RULE OF LAW UNDER MULTIPARTY DEMOCRACY IN TANZANIA: LAW AND PRACTICES

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CERTIFICATION

The undersigned certifies that, he has read and hereby recommends for the acceptance by the Open University of Tanzania as dissertation entitled; "Rule of Law under Multiparty democracy in Tanzania: Law and Practice" in partial fulfillment for the requirements of the degree of Master of Laws, of the Open University of Tanzania (OUT).

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Date

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DECLARATION

I, Hamza Nchimbi, do hereby declare that the contents of this dissertation are a result of my own study and findings and to the best of my knowledge; they have never been presented for a similar or any other degree award in any other university.

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Signature

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Date

DEDICATION

This work is dedicated to my mother Amina Arabi Pilli and my family.

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ABSTRACT

After twenty-eight years of one-party rule, the constitution of Tanzania was amended in July 1992 to allow other parties to be formed. The amendment was made after a countrywide study of the mood and wishes of the Tanzanian people was undertaken by a Presidential Commission headed by the country's Chief Justice, Francis Nyalali. Tanzania went through a short period of multi-party politics in the pre-independence period and an even shorter phase of two years after independence. In due course the ideology resulted in stifling the very development which was being pursued and created a group of people who, because they had benefited from running the party and state, became accountable only to themselves; they were unresponsive to the wishes of the people. The Nyalali Commission, as it has come to be known, made over one hundred and fourteen recommendations to the government to guide the transition and to facilitate the functioning of a widely accepted democratic regime. Some recommendations were taken up quickly and the government has purposely tried to stymie discussion on the recommendations. The paper argues that it is understandable that the state would like to avoid chaos by managing the transition tightly. There are various versions of the term, cases; study assessed some of these meanings and then dealt with the relationship between the multiparty democracy and legal institutions and also the legal practices and challenges faced by the practices of the idea of rule of law both internationally and within Tanzania context. The study sought to determine eligibility of some government practices by surveying reports, articles, readings, books, journals and other academic and intellectual studies in relation to human right statuses in Tanzania; hence serving as benchmark towards monitoring the legal practices of the rule of law in the country.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

CBO	Community Based Organization
CCM	Chama Cha Mapinduzi
CHADEMA	Chama Cha Demokrasia na Maendeleo
CUF	Civic United Front
IEC	Independent Electoral Commission
ICCPR	International Convention of Civil and Political Rights
LHRC	Legal and Human Rights Centre
LRC	Law Reform Commission
NEC	National Electoral Commision
NGO	Non Governmental Organization
UN	United Nations
URT	United Republic of Tanzania
UDHR	The Universal Declaration on Human Rights (“UDHR”)
TEMCO	Tanzania Election Monitoring Committee
TLS	Tanganyika Law Society
TCPRPI	Tanzania Civil and Political Rights Perceptions Index

ZLSC	Zanzibar Legal Service Centre (ZLSC

CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 Introduction

This chapter gives a general overview of the rule of law in Tanzania and its application in the current multiparty democracy. It attempts to reveal the observance of the rule of law and separation of powers and its challenges to multiparty democracy. Moreover, the chapter surveys literature on rule of law and multiparty democracy. In addition it discussed the background of the problem, Objectives of study by looking at both general and specific objectives, Hypothesis of the study and Research Questions, the significance of the study and finally limitation and delimitations of the study.

1.2 Background to the Problem

While the idea is of Western origin, there are Asian scholars who maintain that some of the concerns arose in ancient debates in the East.[1] In any case, all states in the region have written constitutions and all are dedicated to ruling as per the constitution's announced intentions. This does not indicate that all legal systems are the same, either textually or in terms of the constituent document's political functions and expectations. An essential point to bear in mind is that all states' history, economic and political systems both shape and are shaped by their constitutions/legal systems which is to part of the rule of law. This dissertation considers the rule of law as a precondition and as a basis for respecting human rights, promoting democracy and also for a smooth economic development in states

[1] De Barry, 1995; Turner, 1992; WU, 1932

around the world. According to the researcher, theoretically, the rule of law does not mean exactly the same thing from an economic point of view as it does from to the legal perspective.

The famous British philosopher Thomas Hobbes (1588-1679) was mistaken in arguing that order is the only important aim of politics. But he was most certainly right in emphasizing that order is of paramount importance.[2] Without order there will be no rule of law, respect for human rights and economic development. It is no coincidence that the importance of security and order is stressed in current scholarship on rule of law promotion efforts in so-called post-conflict societies.[3] To this regard, the legal practice of rule of law under multiparty democracy should not be underestimated. There have been many practices by the government apparatuses in different states under the umbrella of defending state's normalcy. The presence of the rule of law is evaluated by variables such as limitations on public functions, lack of corruption, open government, basic freedoms, order and safety, legislative compliance, civil justice, criminal justice and unofficial justice.[4]

Global government and states have been facing difficulty is prompting these factors. This is due to the fact that there is variation on application of the rule of law. The rule of law in Tanzania is very different from the rule of law in Uganda, which is different from the rule of law in Kenya and in the Rwanda. All of these societies have their own way of applying the system of rule of law recognizably, although

[2] Edwards, 2002
[3] Thomas Hobbes (1588-1679)
[4] See https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/factors-rule-law

with different strengths and weaknesses. And within each society, the implications of their rule of law system— how it plays out in daily life—is a function of the surrounding political, economic, cultural and social environment.

In Tanzania the question is still asked for the continue violations of human rights in general and individual rights and freedoms in particular. Yet the central puzzles to the rule of law are the independence of the judiciary and unrestricted executive powers on the broader respect for fundamental freedoms, areas in which Tanzania has shown more regression than progress. On a number of occasions, opposition political parties such as CHADEMA and ACT-Wazalendo, voiced their concern and protested against what they called 'arbitrary restriction of right to assemble through different platforms, including press conferences and social media.[5]

In the country the rule of law is seen as a pre-condition and as a basis for respecting human rights, promoting democracy and also for a smooth economic development in states around the World.[6] However, contrarily, nowadays, there seems to be a growing tendency to make questionable statements about the rule of law by political leaders of countries that have so far been considered to be governed by the rule of law and are usually placed at the top of the rule of law rankings. Meanwhile, there is a series of publications about Tanzania's actual political leader indicating' disdain for the rule of law,'' attacking the rule of law' or even' mobilizing for war against the rule of law'.[7] This poses a question as, what is the position and role of played by the rule of law under the multiparty democracy? Is the practice of political leaders

[5] LHRC, 2017
[6] Kulmer, A. (2014). *Master Thesis "Measuring the rule of law: The use of indicators in the EU enlargement policy towards Balkan countries" Faculty of Law at the University of Graz.* Graz: the University of Graz.
[7] Lochem, 2017 The Theory and Practice of Legislation. *Legislation against the rule of law – an introduction*

reveals the real environment within which the rule of law is suppose to operate in the country? Is Tanzania acting as a country that respects rule of law or practicing it?

It should therefore be noted that, the rule of law is a major source of legitimating for governments in the modern world. The rule of law is the cornerstone of enhancing public health, safeguarding involvement, maintaining safety and combating poverty.[8] According to Gastorn the rule of law is also seen as a cornerstone of peace, security, justice and development, as well as an integral part of sustainable development – underpinning social and economic progress and environmental protection with strong institutions and good governance, formal legal frameworks and people's legal empowerment, equal opportunities and equitable access to basic services, and due process.[9]

Additionally, the development of multiparty democracy which is practiced in Tanzania is also rooted from rule of law. Thus, the impediments to rule of law remain executive and legislative interference in judicial decisions and the persistence of a legal regime that limits the freedoms of individuals and institution. The real challenge, however, has been whether there is a real commitment to a culture of upholding the rule of law within government institutions responsible for the administration of justice.

1.3 Statement of the Problem

In modern times the rule of law has been used either as a synonym for democratic government, or at least linked to it. The argument here is that, the government being

[8] The 2011World Justice Project Rule of Law Index
[9] Gastorn, 2015

its pluralistic or multiparty democratic politics will be more likely to keep a government within bounds than would regimes that are not subject to these disciplines. While this is likely true, two qualifications must be made. The first is that even democratic regimes can abuse the rights of minorities by passing oppressive laws, as it was in indigenous Australians and Asian Australians well know. Secondly, even systems that have humane and non-discriminatory laws experience abuses of power, usually by individuals, although systematic abuses are not unknown. Yet, that said, the empirical surveys of human rights compliance show that developed democratic regimes have the best human rights records, and military dictatorships, and one party state have the worst records in this regard.

Similarly, amongst developing states, those that are well advanced economically are generally the least oppressive, while those that are the most backward have real problems. But again, this is not a simple correspondence but merely a general tendency. What emerges from this is that modern systems are not simply based upon the law, but that there are other arrangements - particularly, political institutions and practices - that also contend for pride of position as the key principles of the system. In parliamentary systems, for example, even where there is a written constitution, there is sometimes said to be a conflict between the rule of law and parliamentary sovereignty.

The assertion is that the law insists on stability, while parliamentary sovereignty enables one branch of government to override all others. The point to discuss here point for our purposes is that, what are the position of legal orders are embedded in political systems? Again, what is the position of the constitution and the political

parties Act? This study assesses rule of law under multiparty democracy in Tanzania by looking at its law and practices.

Again, there has been a tendency of police force through the orders from the higher authorities to restrict some operations of political parties and other institutions seem to fight for human rights. To this regard, it's difficult to talk about a democracy without some level of rule of law and human rights protection. Democracy is not possible without some level of human rights protection. For example, people would not be able to take part in free and fair elections unless they enjoy a certain minimum of fundamental civil and political rights such as a person's right to life, security and freedom, freedom of expression, participation in government, and political association. At a minimum, respect for these rights creates a fruitful environment for meaningful or effective political participation and competition which in turn reflects the existence of viable rule of law.

