaration of Human Rights (UDHR), by the United Nations General Assembly in 1948 ushered in international of human rights. Freedom of assembly is recognized in the Universal Declaration of Human rights. Article 20 of the Universal Declaration of Human Rights (UDHR), states that, “Everyone has the right to freedom of peaceful assembly and association.”¹⁴³

¹⁴⁰ UDHR of 1948

¹⁴¹ ICCPR of 1966

¹⁴² ACHPR of 1981

¹⁴³ Art. 20 UDHR of 1948

“

This study examine only the concept of the right of freedom of assembly and its permissible limitation, theretofore the international human right law clearly accepts limits on political rights including freedom of assembly. Article 29 of the Universal Declaration of Human Rights (UDHR) in its connotation stipulate the exercise of rights and freedom is only subjected to restrictions determined by law in the exclusively for the rationale of protecting and respecting the right and freedom of others by meeting the conditions of public order, morality and other welfare in any democratic society¹⁴⁴ These articles of the instrument on the recognize the need for State to enact their laws and specify the rights and obligations provided in the declarations.

Article 29 of the UDHR establishes the wide-ranging of limitation clause which applies to all rights protected in the declaration.¹⁴⁵ The clause applies the norms for judges, legislature and executive to the public to grasp the limitation being used. The clause on the other hand does not allow discrimination between rights.

With respect to the reasons for limitations of the right to freedom of assembly it draw the aspiration to article 2 of the UDHR, which places the obligation to the State to adopt steps as may be necessary in social, economic, political and other field and as well as the legal recognizes to ensure the persons are able to enjoy fundamental rights.¹⁴⁶

The freedom of assembly is also recognized under article 21 of the International Covenant on Civil and Political Rights (ICCPR). The right has been exercised with particular duties and responsibilities, which must be subject with certain limitation, prescribed by law and necessary to the interest of the society.¹⁴⁷ The article set up the grounds on its excises upon which an interference is permitted for the purposes of national security or public order, (*ordre public*), the protection of public health or

¹⁴⁴ Many international lawyers consider the Declaration as customary international law.

¹⁴⁵ Some of the international human rights instruments do not include a general clause, but rather have specific limitation clause attached to specific articles.

¹⁴⁶ Article 2 of the DHRD.

¹⁴⁷ Article 21 of the ICCPR of 1966.

morals or the protection of the rights and freedom of others.¹⁴⁸ On the other hand, reports have underscored administrative measures to restrict or prohibit the right to assemble by imposing serious considerations relating to security, public order and breach of peace being the major reason used to ban the freedom of assembly.¹⁴⁹

The article utilise the term ‘peaceful’ to refer to the circumstances under which the assembly is held.¹⁵⁰ 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.¹⁵¹ Thus restriction imposed on this right must be closely scrutinized with principles of legality and necessity.¹⁵²

General Comments No 31, also provide the obligations to the State that the State parties are obliged to respect the rights recognized in the ICCPR and to ensure the individual freedom is protected under their jurisdiction including freedom of assembly.¹⁵³ This implies all limitations granted in any rights must be obtained under the said covenant itself and must be necessary to achieve legal objectives to be prohibited in covenant and proportional to the attainment of these objectives. Under no circumstances the restriction provided must be enforced in a manner that would impair the essence of a right of the Covenant.¹⁵⁴

Moreover, the UN special rapporteur also pointed out that certain limitations may be applied to the freedom of assembly as an exceptions, clearly considered the practicability of its enjoyment¹⁵⁵ and that the blanket which bans public assemblies create the discriminatory and arbitrary measures.¹⁵⁶ In this aspect the UN special rapporteur on his best practice of freedom of assembly suggested to avoid the

¹⁴⁸ Article 21 of ICCPR 1966.

¹⁴⁹ Commentary to Declaration of Human Right Defenders July 2011 p. 25.

¹⁵⁰ Partsch, K. (1981). ‘*Freedom of conscience and Expression, and Political Freedom*,’ in Louis Henkin (ed), *The International Bill of Right: The Covenant on civil and Political Rights*, new York: Columbia University Press.

¹⁵¹ Erasmus, O. (2001). ‘*The Bill of Rights Hand Book*’, Juta Publishers, p. 33

¹⁵² Thessismus, (2012). *The Protection of Human Rights in peaceful protests and the fight against Extremism*. p. 7.

¹⁵³ General comment No. 31 (80) the nature of the legal obligation imposed on State parties to the Covenant adopted on 29 March 2004 (2187th meeting).

¹⁵⁴ Comment No 31 of the HRC.

¹⁵⁵ Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Main Kiai United Nations Human Rights Council A/HRC 20/27, 21 May 2012, para 16.

¹⁵⁶ Maina Kiai United Nations Human Rights Council A/HRC /23/39, 24 April 2013 para 63.

limitations which blanket the enjoyment of the right governing the time and place.¹⁵⁷

In addition, series of general comment have been adopted by the human right committee (HRC), being the monitoring body overseeing international covenant on civil and political rights ICCPR.¹⁵⁸ The ICCPR Human right committee has held that the requirement to give notice, while *de facto* restrictions on freedom of assembly must be compatible with the permitted limitations laid down by article 21 of the ICCPR. Also in *Kivenmaa v Finland*,¹⁵⁹ the committee noted that the requirements to pre- notify a demonstration would be for grounds of public order, national security, the protection of public health or morals or protection of rights and freedom of others. It should further be emphasized that the requirements of notice is distinct from a request for authorization or permission

Furthermore, the right to freedom of assembly is guaranteed under article 11 of the African Charter on Human and Peoples Right (ACHPR).¹⁶⁰ The exercise of the right to freedom of assembly is subject to necessary limitations prescribed by law. The article in the Charter provides the grounds which is included in the law for the interest of the national security, public order, ethics, health and freedom of others.¹⁶¹

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 state to bring their national laws to comply with the Charter.¹⁶²

The African Commission discussed the right to freedom of assembly that it adhere the people; as such a state should employ a notification on rather than an

¹⁵⁷ Maina Kiai United Nations Human Rights Council A/HRC/20/27, 21 May 2012 para 39.

¹⁵⁸ Human Rights Committee interpretation on the implementation of limitation clause in Article, 12, 18, and 19 are found in General Comments 27, 22 and 10, respectively.

¹⁵⁹ *Kivenmaa v Finland* 412/90.

¹⁶⁰ Article 11 of ACHPR 1981.

¹⁶¹ Article 11 of ACHPR 1981.

¹⁶² Decisions 92/1996 John K. Modise/Botswana, 211/98 Legal Resources Foundation/Zambia, 212/98, also article 60 of the African Charter.

authorisation regime.¹⁶³ The purpose of such regime is to assist the state authorities in fulfilling their role in promoting and protecting the conduct of assemblies along with public safety.¹⁶⁴ The notification process should be easily accessible, and not be required too far in advance; also no notification must be necessary for small or spontaneous assemblies.¹⁶⁵ During the rallies the participants should not be subject with any sanctions merely for the failure to inform the authorities,¹⁶⁶ and also the notification is not obtained by any financial charges for the purposes of public services, and an individual cannot be liable for the act done by other person or group.¹⁶⁷

Wherever the authorities imposes limitations on the freedom of assembly they must provide full legal backed reasons to prohibit the right in a prompt manner and expected judicial appeal must be available.¹⁶⁸ Therefore the law governing protection of the freedom of assembly should not imposes blanket prohibitions, except where it meets the strict guidelines defining incitement to hatred; restrictions must always be proportionate and prohibition only imposed as a measure of last resort.¹⁶⁹

3.3 Brief history of the right to freedom of assembly in Tanzania

The beginning of freedom of assembly closely follows activities which go to the very beginning of man's life in society.¹⁷⁰ Over time, society has gradually acknowledged both freedom of assembly and scope of limitations placed on the power of rulers and

¹⁶³ *Amnesty international and others v Sudan comm.* Nos 48/90 50/91, 52/91 and 89/93(1999) para 81-82, also *Inspector – General of the police v All Nigeria Peoples Part and others*, Nigeria Court of Appeal (2007) para 16, 23, 25, *New Patriotic Party v Inspector-General of Police*, Ghana supreme Court (2000) para 26, 38-39 48, 54'.

¹⁶⁴ A/HRC /20/27 para 27-28.

¹⁶⁵ A/HRC/23/39 para 51-55, 57 and in particular para 54 which provides more detail as to overly bureaucratic notification regime.

¹⁶⁶ *Malawi African Association and other v Mauritania*, Comm No. 54/91, 61/91, 98/93, 164- 196/97 (2000) para 108-11.

¹⁶⁷ A/ HRC /20/27 para 29, 31 Also international Pen and other (on behalf of Saro Wira) v Nigeria Comm no 137/94 (1998) para 105-06.

¹⁶⁸ *New patriotic Prty V Inspector General of Police*, Ghana Supreme Court (2000), para 38, 48.

¹⁶⁹ A/HRC/ 20/27 para 39 Also, A/HRC/ 23/39 para 56, 59, 61-63. On international to hatred, Also, Rabat Plan of Act on the prohibition of advocacy of national, racial or religious hatred.

