

**MZUMBE UNIVERSITY**



**FACULTY OF LAW**

**LAW AS THE BASIC REGULATORY ORGAN OF THE SOCIETY:  
THE CASE OF ABUSE OF FUNDAMENTAL HUMAN RIGHTS BY THE  
POLICE FORCE IN TANZANIA**

**By**

**Kilatu, Edson**

**A Research Dissertation Submitted in Partial Fulfillment of Masters Degree in  
Constitutional and Administrative Law (LLM. C&A) of Mzumbe University,  
Morogoro, Tanzania**

**2013**

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**2013**

**CERTIFICATION**

We, the undersigned, certify that having keenly and thoroughly read hereby recommend for acceptance by Mzumbe University, Morogoro Campus a dissertation entitled Law as the Basic Regulatory Organ of the Society: The Case of Abuse of Fundamental Human Rights By the Police Force in Tanzania, in partial fulfillment of the requirements for award of a degree of Masters in Constitutional and Administrative Law (LLM in C&A) of Mzumbe University.

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## **DEDICATION**

This work is whole heartedly dedicated to those who are committed to impart knowledge to others particularly the late Professor **JWANI TIMOTHY MWAIKUSA AND DR.EDMUND SENGONDO MVUNGI** both belonging to Department of Constitutional and Administrative Law of Faculty of Law(UDSM). Indeed they inspired me to pursue the Masters Degree in Constitutional and Administrative Law. It is unfortunate that they turned prey of social injustice that deprived them of their right to life. Both were murdered in similar circumstances. Always their peculiar mode of delivering lectures, organizing key points and their intellectual flavour will be remembered. May their respective souls rest in eternal peace, Ameen.

## **ABSTRACT**

This study was tailored along four specific objectives. First, it explored the checks against abuse of fundamental human rights put in place in Tanzanian context; secondly it covered statutory measures available for abuse of the fundamental human rights. It also explored the procedures for channeling complaints against abuse of the rights and lastly the extent which the Tanzania Police Force abides by the international police standards hence various international policing ideals were discussed. The police ideals include autonomy and impartiality, legality, proportionality and reasonableness as well as the necessity of Police Actions.

The study covered both primary and secondary data. It employed three research methods to obtain primary data namely interview, questionnaire and Focus Group Discussion. A sample of 100 respondents was randomly chosen, of which 30 were interviewed, 60 through questionnaire and 10 participated in Focus Group Discussion. The research involved descriptive data analysis where data were converted into percentage to bring the impression of the findings. The study revealed various forms of abuse including dubious cases, unlawful arresting and detention without taking the matter to the court of law timely, extrajudicial killings, torture and inhumane treatment.

Also various legal challenges were depicted. The law governing the TPF is ineffective in such a way to warrant abuse of the fundamental rights. There is a need for significant legal reforms for the sake of protecting the fundamental human rights. To that end several recommendations for improving human rights-centred policing were recommended. It recommended among other things for domestication of all core International Human Rights Instruments, hedging the Police Force against Political pressure, simple procedures for channeling complaints and substantial reforms of the Commission for Human Rights and Good Governance (CHRAGGP).

## **LIST OF LOCAL STATUTES**

Anti-money Laundering (Amendment) Act, 2012; Act No. 1 of 2012

Auxiliary Police Ordinance, 1948; Cap. 262 R.E. 2002

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

Commission of Human Rights and Good Governance Act, 2001; Cap. 391 R.E. 2002

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

Criminal Procedure Act, 1985; Cap. 20 R.E. 2002

Evidence Act, 1967; Cap. 6 R.E. 2002

Government Proceedings Act, 1967; Cap. 5 R.E. 2002

Interim Constitution of Tanzania, 1965; Act No 43 of 1965

Law of the Child Act, 2009, Act No.21 of 2009

Magistrates Courts Act, 1984; Cap. 11 R.E. 2002

National Prosecutions Service Act, 2008; Act No. 27 of 2008

National Security Act, 1970; Cap. 47 R.E 2002

National Security Council Act, 2010; Act No. 8 of 2010

Penal Code, 1945; Cap. 16 R.E. 2002

Peoples Militia Powers of Arrest Act, 1975; Cap. 111 R.E. 2002

Police Force and Auxiliary Service Act, 1939; Cap. 322 R.E. 2002

Police Reserve Ordinance, 1939; Cap. 56 R.E. 2002

Political Parties Act, 1992; Cap. 258 R.E. 2002

Prevention of Terrorism Act, 2002; Act No. 21 of 2002

Preventive Detention Act, 1962; Cap. 361 R.E. 2002

Regional Administration Act, 1997; Cap. 97 R.E 2002

Republic (Declaration of Name) Act, 1964; Act No 61 of 1964

Tanzania Intelligence and Security Service Act, 1996; Cap. 406 R.E .2002

Union Between Tanganyika and Zanzibar Act, 1964; Cap. 557 R. E. 2002

Written Laws (Miscellaneous Amendments) Act, 2012; Act No.2 of 2012

## **LIST OF INTERNATIONAL LEGAL INSTRUMENTS**

- African Charter on Human and Peoples Rights, 1981
- Articles of Union between the United Republic of Tanganyika and Peoples Republic of Zanzibar, 1964
- Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, 1988
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Right of the Child, 1989
- Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- International Convention for Protection of All Persons from Enforced Disappearance, 2006
- International Covenant on Civil and Political Rights, 1966
- Law Enforcement Code of Ethics and Enforcement Code of Conduct, 1936
- U N Principles Relating to the Status and Functioning of the Institutions for Protection of Human Rights, 1993
- UN Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials, 1990
- UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985
- UN Standard Minimum Rules for the Treatment of Prisoners, 1955
- United Nations Code of Conduct for Law Enforcement Officials, 1978
- United Nations Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- Universal Declaration of Human Rights, 1948
- Vienna Convention on the Law of Treaties, 1969

## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
Cap	Chapter
CBO	Community Based Organization
CCM	<i>“Chama Cha Mapinduzi”</i>
CHADEMA	<i>“Chama Cha Demokrasia na Maendeleo”</i>
CHRAGG	Commission for Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
CUF	Civic United Front
Ed.	Editor
Edn	Edition
FGD	Focus Group Discussion
FoL	Faculty of Law
i/c	In charge
ICCPR	International Covenant on Civil and Political Rights
IGP	Inspector General of Police
LHRC	Legal and Human Rights Centre
LRT	Law Reports of Tanzania
Ltd	Limited
MCT	Media Council of Tanzania
NGOs	Non Governmental Organizations
No.	Number of an Act
no.	Number of case
nola	National Organization for Legal Assistance
OAU	Organisation of African Unity
OCD	Officer Commanding District
OCS	Officer Commanding Station

OUT	Open University of Tanzania
p.	Page
PCE	Permanent Commission of Enquiry
pp.	Pages
PPPPHR	Public –Private Partnership in Protection of Human Rights
R.E	Revised Edition
REDET	Research and Education for Democracy in Tanzania
RPC	Regional Police Commissioner
Sect.	Section
TANU	Tanganyika African National Union
TAWLA	Tanzania Women Lawyers Association
TLR	Tanzania Law Reports
TPDF	Tanzania Peoples’ Defence Force
TPF	Tanzania Police Force
UDSM	University of Dar es Salaam
UN	United Nations
URT	United Republic of Tanzania
US	United States
v.	versus
VEO	Village Executive Officer
WEO	Ward Executive Officer
WiLDAF	Women in Law and Development in Africa

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## **CHAPTER ONE**

### **1.0 GENERAL INTRODUCTION**

This study attempted to explore the law as the basic regulatory organ of the society. The topic was purposely selected owing to the increasing public outcry against the police force for rampant violation of fundamental rights in Tanzania. The common forms of the violation of fundamental rights being unlawful arrest and detention, torture, extrajudicial killings, unlawful search and seizure of property and police in action. The study covered various aspects of law governing police using appropriate research methodology namely interview, Focus Group Discussion and Questionnaire. Also the secondary data had significant contribution in this study.

Amongst the important aspects covered in this dissertation are the historical backgrounds to the study and literature survey. The statement of the problem covered only the recent reports particularly from 2000 to 2012 because from that year significant reforms were undertaken including the ongoing 2006/2007 to 2014/2015 Police Force Reforms Program which among other things aims at bringing the Police Force close to the public by establishing good relationship with the community. To that end this dissertation has discussed several police standards and principles governing human rights protection and finally gives several recommendations.

### **1.1 Background to the Study**

For decades, streamlining the global police standards has been a focus of international community. The importance of such standardization is that comparative policing has the potential for development of human rights-centred policing. In 1822 the Royal Commission on the Police was appointed by Robert Peel to inquire on the sour relationship between the Police Department and the citizens in England to the extent that the police were nicknamed “bloody gang”. The commission eventually formulated nine policing principles which provide for human rights-centred policing.

The Commission among other things recommended the police officers to use physical force only as a last resort. These principles form the bedrock of global policing ideal today and are in tune with the international human rights instruments and international police standards. Of what the 8<sup>th</sup> principle states that:

*“Police should always direct their actions towards their functions and never appear to usurp the powers of the judiciary by avenging individuals... or authoritatively judging guilty or punishing guilty<sup>1</sup>.”*

The global initiatives to establish police standards eventually prompted adoption of an international Code. The International Association of the Chiefs of Police established the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct, 1936. This was a cornerstone for the global policing standards. This Code is accepted as universal standards governing Police Profession<sup>2</sup>. The code among other things requires the Police officials to act within the legal bounds and avoid unnecessary use of force. After the Second World War several international legal instruments were adopted including the Universal Declaration of Human Rights, 1948 and the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 which provide among other things for the safeguards against the abuse of the fundamental human rights. Since then several global and regional legal instruments have been adopted.

Evolution of the Tanzania Police Force(TPF) has taken some decades. In the pre-colonial era only traditional police system was maintained to keep law and order and defend the territory against external invasions. For example by 1870s the Hehe of Iringa had a disciplined force of armed citizens defending the Hehe territory against external invasion.<sup>3</sup> There was no police force in the modern sense. The traditional police was retained even after colonial subjugation in the second half of the 19<sup>th</sup> Century. The Germans who colonized Tanganyika after the Berlin conference, 1884/85 did not

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<sup>1</sup> Ricks, T.A and Tillet, B.G (1981); *Principles of Security: An Introduction*, Kentucky, Anderson Co p.5

<sup>2</sup> [http://highered.mcgraw\\_hill.com/](http://highered.mcgraw_hill.com/) Police Administration; Last accessed on 19<sup>th</sup> /10/2012

<sup>3</sup> Illife, J. (1979); *A Modern History of Tanganyika*, London, Cambridge University Press, p.57

significantly affect traditional police set up. Military or paramilitary services were only deployed in instances of dissent by local communities.

It is worth mentioning that the history of formal Police system in Zanzibar predates that of Tanganyika. While in Zanzibar the formal Police system was established in 1873 for the purpose of suppressing the Slave Trade,<sup>4</sup> in Tanganyika the Germans attempted to establish a Civilian Police Force with only 31 soldiers under Major S. T. Davies from South Africa in 1916. It aimed at protecting their residents and investments during the First World War in Tanganyika.<sup>5</sup> However, this was an *ad hoc* attempt, the permanent and formal Police system in Tanganyika was finally established by the British on 25<sup>th</sup> August 1919 through Government Notice (GN)<sup>6</sup> after the Germans defeat in the First World War.<sup>7</sup>

The Police was governed by the Police Force and Prisons Ordinance because it was not separate from the Prison Service.<sup>8</sup> The Prison service was separated from the Police in 1931<sup>9</sup> hence the police were governed by the Police Force Ordinance, 1939<sup>10</sup>, the Auxiliary Police Ordinance, 1948<sup>11</sup> and the Police Reserve Ordinance, 1939<sup>12</sup> each law governing a specific aspect. The Auxiliary Police Ordinance<sup>13</sup> governed the Auxiliary Police which assists the police force in maintaining order in specific institutions.

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<sup>4</sup>Jamhuri ya Muungano ya Tanzania: Wizara ya Mambo ya Ndani ya Nchi (2011); *Taarifa ya Mafanikio ya Wizara ya Mambo ya Ndani ya Nchi kwa Kipindi cha Miaka 50 ya Uhuru wa Tanzania Bara 1961-2011*, Dar es Salaam, p. 3

<sup>5</sup>Serikali ya Jamhuri ya Muungano ya Tanzania: Wizara ya Mambo ya Ndani ya Nchi (2011); *Taarifa ya Mafanikio ya Wizara ya Mambo ya Ndani ya Nchi kwa Kipindi cha Miaka 50 ya Uhuru wa Tanzania Bara 1961-2011*, Dar es Salaam, p.1

<sup>6</sup>GN No. 1.Vol. I No. 21-2583

<sup>7</sup>Commonwealth Initiatives (2006); *The Police, the People, the Politics: Police Accountability in Tanzania*, pp. 2, 3

<sup>8</sup>Cap.40 R.E. 2002

<sup>9</sup>Serikali ya Jamhuri ya Muungano ya Tanzania: Wizara ya Mambo ya Ndani ya Nchi (2011); *Taarifa ya Mafanikio ya Wizara ya Mambo ya Ndani ya Nchi kwa Kipindi cha Miaka 50 ya Uhuru wa Tanzania Bara 1961-2011*, Dar es Salaam, p.4

<sup>10</sup>Cap.322 R.E 2002

<sup>11</sup>Cap.262 R.E. 2002

<sup>12</sup>Cap.56 R.E. 2002

<sup>13</sup>Cap. 262 R.E. 2002

The Police Reserve Ordinance governed the reserved police that would be engaged to perform police duties in emergencies or other contingencies which require supplementary police.<sup>14</sup> Statutes governing the Police Force were later consolidated into one statute.<sup>15</sup> It is worth mentioning that Tanganyika inherited several English laws and institutions including the Police Force after the independence. These laws and institutions retained the metropolitan pattern. Professor Haroub Othman observes *inter alia* that<sup>16</sup>:

*“...in course of ten years of Uhuru, we have effected some changes in the state and its institutions, these have been basically changes of form and not of substance. Even these institutions we have created ourselves...have followed the pattern set by the metropolitan powers.”*

The coercive apparatus including the police were not human rights-oriented. The abuses of fundamental human rights during the colonial era were witnessed in both Zanzibar and Tanganyika before and after the independence. In Tanganyika between 1930s and 1950s significant abuses of workers' rights were experienced. Scores of workers were injured and some killed by the coercive apparatus in the course of strikes.<sup>17</sup> The Police Force remained a machinery of the ruling regime even after the independence. Thus it was completely politicized. For instance the Inspector General of Police became a member of TANU Central Committee,<sup>18</sup> each region had three party committees namely Regional Committee chaired by Regional Police Commissioners(RPC), District Committee chaired by District Commanding Officer(OCD) and branch committee chaired by Officer in Charge of Station(OCS).<sup>19</sup> The system was retained until the re-establishment of multipartism, 1992 where the armed forces were barred from party

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<sup>14</sup> Cap.56 R.E. 2002

<sup>15</sup> Police Force and Auxiliary Service Act; Cap.322 R.E. 2002

<sup>16</sup> Othman, H (1980); *The State in Tanzania: Who controls it and Whose Interest Does it Serve*, Dar es Salaam, Dar es Salaam University Press, pp.14 &15

<sup>17</sup> Shivji, I. G ( 1986); *Law, State and the Working Class in Tanzania*, Dar es Salaam, Tanzania Publishing House, pp.162& 168.

<sup>18</sup> Oluyede, P. O. (1973); *Administrative Law in East Africa*, Nairobi, Kenya Literature Bureau, p. 56.

<sup>19</sup> Oluyede, P. O. (1973); *ibid*, p.56.

politics except the right to vote following the recommendations from the Presidential Commission led by Justice Francis Nyalali.

The current Police Force System is literary the product of the political reforms. the Police Force and the Ministry for Home Affairs became Union matters<sup>20</sup> after the Union between Tanganyika and Zanzibar being among the initial eleven Union Matters after the Union between Tanganyika and Zanzibar forming the United Republic of Tanganyika and Zanzibar which was later renamed to the United Republic of Tanzania.<sup>21</sup> Also the laws governing the Police Force in Tanganyika become Union Laws.<sup>22</sup>

The immediate consolidation of the Police after the Union between Tanganyika and Zanzibar was prompted by historical reasons. Initially Government of Zanzibar feared mainlanders in the Police Department hence attempted to adopt *Zanzibarisation* policy aiming at excluding all policemen from mainland.<sup>23</sup> However, this attempt did not last any longer. After the Zanzibar Revolution, 1964, law and order were not timely restored hence Zanzibar sought 300 Tanganyikan Police to keep peace.<sup>24</sup> Also during the colonial era about 270 experienced Police Officers in Zanzibar were from mainland territories 70 of them from Tanganyika.<sup>25</sup> However, until the Union between Tanganyika and Zanzibar the senior police positions in both Zanzibar and Tanganyika

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<sup>20</sup> Mwapwele, D .(Ed.), (1975); *A Decade of Progress 1961-1971: Notes and Records, Tanzania Society*, Dar es Salaam, p. 193, Also Articles of Union, 1964, Article iv(d) and the First Schedule to the Constitution of the United republic of Tanzania, 1977.