Additionally, there have been some actions and threats against political parties which do not favor existence of multiparty democracy. Even the sanctity of organizational democracy was briefly threatened when political parties were informed that they could not proceed with internal party meetings and conventions. This announcement was subsequently withdrawn, but not before the police began putting it into effect on the opposition with unseemly enthusiasm. Again, there are laws in place intended to control and govern political conduct. And law is an instrument of governing multiparty system, rule of law, social engineering and social cohesion; an instrument for balancing competing political and administrative interests. There are also institutions designated to enforce the law. But why the dilemma does still exist?

Why there is failure to address serious problems in fairness in multiparty practices? Why our long established national unity and cohesion is at risk despite the laws and institutions in place? If right answers are not given to those questions and practical solution to the problems are not found; no doubt that democracy, fair and competitive political unity and cohesion will fade up, society will end up balkanized, and the one nation under strong and clear rule of law will perish.

Essentially, by banning political activities, the government was declaring a de facto one-party state in a country that has enjoyed multi-party politics for over 20 years. More lately, the arrests and harassment of opposition leaders have taken a more dangerous turn. For the first time in Tanzania's latest history, two opposition members of parliament (MPs) are in jail. They were both prosecuted with sedition. These efforts to reverse the democracy of Tanzania have been further accentuated by the President's campaign against freedom of the press and freedom of speech.

The current regime has swiftly and arbitrarily applied the draconian Cybercrimes Act and Media Services Act to crack down on mainstream and social media. To date, more than 12 people have been arrested for allegedly insulting the name of the president online. Some of them were inexplicably denied bail. The owner of JamiiForums, a famous social media platform, faces criminal charges for supposedly refusing police officers access to private data from customers of the platform. JamiiForums has been an important platform over the years for whistleblowers of government corruption and has been a rallying point for many who wish to criticize the regime anonymously.

It is therefore a researcher expectation that the findings to these questions would be useful in improving the quality of the multiparty democracy, the political environment operating in the country, practices of the rule of law hence contributing towards positive economic, political and social development in general.

1.4 Objectives of the Study

1.4.1 General Objective

To assess prevalence and practices of rule of law under multiparty democracy in Tanzania.

1.4.2 Specific Objectives

The study was guided by the following specific objectives:

i. To identify legal gaps in the existing laws governing political parties in Tanzania with a view to bridging the gaps.
ii. To suggest a legal framework that promotes democracy and development of multipartism in the country.

1.4.3 Research Questions

i. What are the legal gaps in the existing laws governing political parties in Tanzania?
ii. Which legal framework should be suggested in order to promote democracy and development of multipartism in Tanzania?

1.5 Significance of the Study

This study will create awareness to government, Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs), community and other

institutions on the practices of rule of law under the multiparty democracy in Tanzania. The study will also help the government, policy makers and other legal based stakeholders to improve and suggest plausible means of practicing the rule of law. This study will also be important to the institutions entrusted with the duty to oversee the practicability of the rule of law and elections in the country. These are the Political Parties, National Electoral Commission and Registrar. The Law Reform Commission is also a beneficiary of this work as it sports the problem in the democratic legal framework. Finally, the study will contribute to the existing literature and knowledge on holistic approach needed to manage and suggest best practices of the rule of law under the multiparty democracy in Tanzania.

1.6 Delimitations of the Study

The study assessed the prevalence of the rule of law under the multiparty democracy in Tanzania specifically in Dar es Salaam. The study took into account literature based data found in books, journals, articles and other intellectual and academic writings. It confined itself to five selected districts in Dar es Salaam region. This is because of number of desire of a researcher to obtain thick data and other relevant information for the study. Dar es Salaam region was also selected due to presence of enough government offices and ministries, NGOs and CBOs which are related to this study.

1.7 Literature Review

A "rule of law" that lies beyond the state may concern the reach of law in the global setting. It may refer to some still uncertain and undefined global law as a component of some governance processes that are, as a whole, beyond the control of states. It is

an ancient principle and an elusive notion that has been subject to many interpretations over the centuries. Rule of law is a phrase that is universally used but not fully defined, although it is commonly understood to mean that every member of a society is bound and entitled to the benefit of laws that are publicly drawn up and administered and have no retrospective effect .[10]

This is because there is existence of mushrooming of some political leaders who oppose the rule of law requirements that they are not exceptional. It is prevalent in failed states where there is a growing tendency to make questionable statements about the rule of law by political leaders of countries that have so far been considered to be governed by the rule of law and are usually placed at the top of the rule of law rankings. Therefore, this dissertation surveys literature on rule of law and multiparty democracy with reflections of its applications in the current Tanzanian environment.

Moreover, this dissertation considers the rule of law as a precondition and basis for respecting human rights, promoting democracy and also promoting smooth economic development in states around the world. Theoretically, the rule of law does not mean exactly the same thing from an economic point of view as it does from a legal perspective. Even in the legal perspective, there are two versions of the rule of law— substantial and formal. Few scholars who have attempted to discuss the critical issues posed by the development of mobile money services. Therefore, most of the pieces of literature cited in this paper have been generated from other

[10] Palombella, G. (2009). The rule of law beyond the state: Failures, promises, and theory. *Oxford journals,* 442-468

jurisdictions. Since the thoughts and findings of these authors are relevant to this study, they have been incorporated in order to determine the potential legal gaps that form the scope of the present study.

On the one side, the United Nations has promoted the rule of law at global level through the strengthening and growth of an international structure of norms and standards, the creation of international and hybrid courts and tribunals and non-judicial mechanisms. It has developed its structure for commitment to the rule of law sector at national level through the provision of assistance in constitutional making; the national legal framework; the institutions of justice, governance, security and human rights; transitional justice; and the enhancing of civil society. The 2008 Guidance Note of the Secretary-General on the United Nations Approach to Rule of Law Assistance provided overarching principles and a framework for guiding rule of law activities at the national level. Furthermore, his 2009 Guidance Note on United Nations Assistance to Constitution-making Processes outlined the components of constitution-making processes and recognized that such processes are a central aspect of democratic transitions.

Tamanaha in his paper the tension between legal instrumentalism and the rule of law argued that "the substantive version of the rule of law is the idea that there are legal limits on the government: there are certain things the government cannot do, even when exercising its sovereign lawmaking power . . . this version . . . ensures the 'rightness' of law in accordance with a preexisting higher standard." Tamanaha argues in contrast that the formal version of the rule of law is the idea that the government is bound to abide by legal rules that are publicly set forth in advance, are

certain and stable, and are applied equally to all in accordance with their terms . . . this version of the rule of law ensures the predictability of law.[11] The two versions of the rule of law are not antithetical: Ideally they share the basic proposition that the government and its officials, as well as citizens, operate within legal limits and are bound to follow legal rules.

Tamanaha added that the rule of law exists on different levels, from the abstract to the specific, and on the level of more specific rules and principles, there is range of possibilities, both geographically and historically, which all are or at least can be compatible with the rule of law. It is especially important to keep this in mind when one looks at rule of law promotion efforts since donor organizations and states have often proceeded from the assumption that the only way to create or strengthen the rule of law is to replicate the legal system of donor states.[12] The effects of such legal transplants, for instance trial by jury, have however, been mixed and in current scholarship it is often emphasized that rule of law promotion is often more likely to be successful if the rule of law is built on the foundations of available legal arrangements in the recipient country rather than on bits and pieces imported from abroad.[13]

The variety on the level of more specific rules and arrangements would perhaps be manageable if there were consensus among scholars over the meaning of the rule of

[11] Tamanaha, B. Z. (2006). The Tension between Legal Instrumentalism and the Rule of Law. *33 SYRACUSE J. INT'L L. & COM.* , 131, 131–32

[12] S. Holmes, 'Can foreign aid promote the rule of law'? In: East European Constitutional Review, vol 8, nr. 4, 1999

[13] For debate on legal transplants, see P. Legrand, 'The impossibility of legal transplants', in: 4 Maastricht Journal of European and Comparative Law, 1997, 111-124 and A. Watson, Legal Transplants, Athens (Georgia), 1993)

law on an abstract level. If present, such an understanding could work as an anchor for more detailed arrangements. No such consensus exists however; in fact, not even remotely. There are very different views on what the main characteristic features and the value of the rule of law are. On the one hand there are those who argue that the objective of the rule of law consists of enabling human flourishing in the most expansive sense of the word. The famous formulation of this conception of the rule of law is by the International Commission of Jurists which in its 1959 Conference in New Delhi explained that:

> *"....the function of the legislature in a free society under the rule of law is to create and maintain conditions that will uphold the dignity of man as an individual. This status needs not only the recognition of his civil and political rights, but also the creation of social, financial, educational and cultural circumstances vital to the complete growth of his character".*[14]

There are few, if any, scholars who have defended an equally broad concept of the rule of law but there are versions that come close. Dworkin, for example, one of the most influential legal philosophers of the past century, defines his 'rights' conception of the rule of law in the following manner:

> *"It assumes that citizens have moral privileges and obligations to one another and political rights to the state as a whole. It demands that these moral and political rights are acknowledged in positive law, so that they can be implemented on the request of individual citizens by means of courts or other statutory agencies of a familiar sort, to the extent that this is feasible. The rule of law in this concept is the basis of a government understanding of individual rights. It doesn't make a difference...between the rule of law and substantive justice; on the contrary, it requires, as part of the ideal of law, that the rules in the book capture and implement moral rights".*[15]

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[14] See J. Raz, 'The rule of law and its virtue', in: Raz, The authority of law; Essays on law and morality, Oxford, 1979, 210-232, at 210-1.