¹⁷⁰ Right to assemble, it is in the form of, unaddressed demonstrations and may grow and widen into dissent, activism, civil resistance, protests, revolt, insurgency political revolutions and riots.

government. Simultaneously, instruments of due process of the law that limits the arbitrariness of the governments have also grown.¹⁷¹

Tanzania's history tracing as far back as colonial times both British and German era which started in 1886's there was no really right to assemble among African.¹⁷² During this time some of Tanzanian societies were denied and suppressed their right to public assembly against colonial government, it was difficult for people to enjoy the right to assemble during this period, any movement to assemble met with heavy resistance from the colonial military force to prevent enjoyment of the rights.¹⁷³ It was clear that grating of the rights would result in the effective organisation of the people by their leaders in a challenge to the government.

Since independence in 1961 the country has undergone developments in the area of human rights.¹⁷⁴ In 1984 the bill of rights was incorporated into the Constitution of the United Republic, 1977 in which the right to freedom of assembly is embodied.¹⁷⁵

3.4 Status of law on the right to freedom of assembly

This part assesses guarantee of freedom of assembly in the Constitution of the United Republic of Tanzania 1977 and other legislations regulating of right on freedom of assembly in Tanzania.

Freedom of assembly in the CURT 1977 guaranteed, under article 20 (1) of the Constitution of the United republic of Tanzania 1977 which enshrines the right for people; to freely and peace assemble, associate and cooperate with other person. The right is not an absolute since it is subjected to other legal limitations for certain

¹⁷¹ Right to assemble, it is in the form of, unaddressed demonstrations and may grow and widen into dissent, activism, civil resistance, protests, revolt, insurgency political revolutions and riots.

¹⁷² The freedom of assembly has been at the heart of some of the most important social movements in Tanzania history. The freedom of assembly in the United Republic of Tanzania, essentially a history of limitations.

¹⁷³ Public assemblies took in the form of direct confrontations by taking up weapons and fighting like Hehe and Germans in 1890's and Majimaji war which took active protest against Germans domination July 1905 to 1907, protesting against unjust policy, laws, plans and domination.

¹⁷⁴ After independence, the party supremacy start to exist on which there all political parties were banned and workers organisation.

¹⁷⁵ The Constitution Bill of Right of United Republic of Tanzania of 1984 it recognised the right to freedom of assembly

purposes, including ensuring public order, public safety, or where it is for public interest.¹⁷⁶

Article 30(1) of the Constitution of United Republic of Tanzania provides for the general limitation clause which set the termination or infringement of the rights or freedom of other or the public interest.

The clause introduces a certain criterion which imposes a precondition for the enjoyment and enforcement of the rights entrenched in the Constitution. It set up the limitations of enjoyment in striking of a balance between individual interests on the one hand, and the interest of others and/or the public on the other.

Article 30(2) of the Constitution set out the general principles to any rights, and duties, not to be declared unlawful by any law or to prohibit the enactment of any law or conducting any lawful act subject to the law for the purposes of the rights and freedoms of other persons or of the public interest. The above article of the constitution is a general limitation clause which limits the entire Bill of Rights. Such a limitation is couched in vague, elastic and absolute terms, thus creating room for abuse, and very unfortunately in Tanzania constitution there is no any provision which state that “such limitations must be reasonably justifiable in the democratic society” as appears, for example in some Constitutions of other Africa State such as South Africa,¹⁷⁷ Kenya,¹⁷⁸ and Botswana.¹⁷⁹ As established in this discussion, it is not enough for the legislature to pass a law that curtails freedom of assembly in the interest of national security, maintenance of public order or prejudices the public safety, to be used for any unlawful purpose example; it must be reasonably necessary or justifiable in a democratic society.¹⁸⁰ The practical effect of the omnibus limitations clause (Article 30) is to narrow down or undermine all the human right in

¹⁷⁶ Legal and Human Rights Centre (2013). ‘*Tanzania Human Rights Report* ,’ Dar es Salaam. p.72

¹⁷⁷ Section 36 of South Africa Constitution, 1996.

¹⁷⁸ Section 24 of Kenya Constitution 2010.

¹⁷⁹ Section 12(1) of Botswana Constitution , 1996.

¹⁸⁰ Article 30(2)(b) CURT of 1977.

the constitution, and, if not well articulated by Courts, to make the rights therein an empty shell.¹⁸¹

The experience in Tanzania point out that when the State Attorneys representing the government in Court on human right issues always appears to appeal to article 30 by arguing that, if there is any violation or inhibition of rights that violation or inhabitation is justified and necessary to safeguard an interest stated under article 30.¹⁸² Thus, this omnibus limitation clause is used as a shield for any denial of right.

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.¹⁸³ 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.¹⁸⁴

¹⁸¹ The observation in Mwakyembe, Hrrison George, “ Media Boom,Freedom and the Legal Environment in the Main land Tanzania “, Mbunda, Luitfried Xavier,” Media Law in Tanzania: Are they Media Friendly or Repressive?” Palamagamba, J (2002) “The State of Human right in Tanzania:The challenges in the twenty first centry” p 10, A paper presented to a Seminar on human Rights University of Dar es Salaam.

¹⁸² *Mariam Mashaka Faustine and Others v Attorney General and the Director General of PCCB* civil case no. 88 and 95 of 2010 (unreported) *Republic v Mbushuu@ Dominic Mnyaronje and Another* HCT case no 44 of 1991, *Pumbun and Another v Attorney General and Another* (1993) TLR 159.

¹⁸³ 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.”

¹⁸⁴ Shivji, I. (2003). ‘*Constitutional Limits on Parliamentary Powers*’, The Tanzania Lawyer, Special Edition.

Furthermore, the right to freedom of assembly is regulated in accordance with the law of the Police Force and Auxiliary Services Act,¹⁸⁵ which holds powers to regulate public assemblies and processions in a public space.

The Police Force and Auxiliary Services Act provides conditions for enjoyment of the right to freedom of assembly that, one has to notify the police officer in charge of the area not less than forty eight (48) hours before the scheduled time of the assembly or procession. The prior notification of the intended public assembly and public rallies has to be made to the police officer in charge of the area indicating the purpose in general, specifying time, route and place at which the impending assembly has to be done.¹⁸⁶

After submission of notification to the police in charge, the law also requires the organiser to proceed to collect, convene, organise public assembly or public procession in question as scheduled¹⁸⁷ unless and until the organiser obtain an order from the police officer in charge of the area prohibiting an assembly not to be held as notified.¹⁸⁸ It is within the discretion of the police to limit an assembly, if the assembly “is likely to cause a breach of the peace or to prejudice public safety or the maintenance of public order or to be used for any unlawful purpose.”¹⁸⁹ Police always use their discretion based on limitations grounds but no demonstrative evidence to validate the reasons.¹⁹⁰ This means the police limits the right concerning the time it chooses, place even decide which route the assembly may pass and the organisers have not the right to take part in this determination.¹⁹¹ The law tends to be prohibitive rather than regulatory.¹⁹²

¹⁸⁵ Cap. 322 RE (2002).

¹⁸⁶ Section 43(1) of the Police Force and Auxiliary Services Act, Cap. 322. (RE 2002).

¹⁸⁷ Section 43(2) of the Police Force And Auxiliary Services Act (Cap. 322 (RE 2002).

¹⁸⁸ Section 43(2) of the Police Force And Auxiliary Services Act Cap. 322 (RE 2002).

¹⁸⁹ Section 43(3) of the Police Force and Auxiliary Services Act, Cap. 322.

¹⁹⁰ The imposed limitations is necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others.

¹⁹¹ The imposed limitations is necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others.

¹⁹² The imposed limitations is necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others.

For example, Police may claim the breach of the peace or public order but there is no justifiable evidence shows the threats of peace or any danger caused, as required under human right standards. Perhaps a breach of the peace could be interpreted widely by the police, using their discretion to limit all public assemblies improperly.¹⁹³ This is very concerning, and is likely to be considered an unnecessary limitation. As Professor Glanville Williams has noted there is no authoritative definition of breach of peace.¹⁹⁴ Fighting in public falls within the definition breach of the peace; thus, an affray plainly constitutes a breach of the peace, it is enough if the facts disclose a riot, menacing assault or affray. However, something more than a mere threat is required. Normally it is accepted that breach of the peace must be related to violence.¹⁹⁵

The Penal Code 1945¹⁹⁶ has attempted some definition of the words “unlawful assembly” but again it doesn’t assist much in understanding what exactly constitutes breach of peace.¹⁹⁷ It is generally proved that the breach of the peace whether harm is actually done or possible to be done the presence of a person or his property in fear of being so harmed as the result of assault, a riot, unlawful and other disturbance.¹⁹⁸

The handling of incidents of breach of the peace is covered mainly in two legislations: the CPA and the Penal Code. To avoid misuse of the powers in either of the two laws there is need for reading the two legislations together. The CPA gives every police officer power to intervene for the purpose of preventing a breach of the peace.¹⁹⁹ In order for the police officer to exercise his powers to prevent a breach of the peace, the officer concerned must, however, honestly and reasonably form the option that there is a real breach of peace.²⁰⁰

As already noted breach of the peace must be related to violence to persons and or property. If the police officers are satisfied that there is breach of the peace they have

¹⁹³ Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,” Dar es Salaam p. 42

¹⁹⁴ Glanville W. L. (1954) “*Arrest for Breach of Peace*” *Criminal Law Review*, p. 578.

¹⁹⁵ *R v. Howell* (1982) QB 416.

¹⁹⁶ The Penal Code Cap. 16 (RE 2002).

¹⁹⁷ Section 74 of the Penal Code. Cap. 16 (RE 2002).

¹⁹⁸ Leigh, L.H. (1983) *Police in England and Wales*, London Butterworth, p. 186.

¹⁹⁹ Section 47 of the Criminal Procedure Act Cap 20 (RE2002).

²⁰⁰ Mapunda, T. B. (1998). *Personal Freedom and Police in Tanzania*, in Juma, I. H. *Fundamental Human Right in Tanzania*, p. 149.

two options before them. First thing is to take all necessary steps to disperse all the rioters at the scene before causing any disturbances or breach of the peace. Second to arrest them; in either option, if anyone resists, the police are allowed to use reasonable force to overcome such resistance.²⁰¹

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.²⁰²

Recently Tanzania has witnessed killings of innocent people while exercising the freedom of assembly. It have been seen in several areas including Arusha in January 2011 here six civilian died when demonstrating.²⁰³ In Iringa Morogoro and Songea, there were movements by opposite political party CHADEMA where several people died and many were injured.²⁰⁴

In Mtwara a number of people died and other were subjected while demonstrating in relation to Songosongo Gas. In this particular public demonstration the government deployed the Army to stop the demonstrators. The Minister of Home Affairs said in parliament "When it reached this stage, the Mtwara Regional Commissioner asked the higher authority to authorise the use of the army, and this was the only option," Nchimbi said.²⁰⁵

In 2012 CHADEMA initiated a political campaign known as "Movement for Change" (M4C) through public meetings and demonstration. However, the police force prohibited as the result caused loss of lives and injuries to the participants. Again, on 27th August 2012 CHADEMA organised a public assembly in Morogoro but it was suppressed by police force. The participants on the rallies were interrupted using firearm as a result, shot to death one innocent newspaper vender, Ally Zona. The postmortem report indicated the deceased was hit by a heavy metal, however it

²⁰¹ Section 78 of the Penal Code Cap 16v (RE 2002).

²⁰² Amnesty report, (2002), *The Sad Story of Peaceful Demonstrations Turning Bloody in Tanzania*, 30 January 2001 Human Rights Watch Report.

²⁰³ www.wantedinafrica.com.

²⁰⁴ Jebra, K.(no date). Right to Protest: A silent right that exists in the United Republic of Tanzania.

²⁰⁵ May 23, 2013 Statement by Hon. Nchimbi.

was disputed by the eyewitness who were present at the scene convinced that Ally Zona was shot by the police.²⁰⁶

Also, on 2nd September 2012 at Nyololo Village in Mufindi District Iringa Region another horrifying episode took place during the operation to restrain CHADEMA. The police force interrupted from holding a public rally which was unlawful assembly. The RPC, Michael Kamuhanda ordered the police to suppress the gathering and eventually brutally killed Daudi Mwangosi, who was working with Channel Ten as a reporter.²⁰⁷

On 22nd February, 2012 non political citizens in Songea conducted a public peaceful demonstration towards the Regional Commissioner (RC) offices to report their complaints over the incident of unchecked witchcraft killings in the region. Before responding to the villager's complaint, the police blocked the demonstrations and shot to death three innocent civilians. Others including Theodat Ngonyani from Bombambili (songea), Mohamed Saidi (16) Songea perpetrators among the shooters were arrested and charged before the court of law.²⁰⁸

In 2013, in Lindi and Mbeya regions, business persons protested against the use of Electronic Fiscal Devices (EFDs) for revenue collections as introduced by Tanzania Revenue Authority (TRA) and in the process resorted to violence. In Mbeya, roads were blocked and usual businesses were disrupted and people were injured as a result of the chaos in town.²⁰⁹

From the above discussion, breach of the peace is doctrine which suggests several powers on the police for the purpose of preserving and maintaining public order. The leading precedent case in *R (Laporte) v. Chief Constable of Gloucestershire*;²¹⁰ the casa has pointed out doctrine of breach of the peace by putting the a very broad discretionary powers as the stricter limitation.²¹¹ This case shows the breach of the

²⁰⁶ Legal and Human Rights Centre (2012).“*Tanzania Human Rights Report*,” Dar es Salaam p. 73.

²⁰⁷ *R v G. 2573 PC Pacificus Cleophance Simon* case no. 45 of 2013 HC of Tanzania at Iringa.

²⁰⁸ Legal and Human Rights Centre (2013).“*Tanzania Human Rights Report*,” Dar es Salaam. p. 97.

²⁰⁹ Legal and Human Rights Centre (2013).“*Tanzania Human Rights Report*,” Dar es Salaam. p. 97.

²¹⁰ Several elements of the power were established in this decision, the most important being that the breach of peace has to be imminent; *R. Stone, supra* fn. 199, pp. 415-419.

²¹¹ *N. P. and C in Steel and others v United Kingdom*, 1998 28 EHRR 603.

peace as an extraordinary thing which cannot be limited by any law.²¹² The breach of the peace it has so wide meaning used to harmonise and balance the power vested within the law. The case discussed the way to refrain by codifying the regulatory procedures with suitable safeguards.²¹³ Moreover, wide desecration power it leaves to the police and its disproportionate application.²¹⁴

Also, in the 2011 English case of *R (on the application of Moos and another) v Commissioner of Police of the Metropolis* the case clarified when it is possible for a police officer to limit rights in order to prevent a breach of the peace: apprehended breach must be imminent; what is considered imminent depends on the circumstances; if steps taken by the police are to be justified, proportionate, reasonable and necessary depending on the circumstances preventing an imminent breach of the peace. This case also clearly says that the police can only take the least intrusive action, which is necessary and proportionate, to prevent a likely breach to the peace.²¹⁵

In the Supreme Court of Zambia in the case of *Christine Mulundika and 7 Others v The People*,²¹⁶ In this case the Court considered section 5(4) of the *Public Order Act*, which is very similar to the current Tanzanian provisions. The provision stated that a person who wishes to hold an assembly must notify the regulating officer who shall issue a permit, with conditions if applicable, if the officer is satisfied the assembly will not breach to the peace. The Court held that, although the section itself may be within constitutional limits, it did not have sufficient controls to prevent officers making arbitrary decisions. The interpretation by the police was “highly subjective” and there were “no adequate guidelines” to prevent arbitrary decisions. Further, the Court held that making it an offence to hold any procession in public without a

²¹² The Police Force and Auxiliary Services Act, Cap. 322. (RE 2002).

²¹³ Available at <http://www.osce.org/odihr/24523>, para. 44.

²¹⁴ It has been argued that this power is unsuitable for deciding sensitive human rights issues, since it hands the police an extraordinarily wide discretion, *H. Fenwick*, *supra* fn. 112, p. 738.

²¹⁵ Sarah, M. (2012). *Policing Of Public Assemblies in Tanzania Analysis of the Legal Framework*; Commonwealth Human Rights Initiative, p. 11.

²¹⁶ (S.C.Z. Judgment No. 25 of 1995) [1996] ZMSC 26.

permit, (similar to the Tanzanian law of it being an offence to hold a procession without meeting notification requirements,) is unconstitutional.²¹⁷

The Constitutional Court of Uganda found in the 2008 case of *Muwang Kivumbi vs Attorney General*²¹⁸ in this case among other things discussed section 32(2) of the police Act which gives powers to the Inspector –General of Police to stop or prevent public assembly if has a reasonable grounds for believing that the assembly is likely to cause breach of the peace was unconstitutional and hence null and void. The Court held that the subsection clearly empowers the Inspector General of Police to prohibit the convening of an assembly or any forming of a procession in any public area on subjective reason. This case is directly relevant to Tanzania where the Police Force and Auxiliary Services Act allows the police officer in charge of an area to deny a proposed assembly if the police officer believes it is likely to breach the peace or if the assembly has already happened to prevent the assembly, if in the view of the police officer the assembly may cause a breach of the peace.

The Courts decisions on the above distinguished between attaching conditions to the holding of “serious” public gatherings, and the refusal of permission to hold them. In Tanzania, the Police Force and Auxiliary Services Act it has the gap in the fact that there is no time limit provided within which the police must respond to the public assembly’s participants. A delay in response by the police to the required notification could serve to deny authorisation to the public assemblies. The law does not envision any exceptions to the notification requirement, such as for spontaneous assemblies that may arise in immediate reaction to some event, where the giving of notification is impracticable.

As pointed out on the above the gap can causes lack of uniformity and extraordinary vagueness in interpreting the law relating to public assemble which open the door to subjective and arbitrary decision making by the ruler. From this loophole it seems now that the police powers are unlimited whatsoever. The lack of limited objective interpretation guidelines could have a inconsistent effect on group that engage in

²¹⁷ *Thappar v State of Madras S.C.R* (1950) 594 Supreme Court of India 603.

²¹⁸ The Constitutional Petition No. 9 of 2005) (2008) UGCC 4 (27 May 2008).

advocacy which supports unpopular openly critical of the government policy and plans.

The Police Force and Auxiliary Services Act also allow to the participants of public assemblies to appeal against orders of the Police to the minister responsible, whose decision is final and conclusive (Ouster Clause).²¹⁹ The law has been or is being contravened with the provision of the Constitution which requires to the person whose rights have been violated to institute proceedings for redress in the High Court²²⁰ and the judiciary shall be the authority with final decision in disputes with justice in the United Republic of Tanzania.²²¹

In the Supreme Court in Ghana in the case of *New Patriotic Party v Inspector General of Police*,²²² 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 germs and have no place in Ghana in the last decade of 20th and he said, those who introduced police permits in this country do not need police permits in their own country to hold public meetings and processions.²²³ Following that, the Public Order Act, 1994 was enacted to repeal the 1972 Public Order Decree. In Ghana the 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 as opposed to the Tanzanian case.²²⁴

²¹⁹ Section 43(6) Cap. 322 (RE 2002).

²²⁰ Article 30(3) The Constitution of United Republic of Tanzania of 1977, any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United Republic, may institute proceedings for redress in the High Court.

²²¹ Article 107A (1) The Constitution of United Republic of Tanzania of 1977.

²²² 1993-94)2 GLR 459.

²²³ 1993-94)2 GLR 459.

²²⁴ Section 1(5) & (6) of the 1994 Public Order Act.

In spite of Article 20 of the Constitution of the United Republic of Tanzania of 1977, guarantee of freedom of assembly in the Constitution (and Police Force and Auxiliary Services Act,) the Tanzania Penal Code have been used by the government effectively to limit the right to freedom of assembly in compliance with the Tanzania's obligations under international law and standards. Provisions in the Penal Code,²²⁵ together with Police Force and Auxiliary Services Act,²²⁶ have been used to charge offences related to public assemblies. There are offences and penalties relating to unlawful assembly in both the Police Act and the Penal Code, including fines or a prison sentence, or both.²²⁷ There are many offences, but one that is worthy to note is that it is an offence to hold a procession without meeting the notification requirements.²²⁸

Under Section 74 and 75 of the Tanzania Penal Code it has some obstacles during the excises on the public meetings and demonstrations by prosecuting the participants with different penalties.

Section 74(1) provides the elements of the offence of unlawful assembly, which means the offence must be proved when three or more people with the intention to commit an offence of assemble; carrying the common purpose as to cause person in the near area reasonably to fear that the persons so assembled will commit a breach of the peace.²²⁹

The term fear on the section of the law is a subjective and absolutely used vague because the nature of public assembly and procession is to assemble, parade, dance, discuss loudly, shout, sing and speak out provocative words as the part of expression to presents their grievances as article 18(a) of the Constitution of the United Republic of Tanzania of 1977 allows every person to exercise freedom of opinion and expression of ideas. Therefore the constitution has not put any barrier,²³⁰ instead, the police force have been using the Penal code arbitrarily especially during election

²²⁵ Section 74 of the Penal Code Cap. 16 (RE 2002).

²²⁶ Cap. 322 (RE 2002)

²²⁷ Penal Code RE 2002 and Police Force and Auxiliary Service Act, Cap 322 (RE 2002).

²²⁸ Penal code RE 2002 and Police Force and Auxiliary Service Act, Cap 322 (RE 2002)..

²²⁹ Section 74 of the Penal Code Cap. 16. (RE 2002)

²³⁰ Legal and Human Rights Centre (2012). "Tanzania Human Rights Report," Dar es Salaam p 52.

campaigns.²³¹ Furthermore the police used their discretion empowered to decide whether the assembly is lawful or unlawful.²³²

The main connection with the incidences of unlawful assembly is in the case of *R v. Antony Machibya and 4 others*.²³³ The case involved the students of University of Dar es salaam who between 17th and 20th of January 2009 assembled near the University premises to protest against HESLB loans. The HESLB is charged with the responsibility of granting loans to eligible students and to collect back after the studies. In the course of demonstration police arrested five students who were the ring leader and were brought at Kisutu Resident Magistrate Court in Dar es Salaam to answer the allegation of unlawful assembly but the court dismissed the case on 10th November 2009 after the failure of prosecution side to bring the witness before the Court.²³⁴

Also, the Penal Code describes the riot; to mean the riot execute when an unlawful assembly starts to breach the peace by the terrorizing of the public.²³⁵ On disperse of the rioters any person authorised to make a proclamation in whose view twelve or more persons are riotously assembled or about to be assembled, may make a proclamation commanding the person to dissolve peaceful.²³⁶

During the disperse of rioter or assembly should allow reasonable time for people to making of a proclamation thereafter may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them.²³⁷ If a person resists, force that is reasonably necessary for overcoming such resistance may be used and if continues to take part in the riot or assembly commits an offence, and is liable to imprisonment for five years.²³⁸ Indeed the Police Force and Auxiliary Services Act protect a person who uses force lawfully within the provisions, is not

²³¹ Legal and Human Rights Centre (2009). “*Tanzania Human Rights Report*,”: Dar es Salaam. p. 52.

²³² Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,”: Dar es Salaam. p 37.

²³³ Criminal Case No. 20/2009.

²³⁴ Criminal Case No. 20/2009.

²³⁵ Section 74 of the Penal Code 1981 Cap 16 (RE 2002).

²³⁶ Section 77 of the Penal Code 1981 Cap 16 (RE 2002).

²³⁷ Section 78 of the Penal Code 1981 Cap 16 (RE 2002).

²³⁸ Section 79(1) of the Penal Code 1981 Cap 16 (RE 2002).

liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.²³⁹

Also, the police officers have been using the Penal Code²⁴⁰ and the Newspapers Act²⁴¹ arbitrarily to limit freedom of assembly. Both the laws contain the provisions relating to the offence of sedition.²⁴² Another, provision is section 89(1)(a) of the Penal Code, which criminalises the use of abusive language in such a manner as to be likely to cause a breach of the peace. Currently the offence of sedition used as the binding over to the fiery politicians who is challenging the governments and the leader of ruling party.²⁴³

There are always apprehension to the wide discretionary powers which are given to the police is an unaccountable and discriminatory to the exercise of the right to freedom of assembly. It gives the wide chance to choose which powers to exercise, public assemblies and procession to control and the means to control them will often involve very delicate guiding principle and safety measures considerations. In the past sensitive to criticism on human rights grounds the police tended to use their considerable powers against public rallies less often than the frequent use of criminal charges against protesters.

Further, key feature of a democratic society is the proper legal use of force and firearm by the police during the dispersal of any such assembly. Force must not be used on unlawful assemblies that are non-violent. If this is not practicable then police must only use the minimum amount of force necessary.²⁴⁴ The English case of *R (on the application of Moos and another) v Commissioner of Police of the Metropolis*²⁴⁵ clarifies that police can infringe on the rights of others only when the police reasonably believe that there is no other means whatsoever to prevent an imminent breach of the peace. The case further clarifies that the test of necessity is met only in

²³⁹ Section 79(1) Tanzania Penal Code 1981.

²⁴⁰ Cap 16 (RE 2002).

²⁴¹ Act No. 3 of 1976.

²⁴² Section 55 of the Penal Code and Sections 31 and 32 of the Newspapers Act.

²⁴³ XIX, Article 19, Freedom of Association and Assembly in Sub Saharan Africa, March 2000 p 53.

²⁴⁴ Principle 13, Basic Principles on use of Force and Firearms, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

²⁴⁵ (2012) EWCA Civ 12 (2012).

truly extreme and exceptional circumstances and the action taken by the police must be “reasonably necessary and proportionate and taken in good faith”. This is contrary to Tanzania where there is brutality of police conduct done by the police officer in unlawful assembly.²⁴⁶

3.5 Institutional framework on the right to freedom of assembly

There are several institutions that check the abuse of the fundamental human rights in Tanzania including those established by the state and none state institutions. These institutions include the judiciary, Commission for Human Rights and Good Governance and the Legal and Human Rights Centre.

The judiciary is the principal organ of the state responsible for administration of justice in Tanzania. It checks the powers of other organs of the state and the law enforcement apparatus in particular. A vibrant and independent judiciary serves this purpose effectively. The effect of judicial control of state powers differs from one state to another. In Tanzania despite several challenges facing administration of justice the role of judiciary cannot be underestimated. The current legal framework has been significantly shaped by the judicial decisions.

In 1993 the statutory infringement of freedom of assembly was challenged in the Court.²⁴⁷ In the case of *Christopher Mtikila v Attorney General*²⁴⁸ who challenged the constitutionality of section 40 of the Police Force Ordinance and section 11(1) of the Political Parties Act, 1992. These two laws made it necessary for permits to be considered in order to hold public rallies and public meeting. In the decision of the case before the court, the High Court of Tanzania at Dodoma held in contributive way by abolishing the provision and declared null and void. The court held that the said provisions hi-jacked the freedom of assembly and procession recognized under the Constitution and place it under the personal disposition. The Court said the

²⁴⁶ Legal and Human Rights Centre (2013). “*Tanzania Human Rights Report*,”: Dar es Salaam 173.

²⁴⁷ *Christopher Mtikila v. Attorney General* (1993) Tanzania Law Report, Page 31. Civil Case No. 5 of 1993 of Dodoma, adjudicated by the Late Justice J. Lugakingira.

²⁴⁸ *Christopher Mtikila v. Attorney General* (1993) Tanzania Law Report, Page 31. Civil Case No. 5 of 1993 of Dodoma, adjudicated by the Late Justice J. Lugakingira.

provisions infringe the right to freedom of assembly and procession and therefore unconstitutional.²⁴⁹

The judgment of the case stands as a very good start in the realisation of this fundamental right, but as we have learnt from the experience several police interventions on public assemblies seem not to hold any legal base and instead resulted in 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 realised 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.

In *Mabere Nyauchio Marando and Another v The Attorney General*²⁵⁰ The plaintiff in this case was the member of political party challenging section 11(1)(a) of the Political Parties Act 1992, for contravening the Constitution. It was argued that the subsection had granted the power to the District Commissioners who were member and Carder of the ruling party Chama Cha Mapinduzi [CCM] to grant permits for political demonstrations which had often been deliberately used to weakness the political opposition parties. It was established the evidence that while the said authorities official continued to maintain their position on the basis of being steadfast member of the rulling party CCM, they invariably gave preferential treatment to CCM and exercised their discretion powers to the shortcoming of the rest of the parties.

On that matter, the Presiding Judge Hon. Mr Justine J.Mackanja deliberating emphasized the discretion power given to the authorities to issue permission to be exercised judicially. According to Judge required *inter alia*.... that all get the same and equal treatment..... if other parties are discriminated it necessary results in the violation of the right to freedom of assembly to those who will be discriminated.²⁵¹

²⁴⁹ *Christopher Mtikila v. Attorney General* (1993) Tanzania Law Report, Page 31. Civil Case No. 5 of 1993 of Dodoma, adjudicated by the Late Justice J. Lugakingira .

²⁵⁰ High Court Civil Case No. 168 of 1993, Dar Es Salaam Registry (unreported).

²⁵¹ High Court Civil Case No. 168 of 1993, Dar Es Salaam Registry (unreported).

The discussion of the Judge is what referred as a liberal approach, he finally held section 11(1) of the Political Parties Act 1992 offended article 20(1) of the Constitution and could not save article 30 (2) thereof.²⁵² As a result, he persisted that no one could infringe the freedom of assembly from any other person. However, while holding to the canons of statutory interpretation which take in consideration the actual words used and the circumstances in which they are used while looking at the Constitution as a mother instrument,²⁵³ the judge concluded that the question of sustaining public security during political meeting and public demonstration was essential. It is surprising the case decision; the Court did not see anything wrong in the condition for permits as such except that it found it was wrong to vest those powers on the District Commissioners. The court ordered the powers to be exercised by the Police Officer in Charge. Marandos' decision was not without criticism as it left the problem of permit haunting the right to peacefully assembly as guaranteed under the Constitution, 1977. The Police officers inherited the same spirit of denying the very basic right. It was concluded that section 40 of the Police Force Ordinance and section 11(1) of the Political Parties Act 1992 failed to convene the requirement set out by the Court of Appeal of Tanzania in the case of *Kukutia Ole Pumbun and another v. The Hon. Attorney General and Another*,²⁵⁴ regarding instances when a law limiting from some provision of the Bill of Rights could be saved by article 30(2) of the Constitution.

With, the Legal and Human Right Centre (LHRC)²⁵⁵ is a private autonomous voluntary non-governmental, nonpartisan and nonprofit sharing organization predicting an equitable society. It organization promote, reinforce and safeguard human rights awareness among the public through legal and civic educations, advocacy linked with legal aid, research and human rights monitoring.

²⁵² High Court Civil Case No. 168 of 1993, Dar Es Salaam Registry (unreported).

²⁵³ *Mwalimu Paul Mhozya v. Attorney General*, (1996) TLR 229.

²⁵⁴ [1993] 2 LRC 317.

²⁵⁵ The LHRC was established in 1995 out of experiences and lessons generated from The Tanzania Legal Education Trust (TANLET) and the Faculty of Law of the University of Dar es Salaam (UDSM).

LHRC conducted different research and come up with number of report concerning violations of freedom of assembly. The violations of the right and abuse in the country remain to be a serious challenge including the freedom of assembly.²⁵⁶

Also, the Commission for Human Rights and Good Governance (CHRGG) is an independent government department. It is well- known as the national focal point for an ombudsman deal with the protection and promotion of human right and good governance in Tanzania. The institution was established in 2001 under article 129 (1) of the Constitution of the United Republic of Tanzania of 1977.²⁵⁷

CHRGG is mandated among other things is to protect, promote and preserve all human rights and duties to society in accordance with the constitution and law of the land. The institutional also deals with receiving of allegations and complaints regarding infringement of human rights and to investigate enquiries into matters involving the violation of human rights and the contravention of the principles of administrative justice.²⁵⁸

In playing its role, the CHRGG has currently blamed both the opposition CHADEMA party and the police for an escalation in political tension in the country calling on both sides to tone down inflammatory rhetoric. In this particular incident police and Chadema leaders are locked in a potentially explosive standoff over plans by the countrys main opposition party to hold nationwide demonstrations and public rallies on September 1, which it has dubbed the ‘defiance Day (*Operation Ukuta*).²⁵⁹ The main aim of the meeting was to reconcile Chadema and the police to circumvent the possibility of violence breaking out over the disputed protests. In its solutions suggested the need for sitting together at a negotiating table.

Therefore the CHRGG had obligations, in accordance to Clause 130(1) (g) and (h) of Tanzania Constitution to advise the public and the government if there are signs to

²⁵⁶ Number of report conducted by the team from legal and human right centre.

²⁵⁷ <http://hrbcountryguide.org/partners/commission-of-human-rights-and-good-governance/#sthash.SydkGcmw.dpuf>.

²⁵⁸ <http://hrbcountryguide.org/partners/commission-of-human-rights-and-good-governance/#sthash.2fR8fAmS.dpuf>.

²⁵⁹ Reported in the Guardian Newspaper on 11 August 2016 p.2.

disruption of peace and abuse to human rights, warning that stakeholders who won't fulfill their obligations ahead September 1, won't be spared on the consequences to rescue the country from unnecessary consequences.²⁶⁰

3.6 Conclusion

The right freedom of assembly is a qualified right. Both the instruments and domestic law imposes certain limitations. Although the law provides for various limitations yet rights increasing rate of violation of the fundamental human rights in Tanzania. This is because is several loopholes in the law warranting violation of the fundamental human rights. Also, the law regulating the rights do not provide for a prompt machinery to remedy abuse of rights. In general the current legal set up has no sufficient checks against abuse of powers, factors such as dual judicial approach shelters impunity. Also, judiciary is subject to stringent procedures hence it may not come to aid one in case of instances that need instant redress like interfering with right to assemble. Lack of an independent and effective private oversight body is another trauma.

²⁶⁰ Reported in the Citizen Newspaper on 11 August 2016 p.2

CHAPTER FOUR

DATA ANALYSIS, FINDINGS AND DISCUSSIONS

4.1 Introduction

The purpose of this chapter is to present and examine data concerning the right to freedom of assembly and its legal limitations in Tanzania. The study was conducted in Dar es Salaam region, where the researcher had opportunity to collect data relevant to the study. Within Dar es Salaam the study was conducted in Temeke, Ilala and Kinondoni areas where there was sufficient availability of the resources.

4.2 General Overview

The findings were obtained through interview, questionnaire, and secondary data in a narrative form. Sample size selected were 100 respondents, but only 85 respondents actually responded. Among them 15 were interviewed, 70 through questionnaire. The turnout was as follows: 1 out of 2 Members of Commission for Human Rights and Good Governance (CHRAGG) responded, 1 out of 2 Judges responded, 2 out of 2 Members of Legal and Human Rights Center (LHRC) responded, 4 out of 6 Counsel in different Firms responded, 5 out of 8 Journalist responded, 8 out of 10 Ordinary People from the community responded, 16 out of 20 Members of Political Parties (MPP) responded, and 48 out of 50 Members of Tanzania Police Force (TPF) were involved in data collection and responded.

4.3 Presentation of Findings and Discussions

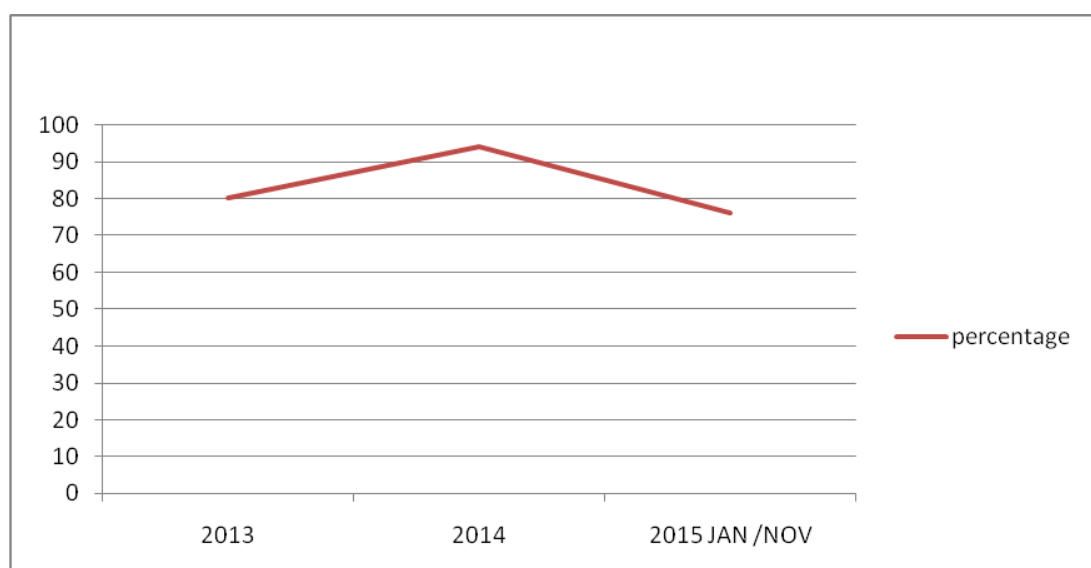
The findings on this study are based on the following themes; that whether the power vested to police by the Police Force and Auxiliary Services Act, cap 322 RE 2002 are too wide to allow the arbitrary denial of rights to freedom of assembly and whether the obligations imposed on the limitations requirements is a limitation to protect, respect and fulfill the freedom to assembly in Tanzania.

Following the above research themes, some of the respondents were of the opinion that the power vested to police by the Police Force and Auxiliary Services Act, cap

322 RE 2002 are too wide to allow the arbitrary denial of rights to freedom of assembly. About 60% of the respondents said that the Act imposes a requirement to the organiser, within forty –eight (48) hours to notify Police officer in charge indicating the reasons of conducting the public assembly, time, route and the place to be conducted that particulars public assembly. As to the some respondents said this is the requirements create good environments to the participants being prepared of the events and as well as the police personnel , but on the other hand the experience shows the police force making the cancellation notices often nearest to the expire of the time provided by the law . As to other respondents commented that this cancellation is the technical known how created by the police to disagree with the public assembly. Also to others responded positively as the time of forty- eight hours creates the room to the police to oversee whether there is the any indicators of breach of peace in the place, therefore the time is logical to be used in justification of exercising the right to freedom of assembly lastly in this point the respondents said the time does not create a room for the spontaneous assembly which occurs suddenly.

Despite the generally prohibitive practice regarding to the freedom of assembly in Tanzania, the number of public assemblies in the country has been growing recently. While a few years ago the number of unauthorised assemblies did not exceed 40% of the total number of assemblies held, in 2013 about 80% of assemblies were unauthorised, and during 11 months of 2014, the number of unauthorised assemblies was over 94% in Dar es salaam.

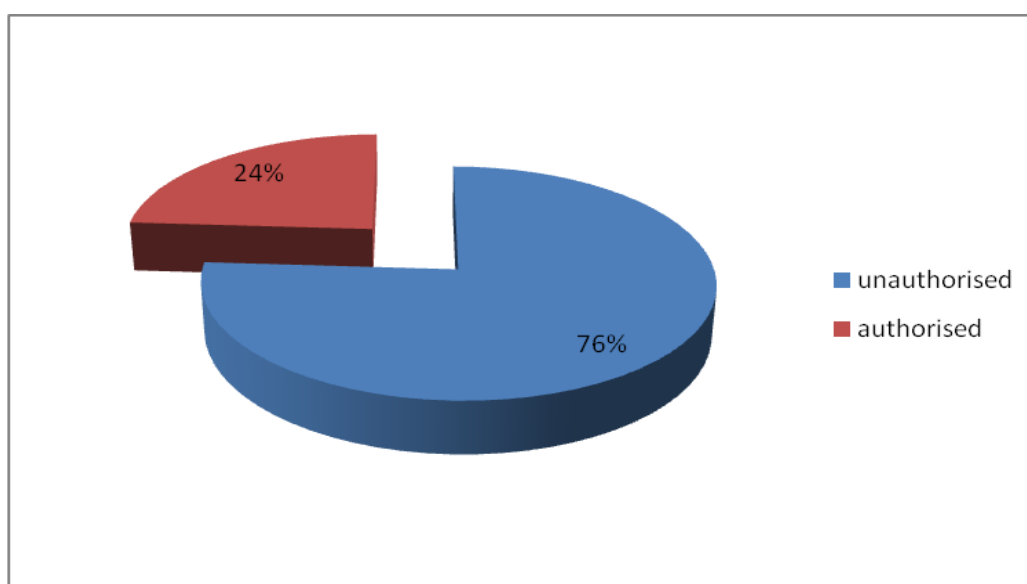
Figure 4.1: Unauthorised assemblies in Dar es Salaam



Source: Field data

The right to assembly although constitutionally guaranteed has not been enjoyed as expected as there has been denial by the police especially the civil society and opposition political parties to assemble as they wish. About 74 cases of public assemblies were observed from January to December 2015 in Dar es Salaam, (18 cases 24%) were held with the submitting of written notifications to police authority. Of 28 assemblies (38%) were denied and not held based on justifiable and unjustifiable reasons. The other 12 cases (16%) were denied but were held without Police authorisation believing that it is simply a waste of time to apply, as notifications will be denied. Sixteen (16) cases (22%) were held without notification because it is the spontaneous assemblies in nature that are not regulated in the law and thus did not require notifications.

Figure 4.2: Public assembly 2015 in Dar Es Salaam



Source; Field data

Therefore, in totality only 24% were held with submission of written notifications to police authority and about 76% of public assemblies were conducted without an authorisation from the authorities (Police Force)

According to the findings 65% of the respondents argued that authorities (Police officers) continuously stop public assemblies and public rallies for political reasons. The applications to exercises any public assemblies that come from the political opposition parties and that which criticises the government are denied. There is no an argumentative legal reason attaches with prohibitions of the freedom of assembly. Police always establishes the grounds which are not within the legal ambit. There have been some allegations that the police have arbitrary and inappropriately exercised their discretion to prohibits public relies. It is alleged also that the police favour certain political parties when considering for authorization of the freedom of assembly.

About 82% respondents revealed a significant rate of politically motivated abuses of the fundamental human rights. The Police force is often used as a political tool to suppress unpopular views against the reigning regime. Often political gatherings and

demonstrations called by the opposition parties were suppressed by the Police Force and mostly without good cause and proper procedures. This trend is threatening the ideals of democracy, rule of law and good governance in general. The Tanzania Police Force demonstrates an overt discrimination among the diverse groups in the country.

Also, about 64% of the respondents disclose the protecting of public order. The respondent pointed out that the reasons to consider the exercises of freedom to assembly should create the clearly legitimate purposes. The legislative response should target at the actual threats of peace in the society and the police force measurements should be used as the last resort. The excessive use of force by police and brutal treatment imposed by police against the organiser and participants in unlawful assemblies are inconsistent to any threats of peace. The police are required to provide more evidence to justify the permissible limitations of the freedom to assembly.

Up to date in Tanzania, the Police Force hardly observes the fundamental human rights. The laws vest enormous powers on the Police Force; these powers are susceptible to abuse for lack of sufficient checks. In almost all National General Elections, series of incidents involving the riot police, invariably applying excessive force to break up rallies and processions being held against dubious police stop orders were witnessed.²⁶¹

The findings also recognised 60% of the respondents observe the obligations imposed on the limitations requirements to protect, respect and fulfill the freedom to assembly. Constantly, the Police officers in Tanzania deliberately ignore international standards of the right to freedom of assembly this because the practicability of the reasons given by police to prohibit the freedom of assembly violate the international instruments. They pointed out an example based on the requirements of prior notification where such a notification is impracticable as a

²⁶¹ Law Reforms Commission of Tanzania(2009); Law Reformer Journal, Vol. 2 No.1, P.84

result create the room for criminal sanctions. Having observed the officials' practice in the imposed limitation to freedom of assembly is inapplicable

According to the findings, about 88% of the respondents opined that the imposed permissible limitation on the right to assembly must be clear at the time when the order is issued. The language used should be objective and clear to give sufficient notice of the event to be prohibited. Those clarity should be proscribed by law, must carry the legitimacy aim and must be proportional to what is targeted to be restricted. They said the laws which governing the protections of right to assembly is clear but the law enforcers when interpreting the provisions are creating the vagueness. This is because there is no any regulation which provides the guideline of the implementation of the law. As to this ambiguity caused by the police officer that results from discriminatory limitations who have been utilised and delegated improperly. About 85% of the respondents pointed out various forms of violation that depicted the limitations in the rights to freedom of assembly by the police officers including serious provocation, coercion, intimidation, torture, abduction, even arbitrary arrest, detention and other inhuman or degrading treatment to person were employed.

About 71% of the respondents noted that, where the police officer wants to establish limitations on the right to freedom of assembly must provide a specific, evidence-based justification for its actions. It must be able to demonstrate the precise nature of the threat to which the new measures are directed, so that it is possible to assess whether the limitations are directed towards a permissible purpose, and whether they are proportionate to the interest to be protected.

The study revealed that 47% of the respondents were dissatisfied with the procedures for channeling complaints against the violation of the basic rights by the police officers while 34% were satisfied with the procedures. Also, the respondents pointed out various forms of violation of the fundamental human rights by the police officers in Tanzania including concocted cases (76%), unlawful arrest and detention (80%), torture and other degrading punishment employed to procure confession among others (71%). Also deliberate denial of bail to the detainees is another critical issue in

Tanzania of to date (65 %). About the prosecution of the Police officers who violated the basic human rights, 56% of respondents were not satisfied while only 23% were satisfied.

Likewise, 66% of the respondents stress the importance of Police as the authority to regulate public assemblies with timely and fulsome reasons for the imposition of any limitation and the possibility of expected appeal procedures. The organisers should be able to appeal before an independent and impartial Court, which should take a decision promptly. The competent administrative Court shall then rule on the ban within twenty four (24) hours, and court decision shall be announced immediately and final. The scope of the freedom to assembly should be defined in the court. The court must show the wideness to be exercised that cannot in principle be limited. The court must consider not only whether a right has been infringed, but also whether that infringement is justifiable for the reasons allowed in the limitation. Approaches based on defining the scope of a freedom of assembly only inquire whether the right is violated in regard with justifiable limitation. The limitations based approach may give the court power more active in implications of public policy.

About 71% of the respondents noted that the government is required to involve a positive obligation to actively protect public assembly. Such obligation includes the protection of participants of peaceful assemblies from individual or groups of individuals. The government should take an appropriate measure depending on all circumstances in a particular case. The organiser and the participants of the assemblies should know how to exercise the right and not to assume this obligation.

About 40% of the respondents said the Police Force and Auxiliary Services Act cap 322 RE 2002, theoretically provides strong protection of freedom to assembly. The constitution and laws in Tanzania protect the fundamental right but this happen to be more theoretical and remained only in paper. The authorities only protect the public assemblies which is peaceful in nature. The assemblies which lose the nature of peaceful do not fall within the protective scope. Also, the public assemblies which

involve uncontrollable conduct and causing unreasonable obstruction to others are not protected.

About 74% of the respondents pointed out some exceptional circumstance on which the freedom of assembly has to be curtailed to prohibit imminent breach of the peace. Among other things, the violence- behavior of the participants themselves may bring the attention of the authorities to ban the public assembly. Another aspect they commented is the offensive and abusive language from the organiser which shows the indicators of breach of the peace. Furthermore the respondents pointed out the duty of the police in maintaining and preserving of public order it is within the permissible allowable limitation. Therefore both police force and the participants have to strike to strike the right in balancing between the duties of both sides.

About 71% of the respondents said that the organisers and participants are required to be aware when preparing conducting the peaceful meeting and public rallies by establishing the planning of exercising the right. This includes the purposes of the meeting in relation with the need of the development. The police should ascertain that, such public assemblies are likely to be peaceful and that have the strength to maintain security at the time to be exercised.

In this decade, it has been found there are an extra Judicial killings of about 246 people during the public assemblies which occurred without the sanction of any judicial proceedings.

In 2012, during the doctors strike, (LHRC 2012) where 16 human rights activists were arrested at Muhimbili National Hospital who were about to breach the peace by exercising unlawful assembly. The activists were detained almost 8 hours at Oysterbay police station whereby they were interviewed by the police thereafter the police failed to establish any offence against them. Therefore it was the success on the part of activists and the failure gives the feedback to the police that sometimes the police force act in the pressure of political interests and not the reality.

Figure 4.3: Scenes of Public rallies and demonstration in Dar es Salaam



Source: secondary data

Significantly, it has been submitted by the respondent that the Police Force should discharge its duties professionally without excessive force from politicians and should balance the reality and political demands to the ruling government. Therefore the demand of activists in the doctor's strike was to make sure that health services restart as usual and not otherwise. The citizen should rise up their voice against the government as the key holder of the rights and not the doctors who are employed by the government and not the citizens employees.

Also, some of the respondents who interviewed randomly were about to say that, when prohibitions of public assembly occurs both political parties and Police Force may not use abuse threatening and offensive language, the language must be planned, clear coordinated and links with organizer, groups, and other in the society. They pointed out example in the incident of Chadema leaders and the Police Force prohibiting demonstration and political rallies countrywide to beginning September 1. For the purpose of maintaining peace and tranquility, they advised the Police Force to stop using words such as "dealing with all those who defy our order" and Chadema should stop using the word "Dictatorship" because these remarks have already caused tension and increased the political temperature in the country.

About 68% of the respondent has recommended and cemented that the Police Force and Auxiliary Services Act Cap 322 RE 2002, should be amended to remove prohibitive powers given the wide discretions to the police which discriminate the political opposition parties while deciding whether to permit public assemblies. The law creates an unreasonable limitation which tends to be more prohibitive than

regulatory. The new provisions should provide all justifiable grounds rather than giving the police unlimited powers to decide whether an assembly should occur.

4.4 Conclusion

Every State has the obligations to protect, respect, and fulfill fundamental rights. As to Tanzania as the State has same the obligation, after it ratified a treaties, to bring their domestic law enacted through the Parliament process and bring it into conformity with the provisions of the treaty in question. Therefore Tanzania has the responsibility protect and promote the right to assemble by expressing of their views collectively and is able to demonstrate peacefully and express their views without facing threats, intimidation or violence. Therefore the incumbents' state parties to abide by the human rights treaty to protect the freedom of assembly even in view of the "difficulty and complexity of the task".

CHAPTER FIVE

CONCLUSION AND RECOMENDATIONS

5.1 Introduction

This chapter attempts to summarise the research findings and draw conclusion. The main focus of the discussion is to find out the solution and the way forward of the problem which will be used by the authorities for making decisions, planning and taking action in relation with policing of public assemblies in Tanzania.

5.2 Conclusion

The aim of this study was to examine the right to freedom of assembly and its imposed permissible limitation in Tanzania. This has been facilitated by the research findings pointed out by the researcher. After the thorough research, the research comes up with the following conclusions:-

The right to freedom of assembly constitutes one of the significant functions in the development of democracy which serves many different objectives that are of vital importance for the democratic society. Again the freedom of assembly, together with other fundamental rights and freedoms, greatly contributes to the personal development and the progress and welfare of the society at large. The right ensures to every person in the community the opportunity to present their idea in a democratic form, this form helps to assist dialogue to express the alternatives opinions within civil society.

In this study various standards that describe the right to freedom of assembly and its permissible limitations in Tanzania are discussed; among other things the discussion sheds light on the limitation clause based on legality, proportionality, necessity and legitimacy aim as the test to enjoy the right. The discussion covers both international legal instruments and municipal laws recognize the right to freedom of assembly.

The power to regulate public assemblies is vested to the police office through which gives the mandate in policing the right. The the Police Force and Auxiliary Services Act Cap 322 RE 2002, study revealed legal drawbacks based on brutality of police conduct and inadequate evidence to justify limitations on the right to freedom of assembly in striking out the balance between the legitimate interest of society and the government. The study reveals the power given to the police office is very broadly discretions power to interpret the law; therefore the law has often been used arbitrary and unreasonable infringing the right to freedom of assembly. The study also open the room that the Appeal from the Minister responsible is final and conclusive which is against article 30(3) and 107A (1) the Constitution of United Republic of Tanzania of 1977. The provisions of the Police Force and Auxiliary Services Act if it could be challenged in the Tanzania High Court it could have been declared unconstitutional.

5.3 Recommendations

- In Africa, all the Governments should avoid on harassing the opposition political parties using its authorities, instead should refrain on the principles governing rule of law as the modern practicable in in any democratic State. As Bluwey points out:

*On any political system practicing and characterised by opposition parties it may confer three main advantages which includes : the principles of minority interests; limitation base4d on the information both to the public and government; and embellishments of the government actions and policies generally, the government are required to surveillance to what the society cannot stand and inspiring the popularity allowing the government to rule in accordance with the law of the land.*²⁶²

- Tanzania government should amend the law which results in unreasonable restrictive and arbitrary application. Therefore, it should carry out an intensively review of legislation in order to abolish the provisions in the Act which violate the enjoyments of the right to freedom of assembly, particular,

²⁶² Bluwey, op. cit. p. 209.

the to revise the provisions relating to public order and sedition which is seems to be used arbitrary to the opposition political parties who brought an idea in contravening the government which have no place in democratic societies of the twenty first century.

- Tanzania laws governing freedom of assembly should be brought into line with international human right standards. Therefore, all cases involving freedom of public assemblies should be considered according to the provisions of the human right instruments. Consequently police officers are expected to adhere to international standards that ensure respects for human rights. Effective guarantee of individual rights and freedoms by the police promote internal peace and security of the State which is important for enjoyment of all human rights under international human right instruments.
- Tanzania government authorities and law enforcement (police institution) should implement effectively their legal power granted by the law, and protecting participants of public assemblies. The police officers should knows, respect, understand and apply the law that they are sworn to uphold. Police must conduct their duties as professional organisation; with code of conduct and ethics which brings the accountability to the community they serve. The Police actions should be lawful, necessary and proportional.
- Tanzania government should add section in the Police Force and Auxiliary Services Act cap 322 RE 2002, which allows appeal remedies procedure to the competent judicial Court by way of petitions whereby can be conducted once the administrative remedies to the Minister responsible being exhausted, this it can be done soon after the procedures of written notifications is complied. Like in Ghana Police are no longer have automatic powers to stop the public instead may grant petition to the court for an order to stop or preventing the holding of the public assemblies. Also, it ensure that organiser of public assemblies are not obliged to allow the organizer to

challenge before the court, any limitations substance of the right to assemble at a time in respect with the legal process .

- Tanzania government should ensure the notification procedure is prompt and not influenced with any bureaucratic and that the proper notifications procedure led to the authorization from the police in charge or minor mistakes on the notification procedure do not result in automatic prevention or dispersal of otherwise peaceful assembly. The authority should make sure the notification requirements are only imposed where there is the necessity to protect public order, national security, as well as other public interest depending the laws of the country.
- Tanzania government should add the provisions in the Police Force and Auxiliary Services Act which recognize and expressing the spontaneous assemblies (unexpectedly assemblies) whereby the proper procedure of notifying to the police is not practicable .
- Tanzania government should ensure that every limitations placed on the public assemble are communicated in a timely manner to the organisers of the assembly, including indicating the each reasons behind each limitations of exercising the public assemblies. The effective communications should be conducted with the leaders and the police force and other stake holders before and during assemblies for the purposes of reducing confrontations and unnecessary harm in the democratic society and rule of law. The concusses should reflect to the benefit and the future of all society without regarding their political perspectives.
- Tanzania government (police institution) should consult with organizer of any intended public assembly by negotiating voluntary to harmonise the preveling situations and refrain from imposing a requirement. Having table sitting agreements in order to rescue the violence between the parties. It should also allocate the place, time manner or other aspect made in the negotiation.

- Tanzania government should ensure that public assemblies are not dispersed simply because they do not acquired an authorizations from the police force instead should consider the nature of the assembly. The police force should facilitate the public assemble where is peaceful in nature even if it doesn't comply with the legal requirements. The police force should disperse of the rioter or demonstrator in considering the philosophy of use of force and firearm. The use reasonable force against peaceful demonstrators and protesters in regard with the principles of Proportionality, Legality, Accountability, and Necessity. All those should help to the police officer to make more consideration and emphasizing the concept of reasonableness in the use of force and firearms.
- Tanzania government should ensure that the participants of public assemblies are not subjected to arbitrary arrest and detained unreasonably without taking before the court. The police should only apprehend the where there is the sufficiently grounds of being arrested and following the proper procedures granted in the criminal procedure Act, in order to avoid negative accountability to the police officer. The police also should avoid torturing and other inhuman treatment to the prisoner at the time when the demonstrator is in the police cells.
- Tanzania government should provide training based on human rights principles. The training should be based much on the civil and political rights in respect with the tactics reveals the protections of those rights. It should therefore significant to the police officer to be equipped on the training of civil public order managements as the one among the fundamentals of the democratic society. Also the government should create the good environments to the police officers in terms of their accommodations, resources and equipments to avoid stressful working conditions.
- Tanzania government should ensure that police institution should incorporate the human rights aspects into their curriculum in police colleges and

workshops and seminars. In addition to the trainings offered by different nongovernmental organisations. Police should be trained on the tactical and operational methods to minimise 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 entitled to human being and not privileges granted by the government.

- Governments should introduce effective complaint system with an independent oversight body to deal with investigation, discipline and monitoring of police officers. In creating such a body, Tanzania should look to neighbor Kenya who recently passed legislation establishing an Independent Oversight Authority involves in the investigation and control of police abuse.

BIBLIOGRAPHY

BOOKS

- Abiola, S. D. (2010) *Limitation clause in National and International Human Rights Document Scope and Judicial Interpretation*, Harvad University. .
- Alex, R. (2002). *A Theory of Constitutional Rights*, J. Rivers (tr), Oxford
- Brennan, F. (1983). *Too Much Order with Too Little Law* (Queensland University Press
- Bronitt, S and Stellios, J. (2006). "Sedition, Security and Human Rights: 'Unbalanced' Law Reform in the 'War on Terror'" MULR 29
- Brugger, W. (2003). "The Treatment of Hate Speech in German Constitutional Law (Pt 1)" 4 GLJ
- Cliff, R. E. (1963). *Police and Public Safety*, Cincinnati; H. W Anderson Company
- Douglas, R. (2004). *Dealing with Demonstrations: The Law of Public Protest and its Enforcement* (Federation Press)
- Dunn, C. (2005). "Balancing the Right to Protest in the aftermath of September 11." 40 Harv CR-CL L Rev 327.
- Fenwick, H. (1999). "The Right to Protest, the Human Rights Act and the Margin of Appreciation", Modern Law Review, Vol.62.
- Flamm, M. W. (2005). *Law and Order: Street Crime, Civil Disorder, and the Crisis of Liberalism*, Columbia Studies in Contemporary American History, Columbia University Press.
- Fox, H. G. and Roth, R. (2000). *Democratic Government and International Law*, Cambridge University press
- Galinsky, M S, (2010). "Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct." 12 A L R 3d 1448 .
- Gardbaum, S. (2007). *Limiting Constitutional Rights*, 54 UCLA Law Review 789
- Hadfield, B. (1993). "Public Order, Police Powers and Judicial Review" Crim LR 915.

- Kabudi, P.J. (1995). *Human Rights Jurisprudence in East Africa: A Comparative Study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda*, Nomos Verlagsgesellschaft, Baden-Baden.
- Kapinga, W.B. (1991). '*The Police Force and Human Rights in Tanzania*' Third World Legal Studies Journal,
- Karl, E. K. (1991). "Legal Theory and Democratic Reconstruction: Reflections on 1989", *University of British Columbia Law Review*, vol. 25, No. 97.
- Kibwana, K. (1990). "*Fundamental Rights and freedom in Kenya*" Oxford University Press Nairobi.
- Martin, R.. (1974). *Personal Freedom and the Law in Tanzania*, Nairobi: Oxford University Press.
- Mashamba, C. J. (2010). "*Judicial Protection of Civil and Political in Tanzania Cases*", Materials and Commentary, Nola: Dar es Salaam.
- Murray, R and Malcom, E. (2002). "*African Charter on Human & People Rights*", The system in Practice, 1986 – 2000, Cambridge University Press,
- Neyrou, P and Beckley, A. (2001). "*Policing Ethics and Human Rights*, Willan Publishing, Oregon, USA.
- Partsch, K.J. (1981). "*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.
- Peter, C. M. (1997). "*Human Rights in Tanzania*", Selected Cases and Materials, Richarz Publications Service, Koln: Koppel.
- Peter, C. M. and Juma, I. H. (1998). "*Fundamental Rights and Freedoms in Tanzania*" Dar es Salaam, Mkuki & Nyota Publisher
- Shaw, M. (2008). *International Law* (6th ed.). Leiden: Cambridge University Press. ISBN 978-0-511-45559-9
- Shivji, I. G. (1989). "*Equality, Rights and Authoritarianism in Africa*", in McCormick, N. & Bankowski, Z. eds. (1989) *Enlightenment, Rights and Revolution: Essays in Legal and Social Philosophy*, Aberdeen: University Press,

- Shivji, I. G. (2003). “Three Generations of Constitutions and Constitution Making in Africa: An Overview and Assessment in Social and Economic Context.” In Rosen (ed.):
- Sottiaux, S. (2008). *Terrorism and the Limitation of Rights: The ECHR and the US Constitution*, Oxford
- Szucs, J. (1981). “Three Historical Regions of Europe: An Outline.” In Keane (ed. 1988): 291 332.
- Wiktor, O. S. (2009). *Human Rights and their Limits*, Cambridge University Press New York

JOURNALS/ARTICLES

- Barendt, E. (2000). ‘Freedom of Assembly’, in Beatson J & Cripps Y, (eds), *Freedom of Expression and of Information, Essays in Honour of Sir David Williams*, Oxford.
- Bichy, W and Finnegan, C. (2006). *Human Rights, Constitutionalism and Judiciary, Tanzania and Irish Perspectives*; Clorus, Dublin
- Brabyn J, (2002). ‘The Fundamental Freedom of Peaceful Assembly and Part III of the Public Order Ordinance’, *Hong Kong Law Journal*, Sweet & Maxwell Asia’.
- Das, D. K. (1998). ‘The armed police in the British colonial tradition’, *Policing: An International Journal of Police Strategies & Management*, vol. 21,2:
- International and Comparative Legal Perspective’, *Berkeley Journal of International Human Rights Law*, (2014). *Nordic Journal of Human Rights*, Vol. 32, No.2, 140–156, published online:
- Kapinga, W.B. (1991) “The Police Force and Human Rights in Tanzania.” *Third World Legal Studies Journal*.
- Kijo – Bisimba, H. (2013). *Human Rights Situation in Tanzania*; Legal and Human Rights Centre, Dar es Salaam
- Mc Donald, P. Greenberg, S. and Bratton, W. (2001). *Managing police operations: Implementing the NYPD crime control model using COMPSTAT*. Belmont, CA: Wadsworth.

Nsereko, D.D.N. (1993) “*The police, Human Rights and Constitution: on Africa Perspective*” in Vol 15 of Human Rights Quarterly, No, 3.

Procession in Ghana in the Light of the Decision in the Public Order Case and the Public Order Act’, 19 *U.G.L.J.*

Quashigah, E. (1999). ‘The Constitutional Right to Freedom of Assembly and

Roza, P. (2005) ‘Rights and Their Limits: The Constitution for Europe in

Salát, O, (2014) *Comparative Freedom of Assembly and the Fragmentation of International Human Rights Law*, Nordic Journal of Human Rights, Vol. 32, No.2, 140–156, published online: 06 Jun 2014.

Sarah, M. (2012) Policing Of Public Assemblies in Tanzania *Analysis of the Legal Framework*; Commonwealth Human Rights Initiative

Stevens, J. ‘Colonial Relics I: (1997) The Requirement of a Permit to Hold Peaceful Assembly’ in Journal of African Law (Vol. 41).

Wambali, K.B. (2009). Michael Taking stock of the law and practice of the right to freedom of political association in Tanzania Law Reformer Journal Volume 2 No 1.

International Law, 23/1

REPORTS

Legal and Human Rights Centre (April, 2010). “Tanzania Human Rights Report 2009,” LHRC: Dar es Salaam.

Legal and Human Rights Centre (April,2011)“Tanzania Human Rights Report 2010,” LHRC: Dar es Salaam.

Legal and Human Rights Centre, (April, 2012). “Tanzania Human Rights Report 2011,” LHRC: Dar es Salaam.

Legal and Human Rights Centre (April, 2013).“Tanzania Human Rights Report 2012,” LHRC: Dar es Salaam, April 2013.

Legal and Human Rights Centre (April, 2014). “Tanzania Human Rights Report 2013,” LHRC: Dar es Salaam.

Legal and Human Rights Centre (April, 2015). “Tanzania Human Rights Report 2014,” LHRC: Dar es Salaam.

Maina Kiai ,(2012). Report of the Special Rapporteur on the rights to Freedom of Peaceful Assembly and of association, (2012)

Websites

Amnesty International website <www.amnestyinternational.org>, accessed on 2 February 2004

Human Rights Watch website <www.hrw.org> accessed on 16 March 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.