<sup>21</sup> Peter, C.M and Othman, H.(Ed.); *Zanzibar and the Union Question*, , Zanzibar, Ecoprint Limited, p. 2, Also Republic ( Declaration of Name) Act No 61of 1964.

<sup>22</sup> Serikali ya Jamhuri ya Muungano ya Tanzania: Wizara ya Mambo ya Ndani ya Nchi (2011); *Taarifa ya Mafanikio ya Wizara ya Mambo ya Ndani ya Nchi kwa Kipindi cha Miaka 50 ya Uhuru wa Tanzania Bara,1961-2011*, Dar es Salaam, p. 4, Also Articles of Union, 1964 Clause v(b).

<sup>23</sup> Shivji, I. G. (2007); *Pan-Africanism or Pragmatism?: Lessons of the Tanganyika –Zanzibar Union*, Dar es Salaam, Mkuki na Nyota Publishers, p.43

<sup>24</sup> Shivji, I. G (2007); *ibid*, p.54

<sup>25</sup> Shivji, I. G. (2008); *Pan-Africanism or Pragmatism?: Lessons of the Tanganyika –Zanzibar Union*, Dar es Salaam, Mkuki na Nyota Publishers, p.43

were held by the whites. The Police Department was headed by the colonial police officer of the rank of Commissioner of Police.

The dominance of white men in the senior positions sparked *Africanisation* movement. The movement prompted Tanganyika African National Union (TANU) to form Africanisation Commission in 1962.<sup>26</sup> The Commission's recommendations resulted into Africanisation of 20 key posts. A notable example was the appointment of Mr. Elangwa Shaidi in 1963 to the rank of Commissioner of Police being the first indigenous African to hold that position.<sup>27</sup>

It is also important to note that the Independence Constitution of Tanganyika, 1961 and the subsequent constitutions including the permanent Constitution of the United Republic of Tanzania, 1977 did not contain the Bill of Rights. Conversely, the Independence Constitution of Zanzibar, 1963 had a Bill of Rights which was scraped off after the Zanzibar Revolution, 1964.<sup>28</sup> The Bill of Rights was denied by the independent government on account that it would impede development endeavors.<sup>29</sup> The Bill of Rights would bar the adoption of repressive and economically harmful policies.<sup>30</sup>

In general the Union had no significant impact on the police system and Fundamental Human Rights in Tanzania. Abandonment of the Bill of Rights was a room for violation of the fundamental human rights in both parts of the union. In 1970s untold incidences of torture and other inhuman treatments were done by security forces in

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<sup>26</sup> Mihyo, P. (1983); *Industrial Conflict and Change in Tanzania*, Dar es Salaam, Tanzania Publishing House, p.72

<sup>27</sup> Oluyede, P. O. (1973); *Administrative Law in East Africa*, Nairobi, Kenya Literature Bureau, p.52.

<sup>28</sup> Shivji, I. G, Majamba, H. I, Makaramba, R. V and Peter, C. M (2004); *Constitutional and Legal System of Tanzania: A Civics Sourcebook*, Dar es Salaam, Mkuki na Nyota Publishers Ltd, p. 91

<sup>29</sup> Msekwa, P. (2006); *Reflections on the First Decade of Multi-Party Politics in Tanzania*, Dar es Salaam, Hanns Seidel Foundation , p. 111

<sup>30</sup> Mchome, S. E. (Ed.), (2002); *Taking Stock of Human Rights Situation in Africa: 40 Years of the Faculty of Law, University of Dar es Salaam 1961-2001*, Faculty of Law, University of Dar es Salaam, p.91

Mwanza and Shinyanga regions. In Zanzibar the situation was not interesting either, the people turned prey of the state apparatus where as several killings and disappearances were witnessed during the reign of the President Abeid Amani Karume.<sup>31</sup> The state built a terrifying security apparatus to control the in and out movements of the political rivalry in Zanzibar.<sup>32</sup> The Police Department was deployed to interfere with the fundamental rights by suppressing the opposition. In August 1963, the Umma Party was banned in Zanzibar and the Police confiscated large quantities of its documents and property. After the assassination of President Abeid Amani Karume several people were detained and severely tortured by the security apparatus in order to extract confession. The worst thing is that the court was inclined to admit the confessions extracted under torture from detainees as well as uncorroborated evidence of co-accused. In regards to this the then Attorney General of Zanzibar, Wolfgang Duarado once said in the court that:

*“The question that first arises is, are these statements admissible in law?. The short answer to this question is that while they would be inadmissible in some systems of law, our system has no bar to the admissibility of such statements. Your honour will observe that I am conceding that some form of arm twisting was adopted in order to obtain these statements”<sup>33</sup>*

In both parts of the union, the state applied *draconian laws* that were inherited from the colonial masters to condense the basic human rights. The Bill of Rights was not incorporated in the law of the land. To mention few, the oppressive laws in Tanzania mainland included the Preventive Detention Ordinance, 1962<sup>34</sup>, Newspapers Act, 1976<sup>35</sup>, the Regional Commissioners Act, 1962<sup>36</sup> and the Area Commissioners Act, 1962.<sup>37</sup> These laws vested too much power on the executive hence human rights were at

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<sup>31</sup> Shivji, I. G (2008); Pan-Africanism or Pragmatism?: Lessons of the Tanganyika –Zanzibar Union, Mkuki na Nyota Publishers, Dar es Salaam, p. 107

<sup>32</sup> Shivji, I. G (2008); *ibid*, pp. 107, 108

<sup>33</sup> Shivji, I. G (2008); Pan-Africanism or Pragmatism?: Lessons of the Tanganyika –Zanzibar Union, Mkuki na Nyota Publishers, Dar es Salaam, p.122

<sup>34</sup> Ca. 490 R.E 2002

<sup>35</sup> Cap.229 R.E 2002

<sup>36</sup> Cap.461

<sup>37</sup> Cap.466

stake. There were various instances where innocent people were detained under these tyrannical laws by the police force.

In 1984, the Constitution of the united Republic of Tanzania, 1977 was amended to incorporate the Bill of Rights through the 5<sup>th</sup> Constitutional Amendment<sup>38</sup> although its enforcement was stayed for three years<sup>39</sup> hence becoming effective in 1988.<sup>40</sup> At the effective date there was no statute in place providing for the procedures thereto until 1994<sup>41</sup>. The enactment of the procedural law afterwards did not accelerate access to justice either. The Basic Rights and Duties Enforcement Act, 1994<sup>42</sup>, the procedural law imposed complex procedures which hinders access to justice<sup>43</sup>. It limits among other things the powers of the judiciary to nullify provisions of the law offending the constitution or Fundamental Human Rights. It also requires all human rights matters to be presided over by a bench of three judges and it excludes the magistrate courts on human rights matters among other things<sup>44</sup>. Owing to the fact that High Court Centre have not been established in every Region leave alone Districts and the fact that three judges can hardly be made available, this turns to be another doom.

## **1.2 Statement of the Problem**

Tanzania is not safe from social injustices. The state of human rights in Tanzania is not pleasing. Several human right reports revealed an increasing trend for abuse of fundamental rights. The Tanzania Police Force (TPF) takes a lead in the abuse of the

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<sup>38</sup> Act No 15 of 1984

<sup>39</sup> Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984; Act No.16 of 1984, S.5(2)

<sup>40</sup> Mchome, S. E. (Ed.), (2002); Taking Stock of Human Rights Situation in Africa: 40 Years of the Faculty of Law University of Dar es Salaam 1961-2001, Faculty of Law, University of Dar es Salaam, p.112

<sup>41</sup> Shivji, I. G, Majamba, H. I, Makaramba, R. V and Peter, C. M (2004); Constitutional and Legal System of Tanzania: A Civics Sourcebook, Mkuki na Nyota Publishers, Dar es Salaam, p. 96

<sup>42</sup> Cap 3R.E 2002

<sup>43</sup> Mchome, S. E. (Ed.), (2002); Taking Stock of Human Rights Situation in Africa: 40 Years of the Faculty of Law University of Dar es Salaam 1961-2001, Faculty of Law, University of Dar es Salaam P.71

<sup>44</sup> Mchome, S. E. (Ed.), (2002); *ibid*, pp.92-94

fundamental human rights. It is worst that several police perpetrators have not been prosecuted for their atrocities. It further revealed a number of critical cases where individuals were seriously injured or killed while under police custody. The main human rights problems in both Tanzania mainland and Zanzibar included the use of excessive force by military personnel and police (LHRC, 2010). The Police Force often interfered with peaceful religious and political gatherings without cause or sometimes with dubious reasons (CHRAGG, 2006). Also the Police unfairly interfered with the political rights of the opposition parties (REDET, 2005).

The Government Watch Annual Report revealed abuses on media rights including the harassment of Mwanahalisi Newspaper<sup>45</sup> by police officers (LHRC 2008). The media house was invaded by the police officers without a search warrant. There are several similar instances where journalists had their cameras destroyed by Police Officials.

In January 2011 three persons were shot dead while thirty others were left injured during *Chama Cha Demokrasia na Maendeleo* (CHADEMA) rallies. Similar instances were witnessed in Tabora region, Mbeya and several other incidences in North Mara Gold Mine in Mara region (LHRC, 2011). The homicide of journalists in 2012 by the Police Force was another critical scene of the violation of the Fundamental Human Rights. The incidence involved unlawful interference of the political activities of CHADEMA at Nyololo village in Iringa region<sup>46</sup>.

The main motive for the investigation was to find out the underlying factors behind the abuse of the fundamental human rights by the Police Force . Under normal circumstances the TPF is a guardian or protector of these rights, the situation raises critical question.

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<sup>45</sup> A weekly Newspaper in Tanzania

<sup>46</sup> Tume ya Haki za Binadamu na Utawala Bora(2012); Muhtasari wa Taarifa ya Tume ya Haki za Binadamu na Utawala Bora ya Uchunguzi wa Tukio Lililopelekea Kifo cha Daudi Mwangosi Kilichotokea Septemba 2, 2012 Kijijini Nyololo, Wilaya ya Mufindi Mkoani Iringa, Available in Nipashe (Tanzania),11<sup>th</sup> October, 2012, p.14

### **1.3 Research Questions**

- What checks against abuse of fundamental human rights are put in place in Tanzanian context?
- What statutory measures are there for the abuse of fundamental human rights in Tanzania?
- How effective are the procedures for dealing with abuse of fundamental human rights?
- To what extent does the Police Force in Tanzania abide by the international policing standards?

### **1.4 Objectives of the Study**

#### (a) Main Objective

This study is meant at exploring the role of the law in regulating the violation of fundamental rights by the Police Force in Tanzania.

#### (b) Specific Objectives

- To explore whether there are checks against abuse of fundamental human right put in place in Tanzanian context.
- To find out whether there are statutory measures for the abuses of fundamental human rights.
- Explore the adequacy of the procedures involved in dealing with the abuse of fundamental human rights.
- Explore the extent to which the Tanzania Police Force abides by the international policing standards.

### **1.5 Significance of the Study**

The study will be useful to the legislature and the government in improving the laws. It may also be useful to the Police Force in adhering to standards of human rights in dealing with individuals in the course of discharging its responsibilities. Lastly it is of

essence to note that this study will add value to the existing human rights jurisprudence and therefore scholars and other human rights stake holders may make use of it.

## **1.6 Literature Review**

Literature covering some important aspects has been reviewed in this paper. The discussion on the role and powers of the Police Force is both wide and complex due to the nature of the policing powers. Policing is caught between ensuring security and guaranteeing the fundamental rights. Therefore there is no uniform scope of policing powers in the world although each jurisdiction is bound to observe some policing ideals. The role of the police force as noted before depends on the nature of the existing political superstructure. For instance the colonial policing was geared towards the objectives of the colonial economy especially cheap labour and land alienation.

Literary after the independence the philosophy behind policing ought to have changed. The thinking and the attitude towards policing had to change too. At this juncture a police is a peace officer who acts free from sheer political influence.

The police office owes obedience to no executive power outside the police force (Oluyede, 1973). The Police Force has to act within the legal bounds; it has to respect human dignity and protect the individual's liberty. But the police officials have been left court free after abusing the fundamental rights. For instance there was no single action brought against the police force for wrongful arrest of persons by 1970s (Oluyede). Unlawful detentions and torture were very common in the early years of independence. However; it goes without saying whether this problem resulted from the laxity of the law.

The enormous powers which were vested in the Regional Commissioners, Area Commissioners and police officers have also occupied a significant part in existing literature. The state officers had discretion to interfere with fundamental rights (Martin, 1974). The police force at times interfered even with court orders on the pretext of implementing lawful orders from the Regional Commissioners (Chipeta, 2009).

This was a room for unchecked abuse of the fundamental rights. Literally the powers of the court were frustrated by the executive powers at the expense of the fundamental rights. This may have been aggravated by the failure to entrench the Bill of Rights in the Constitution thus the Interim Constitution of Tanzania, 1965 and eventually the Constitution of the United Republic of Tanzania of 1977.

After the Bill of rights the court had used it as a benchmark to test the proportionality and legality of executive actions and the statutes. But this did not completely eradicate the problem. The infringement of fundamental rights was still haunting the country some years after political liberalization. Rights were taken away by various draconian laws which placed the fundamental rights at the mercy of the executive (Mbunda: 2003). The author makes reference to the powers to restrain collective rights vested in the executive and the police Force. In the world the question of state sponsored torture is ever increasing.

The worst thing is that those responsible remains unaccountable for their actions (Clare, T. and Edwin, S, 2003). The states appear to condone the abuse of fundamental rights by state apparatus. Torture and other forms of ill treatments are adopted as means of collecting information from the criminal suspects. There are various forms of torture including electrical shock. It is further noted that some of these actions are justified by the domestic laws (Clare, T. and Edwin, S, 2003).

The role of judicial activism in the protection of fundamental rights is also covered in the literature (Kijo-Bisimba and Peter, 2005). It is argued that the role of the bill of rights in fostering or restricting liberty depends on the attitude of the judiciary. Through judicial activism the court plays a significant role to realize the spirit of the Bill of Rights. Of importance is that human rights jurisprudence is ever changing as opposed to the wording of the Bill of Rights. This end may be realized through judicial decisions.

The judiciary may adapt to the changing circumstances by assigning constructive interpretation to the bill of Rights. Apart from that the literature highlights on the need for adequate safeguards and effective remedies against abuse of the law. In Kijo-Bisimba and Peter (2007) the focus was on the judicial control of administrative actions. The literature sheds light among other things, on the judicial control of executive actions. Most of draconian laws have been reformed through court decisions. However; the author does not discuss the constraints of judicial control. So the important question at this juncture is whether judicial control may adequately cure the legal pitfalls in Tanzania.

The existing literature 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, 1977 constitutes a leeway for the abuse of Fundamental Human Rights (Shivji, I. G., Majamba, H. I., Makaramba, R. V. and Peter, C. M., 2004). It is also important to note that the Commission for Human Rights and Good Governance (CHRAGG) has limited oversight over the abuse of the fundamental human Rights in Tanzania.

The scope of the Fundamental Human rights is another area of great concern in Africa generally and in Tanzania particularly. Literary the scope of the Fundamental Human Rights is the pivot of rule of law and human rights but authors have different views on the question of the scope. Some authors prefer a limited scope of the Fundamental Human Rights as opposed to absolute rights. Among other things the authors admit the exception of arresting without warrant of arrest as provided under the law (Korosso, 2003). Of importance this author gives wide parameters of what constitutes abuse of dignity to include arresting and detaining a person without good cause, hand cuffing, keeping prisoners in congested cells, physical and psychological torture (Korosso, 2003). This definition is of essence in the enforcement of the Bill of Rights in Tanzania particularly because this concept has not been defined in any statute.

However; the author owes discussion on the scope of the limitations of the Fundamental Human Rights and the benchmark for determining the limitations.

Some authors prefer a broader scope of Fundamental Human Rights. Among other things authors shed light on the prejudices of state leaders on the scope of the fundamental Human Rights and calls for the balance between the state security and Fundamental Human Rights. It also reveals the pitfalls of the enforcement of Fundamental Human Rights at global level. Thus the compliance to international legal instruments largely depends on good faith of an individual state (*pacta sunt servanda*). The predominance of claw back clauses in the Bill of Rights in most of African states is also discussed among other things (Mchome, Ed., 2002).

Also a highlight is made on the abuse of fundamental human rights in Zanzibar before and after the Zanzibar Revolution, 1964(Shivji, 2008). Among other things the author pinpoints on legal pitfalls such as lack of the independence of judiciary, absolutism of the state as well as the existence of various tyrannical laws in Zanzibar particularly after the Zanzibar Revolution (Shivji, 2008). There was no checks against the state powers in Zanzibar hence scores of killings and disappearances were witnessed (Shivji, 2008). The existing literature has not adequately covered the discussion on the role of the law in deterring abuse of fundamental rights especially by Police Force. Therefore in this study a thoroughly discussion was made on the role of law as a regulatory organ of the society and find out the existing pitfalls and pave a way forward in a noble role of curbing the abuse of Fundamental Human Rights by the Police Force in Tanzania.

### **1.7 Research Methodology and Design**

The research describes and evaluates the utility of the law in relation to the protection of the fundamental human rights. In essence it evaluates the efficacy of the law in curbing abuse of the fundamental human rights by the Police Force in particular. The research was designed in such a way to collect the important and realistic data within the

University time schedule and the demands of the topic. Among the key issues was fixing budget of the research, the determination of the sample size, sampling techniques, and fixing time for each aspect from data collection to the submission of the final report. Data collection, sorting out of data, analysis and presentation of data took three months while other three other months were spent for report writing, editing and reviewing the dissertation.

A limited area was covered to take pace with the resources available. Also research assistants were not deployed for financial reasons hence the research personally arranged for collection of data. The study involved both library and field study. In regards to secondary data various books, reports, journals and cases were reviewed. The field study employed the methods and techniques as discussed in this dissertation.

### **1.7.1 Data Collection Methods and Techniques**

The collection of data employed various techniques such as interview, questionnaires and Focus Group Discussion (FGD) depending on a number of considerations such as accessibility of a respondent, time and financial implication.

#### **1.7.1.1 Primary Dada**

Field data collection was conducted in the selected institutions and the private individuals employing interview, questionnaire and focus group discussion

##### **A: Interview**

This method was employed to various respondents. The method will be used to some key officers and servants of the CHRAGG. Equally it was used to explore information from the ordinary citizens and human right activists. The method enabled the researcher to learn more issues from the respondent especially by asking additional questions. This technique was employed to 30 respondents, 4 CHRAGG officers, 6 human rights activists and 20 ordinary citizens respectively from different areas and experiences.

Literary this ratio is based on the population size of each group, the basic consideration was the technical nature of the topic.

### **B: Questionnaire**

Information from respondents who cannot be easily made available for interview was extracted through questionnaires. It was also be used where additional statistics requires more time to be communicated to the researcher which would not be retrieved during interview. This method was employed to 60 respondents. The questionnaire was prepared according to the categories of respondents. The CHRAGG officers and human right activists were asked both general and technical questions where as the ordinary citizens were asked non technical questions. Although 60 questionnaires were distributed only 49 were returned (76.6%). The study focused on several issues pertaining policing in Tanzania.

### **C: Focus Group Discussion**

This method encompasses groups formed to discuss and share experience on some important issues. This method will be used to complement the interview. This method was employed especially where mass respondents are made available. In a Focus Group Discussion (FGD), a group of 10 people was formed. From this group discussion was conducted to extract some information which would effectively be obtained through this method.

#### **1.7.1.2 Secondary Data**

The researcher made use of the existing reports, books, journals and Newspapers including electronic sources.

### **A: Documentary Studies**

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 at Lugakingira House at Kijitonyama area 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 and University of Dar es Salaam library.

### **B: Electronic Sources of Data**

Electronic sources made a significant contribution in this study, various websites, electronic journals, books and reports were accessed.

#### **1.7.2 Sampling techniques and sampling procedure**

The selection of respondents was based on random sampling. The selection was drawn from relevant human rights agencies such as the Commission For Human Rights and Good Governance (CHRAGG), a constitutional institutional established in Tanzania to deal with human rights and good governance, Legal and Human Rights Center (LHRC), Women in Law and Development in Africa (WiLDAF) and Tanzania Women Lawyers Association (TAWLA) all being Non Governmental Organisations (NGOs) based in Dar es Salaam that offer legal aid and advocacy in Tanzania. Also respondents were selected from among the individual citizens in various areas in Dar es Salaam.

#### **1.7.3 Sample Size**

In this study purposive random technique was employed in order to obtain proper representation and maintain accuracy of data. A total sample of 100 people was interacted through various methods but generally the study required mostly respondents from people from among the people with knowledge in law and human rights due to its technical orientation. Ten questionnaires were distributed to each of the three Non Governmental Organizations and CHRAGG.

#### **1.7.4 Data Processing and Analysis**

After data collection the researcher spend several days scrutinizing and sorting out the data ascertaining which data are relevant to the objectives of the study. The study involved both quantities and qualitative analysis in order to depict the effectiveness of the law in preventing abuse of fundamental human rights by the Police Force in Tanzania. The statistical analysis was carried out electronically. But since the study did not involve complex statistics simply excel and Microsoft word programs were used.

#### **1.7.5 Area of Study**

The research will cover a limited coverage due to various factors. Among these factors is the limited time available to accomplish this study. Also a wider area has more financial implications to the researcher. Therefore the study was confined in Dar es Salaam region. Even within Dar es Salaam this study covered tree suburbs in each of the three Districts. It covered Changanyikeni street, Ubungo Msewe in Kinondoni, Alimaua Street in Sinza area as well as Mindu street in Upanga , Buguruni Malapa and Njia ya Ngo'ombe-Mbagala.

#### **1.8 Scope and Limitations of the Study**

This dissertation aimed at exploring the role of law as a social regulatory organ of the society. The study is limited to the role of law in regulating violation of fundamental rights, a case study of the Police Force in Tanzania. The study may did not cover other regulatory means such as ethics or morality and administrative aspect. Also the study excluded other forms of violation such as mob violence which are equally rampant in Tanzania. Likewise the study was limited to few areas in Dar es Salaam city. The main challenge in this research was denial of access to the Tanzania Police Force. The Tanzania Police Force withheld permission hence the researcher failed to collect data from its sources without giving any reason. Failure to access the information from the TPF sources may have affected the study in one way or another.

## **1.9 Conclusion**

This chapter has covered the historical background to the problem, statement of the problem, research methodology, and objectives of the study, justification of the study, research questions and area of study among other things. The existing literature and secondary data revealed serious abuse of the fundamental human rights in Tanzania. It is very unfortunate that some of the abuses which were done by the Police Force are prohibited by the statute yet Police Force often violates the Bill of Rights without facing any legal consequences except in very rare cases. The existing literature does not exhaustively discuss this topic. Almost there is no coverage on police force standards, most of the authors have covered human rights in generally without zeroing on the TPF.

## **CHAPTER TWO**

### **CONCEPTUAL FRAMEWORK**

#### **2.0 Introduction**

This chapter digests the basic concepts. Literary conceptual framework entails a set of assumptions, values, and definitions.<sup>47</sup> In relation to this topic conceptual framework expounds concepts, opinions, theories, principles and experiences relating to the role of the law in curbing abuse of fundamental human rights the focus being the Police Force. It gives the meaning and connection among the key concepts namely law, fundamental human rights and the Police Force. There is an obvious nexus among these concepts, while law is an independent variable, the fundamental human rights and police actions or inactions are dependant variables. Police actions or inactions and the protection of fundamental human rights in general depend much on the law.

#### **2.1 Meaning of Law**

Law is among the paradox of legal science which may be defined differently in different context. Of importance the evolution of law has a long history. Law is a regulatory organ of the society albeit it is not the only regulatory framework. Other values that regulate the society include morals, religion and ethics but these values are not of interest in this dissertation. At the beginning of legal order in the Greek states, kings decided causes by divine inspirations since at the initial stage of the development of legal order the law was in a divine domain.<sup>48</sup> Also law and morals were still largely undifferentiated. Literary, law is a framework of principles that spells out what can be done and what cannot be done in a society<sup>49</sup>. It subjects every person and institutions to given acceptable standards.

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<sup>47</sup> <http://www.lazogroup.ca/msproject>, Last accessed on 15<sup>th</sup> February 2013

<sup>48</sup> Pound, R (2006); *An Introduction to the Philosophy of Law*, 4<sup>th</sup> edn, New Delhi, Yale University Press p.4

<sup>49</sup> Verma, S. K. (1998); *An Introduction to Public International Law*, New Delhi, Printice Hall of India Private Limited, p.1

Law entails either legal order or the whole body of legal precepts obtained in a politically organized society or the instrument of social control.<sup>50</sup> It defines the scope of the fundamental rights and provides for the enforcement mechanism as well as the remedies for the abuse of the human rights. It ties up the state authorities within the proportional and legitimate legal bounds. That means the state authorities have to confine their powers within the dictates of the law. In the positivist view law is a body of commands of sovereign authority in a politically organized society as to how men should conduct themselves.

In general law entails a body of agreement of men in a politically organized society as to their relations with each other. It also refers to as a philosophically discovered system of principles which express the nature of things to which man's conducts ought to abide by.<sup>51</sup> In the views of Professor Fuller law should contain inner morality and have proper procedures. Thomas Aquinas attempted to define law as a rational order for common good enacted by legitimate power.<sup>52</sup> In the view of Thomas Aquinas life in society lies in correct order and that law unites the people together only when it reflects true reason.<sup>53</sup>

## **2.2 Fundamental Human Rights**

Human rights refer to moral claims by individuals which may or may not have been recognized by a particular legal system which introduce certain minimum standards of treatment to which people are entitled<sup>54</sup>. These are rights inherent to all human beings, irrespective of nationality, place of residence, sex, ethnic origin, colour, religion, language, political orientation or any other status. These standards are protected in the framework of policy, law and administration. They denote a diverse group of

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<sup>50</sup> Chakravant, K. P (1985); *Jurisprudence and Legal Theory*, , Calcutta, Eastern Law House, p.137

<sup>51</sup> Pound, R (2006); *An Introduction to the Philosophy of Law*, *ibid*, p. 26

<sup>52</sup> Francesch, L.G & Ritho, M. A. (2005); *Legal Ethics and Jurisprudence in National Building*, Law Africa Publishing Ltd, Nairobi, pp. 30 &31

<sup>53</sup> Francesch, L.G & Ritho, M. A. (2005); *ibid*, p. 30

<sup>54</sup> Douzinas, C(2007); *Human Rights and Empire: the Political Philosophy of Cosmopolitanism*, New York, Rutledge-Cavendish, p.9

constitutional, legal, judicial, academic, popular texts, practices and commentaries using human rights as their organizing principle<sup>55</sup>. In the case of **Reverend Christopher Mtikila v Attorney General**<sup>56</sup>, Justice Barnabas Samatta as he then was defined the fundamental rights as follows:-

*Fundamental rights are those rights that are not gifts from the state but they inhere in a person by virtue of birth and they are prior to the state and law, the enactment of those rights in the Constitution is mere evidence of their recognition and the intention that they should be enforced in a court of law, and an intention that those rights should not be arbitrary restricted by the state.*

Human rights entail an individual's entitlements which can be realized by the right-holder through the respective action of one or many duty-bearers who must act or refrain from acting certain ways specified in the right. Thus it is legally enforceable against the duty-bearer<sup>57</sup> who does not perform obligations incumbent in him or her. Therefore on this point of view the law must impose a legally enforceable duty on the law enforcement machineries to obey the basic human rights if it is to be meaningful. Human right may also refer to the statement of aspiration against the *locus quo*, and a call for political or legal reforms.<sup>58</sup> It ought to be above politics, a neutral, rational, natural discourse and practice. Thus it is a weapon for resisting the abuse of powers in a body *politica*. To bring this point home Douzinas states that<sup>59</sup>:

*"...invention of natural law and natural rights was the rebellion of philosophers and poets against the dead weight of customs and irrational imposition of authority"*

### **2.3 Police Force**

Etymologically the term Police can be traced from several languages. From the Late Latin *politia* means government or administration and from Greek *politeia* or *politēs*

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<sup>55</sup> Douzinas, C(2007); *Human Rights and Empire: ibid*, pp.8, 9

<sup>56</sup> Misc. Civil Cause No. 10 Of 2005(Unreported)

<sup>57</sup> Douzinas, C(2007); *Human Rights and Empire, ibid*, p.9

<sup>58</sup> Douzinas, C(2007); *Human Rights and Empire, ibid*, p.10

<sup>59</sup> Douzinas, C(2007); *Human Rights and Empire, ibid*, p.12

meaning citizen or *polis* meaning city.<sup>60</sup> It entails the internal organization or regulation of a political unit through exercise of governmental powers especially with respect to general comfort, health, morals, safety, or prosperity.<sup>61</sup> It is the governmental department charged with the regulation and control of the affairs of a community, now chiefly the department established to maintain order, enforce the law, and prevent and detect crime. It is a body of persons making up such a department trained in methods of law enforcement and crime prevention and detection and authorized to maintain the peace, safety, and order of the community.<sup>62</sup> Body of agents organized to maintain civil order and public safety, enforce the law, and investigate crime.<sup>63</sup>

Police in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others.<sup>64</sup> Primarily the Police Force is responsible to keep law and order in the state. Police are members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.<sup>65</sup> Globally, the role and functioning of Police Force has been evolving over time from a mere coercive apparatus to human right stake holder. The Police Force has an incumbent obligation to protect the fundamental human rights and being a citizen-in-uniform is accountable to the law.

The Tanzania Police Force (TPF) is responsible for preventive justice that encompasses the preservation of peace, maintenance of law and order, prevention, detection of

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<sup>60</sup> [http:// www.merriam-webster.com/dictionary/police](http://www.merriam-webster.com/dictionary/police) ; last accessed on line, 12<sup>th</sup>/ 06/2013

<sup>61</sup> [http:// www.merriam-webster.com/dictionary/police](http://www.merriam-webster.com/dictionary/police) ; last accessed on line, 12<sup>th</sup>/ 06/2013

<sup>62</sup> Police in Wikipedia; last accessed on 12<sup>th</sup>/06/ 2013

<sup>63</sup> [http:// www.merriam-webster.com/dictionary/police](http://www.merriam-webster.com/dictionary/police) ; last accessed on line, 12<sup>th</sup>/ 06/2013

<sup>64</sup> <http://thelawdictionary.org/police/> last accessed, 12<sup>th</sup>/ 06/2013

<sup>65</sup> <http://www.magnacartaplus.org>; last accessed 11<sup>th</sup> /08/ 2012

crimes, apprehension and guarding of offenders.<sup>66</sup> In general evolution of the Police Force depends among other things on the political superstructure. In a tyrannical political system the police force is an instrument for suppressing any dissenting views.

#### **2.4 The Intercourse between Law Enforcement and the Fundamental Human Rights**

The legal control of the coercive powers is a fabric of the rule of law and the fundamental rights. In discharging the duties, the TPF has to abide to the national and international laws as well as the policing ideals which limit the scope of its powers. The Constitution of the United Republic of Tanzania, 1977 *inter alia* provides for the protection of human dignity.<sup>67</sup> It also prohibits torture and inhumane treatments<sup>68</sup>.

It is in the interest of this study to find out whether the law plays an effective regulatory role. In order to achieve that end the law should *inter alia* provide sufficiently for protection of fundamental rights and clearly define the powers of each organ of the state in such a way to avoid transgression of the fundamental rights. It is also important for the law to provide adequate procedures for dealing with the abuse of powers.

Law enforcement is a key area in the protection of the fundamental human rights. It is a cornerstone of human rights protection. The law keeps the Law Enforcement machineries within the ideal legal bounds. In other words it hedges the fundamental human rights from being transgressed. The scope of law varies from one jurisdiction to another. In England and Wales the concept of law extends to activities of the parliament, courts, judges, solicitors, barristers and policemen as well as case law and statutes which govern these activities<sup>69</sup>, similarly, Marcus Cicero defines law to include statute, resolutions of senate, and edicts of the magistrates and authority of those

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<sup>66</sup> Police and Auxiliary Service Act, 1939; Cap. 322 R.E 2002, S.5

<sup>67</sup> Article 12(2)

<sup>68</sup> Article 13(6)(e)

<sup>69</sup> Adams, J. N & Brownsword, R (2006); *Understanding Law*, 4t Edn, London, Sweet & Maxwell, p.1

learned in law, administrative edicts and juristic reasoning among others.<sup>70</sup> But this understanding of law is not free from debate because activities of these institutions may not necessary constitute law properly so called. The activities of these bodies are subject to the law and that if these activities are treated as law *per se*, rule of law and human rights may be at jeopardy. It may open a room for arbitrary decisions or actions. This is dangerous because activities of state organs often diverge from the dictates of law.

Law is litmus testing the legality of actions and decisions including those of the Law Enforcement Machineries. The law sets the ideal standards binding the society. It also defines the scope of the power vested in the state apparatus as opposed to mere whims of the state officials. In the absence of rational order; the very fundamentals of humanity may be emasculated. Once laws are not adhered to, the fundamental human rights become empty shells because the very law may form the foundation for tyrannical system. Law confers powers on the officials and declares the rights that people have and it is necessary for security of persons, protection of property and social welfare generally.<sup>71</sup> Likewise law helps to create conditions in which desirable social development can take place.<sup>72</sup>

The regulatory effect of the law is dated back to the state of nature; the time when the society was governed by the law of nature. The law of nature restrained men from invading others' rights although there was no central machinery to execute the law. The law of nature put into everyman's hands the rights to punish the transgressors of the law to such a degree as may hinder its violation.<sup>73</sup> After the formation of body politic such powers vested it the state. The state has monopoly over the coercive powers; therefore it

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<sup>70</sup> Pound, R (2006); *An Introduction to the Philosophy of Law*, 4<sup>th</sup> edn, New Delh, Yale University Press, p. 7

<sup>71</sup> Gallegan, D. J. (2007); *Law in Modern Society* , Oxford ,Oxford University Press, p.207

<sup>72</sup> Sawyer, G.F.A. (Ed.), (1967); *East Africa Law and Social Change*, Nairobi, East Africa Publishing House, p. 8

<sup>73</sup> Gough, W. (1946); *The Second Treatise of Government: An Essay Concerning the True Original Extent and End of Civil Government and a Letter Concerning Toleration* By John Locke, Oxford , Basil Blackwell, pp. 5 & 6

maintains coercive apparatus having power to enforce the law. These powers have to be kept within the legal bounds to avoid tyranny. John Locke had a view that the king degenerates into tyranny once derogates to rule according to laws.<sup>74</sup> Among other things John Locke observed that<sup>75</sup>:

*“Whenever law ends tyranny begins, if the law be transgressed to another harm...whosoever in authority exceeds the power given him by the law and makes use of the force he has under his command to compass that upon the subject which the law allows not ceases in that to be a magistrate; and acting without authority may be opposed as any other man who by force invades the right of another”*

Constructively this observation entails the right to say no to tyrannical rule. This is a reminder that the exercise of powers should be limited to avoid abuse of the fundamental human rights among other things. In essence law is meant to maintain social order. It demarcated the rights of one person against other persons in their social intercourse. Among the Greek people law was regarded as a device to keep each man in his appointed groove in the society and thus prevents friction with his fellows<sup>76</sup>. Thus law keeps each person within the defined legal bounds.

It is worth mentioning that predominance of law is a basic pillar of the rule of law. Therefore law plays an important role the promotion of rule of law and fundamental human rights. It is not enough to have laws but the laws should be adhered to. The true legal spirit requires *inter alia* that all the people including the state organs to abide by the law. It is in the interest of this research to study not only the effectiveness of the laws but also compliance to the law. Thus law at rest and law in motion make the true legal spirit. It is the interplay between these two aspects that make the law meaningful.. It is not enough to have law; the contents of the law are of essence in order to protect human rights. The key issue in this study is not only the existence of the law but also its

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<sup>74</sup> Gough, W. (1946); *The Second Treatise of Government, ibid*, p.100

<sup>75</sup> Gough, W. (1946); *The Second Treatise of Government, ibid*, p.101

<sup>76</sup> Pound, R (2006); *An Introduction to the Philosophy of Law*, 4<sup>th</sup> edn, New Delhip, Yale University Press, 34

conformity to the basic international norms and the predominance of the legal spirit in the execution of duties. In the apartheid regime of South Africa and Nazi regime of Germany the same law was employed to justify untold violation of the basic human rights.

## **2.5 Conclusion**

This study aimed at giving an overt picture on the significance of law in the protection of the fundamental human rights. This chapter sheds light on the role played by the law in governing the social intercourse in the state albeit in a nutshell. Law is broadly interpreted extending not only to the codes but also to legal spirit that is manifested in the practices of state machineries. It is not focused on the abstract concept of the law but in the realistic sense. Thus law entails the true legal spirit that is manifested in the state. It leaves a lot to be desired whether law plays such role in Tanzania. Most being of colonial and monoparty spirited the laws of Tanzania do not sufficiently curb abuse of the fundamental human rights by the state apparatus especially the TPF. The law does not beam balance between individual liberties and the powers of the TPF. This study explored the forces beneath unpleasing state of human rights. In the last chapter recommendation are made on measures be undertaken to realize the potential of law in the realization of the fundamental human rights.

## **CHAPTER THREE**

### **PRESENTATION OF FINDINGS**

#### **3.0 Introduction**

The purpose of this chapter is to present the results from interviews, questionnaire and secondary data in a narrative form. The chapter consists of subsections each giving a highlight on important issues. This chapter presents statistics on the state of human rights in Tanzania from 2000 onwards. Data collection covered 100 respondents selected randomly from the aforementioned areas in Dar es Salaam using different research tools or methods.

#### **3.1 General Overview**

State of human rights in Tanzania is very alarming; there are several instances of Police Force brutality. In each year a significant number of people were reported being killed by the police officers. Although in each year the violations of fundamental human rights were reported the situation was more serious in the years of National General Elections. Where as 36 people were killed in 2005 only 7 people were reported in 2004. Also in 2010 the number shot up to 52 as compared to 10 people in 2009 (LHRC, 2012). It is also important to note that most of the abuses are attributable to the state apparatus including the Police Force. It was also revealed that most of the perpetrators were not prosecuted.

#### **3.2 Main Findings**

This study revealed several incidences of derogating from the law and violation of the basic human rights; thus often the Police Officers act contrary to the dictates of the law or ideal standards. It revealed several forms of abuses by the Police Force and other law enforcement officials. Torture, concocted cases, unlawful arresting and detention are just few examples of the abuses committed by the TPF. Often the Police exercised their powers arbitrary and contrary to the law.

This study focused on several issues as indicated in the questionnaire as well as issues which were raised in FGD and interview. Some of the key areas in the study were the proportionality of police powers, observance of legal procedures, legal actions for abuse of the basic rights, inquiry of human rights abuses and others as noted in this study.

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 (77%), unlawful arrest and detention (80%), torture and other degrading punishment were employed to procure confession among others (71%) and deliberate denial of bail to the detainees is another critical issue in Tanzania of to date (65.4%). About the prosecution of the Police officers who violated the basic human rights, 56% of respondents were not satisfied while only 23% were satisfied.

The study on the Brutality of the law enforcement apparatus conducted in March 2010 revealed among other things that 53% of the abuses were not prosecuted (CHRAGG: 2009/2010). The violation of the fundamental human rights by the law enforcement officials in Tanzania was also featured in the international reports (Amnesty International, 2010) albeit in a nutshell. The report revealed the ill treatment of detainees under the police custody among others. Torture of detainees was spotted as one of the critical issues.

Also the respondents showed their dissatisfaction with the current system of conducting inquiry over the abuse of the fundamental right (55%). The findings match with the report on brutality by the law enforcement officials that were obtained in three regions namely Dar es Salaam, Mbeya and Mwanza (CHRAGG, 2010). The study further revealed the deteriorated relationship between the Police Force and the community due to violation of the fundamental human rights and liberties (46.4%). It also revealed that

the police force was leading in torture of suspects (53.5%) followed by the Peoples Militia (6.9%). Also in the aspect of concocted cases the police is leading (17.8%) and followed by Peoples Militia (0.9%) (CHRAGG: 2010). It is worth mentioning that among the reasons for the torture were unlawful orders from the superiors (1.1%), constitutional loopholes (0.3%), ignorance of their legal limits(0.9%) and arrogance of thinking the police force is above the law(3.4%) (CHRAGG, 2010)

Also the respondents accused the Police Force for not being politically independent (67%). Unlawful arrest and detention of 6Chama Cha Demokrasia na Maendeleo ( CHADEMA) leaders at Kaangrian village in Tarime on the conspiracy of Chama cha Mapinduzi (CCM) local leaders was good evidence. In that case the Police having received an order from the then District Commissioner declined to take any legal action against the conspirators (LHRC, 2003).

It was further revealed that most of incidences of violation of fundamental human rights in Tanzania by the police force occur in the political rallies of opposition parties than the ruling party. For instance in 2003 the Police Force barred Civic United Front (CUF) in Zanzibar to conduct rallies and assemblies in Donge Constituency in the Northern Unguja Region without good cause (LHRC, 2004). Also in July 2004 the Police Force ignored the complaint lodged by CUF against the people who destroyed its flag at Matarubuta area in Urban District of Zanzibar (LHRC, 2004).

Also the Non Governmental Organizations (NGOs) have been facing interference in exercising their rights. In 2010 alone two meetings organized by civil society organization aiming to impart civic education to the public were banned by the police Force on the pretext of security (LHRC, 2010). Thus the right is literary dependant on the discretion of the police Force. Also three incidences of harassing journalists by the police officers on order from the District Commissioners were reported (MCT, 2010).

Although Tanzania is a party to Convention on the Right of the Child (CRC), 1989<sup>77</sup> the study revealed serious abuse of the child rights. A child is entitled for right of protection against torture and other inhuman and degrading punishment under the international law<sup>78</sup>. In Tanzania, a children under the age of ten years is completely not criminally responsible (*doli in capax* ).<sup>79</sup> The United Republic of Tanzania periodic report of 1998- 2003 indicated a declining trend of Police brutality to children albeit no statistics were indicated<sup>80</sup>, it is surprising that the recent findings reveal significant abuse of the child rights.

Serious abuses of child rights were spotted in this study where children under police custody were denies various basic rights including torture of the children, detention of children below the age of criminal responsibility, interrogation in absence of parent or guardian and denying access to relatives among others. The study reveals that over 70 % of 197 children under custody were detained over 24 hours without being taken before the court. Also 15.08% of detained children were below the age of 10 years and 31% of the children were tortured while in custody for the purpose of extracting confession. It revealed further that 42% of the children were denied communication to relatives (CHRAGG, 2010).

The report on the state of media in Tanzania is evidence on violation of the basic human rights. According to the Media Council of Tanzania (MCT) in 2011 alone several incidences were witnessed. For instance in three incidences the Police officers harassed journalists following an order from the District Commissioners requiring the police officers to restrict the journalists from accessing some information (MCT, 2011).

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<sup>77</sup> 10<sup>th</sup> June 1991

<sup>78</sup> CRC, 1989 Article 16

<sup>79</sup> Penal Code, 1945 Cap.16 R.E 2002, S.15(1)

<sup>80</sup> United Republic of Tanzania (2004); The Country Second Periodic Report on the Implementation the Convention on the Right of the Child, p.42

The rate of extrajudicial killings varied with years while in 2003 at least 22 persons were killed. In 2005 and 2010 at least 36 and 52 people respectively were killed (LHRC, 2012). In 2012 at least 26 were killed by law enforcement agencies in which the TPF took a lead. The TPF killed at least 11 persons in several incidences followed by Mining Security Guards, Tanzania Peoples' Defence Force (TPDF) and Sungu sungu that killed 8, 6 and 1 persons respectively (LHRC, 2012).

### **3.3 Conclusion**

This chapter presents the data on the state of human rights in Tanzania. This study also shed light on the underlying forces behind the prevailing state. The chapter reveals significant abuse of the fundamental human rights by the TPF. The key issues included concocted cases, unlawful arresting and detention, torture, abuse of political rights and interference with freedom of expression. It further revealed that the perpetrators of the abuse are rarely taken to the court. Lack of political will to implement the recommendations of CHRAGG and shadow reports especially where the state machineries are involved in abuse. This may be one of the core underlying factors for the violation of the fundamental human rights. With this trend of abuse of the fundamental human rights, rule of law and good governance are reduced into a misnomer.

## CHAPTER FOUR

### POLICE FORCE AND HUMAN RIGHTS IN TANZANIA

#### 4.0 Introduction

This chapter and chapter five discuss the research findings on fundamental human rights and Police Force. The main focus of the discussion is the safeguards against abuse of the fundamental human rights because law enforcement and the fundamental human rights have a significant nexus. Protection of human rights depends on the legal safeguards available against the police system. The Police Force is among the armed forces established under the Constitution of the United Republic of Tanzania, 1977.<sup>81</sup> It is among the core law enforcement institutions. Its duties and powers are stipulated under the Police Force and Auxiliary Services, 1939<sup>82</sup>, Penal Code<sup>83</sup>, Criminal Procedure Act (CPA), 1985<sup>84</sup>, National Security Act.<sup>85</sup> Also the Prevention of Corruption Act, 2007<sup>86</sup>, the National Prosecutions Services Act, 2008<sup>87</sup>, the National Security Council Act, 2010<sup>88</sup>, the Political parties Act, 1992 and other laws govern Police Force.

The Minister for Home Affairs has political powers over police activities. The minister issues directives to the Police Force. In 2010 the Ministry issued a Handbook for Police Force which provides *inter alia* that<sup>89</sup>:

*“Torture and any inhuman or degrading treatment to any person by any member of the Force under any circumstances is totally intolerable. In any dealings with the Public every member of the Force should accord the deserving respect and dignity as required by the circumstances. The use of force by any member of the Force should not be acceptable”.*

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<sup>81</sup> Article 147(2)

<sup>82</sup> Cap 322 R.E 2002

<sup>83</sup> Cap.16 R.E 2002

<sup>84</sup> Cap 20 R.E. 2002

<sup>85</sup> Act No. 3 of 1970; Cap 47 R.E 2002

<sup>86</sup> Cap 400

<sup>87</sup> Act No 27 of 2008

<sup>88</sup> Act No 8 of 2010

<sup>89</sup> The United Republic of Tanzania: Ministry for Home Affairs ( 2010) :Handbook for the Police, p.3

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.<sup>90</sup>

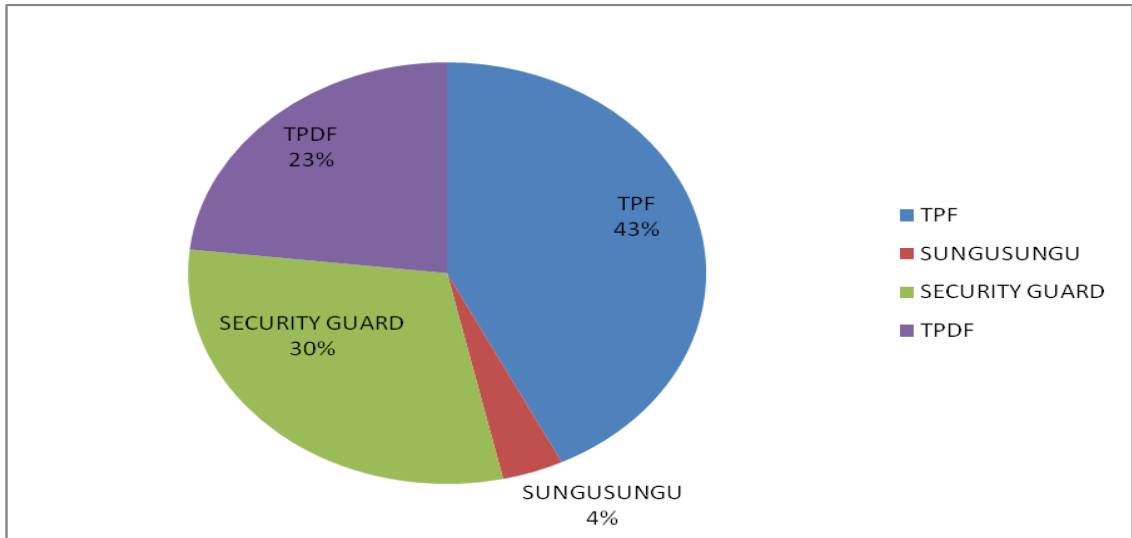
Both primary and secondary data reveal a critical state of abuse of the fundamental human rights in Tanzania. The law enforcement officials are leading in these abuses. Figure: 1: shows the state of extrajudicial killings by law enforcement officials. The Police Force often interferes with the freedom of assembly, brutality, arbitrary arrest and homicide among others.

This study revealed a significant rate of politically motivated abuses of the fundamental human rights (Figure: 2).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 TPF demonstrates an overt discrimination among the diverse groups in the country.

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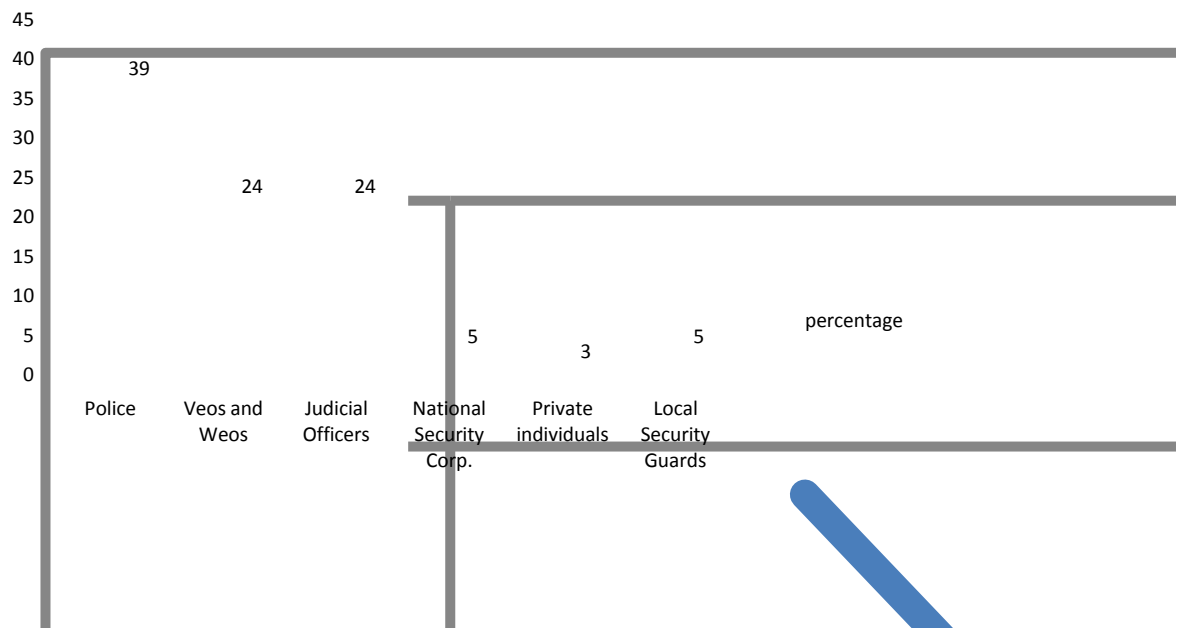
<sup>90</sup> Law Reforms Commission of Tanzania(2009); Law Reformer Journal, Vol. 2 No.1, P.84

**Figure: 1: Extrajudicial Killings**



SOURCE: LHRC, Tanzania Human Rights Report, 2012

**Figure: 2: Politically Motivated Incidences of Abuse**



SOURCE: LHRC, Tanzania Human Rights Annual Report, 2004

Up to date the law vests excessive powers on the Tanzania Police Force (TPF) in such a way prompting abuse of the basic human rights. Enormous powers put fundamental rights at stake. For instance under the News Papers Act, 1976 Police Officers are empowered to seize any newspaper without a search warrant<sup>91</sup> on suspicion for breach of law. It is very unfortunate that the law does not specify what constitutes contravention of the law. The very law does not provide for checks against these powers<sup>92</sup>. This remains a pure matter of discretion. In this case the basic rights are at the pleasure of the government of the day. This *lacuna* has been a room for violating freedom of press and other rights incidental to.

#### **4.1 Mechanisms for Checking Abuse of Human Rights**

The Police Force is an important institution for protection of the fundamental human rights. It carries out a very crucial responsibility to the society which extends to personal and property protection. The Police Force responsible for the execution of the law and maintenance social order. But this can be realized through a good legal system, thus a system that embraces the fundamental human rights. The legal system has to deter abuse of the fundamental rights. Statutory or institutional approach plays a significant role in checking abuse of the fundamental rights. In this chapter various institutions responsible with human rights and other legal percepts are covered.

##### **4.1.1 Institutional Framework**

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 (CHRAGG) and Civil Society Organisations (CSOs.)

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<sup>91</sup> Cap 229 R.E, S.22(3)

<sup>92</sup> LHRC (2006); The Legal and Policy Status of Access to Information in Tanzania: A Research Report, Dar es Salaam, p.3

#### 4.1.1.1 The Judiciary

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. The history of Tanzania witnessed substantial transgression against the fundamental human rights. In the **Application by Paul Massawe**<sup>93</sup>, the Regional Commissioner-cum-Regional Party Secretary ordered the Regional Police Commander to retain the goods of the applicant contrary to the given court order. However, the court jealously defended its autonomy. His Lordship Mnzavas, J, in this case observed *inter alia* that:

*“The freedom of a just man is worth little if court orders can be so arrogantly flouted. The Regional Commissioner’s act of ordering the Regional Police Commander ...to interfere with lawful court order was clearly ultra vires, illegal and totally unconstitutional...”*

In **Happy George Washington Maeda v. Regional Prison Officer Arusha**<sup>94</sup>, a wife made an application for *habeas corpus* seeking release of her husband who was detained in Arusha remand prison for some days without being told the cause or being charged before the court. The court was satisfied and therefore granted the prerogative remedy of *habeas corpus* on account that the detention was unlawful.

Also in **Dishona Susa Yamo and John Yamo v. Republic**<sup>95</sup> the applicants were unlawfully detained in 1985 after prior release in 1984 when the detention order of 1983 had expired. It is very unfortunate that no charge was preferred against the detainees

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<sup>93</sup> [ 1979] LRT n.18

<sup>94</sup> High Court of Tanzania, Arusha, Miscellaneous Criminal cause No.36 of 1979 (Unreported)

<sup>95</sup> (1985) TLR 119

throughout the detention period hence the court found the detention illegal and granted the order of *habeas corpus*.

In **Chumchua s/o Marwa v. Officer In charge of Musoma Prison and Attorney General**<sup>96</sup> prior the effective date of the Bill of Rights the court played a very constructive role to safeguard the basic rights. The court declared unconstitutional the provisions of the Deportation Ordinance, 1921<sup>97</sup> which were not in tune with the Bill of Rights. The important thing in this case is that the court is not a mere slot machine; it has a noble duty to jealously aid the citizens when oppressed even by statute. Literary the court supplies the inadequacies of the law. His Lordship Mwalusanya, J among other things in this case made the following observation:

*“The Bill of Rights became operative on 16/3/1985 vide Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984 and since then any organ of the government was enjoined to act in accordance with those basic human rights. It is not true that the observance of the Bill of Rights was also kept in abeyance for a three year period, what I know is that it is only the power of the court that was suspended for a three year period (justiciability). So the High Court in this case has power to consider the constitutionality of legislation<sup>98</sup>”*

It was further observed that:

*“... So our High Court should not feel shy to enforce the fundamental rights notwithstanding the fact that the government has yet to enact rules of procedure for the enforcement of the same<sup>99</sup>”*

In 1994, the Government Proceedings Act, 1967 was amended to guarantee access to justice by removing the requirement for *ministerial fiat* w<sup>100</sup>. After the amendments the proceedings against government required only ninety (90) days notice<sup>101</sup>. But the amendments were prompted by judicial decisions particularly the case of **Peter**

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<sup>96</sup> Miscellaneous Criminal Case No.2 of 1988, High Court of Tanzania at Mwanza( Unreported)

<sup>97</sup> Cap 38 R.E.2002

<sup>98</sup> <http://tujienzi.blogspot>, last accessed on 11<sup>th</sup> January, 2013

<sup>99</sup> <http://tujienzi.blogspot>, last accessed on 11<sup>th</sup> January, 2013

<sup>100</sup> Act No. 30 of 1994, S.2

<sup>101</sup> S.6

**Ngomango v. Gerson Mwangwa and Attorney General.**<sup>102</sup> In this case Mwalusanya, J made a very firm observation. The Honorable Judge held inter alia that;

*“ The requirement of ministerial fiat before one could sue the government in s.6 of the Government Proceedings Act[1967] was unconstitutional and void as it deprived an individual the right to free access to the courts <sup>103</sup>”.*

The Judge observed further that;

*“The requirement of ministerial fiat militated against the principle of accountability, openness and transparency in a multiparty democracy”.* Literary this was an important step towards accountability of the state officials generally and the Police Force in particular.

The Police Force has been enjoying absolute powers. Commencing from the colonial period to 1962 the powers to issue permit for public meetings and rallies were vested on the Police Officer i/c of an Area.<sup>104</sup> In 1962 the Police Force Ordinance was amended vesting the said powers in the District Commissioners. After multipartism the powers of the District commissioners were highly contested.

In **Mabere Nyaicho Marando and Another v. The Attorney General**<sup>105</sup>, another mile stone was laid down. The Plaintiffs, leaders of political parties, jointly challenged sect. 11 (1) (a) of the Political Parties Act 1992, for having offended the Constitution. It was argued that the sub-section had granted to District Commissioners who were members and officers of the ruling party CCM, power to grant permits for political rallies, which had often been deliberately used to the disadvantage of opposition parties. It was in effect established in evidence that while the said government officials continued to hold their position on the basis of being steadfast members. By the

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<sup>102</sup> (1993) TLR 77

<sup>103</sup> (1993) TLR 77

<sup>104</sup> Act No.35 Of 1962

<sup>105</sup> High Court of Tanzania, Case No.168 of 1993, at Dar es Salaam (Unreported), at p.19

enactment in the same package, of the Area Commissioners Act 1962<sup>106</sup>, and the Regions and Regional Commissioners Act 1962<sup>107</sup>, they invariably gave preferential treatment to CCM and exercised their discretion to the disadvantage of the rest of the parties.

The Presiding Judge Hon. Mr. Justice J. Mackanja emphasized *inter alia* that:

*“...all get the same and equal treatment.... if other parties are discriminated it necessarily results in the infringement of the right of assembly of those who will be discriminated.”*

It is surprising that the court did not see anything wrong in the requirement for permits as such except that the 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’s** 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.

In **Rev. Christopher Mtikila v. Attorney General**<sup>108</sup>, the court declared the provisions of the Police Ordinance, 1954<sup>109</sup> and the Political Parties Act, 1992<sup>110</sup> respectively *null* and *void*. The provisions were not in tune with the Constitution of the United Republic of Tanzania, 1977 and the democratic standards. The law granted discretion to the Police Force to issue permission for both political and nonpolitical meetings, rallies and assemblies. This condition was seen contrary to the spirit of freedom of assembly as guaranteed under the constitution.<sup>111</sup> Among other things Lordship Lugakingira, J in striking down these provisions held that:

*“A law that seeks to make the exercise of those rights subject to the permission of another person cannot be consistent with the express provisions of the Constitution for it makes the exercise illusory. In this case*

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<sup>106</sup> Cap 466

<sup>107</sup> Cap 461

<sup>108</sup> ( 1995) TLR 31

<sup>109</sup> Cap 337 R.E 2002, S.40

<sup>110</sup> Cap 258 R.E. 2002, S.11(1)(a)

<sup>111</sup> Constitution of the United Republic of Tanzania, 1977; Cap.2 R.E. 2002, Article 20

*section 40 of the Police Ordinance and section 11(1) of the Political Parties Act are unconstitutional”.*

The requirement for permit was statutory abolished in this case. The law as it stands now one has to simply notify the Police Force on the intended assembly although the Police Force in practice abuses the very express provision of the law.

#### **4.1.1.2 Commission for Human Rights and Good Governance (CHRAGG)**

CHRAGG is the principal organ established to oversee human rights compliance in Tanzania. It is empowered to investigate on the abuse of the basic human rights, institute proceeding, and prepare reports on the state of human rights among others<sup>112</sup>. This institution is established by the Constitution of Tanzania, 1977<sup>113</sup>. International standards among other things require independent national human rights institutions<sup>114</sup>. Appointment of the commissioners should go through an open procedure involving a pluralistic representation of civil society organisations (CSOs) and parliamentary approval.<sup>115</sup> The role of the executive should be limited endorsement of the proposed persons. Also National Human Rights Institutions should have judicial powers even to the extent of invalidating the validity of any statutory provisions offending the basic human rights, make binding orders for release of unlawfully detained persons, payment of compensation<sup>116</sup>. The study revealed that CHRAGG is lacking the key prerequisites of National Human Rights Institutions among other things being accountable to the president.<sup>117</sup> Under the current setup the CHRAGG is a dead icon, it can only realize its potential after substantial reforms.

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<sup>112</sup> Commission For Human Rights and Good Governance Act, 2001, S.6

<sup>113</sup> Article 129(1)

<sup>114</sup> Hatchard, J, Ndulo, M. and Slinn, P. (2004); *Comparative Constitutionalism and Good governance in the Common Wealth: An Eastern and Southern African perspective*, Cambridge, Cambridge University Press, p. 211

<sup>115</sup> Hatchard, J, Ndulo, M. and Slinn, P(2004); *Comparative Constitutionalism and Good governance in the Common Wealth: An Eastern and Southern African perspective*, Cambridge, Cambridge University Press, pp.212, 213

<sup>116</sup> Hatchard, J, Ndulo, M. and Slinn, P(2004); *Comparative Constitutionalism and Good governance in the Common Wealth: *ibid**, pp.225, 227

<sup>117</sup> S.16

#### 4.1.1.3 Civil Society Organisations

Richard Holloway *inter alia* defines a civil society as a citizen, association of citizen, associating neither for power nor for profit, a third sector of society, complementing government and business<sup>118</sup> . CSOs are significant watchdogs against violation of fundamental human rights. These organisations have long history, but became important vehicles for spearheading the welfare of the people by the 20<sup>th</sup> century. The partnership between the state and the civil society organisations is a pressing socio-economic need in the modern states. Scholar observed *inter alia* that<sup>119</sup>:

*“The Civil Society Organisations are the key to good governance where individuals and groups are connected with public realm, protecting their rights and making governments more responsive to their interests”.*

It is further observed that<sup>120</sup>: *“It is in fact incumbent upon the government to effectively use NGOs as partners of development through policy and legislative measures”.*

In Tanzania CSOs were highly monitored by the government<sup>121</sup>. The registrar is empowered to declare any society unlawful. CSOs existed at the pleasure of the registrar hence freedom of association was at stake. The CSOs are classified into Non Governmental Organizations (NGOs), Community Based Organizations (CBOs) as well as faith based organisations and Non Faith Based Organisations. While NGOs are regulated by Non-Governmental Organizations Act, 2002 others are registered and governed by the Societies Act, 1954<sup>122</sup>.

CSOs play an important role in the protection of fundamental human rights. The CSO checks government actions through advocacy, clinical services and prepare constructive

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<sup>118</sup> LHRC( 2012); Tanzania Human rights Report, p.62

<sup>119</sup> Assefa, T. (Ed.), (2001); Promoting Good Governance and Wider Civil Society Participation in Eastern and Southern Africa, Report on Regional Conference, Addis Ababa, Organization for Social Science Research in Eastern and Southern Africa( OSSREA), p.31

<sup>120</sup> Assefa, T. (Ed.), (2001); Promoting Good Governance and Wider Civil Society Participation in Eastern and Southern Africa, p.100

<sup>121</sup> Societies Ordinance, 1954, Cap.337 R.E , S.17

<sup>122</sup> Cap. 337 R.E 2002

reports namely shadow or parallel reports<sup>123</sup>. They are important partners in governance since the question of public private partnership in the protection of human rights. Although partnership between government and the CSOs is statutory recognized there is a sour relationship between the government and CSOs in Tanzania<sup>124</sup>. Collaboration between the government and CSOs derives its legitimacy from the Public Private Partnership Act, 2010<sup>125</sup> which was adopted as a step towards open government. However, the law does not impose mandatory obligation onto the state authorities to give effect to the shadow reports. Enforcement of shadow reports depend on the discretion of the relevant state authorities.

#### **4.1.2 Statutory Measures or Safeguards**

The law incriminates various actions and conducts in Tanzania including assault. Also there are several principles governing the Police Force. Protective or integrity principle excludes admission of evidence which has been obtained by police impropriety. The principle was meant at protecting citizens from unlawful interference in their private affairs hence even a demonstrably reliable confession will be excluded if it has been obtained by oppression. In Tanzania the law does not completely exclude evidence improperly obtained by the Police Force there by encouraging degrading punishments for the sake of forging confession.

Also the criminal justice system is not effective in Tanzania. The policemen are rarely prosecuted for violating human rights. The case of **ACP.Abdallah Zombe and 12 Others v. Republic**<sup>126</sup> was viewed as a turning point in criminal justice in matters relating to abuse of coercive powers in Tanzania. It was the case in which 13 police officers were charged of murdering four innocent businessmen in Dar es Salaam. Yet it

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<sup>123</sup> United Nations High Commission for Human Rights(2007); United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and Treaty Bodies, Facts Sheet No 30, Geneva, p.42

<sup>124</sup> LHRC( 2012); Tanzania Human rights Report, p.64

<sup>125</sup> Act No.18 of 2010

<sup>126</sup> Criminal Case No. 26 of 2006, High Court of Tanzania at Dar es Salaam ( Unreported)

was a drop of water in the sea because there are scores of similar scenarios in which the perpetrators did not face trial despite the public outcry.

#### **4.1.3. Procedures for Channeling Complaints**

There are various machineries mandated to deal with abuse of fundamental rights including the judiciary and CHRAGG, for each machinery procedures are quite important. Procedures are path towards the realization of the fundamental rights. Procedures among other things guarantee access to justice. The important thing to bear in mind is that the Procedures for instituting legal actions against members of the armed forces differ from those for ordinary people. In regards to judicial approach, the police are subject to dual process in the sense that a police officer cannot be taken before the ordinary court unless has first been convicted in the court martial. It may take considerably long time to bring a policeman or policewoman in court. It is not of essence in this dissertation to discuss the philosophy behind such system, suffices only to note that in most cases charges against them depends on the will of the Police Force hence impunity is significantly footed on this procedural complexity amongst other factors.

Also the state enjoys monopoly over criminal prosecution except for Primary courts. Prosecution is principally initiated by the public prosecutors in most cases being the police officers although private prosecution is recognized. It is not easy for an individual whose rights are violated by the Police Force to institute legal action. This study revealed that the TPF is reluctant to prosecute its officials for abusing the fundamental human rights. Similarly the TPF enjoys monopoly over investigation in Tanzania. Surprisingly TPF often set to investigate its own abuses in most cases through partisan *ad hoc* committees. Similar spirit is reflected the Police Force and Auxiliary Services Act, 1939. The Act empowers the Minister for Home Affairs to receive and determine complaints from political parties aggrieved with the decision of the TPF. The naked truth is that the minister is not impartial, being partisan in the political discourse

can hardly be a fair judge. The Police Force and Auxiliary Services Act, 1939 provides *inter alia* that<sup>127</sup>:

*“...person, who is aggrieved by the terms of a stop order issued under subsection (3) or, any order given by a police officer under subsection (4), may appeal to the Minister whose decision on the matter shall be final.”*

Impartiality is a pressing demand of justice, in **R v. Secretary of State for the Environment and Another, ex parte Kirkstall Valley Company Ltd**<sup>128</sup> the court made clear that the test of bias is applicable in cases concerning judicial or quasi judicial bodies is also applicable to a body such as a local government authority. At any rate this rule cut across the ministerial powers under the law. The procedures for filing a complaint before CHRAGG are not complicated but it is so constrained. It suffers from resources constraints. Also it does not enjoy sufficient autonomy. In general it has failed to demonstrate significant contribution in curbing abuse of fundamental rights.

#### **4.1.4 Conclusion**

The increasing rate of violation of the fundamental human rights in Tanzania implies failure in the legal system. Although the law provides for various rights there is no effective mechanism to protect the same. The fundamental rights in Tanzania are not adequately protected. There are several loopholes in the law warranting violation of the fundamental human rights. The police Force among other things is subjected to political pressure. Also the law 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 oversight body is another trauma. Marginalization of CSOs adds salt on the wet wound.

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<sup>127</sup>Cap 322 R.E 2002, S.43(6)

<sup>128</sup> (1996) 3 All ER 304

**CHAPTER FIVE**  
**INTERNATIONAL POLICE FORCE STANDARDS IN TANZANIAN**  
**CONTEXT**

**5.0 Introduction**

Needless to say, the international law plays a significant role in the in the promotion and protection of the fundamental human rights. Most of human rights ideals are derived from the international norms and practices. Literary the international law exerts more pressure on the state than its own internal legal and policy mechanism. Although it faces several setbacks in the realization of human rights values. States shelters behind sovereignty to avoid obligations under the international law. Also domestication of the international treaties hinders the implementation of international obligations.

There are several regional and global legal instruments governing the intercourse between the law enforcement machineries and the civilians including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985<sup>129</sup>, the Declaration of the Basic Principles of Justice for victims of Crime and Abuse of Powers, 1985 and the Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, 1988. The Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, 1988 provide *inter alia* that:

*“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No Circumstance whatever may be invoked as a justification for torture or other Cruel, inhuman or degrading treatment or punishment<sup>130</sup>”.*

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<sup>129</sup> Also known as Beijing Rules

<sup>130</sup> Principle 6

The African Charter on Human and Peoples Rights (ACHPR), 1981 was adopted by Organisation of African Unity (OAU) to address human rights problems peculiar to Africa particularly dictatorship which was haunting many states in Africa such as Idd Amin's regime in Uganda and Jean Badel Bokassa's regime in the Central Africa. ACHPR provided for group rights such as rights to existence as people and rights to national and international peace and security among others which were not covered in the existing international and regional legal instruments<sup>131</sup>. However, this regional instrument was not comprehensive in the sense that it was dominated by claw-back clauses. Thus it highly compromised the Fundamental Human Rights<sup>132</sup>.

Tanzania is a party to the International Covenant on Civil and Political Rights (ICCPR) of 1966, which was acceded on 11<sup>th</sup> June, 1976<sup>133</sup>. This Covenant protects among other things, the rights against arbitrary deprivation of life<sup>134</sup>. The ICCPR protects persons against torture or cruel and inhuman or degrading treatment<sup>135</sup>. It imposes a duty on the contracting states to adopt effective remedy for the violation committed in official capacity<sup>136</sup> as well as for the compensation for unlawful detention or arrest<sup>137</sup>.

Also there are several other soft legal instruments providing for standards and principles governing human rights protection. These are Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, 1988, Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Powers, 1985, Law Enforcement Code of Ethics and Enforcement Code of Conduct, 1936, United Nations Code of Conduct for Law Enforcement Officials, 1978 and UN

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<sup>131</sup> Mchome, S.E. (Ed.), (2002); Taking Stock of Human Rights Situation in Africa: 40 Years of the Faculty of Law University of Dar es Salaam 1961-2001, Faculty of Law, University of Dar es Salaam, pp. 16, 17

<sup>132</sup> Mchome, S.E. (Ed.), (2002); *ibid*, p. 16

<sup>133</sup> United Nations High Commissioner for Refugees (2000); International Instruments Relating to Refugees, Dar es Salaam, p. 223

<sup>134</sup> Article 6

<sup>135</sup> Article 7

<sup>136</sup> Article 2

<sup>137</sup> Article 9(5)

Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials. It is worth mentioning that the significance of treaties was not fully appreciated until 1945 as one observes that:

*“Initially sources of human rights were found in state constitutions, legislation and jurisprudence. After 1945 these sources are increasingly located in international, regional Conventions and case law”*<sup>138</sup>

### **5.1 Basic International Police Standards**

It is of essence to note that police force is not independent of the executive arm of the state hence it is susceptible to political pressure. In order to realize the equal and dignified treatment of all the human persons, political parties, the civil society organisations, the United Nations has adopted human rights standards governing the policing business<sup>139</sup>. These standards shape the functioning of the Police institutions as well as the relationship between the Police Force and the citizen on one hand and the government on the other. The international community has taken various initiatives to promote human rights-centred policing. In several international legal instrument reference is made to dignified treatment of human persons. The international policing standards focus on institutional autonomy and impartiality, Legality of actions, proportionality and equal treatment. Among other things the Human Rights Standards state<sup>140</sup>:

*“ Law enforcement officials shall at all times fulfill the duty implied on the by the law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.”*

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<sup>138</sup> Douzinas, C(2007); Human Rights and Empire: *ibid*, p.9

<sup>139</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for Police, Geneva, United Nations Publications, p.2

<sup>140</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police, *ibid*, p.2

The policing standards also states that<sup>141</sup>:

*“All police actions shall respect the principles of legality, necessity, non discrimination, proportionality and humanity.”*

### **5.1.1 Autonomy and Impartiality of Police Force**

This is among the democratic standards of policing adopted by the United Nations. It requires the police to be responsible and accountable to the community in order to enable it to exercise their functions and powers as impartial servant of the general public and the government of the day<sup>142</sup>. In order to enhance impartiality of the Police Force it should work in the arms length. A complete independence of police is not possible but it should be afforded sufficient autonomy. The executives should always keep eyes open but hands off. In other words it should not supervise the Police Force but simply scrutiny it.

Autonomy of the Police Institution is allied to the principle of civil supremacy in some ways. The principle of civil supremacy entails fundamental division between the military and civil sphere whatever the level of interaction between them<sup>143</sup>. In a broader perspective this principle entails a wall that shelters un necessary military interference in the civil discourse. The principle is a basic safeguard against the abusive deployment of the state coercive apparatus by the ruling regime against political rivals or critics such as civil society, political parties, media and individual citizens.

Armed forces have to refrain from political discourse except to the extent that is constitutional approved. Amongst other things the armed forces should not be used to target political rivals or seek to influence the state politics. The armed forces should be

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<sup>141</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police, *ibid*, p.2

<sup>142</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police, *ibid*, p.4

<sup>143</sup> Hatchard, J, Ndulo, M. and Slinn, P(2004); Comparative Constitutionalism and Good governance in the Common Wealth: An Eastern and Southern African perspective, Cambridge, Cambridge University Press, pp.240, 241

subject to the law of the land as opposed to political whims. In Uganda during the reign of Milton Obote's armed forces were used in such a way to cause terror and abuse of human right<sup>144</sup>. Equal treatment of all the political parties, civil societies and individuals with opposing views can hardly be realized except with an autonomous Police Force.

In **Feiner v. New York**<sup>145</sup>, Petitioner made an inflammatory speech to a mixed crowd of 75 or 80 Negroes and white people on a city street. He made derogatory remarks about President Truman, the American Legion, and local political officials; endeavored to arouse the Negroes against the whites; and urged that Negroes rise up in arms and fight for equal rights. The crowd, which blocked the sidewalk and overflowed into the street, became restless; its feelings for and against the speaker were rising; and there was at least one threat of violence. After observing the situation for some time without interference, police officers, in order to prevent a fight, thrice requested petitioner to get off the box and stop speaking. After his third refusal, and after he had been speaking over 30 minutes, they arrested him, and he was convicted of violating S.722 of the Penal Code of New York. Among other things the US Supreme Court observed *inter alia* that<sup>146</sup>:

*“...police cannot be used as an instrument for the suppression of unpopular views; but, when a speaker passes the bounds of argument or persuasion and undertakes incitement to riot, the police are not powerless to prevent a breach of the peace.”*

To that end the human rights standards provide *inter alia* that:

*“No member of the police may be ordered or forced to exercise his or her functions or powers or deploy resources to promote undermine any political party or interest group or any member of such party or group...the police have the duty to uphold the rights of and afford protection to all political parties, persons and organisations equally without fear or favour”.*

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<sup>144</sup> Hatchard, J, Ndulo, M. and Slinn, P(2004); Comparative Constitutionalism and Good governance in the Common Wealth, p.245

<sup>145</sup> 340 U.S. 315

<sup>146</sup> p.321

Although the Constitution of the United Republic of Tanzania, 1977 excludes the Armed Forces from joining political parties<sup>147</sup>, the study reveals that the Police Force in Tanzania is not free from political influence. The Constitution and other laws do not in real sense hedge the police Force from the political interference. The appointment of the top officials of the TPF is vested in the president of Tanzania who is politically partisan. At regional and District level the Regional Commissioners (RC) and District Commissioners (DC) are responsible for maintenance of law and order. The president delegates his or her powers to the RC at the regional level<sup>148</sup>.

The findings reveal that the Police Force has never attempted to ban political rallies held by the ruling party. Generally the TPF has been reluctant to take an action against the complaints lodged by the opposition parties in most cases. An ideal policing system lays down good environment for political, economic and social development. It is a basic tenet for rule of law. In one of the articles it was maintained inter alia that<sup>149</sup>:

*“In a multiparty democracy the manner in which the police maintain neutrality when enforcing law and order influences how the citizens perceive justice and government legitimacy. A police force that protects the citizens fairly, abides by the rule of law, maintains public safety and uses violence as a last resort only will build trust in its citizens and create a conducive environment for economic growth and political stability yin a democratic state like Tanzania.”*

The Police Force was an instrument of the ruling regime in most of states having no legal safeguards against political interference. Up to date, the Police Force hardly identifies itself as a politically independent institution. This study revealed that it works under the directives of the ruling regime. The TPF is accused of double standards

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<sup>147</sup> Article 147(3)

<sup>148</sup> Regional Administration Act, 1997; Cap 97, S.6

<sup>149</sup>Jairo, R. C ( 2007); Political Control And Politicization of the Policing In Tanzania; Paper presented at the Conference on Police Reforms and Democratisation in Post-Conflict African Countries at the Zebra Lodge, Pretoria, South Africa, P.9

in the treatment of the people while it hardly took actions against the state and ruling party officials it responded immediately even on unfounded accusations against the opposition parties, CSOs and journalists. It demonstrated an overt discrimination against the people on ideological orientation. It frequently interfered with the freedom of assembly which is a corner stone of democratic society.

The study indicated high rate of politically motivated abuse of fundamental human rights in the Police Force. This fact is also revealed in the Journal of the Law reforms Commission of Tanzania. The Journal states among other things that<sup>150</sup>:

*“...while the law talks about the notification of an officer in-charge of a police station of the area the meeting is to be held, in practice these discretionary decisions have always been made publicly by Regional Police Commanders in other regions, and the Commissioner for the Dar Es Salaam Special Police Area, in the case the largest city in the country. This is an indication of the involvement of the highest levels of the Police Force, which invites the implication of closer follow up by the highest levels of Government, if not the ruling party itself. Indeed, the extensive misuse and abuse of discretion by the police officers involved is an open secret...”*

### **5.1.2 Legality of Police actions**

One of the basic pillars of rule of law is that every person is subject to the law; thus law is the standard test of legality of any act. Power is what the law creates and that no one can arbitrary assume power where none is vested to him or her by the law. Law is the ceiling of any administrative act in the state that abides by the rule of law. The law requires police officers to abide by the lawful orders given by the superiors. In a broad sense that has both the negative sense and the positive sense.

In the positive sense it entails the duty to obey the lawful orders and directives while in the negative sense it entails rights to disobey unlawful orders. Amnesty International, 10

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<sup>150</sup>Law Reforms Commission of Tanzania(2009); Law Reformer Journal, Vol. 2 No.1, P.84

Basic Human Rights Standards for Law Enforcement Officers<sup>151</sup> among other things prohibit arbitrary restraint of the individuals' liberties. The standards also empower the Law Enforcement Officers to disobey unlawful orders<sup>152</sup>. The doctrine of superior order was abolished after the World War II during the trials in the Nuremburg and Tokyo Tribunals where several Nazi people faced trials for committing war crimes, crimes against humanity and genocides. The abolition of the defence of superior order was among the new developments in international humanitarian law.

In order for the Police Force to keep its actions within the legal bounds necessary safeguards have to be adopted. The law in Tanzania has no important tenets for ensuring that the subordinate officers are not compelled to obey unlawful superior orders. The law does not guarantee the right to disobey unlawful orders as recognized under the human rights standards. The United Nations Human Rights Standards provide among other things that<sup>153</sup>:

*“Officials who refuse unlawful superior orders shall be given immunity”*  
and provide further that: *“ official who commit abuses of these rules shall not be excused on the ground that they were following superior orders”*.

It is equally maintained that<sup>154</sup>:

*“All police officials remember that obedience to superior orders may not be invoked to justify serious human rights violations such as unlawful killings and torture”*.

The immunity against unlawful superior orders also implies imputation of liability to superior officers for wrongs committed in presence or order of the superior. Under the international standards the superior police officials are responsible for the actions of police under their command if they knew or ought to have known of the abuses but failed to take actions. The law in Tanzania imposes duty to obey lawful orders without

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<sup>151</sup> Amnesty International (2009); International Police Standards: 10 Basic Human Rights Standards for Law Enforcement Officials, Geneva Centre for Democratic Control of Armed Forces, Geneva

<sup>152</sup> *Ibid*, Basic Standard 9

<sup>153</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police, *ibid*, p.24

<sup>154</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police, *ibid*, p.3

any safeguards for disobedience of unlawful orders The Police Force and Auxiliary Services Act, 1939 provides that<sup>155</sup>:

*“ Every police officer shall exercise such powers and perform such duties as are by law conferred or imposed upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the Force. ”*

This should not be underestimated because the police officers have no security of tenure hence they can hardly decline to abide by any superior order. Often violations of the fundamental human rights in Tanzania result from superior orders. The police powers should be subjected to ideal limits necessary in the democratic state as stipulated in several international human rights instruments including the UDHR, UN Human Rights standards and Practice for the Police and ICCPR. The police officials have to maintain high level of tolerance and professional standards. The Police powers should be exercised in a manner that does not derogate from morality, public order and general welfare of the people<sup>156</sup>. The legal system has to avail the right for both popular and unpopular opinions against the government.

### **5.1.3 Reasonableness and Proportionality of Police Actions**

The principle of proportionality is a key safeguard to the basic human rights. Among other things requires the law to lays out prohibitions only if they are needed, and if the inconveniences caused by this restriction do not exceed the inconveniences that the prohibition is supposed to remedy<sup>157</sup>. In other words one should not use a sledge hammer to crack a nut<sup>158</sup>. In this principle normally an action must strike for a balance between harm and good. Measures that are amenable of doing more harm than good though aiming at a legitimate objective should be avoided.

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<sup>155</sup> Cap 322 R.E, S.27(1)

<sup>156</sup> Office of the United Nations High Commissioner For Human Rights(2004); Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for Police, Geneva, United Nations Publications, p.5

<sup>157</sup> <http://www.termpaperwarehouse.com> accessed on 18<sup>th</sup> May 2012

<sup>158</sup> *ibid*

**B v. Secretary of State for home Department**<sup>159</sup> cements this principle. The court observed *inter alia*:

*“ ...a measure which interferes with a community or human rights must not only be authorized by law but must correspond to a pressing social needs and go no further than strictly necessary in a pluralist society to achieve its permitted or more shortly must be appropriate and necessary to its legitimate aim”*

This principle attempts to balance between discretion and individuals' rights<sup>160</sup>. Since the law confers wide discretion on the Police Force this principle is absolutely important. In 1990s the United Nations adopted the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990<sup>161</sup> which among other things requires the Law Enforcement Officials to be accountable for abusive use of force. It also limits the scope of the use of force, it provides *inter alia* that: “... in the dispersal of assemblies that are unlawful but non violent, law enforcement officials shall avoid the use of force.”<sup>162</sup>

The danger of wide and vague discretion was made clear in the case of **R vs. Landry**<sup>163</sup> where the supreme court of Ontario observed among other things that:

*“The wide, vague and virtually uncontrollable discretion would be giving the police officers creates a greater danger to the sanctity of the home than the danger that criminals would otherwise escape”*

Also in **Kukutia Ole Pumbun and Another v. Attorney General**<sup>164</sup> developed an important safeguard against arbitrary and wide discretion in Tanzania; the court among other things maintained that:

*“...the law which seeks to limit or derogate from the basic rights of the individual on the ground of public interest would be saved ...only if it*

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<sup>159</sup> [2000] UKHRR,502,CA

<sup>160</sup> Leylands, P(2009); Text Book on Administrative Law, oxford University Press, London, p.295

<sup>161</sup> It was adopted in Havana, Cuba

<sup>162</sup> Principle 13

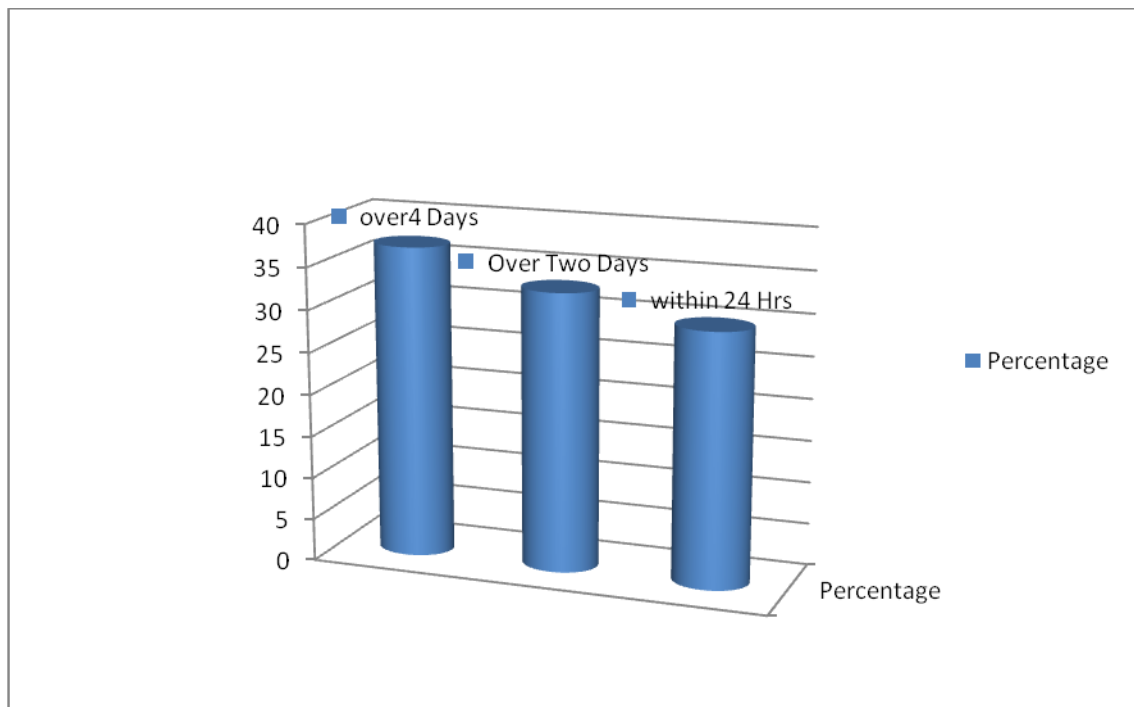
<sup>163</sup> [1986] 1 S.C.R. 145

<sup>164</sup> (1994) TLR 159

*satisfies two essential requirements: first such law must be lawful in the sense that it is not arbitrary. It should make adequate safeguards against arbitrary decisions and provide effective controls against abuse by those in authority when using the law. Secondly, the limitation imposed by such law should not be more than reasonably necessary to achieve the legitimate objective<sup>165</sup>”.*

This study highlighted several forms of abuse of the fundamental human rights including child rights. Child rights were not spared by the Police Force although the Convention on the Right of the Child, 1989 provides for various rights. The TPF did not act proportionately in dealing with juveniles. Children remained in custody for more than 24 hours. Also a significant number of children were tortured and denied access to legal service and parents. All of these measures cannot be said to be proportional.

**Figure: 3: Detention Period for Juveniles in Police Custody**



SOURCE: CHRAGG: Tanzania Human Rights Annual Report, 2010/11

<sup>165</sup> pp. 166, 167

#### 5.1.4 Necessity of Police Actions

Where the exercise of powers that is likely to emasculate the very gist of the fundamental human rights, the court should not only observe the legality of the action but also the necessity of the action. These principles play a significant role in checking the powers of the state apparatus against the basic human rights. Under the international standards of Police Force, Law Enforcement Officials may only use fire arms when the less dangerous means are not practicable. In that case force can be applied to the minimum extent necessary<sup>166</sup>. In United States of America the question human rights-based policing is of significance consideration. The court plays an important role in striking for a balance between the protection of the fundamental human rights and the maintenance of law and order.

The principle of necessity proved to be useful in several incidences including the Irish Crisis. On 30 January 1972, 13 Catholic civilians were shot dead by British paratroopers in the course of a banned civil rights march in Derry ‘Bloody Sunday’ .The Irish Catholics complained against discrimination in all sectors hence civil disobedience move in which ill treatment of several detainees was witnessed. This led to legal proceedings being initiated against the United Kingdom by the Republic of Ireland government under the European Convention on Human Rights. The interrogation methods used as including continuous noise, deprivation of food, water and sleep, and wall standing. Lord Gardiner, a former Labour Lord Chancellor remarked that<sup>167</sup>:

*If it is to be made legal to employ methods not now legal against a man whom the police believe to have, but who may not have, information which the police desire to obtain, I, like many of our witnesses, have searched for, but been unable to find, either in logic or in morals, any limit to the degree of ill-treatment to be legalized. The only logical limit to the degree of ill treatment would appear to be whatever degree of ill treatment proves to be necessary to get the information out of him, which would include, if necessary, extreme torture. I cannot think that Parliament should, or would, so legislate.*

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<sup>166</sup> Principle 14

<sup>167</sup> Barnett, H(2002); Constitutional & Administrative Law, London, Cavendish Publishing Ltd., p.53

In **Cox v. New Hampshire**<sup>168</sup>, the appellants are five Jehovah's Witnesses who, with sixty-three others of the same persuasion, were convicted in the municipal court of Manchester, New Hampshire, for violation of a state statute prohibiting a parade or procession upon a public street without a special license. The sixty-eight defendants and twenty other persons met at a hall in the City of Manchester on the evening of Saturday, July 8, 1939, for the purpose of engaging in an information march. The company was divided into four or five groups, each with about fifteen to twenty persons. Each group then proceeded to a different part of the business district of the city, and there would line up in single-file formation and then proceed to march along the sidewalk, single-file,' that is, following one another. It was held *inter alia* that:

*“the Supreme Court of the State...construed the statute and defined the limitations of the authority conferred for the granting of licenses for parades and processions....It was with this view of the limited objective of the statute that the state court considered and defined the duty of the licensing authority and the rights of the appellants to a license for their parade, with regard only to considerations of time, place and manner so as to conserve the public convenience. The obvious advantage of requiring application for permit was noted as giving the public authorities notice in advance, so as to afford opportunity for proper policing. And the court further observed that, in fixing time and place, the license served to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder.”*

The court further observed that:

*“...the licensing board was not vested with arbitrary power or an unfettered discretion; that its discretion must be exercised with uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination; that a systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate...[The] defendants, said the court, had a right, under the Act, to a license to march when, where, and as they did if, after a required investigation, it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such conditions or changes in time, place and manner as would avoid disturbance.”*

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<sup>168</sup> 312 U.S. 569 (1941)

This judicial construction in this case is in tune with the Political Parties Act, 1992 of Tanzania. This Act *inter alia* provides that<sup>169</sup>:

*“ When a political party is desirous of holding a meeting or procession in any open public place in any area it shall, not less than forty eight hours before the meeting, submit a written notification of its impending to the police officer in charge of the area in which the meeting is to take place is situated.”*

Proportionality of the limits imposed against the fundamental human rights is also amplified in the case of **Hague v. Committee for Industrial Organisation**<sup>170</sup>, Mr. Justice Roberts among other things observed that:

*“. . . Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.”*

## **5.2 Limitations against International Police Force Standards**

There are several limitations against implementation of the international standards governing police business. The limitations range from the legal limitations to political.

### **5.2.1 Domestication of International Legal Instruments**

In dualist system domestication it is a conditional precedent that an international legal instrument forms part of the domestic law only upon domestication. Failure to domesticate has great legal consequences, thus the international legal instrument is rendered unenforceable. The basis for domestication is an assumption that international and municipal law existed on separate planes the former governing international

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<sup>169</sup> S.11(4)

<sup>170</sup> 307 U.S. 496, 515 , at p.516

relation and the latter governing intercourse between individuals *inter se* and between individuals and the state<sup>171</sup>.

### 5.2.1.1 Legal implications for Domestication

In Tanzania and other common law system countries, the international treaties have no direct application at national level though it has political and diplomatic implication unless domesticated. Non domesticated treaty does not aid an individual whose rights are at stake hence it is a misnomer.

In **Chung Chi Cheng v. the King**<sup>172</sup> the implication of domestication was discussed. In this case Cheng, a boy on board shot dead the captain of the vessel while in the territorial waters of Hong Kong. In this incident the acting chief officer was seriously wounded. Both the boy and the captain were Chinese nationals. The crime was also committed in a Chinese vessel. The application by china for the custody was rejected by the Privy Council. Of importance Lord Atkin observed that:

*“I must always be remembered that, so far as, any rate as the court of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our domestic law”*

The principle was reiterated in **R v. Chief Immigration Officer, ex parte Salamat Bibi**<sup>173</sup>, the applicant and two children from Pakistan who visited her husband in United Kingdoms was repatriated on arrival at the port on account that she failed to satisfy that her visit was temporary. However; Article 8(1) of the European convention on Human Rights to which U.K was a party provided for right to family life. Therefore the repatriation was challenged basing on this Convention but the same was not domesticated. However, the petition failed on account that a convention did not form part of the English law because it was domesticated.

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<sup>171</sup> Shaw, N.M. (2003); International Law, Cambridge, Cambridge University Press, p.29

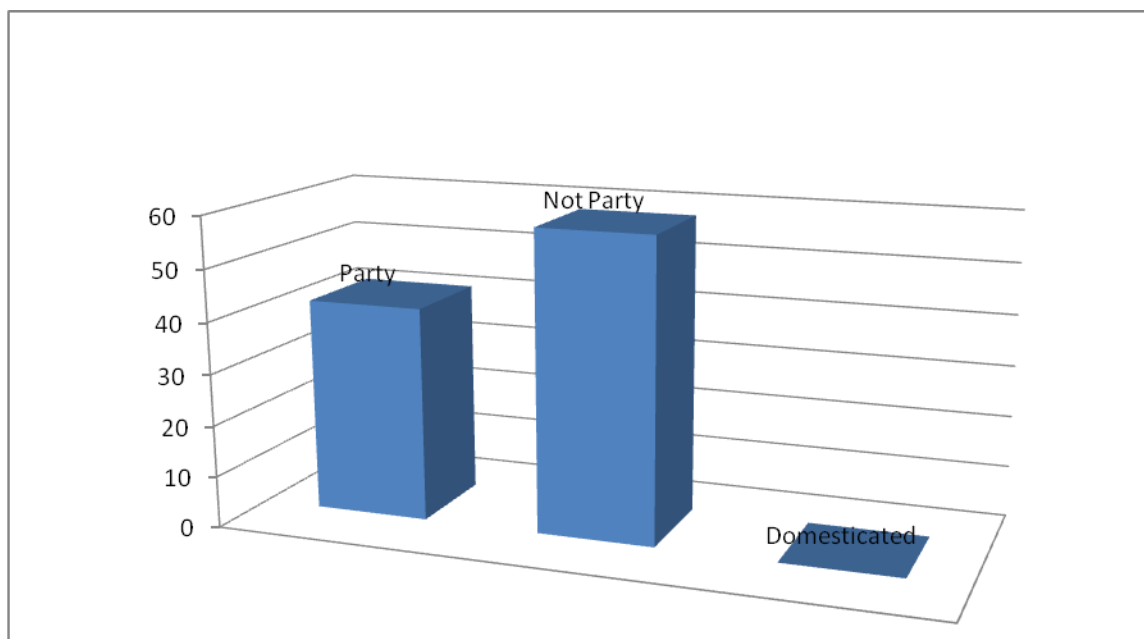
<sup>172</sup> (1939) AC 160

<sup>173</sup> (1976)1 WLR 979

Also in **R v. Secretary of State for Home Department, ex parte Brind**<sup>174</sup> the very principle was reiterated. This case involved a conflict between the Broadcasting Act, 1981(British) and European Convention Human rights, 1950. The applicant was challenging the local statute for abrogating freedom of expression. Of importance is that although Britain was a party to the Convention, it had not been domesticated. It was made clear that such treat cannot prevail over clearly worded statute that contradicts it. As a matter of principle such international treatment may only come to aid in the interpretation of an ambiguous statute.

Although Tanzania adheres to the principle of dualism as noted before, it has not domesticated all the core international human rights legal instruments. The figure below gives a clear picture on this fact. Failure to domesticate these instruments limits the enforceability of the core legal international instruments in the municipal judicial machineries.

**Figure: 4: Status of Core International Human Rights Instruments**



SOURCE: LHRC: Tanzania Human Rights Annual Report, 2011

<sup>174</sup> (1991) 2 WLR 588

The Constitution of Tanzania, 1977<sup>175</sup> empowers the Parliament to ratify treaties that are entered by Tanzania. It is very unfortunate that the parliament rarely exercises its powers. Mostly the parliament lets the prerogative of the executive to make international treaties<sup>176</sup>. The Parliament just furnishes the formal requirements of effecting enforceability. The Parliament hardly initiates domestication of the pending international human rights instruments. Prerogative of the executive gives a room of avoiding international obligations. The executive prerogative roots from the period of party supremacy where the parliament was a mere rubber stamp.

### **5.2.2 Sovereignty**

Each state has exclusive jurisdiction over their internal affair which is sanctioned by international law. Among other things the UN Charter recognizes the principle of non interference of internal affairs of a state. Similarly, a state cannot be compelled to accept an international instrument. States are at liberty to choose whether to adopt an international legal instrument or not as well as the extent of legal obligations. A state may accept a treaty and yet decline to be bound by optional protocols made under it.

Tanzania is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and several optional protocols on human rights. Failure to ratify these instruments has a significant impact on the protection of the fundamental human rights in Tanzania since the protocols impose significant obligations to contracting states. The optional protocol among other things imposes the duty to table the annual report before the committee on its implementation. The periodic report serves an opportunity for taking stock of human rights protection within their jurisdiction for purpose of spearheading improvements<sup>177</sup>.

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<sup>175</sup> Article 63(3)

<sup>176</sup> Mbunda, L,X(Ed.), (2003); Treat Making and Incorporation in Tanzania; East Africa Law Review, Volume 28-30, p.160

<sup>177</sup> United Nations High Commission for Human Rights(2007); United Nations Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and Treaty Bodies, Facts Sheet No 30, Geneva, pp.18, 19

Optional protocols also enable states to conduct comprehensive review thereby adopting initiatives to harmonize national laws and the international human rights instruments<sup>178</sup>. Constructively periodic reports is a reminder of obligations; technically it promotes accountability of the state hence abide by the international human rights standards. Since Tanzania has not ratified the optional protocols it is relieved from that duty. Literary Tanzania waives various legal obligations which are incumbent in the protection of these rights.

Also there are several non binding instruments also known as soft laws. UDHR is among the soft laws since it is not a legally enforceable. UDHR is consisted of the general principles of law or elementary considerations of humanity<sup>179</sup>. Observance of the principles embodied in the soft laws is not obligatory. States may not feel the obligation to observe these principles. These principles may only bind upon incorporation in the municipal laws. Also the international machineries do not offer binding recommendations. The recommendations of the human rights Committees are simply a reminder on the state in regards to observance of human rights.

### **5.2.3 Internal Judicial Constraints**

The principle of separation of powers requires each organ of the state to confine itself within its legal bounds. The judiciary cannot interfere with the violation of fundamental rights unless moved by an interested party. The role of the judiciary is retroactive in the sense that the court often interferes after the abuse of rights except injunction. The judiciary cannot give directives on daily policing routines. The judiciary does not direct how the state machineries should carry out their daily functions. Leylands observes inter alia that<sup>180</sup>:

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<sup>178</sup> United Nations High Commission for Human Rights(2007); *ibid*, pp.18, 19

<sup>179</sup> Verma, S.K(1998) An Introduction to Public International Law, Prentice-Hall, New Delhi, P.220

<sup>180</sup> Leylands, P and Woods, T(2003); Administrative Law Facing the Future: Old Constraints & New Horizons, oxford University Press, New York, p.36

*“...judicial role is only to determine the limits of powers but not to scrutiny how executives should carry out their functions and choose to use powers because that is a political issue. It can only be done by the parliament.”*

Judicial review depends on the legal framework of the state. It is subject to procedural requirements, adequacy of its infrastructures and judicial practices hence a complainant may not realize a prompt redress against police abuses. The court in Tanzania does not promptly dispose cases. Cases take very long time before disposition in the court of law hence several people especially those charged of none bailable offences spend very long time in remands even where the accusations thereof are not genuine.

Judicial independence is another key aspect on judicial control of the Police Force, where the judicial is not independent human rights cannot be spared. In the history of Tanzania interference with the judiciary is not a strange thing. The state of judicial interference was so significant during one party state. In t James **Bitu v Iddi Kambi**<sup>181</sup>, the District Party Secretary in Musoma directed the Primary Court Magistrate to transfer a land dispute to the relevant party organs at village level. This was done and after the party had come to a conclusion, the magistrate was told to write a routine judgment abiding with the decision reached at village level. Up to date **there** have been under carpet complaints that the judiciary works under executive directives.

### **5.3 Conclusion**

Implementation of the international policing standards in Tanzania is still a grey area. The findings reveal several incidences of abuse of fundamental human rights by the Police Force. Although Tanzania has ratified most of the core human rights instruments domestication is still lagging behind. Almost all the ratified instruments have not been domesticated. Of to date Tanzania has not ratified the Convention against Torture, 1984 and several optional protocols. The protocols among other things confer audience of individual citizens before the international human rights institutions.

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<sup>181</sup> (1979) LRT No. 9.

Failure to adopt these legal instruments has a significant implication on the observance of the basic human rights by the law enforcement machineries. Generally Tanzania does not abide by the international policing standards as noted in chapter three of this report. Excessive use of force, torture and interference with the personal freedoms are among the critical features in the Tanzania policing system. It is worth mentioning that the police force works discriminatory, thus it favours the ruling party while suppressing the opposition and the Civil Societies Organisations (CSOs). There are several incidences in which the Police Force failed to take legal actions for seriously the violation of the fundamental right.

## **CHAPTER SIX**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **6.0 Summary**

This chapter attempts to summarize the important issues in this study. This report consists of six chapters this being the last chapter. The findings reveal a serious state of violation of the fundamental human rights in Tanzania. Also the data were statistically analysed in order to give reliable conclusion and the real impression. As noted in chapter one the study encountered bureaucracy in the key institutions especially in the TPF which withheld data.

In this study various principles pertaining policing and human rights are also discussed; among other things the discussion sheds light on the principles of proportionality, necessity and legality as key guidelines to democratic policing. Also the question of police neutrality is covered. The discussion covers both international legal instruments and municipal laws governing human rights. The study revealed several legal pitfalls such as absence of police autonomy and neutrality in Tanzania, absence of effective oversight mechanism. The study amongst other things reveals political patronage of the Police Force hence there is a significant extent of politically motivated abuse of the fundamental human rights.

Although Tanzania is a party to about most of the core international human rights Instruments none has been domesticated thereby limiting the scope of human rights protection. The study depicted significant abuse of the fundamental human rights including the child rights where a significant number of the children in remand were tortured and brought before the court after the lapse of 24 hours contrary to international standards. It is also worth mentioning that the relationship between the Police Force and the community has deteriorated by 77%. Also the police brutality is quite alarming in Tanzania and in generally the law has not demonstrated significant deterrent effect in

relation to police abuses of human rights. Police abuses mostly attributable to political influence or lack of proper legal checks mechanisms.

### **6.1 Conclusion**

The study has established that the law in Tanzania has not realized its role of keeping the Police Force within the accepted police ideals. The Tanzania Police Force does not observe the fundamental human rights in discharging its activities. Among other things the law does not provide for adequate safeguards against such abuse. Also the Police Force is working under political pressure hence it can hardly work according to the law and the professional dictates.

The recurrent violation of fundamental human rights has resulted into deteriorations of the relationship between the TPF and the community. The sour relationship between the Police Force and the people has effect in the promotion of rule of law and human rights. Tanzania may have a long way to go before realizing police standards. It requires a complete overhaul of the policing machinery. The Police Force is highly affiliated to party politics. The question of domestication also requires sufficient attention. Monism approach may offer a better solution to this challenge albeit it is not free from criticism either. This study has opened up a room for further studies especially on indemnity system for the victims of police abuse.

### **6.2 Recommendations**

In this study several challenges were pointed out, in general the Tanzania Police Force does not abide by the international police standards. Although there are several challenges as noted before the main pitfalls facing policing in Tanzania is lack of an effective statutory checks mechanism. In order to improve the police force standards the study has come out with the following recommendation:

- Tanzania should sign and domesticate all core International Human Rights Instruments in order to promote the fundamental human rights and policing

standards. This is a necessary step of curbing violation of the basic human rights. It is only through domestication the international legal instruments will form part of the municipal laws. The trend in Tanzania has been to sign international legal instruments without domestication.

- The Constitution should guarantee the independence of the Police Force against political influence that will enable the police force to work under professional dictates being accountable to the law and the community only.
- Appointment of the Inspector General of Police (IGP) should be vetted by the parliament. Also the IGP and the senior commanding officers should have security of tenure.
- Regional Police Commissioners and the Officers Commanding Districts should chair security committees instead of the District Commissioners and Regional Commissioners.
- Executive prerogative on the Police Force should be limited to general policy issues. The daily routines of the Police Force should not be subjected to political directives.
- Substantial reforms of the Commission for Human Rights and Good Governance
- Also the law should impose the obligation to table the annual reports of the oversight body before the parliament for deliberations and necessary action.
- For the purposes of transparency the law should require a compulsory involvement of civil society Organisations in the investigation of grave abuse of the fundamental human rights in Tanzania.

- The Police Force should be completely excluded from investigating abuse of fundamental rights attributed to it.
- The law should provide punishment and compensation for arbitrary and unfounded arrest and search of person.
- That the law should provide judicial immunity to subordinate police officers who disobey unlawful superior orders. This will enable the police officers to act on the professional dictates and the law as opposed to mere whims
- That the law should fix the maximum duration in which a person may be held in remand pending investigation of the case and the remedy for failure to abide by the limits set by the law.

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## APPENDICES

### APPENDIX “A”QUESTIONNAIRE FOR POLICE OFFICERS

The Research is meant for partial fulfillment of the requirements for Masters Degree in Constitutional and Administrative Law of Mzumbe University. It aims at studying the effectiveness of law in ensuring Police observance of Fundamental Human Rights in the performance of their duties particularly from 2000 to present.

#### Particulars of the respondent:

1. Sex..... Male/ female
2. Rank.....
3. Age.....
4. Education (*Tick the appropriate choice*)

- |                         |        |
|-------------------------|--------|
| A: Primary level        | [    ] |
| B: Secondary Level      | [    ] |
| C: Post Secondary Level | [    ] |

#### Instructions

1. Respond each question known your conversant with
2. You may seek clarifications from the research in case of any difficulties

#### Questions

1. For how long have you been working with the Police force? (*tick the appropriate response*)

A: Between 1-5 years	[    ]
B: Between 6-15 years	[    ]
C: Above 15 Years	[    ]

2. Which duties do you perform?, Mention

.....  
.....  
.....

3. Are you aware of any reforms in the Police Force?

A: Yes

B: No

[     ]

C: Somehow

Mention (*if any*)

.....  
.....  
.....

4. Do you think the legal reforms have any significant effect in ensuring observance of fundamental human rights?

A: Yes

B: No

C: Some how

[     ]

D: I don't know

5. Do you think the Tanzanian Police Force observes the Human Rights Standards in performing its duties?

A: Yes

B: No

[     ]

C: Somehow

D. I don't know

6. Are you aware of the incidences of violation of Fundamental Human Rights by the Police Force in Tanzania?

A: Yes

B: No

C. Some how [ ]

D. None

If yes, what do you think are the reasons? Mention.....

7. Do you know the measures taken against the police officers for abuse of the Fundamental Human Rights in Tanzania?

A: Yes

B: No [ ]

C: Somehow

If yes, specify.....

8. Do you think the law provides sufficient safeguards against the police abuse of the Fundamental Human Rights in Tanzania?

A: Yes

B: No

C. Some how [ ]

D. I don't Know

Give your opinion (if any)

.....  
.....  
.....

9. Does the Police Force in Tanzania observe the International Policing standards?

A: Yes

B: No

C: Somehow [       ]

D: I don't know

Comments (if any)

.....  
.....  
.....  
.....

Thanking you in advance for your sincerely cooperation

Name; Edson Kilatu

Phone: 0713-815001

E-mail: [kilatu2004@yahoo.com](mailto:kilatu2004@yahoo.com)

Mzumbe University

**APPENDIX B: QUESTIONNAIRE FOR HUMAN RIGHTS AGENCIES AND  
ACTIVISTS**

The Research is meant for partial fulfillment of the requirements for Masters Degree in Constitutional and Administrative Law of Mzumbe University. It aims at studying the effectiveness of law in ensuring Police observance of Fundamental Human Rights in the performance of their duties particularly from 2000 to present.

**Particulars of the respondent:**

1. Sex..... Male/ female
2. Age.....
3. Occupation.....
4. Position.....

**Instructions**

1. Respond to each question you are conversant with
2. You may seek clarifications from the researcher in case of any difficulties

**Questions**

1. For how long have you been working with your institution?

- A: Between 1-5 years [     ]  
B: Between 6-15 years [     ]  
C: Above 15 Years [     ]

2. Do you know the scope of the powers of the police officers in Tanzania?

- A: Yes  
B: No [     ]  
C: Some how

3. Do you think the law balances between the powers of the police and the fundamental human rights?

A: Yes

B: No [ ]

C: Some how

D: I don't know

4. Do you think the law provides sufficient safeguards against the abuse of the Fundamental Human Rights by the police officers in Tanzania?

A: Yes

B: No [ ]

C: Somehow

D: I don't know

Give your opinion (if any) .....

5. Do you know the measures taken by the government against abuse of Fundamental Human Rights in Tanzania by the Police Force?

A: Yes

B: No [ ]

C: Somehow

Mention (if any)

.....  
.....

6. Do you think the measures taken by the government against abuse of the Fundamental Human Rights by the police Force in Tanzania are sufficient?

A: Yes

B: No [ ]

C: Somehow

Give your opinion (if any)

.....  
.....

7. Does the government extend cooperation to other human rights stake holders in the protection of the fundamental human rights?

- A. yes
- B. No
- C. Somehow [       ]
- D: I don't know

Give your opinion (if any)

.....  
.....  
.....

8. Do you think there is a need for the changes in the law order to prevent police-based abuse of fundamental human rights?

- A: Yes
- B: No [       ]
- C: I don't know

Specify (if yes)

.....  
.....

9. Does the Police Force in Tanzania observe the International Policing standards?

- A: Yes
- B: No
- C: Somehow [       ]
- D: I don't know

Comments (if any)

.....  
.....  
.....

Thanking you in advance for your sincerely cooperation

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Mzumbe University

### APPENDIX C: GENERAL QUESTIONNAIRE

The Research is meant for partial fulfillment of the requirements for Masters Degree in Constitutional and Administrative Law of Mzumbe University. It aims at studying the effectiveness of law in ensuring Police observance of Fundamental Human Rights in the performance of their duties particularly from 2000 to present.

#### Particulars of the respondent:

1. Sex..... Male/ female

2. Age.....

3. Occupation.....

4. Education (*Tick the appropriate choice*)

A: Primary level [     ]

B: Secondary Level [     ]

C: Post Secondary Level [     ]

#### Instructions

1. Respond to each question you are conversant with
2. You may seek clarifications from the researcher in case of any difficulties

#### Questions

1. Do you know the role of Police force in Tanzania?

A. Yes

B. No [     ]

C. Somehow

2. Do you know the scope of the powers of the police officers in Tanzania?

A: Yes

B: No [     ]

C: Some how

3. Do you think the law vests too much power on the Police Force in Tanzania?

A: Yes

B: No

C: Somehow [      ]

D: I don't know

Give your opinion (if any)

.....  
.....

4. Do the Police Officers treat people under their custody according to the law?

A: Yes

B: No

C: Somehow [      ]

D: I don't know

Give your opinion (if any)

.....  
.....  
.....

5. Does the law regulate the Police Force effectively in performing their duties?

A: Yes

B: No

C: Somehow [      ]

D: I don't know

6. Do you know the procedures of dealing with the abuse of fundamental rights caused by the police officers?

A: Yes

B: No

C: Somehow [ ]

D: I don't know

7. Do you think the legal procedures for the individuals injured by the police officers in Tanzania sufficient?

A: Yes

B: No [ ]

C: Somehow

D: I don't know

8. Does the law provide sufficient remedy for the abuse of the fundamental human rights in Tanzania?

A: Yes

B: No [ ]

C: Somehow

D: I don't know

Give your opinion in relation to procedures and remedies for abuse of the fundamental human rights (if any)

.....  
.....  
.....

Thanking you in advance for your sincerely cooperation

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Mzumbe University

### **KIAMBATANISHO C: DODOSO ZA JUMLA**

Utafiti huu ni sehemu ya mafunzo ya Shahada ya Uzamili katika Sheria za Katiba na Utawala ya Chuo Kikuu Mzumbe. Lengo mahsusi ni kutafiti ufanisi wa sheria katika kuhakikisha kuwa jeshi la Polisi Linazingatia haki za msingi za binadamu katika kutekeleza majukumu yake ya kipolisi hasa kuanzia mwaka 2000.

#### **Taarifa za Mjibu Dodoso**

1. Jinsia..... (Me/Ke)
2. Umri.....
3. Shughuli .....
4. Elimu

- A: Shule ya Msingi [     ]
- B: Secondari [     ]
- C: Chuo [     ]

#### **Maelekezo**

1. Jibu maswali yote kwa kadri unavyoyaelewa
2. Ikiwa kuna ugumu wowote unaweza kuwasiliana na mtafiti  
Maswali

1. Je unajua majukumu ya Jeshi la Polisi Tanzania

- A: Ndio
- B: Hapana [     ]
- C: Kiasi

2. Je unajua mipaka ya mamlaka ya polisi katika kutenda kazi zao

A: Ndio

B: Hapana [      ]

C: Kiasi

3. Je unafikiri sheria imelipa jeshi la Polisi Mamlaka makubwa mno Tanzania

A: Ndio

B: Hapana [      ]

C: Kiasi

D: Sijui

Je unamaoni yoyote?,

elezea.....  
.....  
.....  
.....

4. Je unafikiri polisi huzingatia sheria wanaposhughulika na watuhumiwa?

A: Ndio

B: Hapana [      ]

C: Kiasi

D: Sijui

Je unamaoni yoyote?

Elezea.....  
.....  
.....

5. Je unafikiriisheria inadhibiti vya kutosha Jeshi la Polisi linapotekeleza majukumu yake?

A: Ndio

B: Hapana [       ]

C: Kiasi

D: Sijui

Je unamaoni yoyote?

Elezea.....  
.....  
.....

6. Je unazifahamu taratibu za kushughulikia ukiukwaji wa haki za binadamu pale unapofanywa na Jeshi la Polisi?

A: Ndio

B: Hapana [       ]

C: Kiasi

D: Sijui

7. Je unafikiri taratibu zinazotakiwa kufuatwa na mtu pindi anapokuwa amevunjiwa haki zake na Jeshi la Polisi Zinajitosheleza?

A: Ndio

B: Hapana [       ]

C: Kiasi

D: Sijui

8. Je unafikiri sheria inatoa fidia stahiki pindi haki za msingi za watu zinapokiukwa na Jeshi la Polisi?

A: Ndio

B: Hapana [       ]

C: Kiasi

D: Sijui

Je unamaelezo ya ziada kuhusiana na taratibu pamoja na fidia zinazotolewa baada ya mtu kuvunjiwa haki zake na Jeshi la Polisi?

Elezea.....  
.....

Jina; Edson Kilatu

Simu: 0713-815001

Barua Pepe: [kilatu2004@yahoo.com](mailto:kilatu2004@yahoo.com)

Chuo Kikuu Mzumbe

**APPENDIX D: INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IN  
TANZANIA**

S/N	Core International Human Rights Instruments	Status
1	Universal Declaration of Human Rights	Not Signed and Ratified
2	International Covenant on Economic, Social and Cultural Rights, 1966	Accessed on 11 <sup>th</sup> July 1976
3	International Covenant on Civil and Political Rights, 1966	Accessed on 11 <sup>th</sup> July 1976
4	Optional Protocol to the International Covenant on Civil and Political Rights, 1966	Not Signed
5	Second Optional Protocol to the International Covenant on Civil and Political Rights, 1966	Not signed
6	Protocol to the International Covenant on Economic, Social and Cultural Rights, 1966	Not Signed
7	Convention on the Rights of the Child, 1989	Signed 1 <sup>st</sup> July 1990 and Ratified 10 <sup>th</sup> June 1991
8	International Convention on the Elimination of All Forms of Racial Discrimination, 1966	Acceded on 27 <sup>th</sup> October 1972
9	Convention on the Elimination of All Forms of Discrimination against Women, 1979	Signed on 17 <sup>th</sup> July 1980 and Ratified on 20 <sup>th</sup> August 1985
10	International Convention for Protection of All Persons from Enforced Disappearance, 2006	Signed in September 2008
11	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Not signed
12	International Convention on the suppression and Punishment of the Crime of Apartheid	Accessed on 11 <sup>th</sup> June 1976

**APPENDIX E: THE NINE PRINCIPLES OF POLICING BY SIR ROBERT  
PEEL**

1. The basic mission for which the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon public approval of police actions.
3. Police must secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
4. The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
5. Police seek and preserve public favour not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.
6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
7. Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence
8. Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.