[15] R. Dworkin, A matter of principle, Cambridge: Mass., 1985, at 11-12

There are also scholars who defend a more modest conception of the rule of law. According to them, the point of the rule of law lies primarily in limiting the exercise of governmental power and in making the actions of the government with respect to its citizens and of citizens with respect to each other predictable. Hayek, for example, writes that the rule of law:

> *" ... means that, in all its activities, the government is bound by laws laid down and announced beforehand – rules that render it possible to predict with reasonable assurance how the power will use its coercive powers in certain conditions and to schedule its personal activities on the grounds of that understanding ".*[16] *Raz's conception of the rule of law is roughly similar:*
> *'The rule of law literally implies what it states: the rule of law. Taken in its broadest context, this implies that individuals should follow the law and be governed by it'.*[17]

Our review of the literature has shown that the two conceptions of the rule of law just mentioned represent the two opposite sides of contestation about the proper meaning and aims of the rule of law. These opposite sides are variously described in scholarly literature as broad versus narrow, thick versus thin, substantive versus formal.[18] The key difference is that the narrow or thin or formal conceptions deny that the existence of the rule of law depends on the content of the laws which rule. To put it in extreme terms: if one wants to find out whether the rule of law existed in South-Africa prior to 1990, the fact that Apartheid was firmly entrenched in legislation and case-law is irrelevant; what is relevant, among other things, is whether these laws were sufficiently clear, so that they could guide the conduct of persons, so as to enable them to plan their lives. It is very important that this

[16] F. A. Hayek, The road to serfdom, London, 1993, at 54.
[17] Supra note 15, at p 212
[18] The distinction between thin and thick is by far the most common in academic literature, but other classifications are possible. Fallon, for example, distinguishes between historicist, formalist, legal process and substantive conceptions of the rule of law (Fallon: 5).

example, which is deliberately extreme so as to avoid equivocation, is not misunderstood.

First, the cases of highly abject regimes which comply with the rule of law are very rare indeed. Secondly, those who defend a thin conception of the rule of law do not refuse to pass judgment on the content of laws. They may have strong views on what the content of the law should be and they may be highly active and energetic in trying to reform the law if it is less just than it should be. What the example highlights is that some thinkers make an analytical distinction between the existence of the rule of law and the content of the laws that rule. In these models, substantive justice is an independent ideal which in its core is different from the ideal of the rule of law. In short, the rule of law may not by definition be the rule of good law, though it preferably is.[19]

The foregoing may give the impression that there are only two versions of the rule of law: a thin and a thick one. In fact, thick and thin should rather be seen as broad categories, within which further distinctions can be made. There is a broad spectrum of rule of law conceptions, ranging from thinnest to thin and from thick to thickest. This has been presented very clearly by Tamanaha in his table of rule of law conceptions.[20]

[19] Raz at p 211. For those familiar with legal theory, it will not come as a surprise that those who defend the thin conception of the rule of law are often outspoken exponents of legal positivism. See P.P. Graig, 'Formal and substantive conceptions of the rule of law: An analytical framework', in: Public Law, 1997, 467-87, at 477. For a classic explanation of the meaning and merits of legal positivism, see H.L.A. Hart, 'Positivism and the separation of law and morals', in: Essays in jurisprudence and philosophy, Oxford, 1993, 49-87.

[20] B. Z. Tamanaha, On the Rule of Law; History, Politics, Theory, Cambridge, 2006, at 91

	ALTERNATIVE RULE OF LAW FORMULATIONS Thinner - - - - - - - - - - - - - - -> to - - - - - - - - - - - - -> Thicker		
FORMAL VERSIONS:	1. **Rule-by-Law** – law as instrument of government action	2. **Formal Legality** – general, prospective, clear, certain	3. **Democracy+ Legality** – consent determines content of law
SUBSTANTIVE VERSIONS:	4. **Individual Rights** – property, contract, privacy, autonomy	5. **Right of Dignity and /or Justice**	6. **Social Welfare** – substantive equality, welfare, preservation of community

Whether the thin conception of the rule of law is superior to the thick conception and which of the thin or thick conceptions is best is an issue which is impossible to resolve. There are good reasons for and against any of the conceptions, but no argument is available which demonstrates beyond doubt to all reasonable participants to the debate that one conception is clearly the best. Some commentators have therefore suggested that the rule of law, like 'art' and 'democracy', is an example of what the British philosopher W.B. Gallie half a century ago called essentially contested concepts, that is, 'concepts the proper use of which inevitably involves endless disputes about their proper uses on the part of their users'.[21]

This definition of Tamanaha proposes that with the environment where there are no rooms for rule of law and its operation. Again, there is a series of publications about

[21] R. J. Fallon, 'The rule of law as a concept in constitutional discourse', in: Columbia Law Review, vol. 97, 1997, nr 1, 1-56, at 7; J. Waldron, 'Is the rule of law an essentially contested concept (in Florida)?, in: Law and Philosophy, 21, 137-64, 2002, at 148-159; W.B. Gallie, 'Essentially contested concepts', in: Proceedings of the Aristotelian Society, vol. LVI, 1955-6, 1956, 167-198, at 169. This does not just mean that the concept of the rule of law is vigorously contested, with no resolution in sight. It means that the contestation goes to the very core of the concept (Waldron: 149). There are perfectly coherent and defensible, but profoundly different views on the content and requirements of the concept, as well as on why it is to be valued, on the point that it has. This does not discharge one from attempting to outline a version of the concept that is coherent, convincing and possibly useful. Indeed, the contestation surrounding the use of essentially contested concepts challenges the users of these concepts to sharpen their own conception. 'Recognition of a given concept as essentially contested implies recognition of rival uses of it (such as oneself repudiates) as not only logically possible and humanly 'likely', but as of permanent critical value to one's own use or interpretation of the concept in question…' (Gallie: 193). But any conception can and will on good grounds be contested, and the conception outlined in this report is no exception.

Tanzania's actual political leader indicating' disdain for the rule of law, attacking the rule of law or even mobilizing for war against the rule of law. However, Tanzania is still considered –internationally – as a country which respects rule of law with well defined branches of the government, existence of political parties and number of mass media both privately and public owned. Within such environment, the most probable question is, why are journalists being detained without bail without clear ground backing cases alleged to? With such an environment can we call Tanzania a democratic country which respects freedom of mass media as it is used to?

Again, Tamanaha has not digested clearly issues related to multiparty system and its legal operation, legal issues pertaining to human rights protection which are the realm of this study; however, its relevance to this study lies in the fact that it has focused on the existence of the rule of law and especially preexisting and rightness of the law which is also the concern of this study. To this regards, this dissertation therefore sought to determine eligibility of some government practices in relation to human right statuses in Tanzania; hence serving as benchmark towards monitoring the legal practices of the rule of law in the country.

Meyeson in his journal entitled 'the rule of law and the separation of powers'[22] stated the opposite of the rule of power. According to him rule of law stands for the supremacy of law over the supremacy of individual will. However, this conception of the rule of law speaks only in the most general terms. As in the case of all abstract multiparty systems and political ideals the requirements of the rule of law are

[22] Meyeson, D. (2004). THE RULE OF LAW AND THE SEPARATION OF POWERS. *Macquarie Law Journal*, 1-6

contested.[23] To this regard, separation of powers doctrine is also complex and contested notion, and the extent to which it supports the rule of law therefore depends, in part, on how its requirements are understood. Meyeson mainly focuses on the meaning of the rule of law and the separation of power. This dissertation explores the rule of law under multiparty democracy as well as the laws and practices. Furthermore, the researcher will also try to investigate if this study can be used to advance rule of law values.

Dicey in his well-known work 'The Law of the Constitution 194'[24] stressed three features of the rule of law: The need to curb the granting of discretionary powers to government authorities in the interests of security and predictability ; the capacity to seek redress in autonomous judiciary should the government act illegally ; and the significance of equality before the law. According to him, if these features are accorded in the system of rule of law it may help in transforming and liquidizing the nature of government operations in the current years.[25] However, the question remains, are these features applies and accord to Tanzania environment? Are the Tanzanian court systems independent not to give loopholes to the political practitioners to impose their ideas?

For the United Nations, the rule of law refers to[26] the principle of governance in which all persons, institutions and entities, both public and private, including the State itself, are accountable to laws that are publically enacted, equally enforced and

[23] Meyeson, D. (2004). THE RULE OF LAW AND THE SEPARATION OF POWERS. *Macquarie Law Journal*, 1-6

[24] Dicey, A. (1950). *The Law of the Constitution 194 (9th ed).* London: MacMillan.

[25] Ibid

[26] The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General, UN SC, UN Doc. S/2004/616

independently enacted and are consistent with international human rights standards and standards. It also needs steps to guarantee compliance with the values of the rule of law, equality before the law, accountability to the law, honesty in the implementation of the law, division of powers, involvement in decision-making, legal assurance, the prevention of arbitrariness and procedural and legal transparency. There is much in this definition, with which this study agrees, but not the inclusion of human rights and not the allusion to democracy. There are three main reasons why researcher excluded them from the core meaning of the rule of law.

The first reason is that the definition, on its own terms, requires only that government officials and citizens be bound by and abides by the law. It should be noticed that this requirement says nothing about how those laws are made—whether through democratic means or otherwise-and it says nothing about the standards that those laws must satisfy-whether measured against human rights standards or any others. The rule of law is an ideal of legality. Democracy is a governance scheme. Human rights are fundamental norms and standards, or at least norms which assert universal application.

Since each of these concepts has a significance that is well known, it encourages misunderstanding to argue, in my perspective, that the latter two are component of the concept of the rule of law. Each of them must be grasped and argued for on its own terms. They are distinct components that concentrate on distinct aspects of the political-legal scheme, which may occur individually or in conjunction. Researcher's second reason for excluding them is that to insist that the rule of law requires human

rights and democracy has the effect of defining the rule of law in terms of institutions that match liberal democracies. It indicates that only liberal democracies have the rule of law.

In this line of reasoning, if a community wants to obtain the rule of law, it must come to resemble a liberal democracy. It's unjustifiable. It seems to fill the significance of the rule of law with contestable normative presuppositions to generate the required or presupposed result, which is then placed on all by definition fiat. Furthermore, this move—the insertion of democracy and human rights as aspects of the definition of rule of law—is objectionable because it is contrary to the tenets of liberalism itself. It is contrary to liberal tolerance and regard for other aspects of being to argue that only liberal democracies are entitled to legitimacy.

One of the most important liberal philosophers of the 20th century, John Rawls, made this very argument when he recognized that what he called "hierarchical societies" (which he contrasted with liberal societies) can be legitimate even when democratic institutions are lacking, when people are not seen as free and equal, and when "they do not have the right to free speech as in liberal societies".[27] According to Rawls, such communities can be lawful if they are well-ordered and individuals appreciate minimum privileges to subsistence, safety, assets, official equality and liberty from forced labour.[28] Rawls added, "The legal structure (must be) honestly and not immoderately thought to be driven by a standard sensible perception of fairness. It requires into consideration the vital interests of people and imposes moral

[27] See John Rawls, "The Law of Peoples" in Samuel Freeman, ed., Collected Papers (Cambridge: Harvard University Press, 1999)
[28] Ibid. at 546-547

obligations on all employees of community".[29] What he had in mind was a genuinely communitarian-oriented government and society. This is not the place to engage in a discussion of Rawl's theory. I mention it here only to show that a liberal philosopher of the first class has recognized that countries do not need to implement democracy and a complete range of liberal rights in order to assert legitimacy. In line with this perspective, Rawls provided a minimalist concept of the rule of legislation that relies on the fundamental components of the legal scheme.

By the rule of law, he stated, I mean, that his laws are public, that comparable instances are handled in the same way, that there are no student charges, and the like. These are all characteristics of the legal system, in so far as it embodies, without exception, the concept of a government scheme of regulations directed to reasonable humans for the organization of their behavior in the achievement of their meaningful interests. This idea does not, in itself, impose any boundaries on the substance of the legal laws. The Rawls concept of the rule of law is compatible with the approach researcher take here.

The third reason why this research is not including democracy and human rights as needed elements of the rule of law has to do with the strong legitimizing role of the rule of law in contemporary worldwide discourse. A country that has the rule of law—and virtually every country today makes this claim, some with much less credibility than others— relies on this claim to insist that it is a good government worthy of obedience from its citizens. When one reads all the rhetoric about the rule of law that now exists, it sometimes feels like the rule of law is the foundation of all

[29] Ibid. at 546

decent things. The 2011 World Justice Project Rule of Law Index, for example, broadly asserts:[30] Without the rule of law, medicines do not reach health facilities due to corruption; women in rural regions stay ignorant of their freedoms; individuals are murdered in criminal violence; and business expenses are increasing because of the danger of expropriation. The rule of law is the cornerstone of enhancing public health, safeguarding involvement, maintaining safety and combating poverty.

This study emphasizes on the belief that the rule of law provides essential benefits to society. That said, the issue with claims like this is that a community can have the rule of law, yet still suffer from bad public health, poverty, threats to private safety, and a host of other ills. For example, the United States is generally thought to be a country governed by the rule of law and scores relatively well on the rule of law index.[31] Yet major segments of its population have limited access to health care, suffer from poverty and live in unsafe areas.

To this regard is necessary to maintain a sharp analytical separation between the rule of law, democracy and human rights, as well as other good things we might want, like health and safety, because mixing all of these together tends to obscure the essential reality that a society and a government may comply with the rule of law, but still have serious shortcomings or will in various respects. Or, to put it another direction, the rule of law may be a needed component of good governance and a decent community, but it is definitely not enough. And a society that possesses the

[30] Mark David Agrast, Juan Carlos Botero & Alejandro Ponce, The World Justice Project Rule of Law Index 2011, (Washington D.C.: The World Justice Project)
[31] Ibid. at 103

rule of law, while better off in certain ways that I will identify, is not necessarily, on that basis alone, a good society worthy of praise. The rule of law is just one element of a bigger socio-political complex, and what counts is not a single item on its own, but how it all goes together.

In Tanzania the court has the authority to certify the Director of Elections in the case of parliamentary election or the Electoral Authority in the case of election in local authorities.[32] According to researcher, the rule of law is endowed, as well, with a conceptual independence from democracy; it applies to and confronts any form of power and government, and, in turn, eventually it takes different incarnations in different times and places. The aspect of the rule of law is supported by the separation of judicial from executive power which is engaged. In giving that only judges can exercise legislative powers, the doctrine prohibits public representatives from getting the last word on whether they have behaved illegally. The division of legislative powers thus offers for an efficient control of the executive branch.

Fombad & Kibet[33] demonstrates that for nearly two decades, there has been a steady decline in the state of the rule of law in Africa. This is of concern especially considering that even in countries that had recorded significant gains as far as the rule of law is concerned, there has been a steady decline, while some countries have consistently scored poorly over the years.[34] To this regard the rule of law is the

[32] The National Elections Act, Cap. 343 incorporates all the amendments made up to and including 30th June,
2010, and is printed under the authority of section 4 of the Laws Revision Act, Cap. 4.

[33] CM Fombad & E Kibet 'Editorial introduction to special focus: The rule of law in sub-Saharan Africa: Reflections on promises, progress, pitfalls and prospects' (2018) 18 African Human Rights Law Journal 205-212

[34] Ibid

bedrock on which democracy and democratic practices are supposed to be anchored. Although democracy in one form or another is well established through the regular holding of multiparty elections in sub-Saharan Africa, there are many signs of creeping authoritarianism.

On the other hand, Multipartism has in a way also influenced the behavior of the judicial branch of government. The independence of the judicial system is critical for the expansion of democracy. The Nyalali Commission which recommended the re-introduction of Multi-party politics in Tanzania emphasized that for expanded democracy to take shape in Tanzania, the judicial system has to remain autonomous from executive and parliamentary control[35]. Furthermore, the judiciary must ensure that "no parliamentary legislation undermined the constitution. Also, the judiciary must be empowered to review executive actions, to make sure they do not violate basic human rights enshrined in the constitution.

1.8 Research Methodology

Research approach and methodology is the general strategy that outlines the way in which research is to be.[36] This dissertation relies on documentary evidence as the dominant source of data collection. The method involved translating schools of thought and testing them against each other to determine their relation with the rule of law in Tanzania. A chain of literature including books, articles, journals, and thesis were consulted to retrieve knowledge on the rule of law under multiparty democracy and challenges faced in Tanzania.

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[35] The Nyalali Commission 1992

[36] Kothari, C. (1990). *Research Methodology: Methods and Techniques.* New Delhi: New Age International (P), Limited.

To achieve this researcher visited various libraries and online materials so as to thicken the study. Like most articles, journals are available online various websites were also consulted. The rationale behind opting for the methodology as the dominant source of data collection for this dissertation is to have sufficient time to review different literature (both online and hard copy materials) related to this study and later convey their insights in this dissertation.

Qualitative approach was applied to assess and analyze the relevance of the data gathered from different readings and studies towards the rule of law under multiparty democracy in Tanzania. This helped in providing "thick description" thought to be essential for enabling transferability of judgments. Qualitative approach also served to provide a bigger picture of a situation or issue and can inform in an accessible way. Additionally, organization of data reflected the objective of study to ensure that adequate and relevant data are collected and find whether there is a necessity of going back in the field and re-collect information to feel the gaps.

1.9 Chapter Summary

It is obvious that the rule of law has some punch on the existence of multiparty democracy. The government especially in developing countries is required to be more flexible in adapting appropriate and viable means of applications of leadership and commitment, motivation, and increasing sense of collaborations among the citizen and other government agencies. The above literature review has clearly demonstrated that rule of law has led to both enjoyment of the democratic system of government and multiparty democracy.

In particular, the research on effective rule of law indicates the importance of vibrant goverment system and administrative leadership. It should therefore be noted that the rule of law binds citizens together and motivates them towards achievement of goals in their nations. A key factor influencing effectiveness of rule of law under multiparty democracy is the nature and quality of the politicians who are accountable to the citizens. This chapter also introduce the dissertation focusing on its topic- rule of law under multiparty democracy in Tanzania: “law and practices”.

The chapter traced the research problem by defining rule of law under democratic system in Tanzania. It proceeded with stating problems by looking at status of rule of law under multiparty system in Tanzania and how a study explains on their legal practices in the country. The chapter has also presented research questions, hypothesis and tasks that guided the study. Lastly, research presented research significance and definition of key terms.

CHAPTER TWO

AN OVERVIEW OF RULE OF LAW

2.1 Introduction

The "rule of laws" that falls beyond the state may affect the scope of law in a worldwide context. It may refer to some worldwide legislation, which is still unsure and undefined, as part of some management procedures that are, as a whole, outside the states' control.[37] Separate regimes may connect into networks lacking a "unitary design" and through nonhierarchical links, thus growing as a whole with no center and no predesigned plan[38]. Networks of networks have developed within the international space,[39] and diverse actors - like NGOs and multinational companies,[40] or informal bodies or private institutions[41] crossing the borders of nation-states - populate a kind of polycentric society that is hardly dependent on state power and command alone, and involve a reorganization of the Westphalian notion of world order.[42]

New truths call for cooperation between sources of law that are far from being structured. New recipes are evoked for solving the problem of rules conflict, fragmentation, and the lack of democratic control, and relevant attempts are made in

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[37] Sabino Cassese, *Administrative Law without the State? The Challenge of Global Regulation* , 33 N.Y.U. J. I NT'L L. & POL. 663, 677 (2005).

[38] Cassese, *supra* note 1, at 677.

[39] ANNE-MARIES LAUGHTER, A NEW WORLD ORDER 135 (Princeton Univ. Press 2004).

[40] *See generally,* NO N -S TATE ACTORS AS NE W SU BJECTS IN INTERNATIONAL LAW (Rainer Hofmann ed., Duncker & Humblot 1999).

[41] *E .g.,* the Basle Committee for cooperation among national central banks. *C f.* Anne-Marie Slaughter, "Governing the Global Economy through Government Networks," *in* THE ROLE OF LAW IN INTERNATIONAL POLITICS: ESSAYS IN INTERNATIONAL RELATIONS AND INTERNATIONAL LAW 177 (Michael Byers ed., Oxford Univ. Press 2000).

[42] *See, e.g.,* Neil Walker, *Beyond Boundary Disputes and Basic Grids: Mapping the Global Disorder of Normative Orders,* 6 I NT'L J. CONST. L. (I • CON) 373 (2008). Notably, Walker does elaborate on the stability of the new disorder as a qualitative change.

order to conceptualize the multilevel Set of basic laws that are appearing in the international world and capable of playing a constitutional position.

However, even if some legal fabric develops beyond nations, international law may be one of its components. Certainly, on the one hand, one cannot conceive of global law just as an evolutionary stage of international law, traditionally encompassing the interplay among states' wills.[43] It has been made clear that global administrative law, for instance, has grown up in large measure by trespassing on the national, regional, global divides. On the other hand, however, international law itself is influenced by the same procedures and has created fresh levels over the last fifty years, as is frequently accepted, which, beyond the state-transactional stage, have given rise to regulatory and structural law as well as ' community *' erga omnes'* (or super parts) law.[44]

The Declaration enacted by the United Nations General Assembly on 24 September 2012 at the High-level Meeting on the Rule of Law at the National and International levels reaffirmed that "natural freedoms, the rule of law and democracy are interlinked and mutually reinforcing and are part of the fundamental and indivisible key values and principles of the United Nations".[45] Indeed, public responsiveness to the interests and demands of the largest amount of people is exclusively linked to the

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[43] Francisco La Porta, *Globalization and the Rule of Law, in* L AW AND JUSTICE IN A GLOBAL S OCIETY 263 (Manuel Escamilla & Modesto Saavedra eds., Editorial Univ. de Granada 2005).

[44] AN TONIO CA SSESE, IN TERNATIONAL LA W 217 (2nd ed., Oxford Univ. Press 2005); J. H. H.Weiler, *The Geology of International Law; Governance, Democracy and Legitimacy, in* ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT [ZaöRV] 547 (2004); Gianluigi Palombella, *The Rule of Law, Democracy, and International Law. Learning from the US Experience*, 20 RATIO JURIS 456 (2007).

[45] See Para. 5 in "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels" (A/67/L.1), 19 September 2012, available athttp://unrol.org/files/Official%20Draft%20Resolution.pdf.

ability of democratic organizations and procedures to strengthen the values of freedoms, equality and accountability.

If the rule of law is seen not only as a tool of governance, but as a rule to which the whole of culture, including the state, is bound, it is essential to the advancement of democracy. Strengthening the rule of law must be achieved not only by concentrating on the implementation of standards and processes. It must also emphasize its basic position in the preservation of freedoms and the advancement of inclusiveness, thereby enshrining the protection of freedoms in the wider discourse on human development.

A common feature of both democracy and the rule of law is that a purely institutional approach does not say anything about the actual outcomes of processes and procedures, even if they are formally correct. When dealing with the rule of law and the nexus of democracy, a fundamental distinction must be drawn between the rule of law, in which law is an instrument of government and government, and the rule of law, which means that everyone in society is bound by law, including the government. Essentially, constitutional boundaries on power, a main characteristic of democracy, involve adherence to the rule of law.

Moreover, within international law, dogmatically held to deal with interactions between states and where no other subjects are allowed to emerge, individuals have actually been addressed increasingly and touched directly by conventional law or by administrative resolutions and orders issued by supranational organs. In this complex and uncertain legal environment, the question may be posed asking what is the

potential or the role, if any, that the concept of the rule of law can play[46] when we try to disentangle it from state territorial sovereignty or from the rights-based law of our constitutional democracies and to project its normative content beyond its most familiar domain.

To this regards, researcher's major concern is on the issue that belongs among the general concerns raised by the transformations of international law as interstate law particularly the rule of law. One of the relevant problems that arises in this context - even before the complaint about the absence of any democratic control over the choices made by global or international actors (or the United Nations Security Council and the like) — regards the consequences for individuals and rights guarantees vis-à-vis the exercise of power. Private actors[47] as well as traditional public institutions, such as states (and an impressive array of administrative bodies), can be agents of rights infringements, just as much as international organizations and supranational authorities.

In very concise if general terms, the different meanings and various import assigned to the notion of the rule of law display levels of varying depth and thickness. A first stage could be defined as a "law of rules" to be complied with. Such a notion treasures the sheer existence of a legal order and its provision of control over uncertainty. It pertains to the prevention of arbitrary power, lato sensu, and to some

[46] Sabino Cassese has produced seminal works on the understanding of the rule of law, through global administrative law. For instance, *cf. supra* note 1, at 683 and 690, he has stressed the function of " rights globalization, " the provisions of guarantees for the addressees, mainly rights of participation and of defense, that were originally developed as a part of " traditional administrative law. " *See generally* Sabino Cassese, OLTRE LOS TATO [BEYOND THE STATE] (Laterza 2006)

[47] Gunther Teubner, *Globalised Society, Fragmented Justice: Human Rights Violations by* "Private*" Transnational Actors, in* LAW AND JUSTICE IN A GLOBAL SOCIETY, *supra* note 8, at 547.

requirements for the law to be able to guide behaviors. This level of meaning, therefore, is not far from the one endorsed by Joseph Raz, who listed a set of requirements that, in turn, elaborated on those first suggested by Lon Fuller, regardless of the moral value acknowledged by the latter in the ensuing impact.[48]

Certainly, the rule of law is the most relevant standard that can be applied when it comes to the function, composition and performance of the law and precedes logically and even historically the development of Western modern constitutionalism. While the contemporary appeal to a world constitutionalism seems to be the most ambitious claim for the new era, the rule of law may, nonetheless, be enquired as a fundamental situation for a good legal setting, whether within or outside the state. After all, the issue of the rule of law appears to be even more pressing than the building of a cosmopolitan republic or the accomplishment of a democratic global power structure. Insofar as democracy and the rule of law can be mutually supportive and mutually reinforcing, they are both desirable and mainly consistent.

Nonetheless, the rule of law asks for some law to face, limit, or even counterbalance power, regardless of its forms, structures, and those who wield it. Accordingly, the rule of law is endowed, as well, with a conceptual independence from democracy; it applies to and confronts any form of power and government, and, in turn, eventually

[48] Robert P. George, *Reason, Freedom, and the Rule of Law: Their Significance in the Natural Law Tradition*, 46 A MER. J. J URISPRUDENCE 249 (2001). Legal positivism is not at stake because it simply maintains that the validity of law does not reside or depend on its moral value but on social facts (i.e., on its sources). Andrei Marmor, *The Rule of Law and Its Limits*, 23 L AW & P HIL. 39, 41 (2004). On the moral value of the rule of law, see also Neil MacCormick, *Natural Law and the Separation of Law and Morals*, *in* NATURAL LAW THEORY: CONTEMPORARY E SSAYS 123 (Robert P. George, ed., Clarendon Press 1992).

it takes different incarnations in different times and places. In what follows, since the rule of law refers to *law* per se, I do not need to assume any pre-understandings concerning its necessary inherence in the domain of the state, while I will be inclined to consider it as destined, essentially, to contrast with the monopoly of law and power.

Within this framework, this study shows some circumstances wherein the rule of law - which is not only cherished but expressly mentioned by states, regional and supranational organizations, laws, and judicial pronouncements — has a chance of acquiring some normative universality. This objective is linked to the continuing exercise of conflict between distinct performers and legal commands, to the choices of "acceptance" and, ultimately, to the creation of certain normative constants, with validating features (in relation to applicant norms) designed at a separate stage than that of the participants ' operations.

2.2 Theoretical analysis of the rule of law

2.2.1 Legal Theory Lexicon

This theory traces the rule of law at least as far back as Aristotle and is deeply embedded in the public political cultures of most modern democratic societies. This theory maintains that the rule of law is important and has to do with predictability and certainty. Therefore, when the rule of law is respected, citizens and firms will be able to plan their conduct in conformity with the law[49]. It can therefore be argued that the rule of law is the most relevant ideal that can be invoked when it comes to the role, structure, and quality of law, and it logically and even historically precedes

[49] Dicey, 1950; Fallon, 1997; Shklar, 1987

the development of Western modern constitutionalism. Palombella[50] stresses that the contemporary appeal to a world constitutionalism seems to be the most ambitious claim for the new era, the rule of law may, however, be required as a basic condition for a decent legal environment, regardless of whether it extends within or beyond the state.

According to Mason, Shapiro & Shklar[51], the rule of law has a history and one of the features of that history is the way the concept has been reinterpreted over time. This expression refers to a doctrine-some would say, an ideology-about how governments should act, and has been used as a synonym for constitutional government and sometimes, although we will see these terms are not coeval, it means democratic government.[52]

A contemporary elaboration of the ideal of the rule of law is provided by John Rawls.[53] He defines the rule of law as "the regular, impartial, and in this sense fair" administration of "public rules." In schematic form and with some alterations, Rawls offered the following conception of the rule of law.[54]

1. The Requirement that Compliance Be Possible. The legal system should reflect the precept that ought to imply can.
    a. The actions which the rules of law require and forbid should be of a kind which men can reasonably be expected to do and to avoid.
    b. Those who enact the laws and issue legal orders should do so in good faith, in the sense that they believe "a" with respect to the laws and orders they

[50] Palombella, G. (2009). The rule of law beyond the state: Failures, promises, and theory. *Oxford journals*, 442-468
[51] Hills, 1994; Shapiro, 1994; Shklar, 1987
[52] Ibid
[53] John Rawl on the Rule of Law
[54] John Rawls on the rule of law

promulgate.

   c. A legal system should recognize impossibility of performance as a defense, or at least a mitigating circumstance.

2. The Requirement of Regularity. The legal system should reflect the precept that similar cases should be treated similarly.
   a. Judges must justify the distinctions they make between persons by reference to the relevant legal rules and principles.
   b. The requirement of consistency should hold for the interpretation of all rules.
3. The Requirement of Publicity. The legal system should reflect the precept that the laws should be public.
4. The laws should be known and expressly promulgated.
   a. The meaning of the laws should be clearly defined.
5. The Requirement of Generality. Statutes and other legal rules should be general in statement and should not be aimed at particular individuals.
6. The Requirement of Due Process. The legal system should provide fair and orderly procedures for the determination of cases.
   a. A legal system ought to make provision for orderly and public trials and hearings.
   b. A legal system ought to contain rules of evidence that guarantee rational procedures of inquiry.
   c. A legal system ought to provide a process reasonably designed to ascertain the truth.
   d. Judges should be independent and impartial, and no person should judge her own case.

Absent from Rawls ' formulation is the concept that the rule of law requires state and public representatives to be subject to the law. Thus, a seventh aspect of the rule of law might be added to Rawls ' formulation as follows:

7. The Requirement of Government under Law. Actions by government and government officials should be subject to general and public rules.
    a. Government officials should not be above the law.
    b. The legality of government action should be subject to test by independent courts of law.

The issue, according to the above reasons, is whether all the prerequisites of the rule of law in Tanzania are fulfilled during the phase of public execution. If they cannot be encountered, then it implies rulers have not efficiently exercised their rights and authority to fulfill constitutional requirements. Accordingly, more can be said about the content of the ideal of the rule of law; however, this study explores the laws and practices of the rule of law under the multiparty democracy in Tanzania.

2.2.2 Classical Theory of Law

The major issue within the classical theory is the issue of the sovereignty of parliament, and the organization of that institution, under modern democratic conditions, on party lines. For most of developed states law is always vulnerable to statute once it becomes accepted that legal validity is a function of the decisions of a representative body.[55] However, in the pre-legislative era of classical law it might have been true to say that the common law principle which holds that a person is permitted to do whatever is not forbidden by law did embody more "rights" than

[55] Jowell, J., & Oliver, D. (1985). *The Sovereignty of Parliament-in Perpetuity, in THE CHANGING CONSTITUTION* . Chicago: 23-47.

those that could be enumerated in some "positive" declaration, but that claim sounds hollow in late twentieth-century Britain.[56] Yet, curiously enough, and to the chagrin of spontaneous order theorists, the principle that ultimate legal validity is a function of parliamentary sovereignty was not planned, designed, or even thought of by anybody: it just happened.

2.3 Constitutional Duties of Political Parties: Experience in other countries

Angola's Constitution (1992) is more illustrative on this aspect.[57] Under Article 4(2) (3) (4), every political party has a constitutional duty to facilitate national unity, defend sovereignty and democracy, protect fundamental freedoms and human rights. According to Article 17(4) of the Constitution of Pakistan, each party has a duty to hold intra-party elections to elect its office-bearers and party leaders. Moreover, the Mozambique Constitution, essentially Article 74(2), requires that the internal structure and the functioning of political parties be democratic. Article 4 of France's Constitution requires political parties to respect the principle of national sovereignty and democracy. Finally, pursuant to Article 21(1), the Constitution of Germany imposes two major duties on political parties, i.e. requiring their internal organization to conform to democratic principles and public accountability for their sources and use of funds and assets.[58]

In my submission, since Tanzania has multiparty democracy and a written constitution, fundamental duties and rights of political parties need to be embodied

[56] Dicey, A. (1950). *The Law of the Constitution 194 (9th ed).* London: MacMillan.
[57] David Clark, The Many Meanings of the Rule of Law
[58] Ibid

in it. This will serve two purposes: first, to curtail parties from abusing political processes, and second, to protect political parties from government interference or harassment. Third, to control leaders of political parties who tend to run their parties as personal entities (i.e., no transparency, accountability, and deliberately mismanage intra-party elections).

2.3.1 Constitutional Duties of a political parties: Experience of Tanzania

Under Article 3(1), the Constitution of Tanzania (1977) declares Tanzania a socialist state with multiparty democracy. It further prohibits, under Article 20(2), the registration of any political party that promotes or fosters the interests of any religious faith or group, tribal group, place of origin, race or gender[59]. Also deny registration for parties advocating the break-up of the United Republic, accept or advocate the use of force or violent confrontation as a means of achieving its political goals.

Finally, it restricts parties that intend to carry out their political activities in only one part of the United Republic and those that do not allow their leaders to be elected periodically and democratically. However, the Constitution does not provide for a political party's general rights and duties. It may seem that (by implication) political parties have a duty to protect the Constitution and further democracy. One may also argue that they have the right to participate in elections and advance their political interest by legitimate means. However, the researcher remains neutral in this aspect.

[59] The URT Constitution (1977)

2.3.2 The Current Challenges Undermining the Development Political Parties, Rule of law and Multiparty Democracy in Tanzania

In the first half of 2016, political parties, mass media and other activists have faced restrictions, particularly through attacks and threats to and of leaders of political parties (especially opposition parties), journalists and media houses and presence of laws restricting media and opinion freedoms.[60] For instance, live television broadcasts of parliamentary sessions have been terminated, and MPs expressing their discontent were banned from the House.

Meanwhile, the President guarantees that all of his public appearances, however small they may be, are broadcast live by all press channels. As a result, there is a growing self-censorship in the press fraternity for fear of incurring the fury of the head of state or his acolytes. This undermines his battle against corruption, as the press has always played a main part in the enforcement of accountability in Tanzania. Other civil society organizations are also systematically being attacked and have resorted to self-censorship for survival. For instance, In March 2017, the media community in Tanzania was shocked by the raid of the Clouds Media offices by the Dar es Regional Commissioner, Paul Makonda, with officers presumed to be law enforcement officers, some of whom were armed.

In the same vein, the proprietor of Jamii Forums, a famous social media platform, faces criminal accusations for supposedly refusing police policemen access to private data from customers of the platform. Jamii Forums has been a significant

[60] LHRC Bi-Annual Tanzania Human Rights Report 2017

platform for government corruption whistleblowers over the years and has been a rallying point for many who wish to criticize the system anonymously.[61] There have been cases of Mwananchi Journalist (Azori Gwanda) and other opposition supporters; however, the government is not giving a clear answer over these incidences.

In May 2017, the Minister responsible for media, Dr. Harrison Mwakyembe, prohibited radio and television stations from reading newspaper articles, instead just read the headlines, so that they newspaper companies make profit. The new ban for Mawio Newspaper was also met with condemnation by the media community, led by the Media Council of Tanzania and Tanzania Editors Forum, and other stakeholders of media freedom. CSOs under the Tanzania Human Rights Defenders Coalition (THRDC) issued a press statement condemning the action by the Minister, noting that they are not justified under the Media Services Act. The Minister was accused of overstepping his authority.[62]

In researcher's view, this prohibition may hinder freedom of expression. It is also important to note that media houses have not been complaining that they are not making profit because of articles being read by radio and television stations. To this regards, difficult issues must be raised with the government to ensure that it does not dismantle the foundations of democracy painstakingly established over the past two decades.

[61] African Research Institute, 2017
[62] LHRC Bi-Annual Tanzania Human Rights Report, 2017

Freedom of Assembly has worsened in the first six months of 2017, compared to the same period in 2016, which was highlighted by a ban on political assemblies. The ban on public rallies has since been lifted. For instance, in June 2017, police interfered with freedom of assembly when they prevented launching of a book by a human rights activist about human rights activists at higher learning institutions. The book launch was scheduled to take place at a hotel in Ubungo area, but police officers surrounded the area and arrested those attendees. Among those arrested was the Executive Director of the Tanzania Human Rights Defenders Coalition (THRDC), Mr. Onesmo Olenguruwa.[63] The THRDC Director was charged with unlawful assembly (criminal trespass). He was later released on bail.

Meetings of political parties continue to be denied for various reasons. In 2016 police imposed a ban on political meetings, which was later lifted. However, in practice political assemblies continue to be restricted, with police seemingly taking advantage of the loopholes in the Police Force and Auxiliary Services Act to deny them. Only politicians who are Members of Parliament (MPs) and leaders in their respective constituencies are allowed to conduct political meetings. This amounts to restriction of freedom of assembly, which also affects freedom of expression for political parties.[64] The freedom is further restricted as they are only allowed to conduct such meetings/rallies in their respective areas and not allowed to involve/invite leaders of a particular political party from outside such areas/constituencies.

[63] Ibid
[64] LHRC, Bi Annual Human Right Report, 2017

Again, right to Liberty and personal security has been in shamble since 2017 up to date due to unfriendly actions imposed by law enforcers. It should be understood that domestic, regional and international human rights laws provide for the right to liberty and personal security. This right entails an obligation on States to refrain from subjecting any person from arbitrary arrest or detention, depriving them of their liberty.[65] Deprivation of liberty is only allowed if provided by and done in accordance with law. The right to personal security is both for detained and non-detained persons. States have an obligation to take reasonable and appropriate measures to protect both persons.

Deprivation of liberty is only justified if it is in accordance with the law (principle of legality) and not arbitrary. If a person is arrested or detained on grounds which are not clearly stated in domestic law, the principle of legality is violated. Arbitrary arrest/detention does not only mean that against the law, but also not appropriate, unjust and done in disregard of due process of law. Arrest and detention of a person must thus not only be lawful, but also reasonable and necessary under the circumstances, for instance to prevent flight, interference with evidence or recurrence of crime.

The period of January to June 2017 has witnessed a number of arbitrary arrests, detention and killings including of journalists, Civilians, human rights defenders and police. For instance, news stories at Lucky Vincent Primary School were arbitrarily arrested by police and later released. The arrest and temporary detention of these

[65] UDHR, 1948

journalists was neither reasonable nor necessary. Again, in June 2017, human rights defenders and invited guests were arbitrarily arrested by police where they had gone to attend a book launch at Blue Pearl Hotel in Dar es Salaam. Among those arrested was the Executive Director of the Tanzania Human Rights Defenders Coalition (THRDC) was arrested and detained, before he was released on bail.

There has also been a tendency of Regional Commissioners (RCs) and District Commissioners (DCs) ordering arrests and detention, which are usually arbitrary for being unreasonable and unnecessary. They claim to exercise these powers under the Regional Administration Act, which only allows them to detain people for up to 48 hours if they cause chaos and threaten public peace which is abuse of powers under the Regional Administration Act, leading to arbitrary arrests and detention. For instance, in February 2017 it was reported that the DC of Mwanga in Kilimanjaro ordered arrest of three officials of Mwanga District Council, to be detained for not more than 48 hours on allegations of not doing their jobs properly.

Apart from actions and incidents threatening right to liberty, there were also incidents threatening security of persons. According to the Human Rights Committee, Article 9(1) of the International Covenant on Civil and Political Rights protects the right of security of person also outside the context of formal deprivation of liberty, meaning States cannot ignore known threats to the personal security of persons under their jurisdiction. For instance, there has been a wave of abductions and disappearance of people, threatening personal security. In April 2017 a local singer/rapper known as Roma Mkatoliki was abducted and tortured by unknown people before being released. This incident captured the public's interest as it was

compared to the disappearance of Ben Saanane in 2016, who remains missing to date.

In the period of January to June 2017, a big number of killings occurred in Kibiti, Rufiji and Mkuranga Districts in Pwani Region, a continuation of events of 2016. Most of those killed are police officers and local leaders, particularly of the ruling party (CCM). These killings have threatened peace and security in Tanzania, with fear that they could be acts of terrorism. The situation in these areas, however, is still being investigated and monitored by the law enforcement bodies to determine the real causes of the killings and restore peace and order.

Among the victims of the killings were 8 police officers who were killed in Kibiti in April 2017.[66] Before the killing of these officers, it was reported that unknown assailants killed the head of criminal investigation in Kibiti, in February 2017. Two more police officers were killed in June 2017, bringing the total of law enforcement officers killed from January to June to 11 as reported in the media.[67] However, police data indicates a total of 12 police officers killed. At least four local leaders were reported killed in the period of January to June 2017, including village leader; CCM Secretary – Bungu Ward in Kibiti; and member of village government.

Generally, researcher assumes that, the situation within which political parties, rule of law and multiparty democracy operates in Tanzania Mainland for the period of January to June 2017 up to 2019 has worsened compared to other periods. The major

[66] LHRC, Bi Annual Human Right Report, 2017
[67] Ibid

factors contributing to this situation are continued violations of civil and political rights, particularly right to life; further restrictions and threats on freedom of expression and democratic development, which explains Tanzania dropping in the World Press Freedom and democratic Index; restrictions on freedom of assembly; and increased violence against mass media. On the other hand, there has been slight improvement on situation some rights, such as right to education, which has been boosted by introduction of free basic education and right to life for People with Albinisms (PWAs).

Researcher also recommends that being a de facto abolitionist state, the Government should move to declare a state of moratorium and improve death row conditions, and prepare to abolish death penalty. Ministry of Home Affairs to ensure law enforcement officers who conduct extra-judicial killings are held accountable in accordance with the law and ensure the police force is strengthened in order to combat violence against police officers and raids of police stations. The Ministry of Constitutional and Legal Affairs should spearhead amendment of laws restricting freedom of expression such as the Media Services Act and Cybercrimes Act.

Additionally, Government officials should refrain from suppressing opposition through denial of political assembly, interfering with freedom of expression without reasonable ground stipulated by law; and stop threatening journalists. Again, Government officials and members of political parties should exercise political tolerance in order to preserve peace and security. And lastly, Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.

2.4 Researcher's Underlying Assumptions

Researcher assumes that, there are instances where a modern legal order has either been imposed or adopted by a society that operates contrary to the assumptions of the rule of law. In fact, the rule of law is based on the assumption that: political leaders make mistakes, therefore, they are not infallible; that since they are expected to rule in the interests of the public good and not merely their own personal interests, they should be held accountable for what they do. However, in systems where real power is in the hands of an absolute monarch or in the hands of a political leadership that sees its existence as essential to the nation and imagines that its interests are the same as those of the nation, this idea will prove to be a real problem.

Another assumption is that legitimacy comes from obeying the law and in democratic systems through free and fair elections; and also that the state recognizes a relatively autonomous civil society consisting of voluntary organizations such as clubs, societies, professional associations, political parties, trade unions and churches that the state does not directly control, and in operations of which it does not interfere. Another main aspect of the rule of law–democracy nexus–is the understanding that constructing democracy and the rule of legislation can be convergent and mutually reinforcing whenever the rule of legislation is described in wide, end-based conditions rather than in narrow, personal and purely customary conditions. The nexus is powerful whenever the rule of law is established in its connection with meaningful results, such as fairness and democratic governance.

Additionally, rule of Law and Constitutional Democracy as key tenants of good governance have been identified as strategic areas that will enable the country reach

middle income status as planned in both the national Vision and the realization of the global Agenda 2030 and its 17 Sustainable Development Goals (SDGs). Moreover, the rule of law and constitutionalism also enhance general organizational efficiency, transparency and accountability in the leadership of public affairs, the sustainability of economic growth, the appeal of investment, and peace and safety.

2.5 Knowledge and Research Gaps

There are number of gaps left by different literatures studied across this topic. The gap ranges from geographical factors (most of the studies were conducted outside Tanzania) and settings. For instance, most of the studies were conducted in Zimbabwe, South Africa, Asian countries, Europe, and the United States of America. Moreover, the nature of the possible fact on the performance of the rule of law under the multiparty democracy has really been addressed especially in developing countries such as Tanzania. This is due to the fact that the rule of law in most of the third world countries is operating under undefined democratic systems which may motivate citizens and some performing institutions not caring about their well being.

Moreover, based on the reviewed literatures it is obvious that the studies did not use a case study as a design for obtaining research data. Furthermore, most of the literature studied focused mostly on elections and other democratic principles apart from the rule of law. It is therefore, clear that findings obtained under such type of study whose term and viable is different together with their environmental context may not be enough to enough a case of the rule of law in multiparty democracy in Tanzania particularly in Dar es Salaam region.

CHAPTER THREE

RULE OF LAW UNDER MULTIPARTY DEMOCRACY: EXPERIENCE IN OTHER COUNTRIES AND BEST PRACTICES.

3.1 Introduction

The central theme of chapter two is the definition of rule of law and shows how constitutional practices of the rule of law under multiparty democracy by analyzing experience in other countries and how they relate to Tanzania experiences. This is due to the fact that the rule of law has pre-dated democratic regimes, the rule of law has also been used in modern times either as a synonym for, or at least linked to, democratic government, the argument being that pluralistic or multiparty democratic politics will be more likely to keep a government within boundaries than regimes that are not subject to these disciplines. While this is generally true, two qualifications have to be made. The first is that even democratic regimes can abuse minority rights by passing oppressive laws. Secondly, even systems that have humane and non-discriminatory laws experience abuses of power, usually by individuals, although systematic abuses are not unknown.

The empirical human rights surveys show that the most advanced democratic regimes and military dictatorships have the worst human rights record and one party state has the worst records in that respect.[68] Similarly, those who are economically well advanced among developing countries, including Tanzania, are generally the least oppressive, while those who are the most backward have real problems. But again, it's not a simple letter; it's just a general trend. What emerges from this is that

[68] Experience of South Sudan and Burundi

modern systems are not simply based on the law, but that there are other arrangements - particularly political institutions and practices - that also compete for pride of place as central principles in the system.

The argument is the law's insistence on stability while parliamentary sovereignty enables a branch of government to override the other branches of the government, which is a conflict between rule of law and parliamentary sovereignty in parliamentary systems, for example, although a written constitution is established (Griffith, 1994). Whether this is so does not need to be discussed here, but the point for our purposes is that legal orders are embedded in political systems.

3.2 Rule of law under multiparty democracy: European experience

Political leaders opposing the requirements of the rule of law are not exceptional. In failed states it is even common to ignore the rule of law. Nowadays, there seems to be a growing tendency to make questionable statements about the rule of law by political leaders of countries that have thus far been considered to be governed by the rule of law and which are usually positioned at the top of the rule of law rankings. Meanwhile, there is a series of publications about the actual political leader of the US indicating 'disdain for the rule of law',[69] 'assaulting the rule of law'[70] or even 'mobilizing for battle against the rule of law'[71].

[69]Joan Biskupic, 'Trump's disdain for the rule of law', CNN Politics,12 August 2019, <http://edition.cnn.com/
2019/08/11/politics/trump-rule-of-law/index.html>

[70] Richard North Patterson, 'Trump assaults the rule of law', Boston Globe 10/ 08/2019, <https://www.bostonglobe.com/opinion/2019/08/10/trump-assaults-rule
law/w4jL2MmvVZQLj4f3evTZyO/story.html>

[71] Jonathan Chait, 'Trump is mobilizing for war against the rule of law', New York Magazine, 11 August 2019, <http://nymag.com/daily/intelligencer/2019/08/trump-is-mobilizing-for-war-against-the-rule-of-law. html>

In European countries, media often record statements by political leaders prepared to limit or even act against the rule of law, especially in cases of anti-terrorism interventions.[72] For the first moment in history, the European Commission lately issued a formal alert to Poland to avoid the Polish Government from rejecting or requiring the Supreme Court magistrates to resign. Poland is not the only EU country to be concerned about the rule of law.[73] This gives a researcher a clear doubt about condition and development of a rule of law and its challenge in Europe. We could try to convince ourselves that there is no reason for concern. We might consider that the rule of law cannot exist without being challenged. We could also remind ourselves of our (high) ranking on the international rule of law index, but to insist stubbornly upon the unchanged supremacy of the rule of law, one needs to turn a blind eye to an ever-increasing number of issues.

In particular, on the political level, there seems to be an increasing neglect for rule of law requirements, and not only by extremists. A recent evaluation of electoral platforms in the Netherlands showed that almost none adhered to these requirements. An evaluation of political parties in the Dutch parliament, done by the Commission of jurists on human rights, showed the three largest political parties frequently voting unfavorably regarding human rights.[74]

[72] The British prime minister, Theresa May, showed not to have any doubt to tear up human rights whenever they get in her way to take safety measures. Guardian, 7 June 2017. <https://www.theguardian.com/commentisfree/2019/Aug/10/theresa-may-human-rights-european-charter-terrorists>.

[73] Peter van Lochem (2017) Legislation against the rule of law – an introduction, The Theory and Practice of Legislation, 5:2, 95-100, DOI: 10.1080/20508840.2017.1387729

[74] Ibid

3.2.1 Researcher's Concern on A Legislative Focus of Some European Countries

Although the rule of law indeed cannot exist without being challenged, there might be some reasons for concern. It seems to be more important than ever to emphasize the significance of the rule of law and the boundaries. For the most part, the position countries take on rule of law rankings is caused by the accessibility of an independent court. This study tries to look at the rule of law requirements that need to be met by the legislator. In this special edition we therefore examine the rule of law from a legislative perspective.

More specifically, researcher is interested in laws that run against the rule of law. One might wonder how this is even possible if the legislator is the highest authority in law-making responsible for protecting the rule of law. Many studies have reflected on this question. They agree that it is possible that legislators rule against the rule of law; however, they differ on many aspects, such as: how this happens, the way in which this comes to the fore and the severity of infringements on the rule of law.

Moreover, one core component of the rule of law is the separation of law and politics. Therefore, the importance of the rule of law lies partly in the power it denies to people and to governments, and in the discipline to which it subjects all authority. That denial, and that discipline, is conditions of the exercise of power, which in a democracy, comes from the community which all government serves. Judicial prestige and authority are at their greatest when the judiciary is seen by the community, and the other branches of government, to conform to the discipline of the law which it administers. The rule of law is not being implemented

by the military. It relies on public trust in a legally formed agency. The judiciary asserts the supreme ability to decide what the law is. Public trust requires the standard of law to be maintained, above all, by the judiciary.

3.2.2 Possibility of Legislation against the Rule of Law

The main reason for doubt concerning the possibility of laws that go against the rule of law is the traditional understanding of parliamentary sovereignty. The constitutionally based respect for parliament as the highest power in a state is at odds with a public disdain for what the French sociologist Durkheim called 'la cuisine politique'. This particular contradiction is the essence of the eternal debate about the relationship between democracy and the rule of law. Does democracy dominate the rule of law or is it the other way around? Of course many prefer the conciliatory point of view, according to which democracy and rule of law are inseparable, but such a point of view is often seen as incorrect or even as window dressing. While there are a few examples of rule of law states without democracy, there are plenty of democracies where the rule of law is hard to find.

The authors of this study agree upon the possibility of legislation against the rule of law. Cormacain and Westerman remind us of the fact that the probability of legislation against the rule of law differs as it depends on the definition of the rule of law. There is a thin and a thick definition, depending on the normative scope. A thin definition is given by Shinar who limits the rule of law concept to the core element that public officials must exercise their power according to legal rules.[75] In this thin

[75] The normative scope of Shinar is less limited, because of his thick definition of the legislator, according to which the administration and the courts are to be seen as legislators.

concept, legislation against the rule of law is limited to cases in which the legislator allows public officials to exercise their power without a legal competence to do so.[76]

Far more possibilities for legislation against the rule of law are to be discerned in a thick definition of the rule of law, with requirements such as democratic decision-making and ensuring human rights. Besides a thin and thick definition of the rule of law, there is a thin and thick definition of democracy. The latter view includes the rule of law. In that case, the principle of parliamentary sovereignty will logically leave no room for legislation against the rule of law. On the other hand, there is a lot of room for it in a thick rule of law definition.

3.2.3 The Role of Legislative Drafters in Protecting the Rule of Law

Although parliamentary sovereignty is a fundamental tenet of constitutional law, it is common practice that parliament is bound by legal restrictions. Since legislation is the most important source of law it must reflect the values of the rule of law, as Cormacain points out in his article in this issue. He does not consider politicians to be the best guardians for compliance of legislation with the rule of law. Legislative drafters would be more natural protectors of the rule of law. They should not only be concerned with converting policy into legislation, but as legislative counsels, they also have the responsibility to protect the rule of law. According to Cormacain legislative drafters see themselves as guardians of the statute book, with an obligation to protect the integrity of legislation. From there it's a small step indeed to see them as protectors of the rule of law.

[76] The normative scope of Shinar is less limited, because of his thick definition of the legislator, according to which the administration and the courts are to be seen as legislators.

According to Hutchinson, the role of the drafters is a lot more modest.[77] In his 'realistic' view, politicians are subject to the rule of law. It is a 'political precept of good democratic governance', as he writes in his contribution to this issue. The rule of law is only one of the guidelines to achieve justice and people should consider themselves lucky if their government respects the imperatives of this rule. Seeing the rule of law as an unwritten constitutional principle implies that the legislator will not be able to prevent the court from judging state actions. However, unwritten principles also imply judicial discretion. Hutchinson shows that the Canadian Supreme Court is regularly 'moving backwards', especially about judging legislation. Hutchinson is reluctant in giving that much discretion to judges. It would imply that in the end the country will have a government of men (judicial persons) and not of laws.

Although on different grounds, Shinar also shows reluctance about the rule of law responsibilities of judges. In his opinion, authors even need to stop conflating courts with the rule of law. Conventional wisdom that courts are designed to safeguard the rule of law may be true, but at the same time courts might also undermine the rule of law. Although public officials must exercise their power according to legal rules as the core element of the rule of law, courts regularly allow these officials to exercise their power without a legal competence.

According to Shinar's thick definition of legislation, courts regularly legislate against the rule of law by generating competing rules of law.[78] The most explicit

[77] As he stated in his earlier publication: A.C. Hutchinson, 'In the public interest. The responsibilities and rights of government lawyers', German Law Journal, (2009) 10(7), 981–1000

[78] Peter van Lochem (2017) Legislation against the rule of law – an introduction, The Theory and Practice of Legislation, 5:2, 95-100, DOI: 10.1080/20508840.2017.1387729

example of such a rule of law is the immunity occasionally granted to the government officials by the courts. This means that the acts of these officials stay without legal review – which is against the rule of law – and might be arbitrary. Although Shinar considers immunity as 'the most explicit case of legislation against the rule of law', he explores other rules of law that violate the rule of law, namely 'standing' (who may not bring a suit before court), 'political question' (what will the court not agree to hear), 'suspension of invalidity' (the court postpones the start date for a remedy) and 'extensions' (after government fails to remedy in time).

What would courts have to do when confronted with legislation against the rule of law? As Raban explains in his contribution, in most cases legislation against the rule of law is legislation against the constitution. This means that the court[79] in those cases will turn to the constitution. It should be noted that clarity, prospectively, generality, knowability and rationality of legislation are all principles of the rule of law, but often constitutional requirements too, embedded as these principles are within existing constitutional requirements. Still, there are rule of law restrictions to legislation that are not constitutionally grounded. In those cases, courts do not seem to be guided by the rule of law, but justify their decision by way of regular statutory interpretation.

3.3 Rule of Law under Multiparty Democracy: Experience of Asian countries

3.3.1 East Asia: Rule by Law

There has been awareness in a variety of East Asian countries, such as China, that a single man's law is hazardous. The experience of the Cultural Revolution (1966-76)

[79] Raban writes about the US Supreme Court

was said to bear this out. On the other hand, rule by law, that is, rule according to known rules rather than arbitrary dictates, is also 55 recognized as essential, both politically and also in order to create a sort of predictability upon which to base economic modernization.

The logic here is that the state should be governed by established legislation rather than by mere fiat or personal rule. Rules are seen here as a more rational and perhaps more effective means of leading or directing community.[80] Nevertheless, despite these points, there is less interest in holding senior political leaders accountable; in fact, in some places they are effectively exempt from the law, unless there is a purge or minor officials are caught in an anti-corruption campaign. One of the contradictions in the use of an instrumentalist perspective of the law is that the connection between one-party rule and the rule of law remains challenging.

On the one hand, the party should abide by the law; but on the other hand, the party is obliged to guide the state, i.e. the law. While officially there is said to be no such contradiction[81], in reality, as critics have pointed out, the party, especially its senior leadership, is effectively above the law.[82] Chinese writing on the topic seems to be between assertions that the group must abide by the law, and demands that the party must provide guidance to the organs of state authority.

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[80] Zhongguo Fazhi Bao (1985) 'