TABLE OF CONTENTS

Acknowledgement ii
Dedication iii
Table of Abbreviations iv

Chapter One
INTRODUCTION TO HUMAN RIGHTS

1.1 General Overview 1

1.2 Conceptualising Human Rights 2

1.3 The Influence of the UDHR on the Evolution of Modern Human Rights Concepts 4
1.3.1 General Overview 4
1.3.2 The Adoption of the UDHR
(a) An Historical Antecedent 4
(b) The Search for a Universal Definition of Human Rights: Adopting the UDHR 5
1.3.3 Historical Influence of the UDHR on Modern Human Rights 7
(a) The UDHR as One of the Greatest Achievements of the United Nations 7
(b) The UDHR vis-à-vis the Division of Human Rights into three Generations 7
(c) The Influence of the UDHR on Subsequent Human Rights Instruments Regarding Indivisibility of Human Rights 11
(d) The UDHR and the International Acceptance of Socio-Economic Rights 14
(e) The UDHR vis-à-vis Relativism of Human Rights 16

Chapter Two
BACKGROUND TO HUMAN RIGHTS IN TANZANIA

2.1 The Genesis of Modern Human Rights Concepts in Tanzania 18

2.2 Introduction of the Bill of Rights in Tanzania 22

2.3 Judicial Protection of Human Rights in Tanzania 24

2.3.1 General Overview 24
2.3.2 Human Rights Protection Mechanism in Tanzania 24
2.3.3 The Enabling Law on the Enforcement the Bill of Rights 26

2.4 Some Statutory Constraints on the Enforcement of Human Rights in Tanzania 30
2.4.1 The Three-Judge Requirement 30
2.4.2 Repugnant Laws to Remain Valid until Rectified by Parliament 31
2.4.3 The Problematic 'Saving Clause' 35
2.4.4 Using Parliament to Pre-empt Court Decisions in Favour of Human Rights 35
2.4.5 Invoking Legal Technicalities to Stall the Course of Human Rights .. 37

Chapter Three

SOVEREIGNTY RIGHTS IN TANZANIA MAINLAND AND ZANZIBAR

3.1 Sovereignty and Statehood of Zanzibar in the Union: Critical Comments on *S.M.Z. V. Machano Khamis Ali & 17 Others*, by Issa G. Shivji 41
3.1.1 Introduction 41
3.1.2 Some Peculiar Features
(a) Assumption of Jurisdiction 42
(b) The High Court's Ruling not fully considered 44
(c) The Constitution of Zanzibar not referred .....
3.1.3 The Analysis 45
(a) The Approach 45
(b) Critique from the Internal Standpoint 45
3.1.4 The Standpoint of the Zanzibar Constitution 51
3.1.5 Concluding Ironies 52

3.2 *Serikali ya Mapinduzi Zanzibar v. Machano Khamis Ali & 17 Others* (Criminal Session Case No.7 of 1999, High Court of Zanzibar) 53

3.3 *Serikali ya Mapinduzi Zanzibar v. Machano Khamis Ali & 17 Others* (Criminal Revision in Criminal Application No. 8 of 2000, Court of Appeal of Tanzania) 64

Chapter Four

PROTECTION OF THE RIGHT TO LIFE IN TANZANIA

4.1 *Republic v. Mbushuu alias Dominic Mnyaroje and Kalai Sangula (*Criminal Sessions Case No. 44 of 1991, High Court of Tanzania) 79

4.2 *Mbushuu alias Dominic Mnyaroje and Another v. Republic* (Criminal Appeal No 142 of 1994, Court of Appeal of Tanzania) 99

Chapter Five

FREEDOM OF ASSEMBLY IN TANZANIA

5.1 Introduction 115

5.2 The Justiciability of the Freedom of Assembly: Some International, Regional and Local Concerns 115
- (a) The Right to Freedom of Assembly at the International Level 116
- (b) The Right to Freedom of Assembly as Guaranteed by Regional Instruments 116
- (c) The Freedom of Assembly as Guaranteed by National Constitutions 116

5.3 Restrictions on the Right to Freedom of Assembly 117

5.4 The "Clear and Present Danger" Test and the Right to Assemble Peaceably 119

5.5 The Universal Role of the Police on Protection of the Freedom of Assembly 120

5.6 Legal Protection of the Freedom of Assembly in Tanzania 121
- (a) *The Political Parties Act (1992)* 121
- (b) *The Elections (Amendment) Act (1992)* 122
- (c) *The Local Authorities (Elections) (Amendment) Act (1992)* 122
- (d) *The Police Force and Auxiliary Services Act* 123

5.7 Some Subsidiary Legislation Guaranteeing the Right to Peaceful Assembly in Tanzania 126
- (a) Government Notice No. 169 Of 1958 126
- (b) Government Notice No. 98 Of 1960 126
- (c) Government Notice No. 237 Of 1962 126

5.8 Judicial Protection of the Freedom of Assembly in the Commonwealth 126

5.9 Democracy and State Interference with the Freedom of Assembly 131

5.10 Conclusion 132

Chapter Six
THE RIGHT TO PARTICIPATE IN THE GOVERNANCE OF PUBLIC AFFAIRS IN TANZANIA

6.1 "The Right of People to Participate in the Governance of Public Affairs in Tanzania," By Clement J. Mashamba. 133
1.1.1 Introduction 133
6.1.2 Democracy and People's Participation in Governance of Public Affairs 134
6.1.3 The Ideals behind People's Participation in the Governance Of Public Affairs 136
6.1.4 How can Citizens Participate in Governance of Public Affairs in Tanzania? 139
(a) Direct Participation 139
(b) Indirect Citizens' Participation in Governance of Public Affairs: The Case of the Lawmaking Process 139
6.1.5 Citizens' Participation In The Lawmaking Process In Tanzania
(a) In Retrospect 141
(b) Less Citizens' Participation in the Lawmaking Process in Tanzania 142
6.1.6 Concluding Remarks 143

6.2 *Rev. Christopher Mtikila v. Attorney-General (1993)* 145

6.3 *Christopher Mtikila v. Attorney General (2005)* 173

6.4 *Julius Ishengoma Francis Ndyanabo v. Attorney-General (2001)* 194

6.5 *Legal and Human Rights Centre, Lawyers' Environmental Action Team & National Organization For Legal Assistance v. Attorney-General (2005)* 211

6.6 *"Takrima in Court: The Implications of the High Court Ruling in Legal And Human Rights Centre & 2 Others v. A.G. on Free and Fair Elections in Tanzania," By Clement J. Mashamba* 233
6.6.1 Introduction 233
6.6.2 Defining *Takrima* 233
6.6.3 *Takrima* in Court 235
(a) The Facts of the Case 235
(b) Preliminary Objections Raised by the Respondent 237
(i) Petitioners Lacked *locus standi* 237
(ii) Lack of Cause of Action 240
(c) The Court's Reasoning in Respect of the Main Petition 241
(i) *Takrima* vis-à-vis Equality Before the Law (Article 13(1)) ... 241

(ii) The Proportionality Test vis-à-vis the Necessity to Enact *Takrima* Provisions 242
(iii) The Right to Enfranchisement (Article 21) 243
(iv) Prohibition of Enacting Discriminatory Laws [Article 13(2)] 243
6.6.4 The Future of the Right of Citizens to Participate in Elections without the *Takrima* Provisions in Tanzania 243

6.7 *Joseph Warioba v. Stephen Wassira and Another* (1997) 245

Chapter Seven

CIVIL LIBERTIES AND RULE OF LAW IN TANZANIA

7.1 *Lujuna Shubi Ballonzi, Senior v. Registered Trustees Of Chama Cha Mapinduzi* [1996] TLR 203 251

7.2 Director of Public Prosecutions v. Daudi Pete [1993] TLR 22 264

7.3 *Hamisi Masisi And 6 Others v. Republic* [1984] TLR 24 281

7.4 *Kukutia Ole Pumbun and Another v. Attorney General And Another* [1993] TLR 159 287

7.5 *Baraza La Wanawake, Tanzania (Bawata) & 5 Others v. Registrar of Societies & 2 Others* (High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 27 of 1997) 296

7.6 "Judicial Protection of the Freedom of Association in Tanzania: The Bawata Case," By J. Clement Mashamba 336
7.6.1 Introduction 336
7.6.2 *Bawata's* Background 336
7.6.3 The Facts Surrounding the *Bawata* Petition 337
7.6.4 Parties' Arguments and Issues before the Court 340
(a) Some Procedural Aspects 340
(b) Main Issues before the Court 340
(i) The Suspension of BAWATA was Unlawful and in Violation of Human Rights 340
(ii) Section 2 of the Societies Act was Unconstitutional 341
(iii) The Notice of Intention to Cancel BAWATA's Registration was Unlawful 342
(iv) Section 17 of the Societies Act was Unconstitutional 343
(v) Were the Petitioners Entitled to Exemplary Damages? 344
7.6.5 The Court's Reasoning 345

(a) Simplified Issues 345
(b) Whether BAWATA's Deregistration was Unlawful 345
(i) The Deregistration was Accompanied by Flaws Constituting Glaring Unlawfulness 345
(ii) Requiring Re-register amounted to "BAWATA being Re-born" 347
(iii) BAWATA had a Right to be Heard before its Deregistration .. 348
(c) Whether the Petitioners' Constitutional Rights were Violated 349
(i) The Societies Act is "Legally" Problematic 349
(ii) The Legal Effect of a Relief not Contained in Pleadings 349
(iii) Anticipatory Breach of Human Rights Can Attract Judicial Redress 350
(iv) General Principles Guiding Courts in Interpreting Constitutionality of Legislation 351
(vi) Sections 8, 14 and 17 of the Societies Act were Unconstitutional for Being Arbitrary 353
(vii) Sections 18, 19(1) and 30 were Constitutional 356
(viii) The Repugnancy of the Finality Clause Contained in Section 19(2) 357
7.6.6 The Legal Effect of the Remaining Unimpugned Provisions of the Law 357
7.6.7 Allowing the "Appropriate" Authority to Rectify the Defect 358
7.6.8. Refusing to Invoke the Principles of International Human Rights Instruments 359
7.6.9 Delaying Justice 360
7.6.10 Respondents' Reliefs to Damage Suffered 360

7.7 *Peter Ng'omango v. Gerson M.K. Mwangwa and the Attorney General* [1993] TLR 77 362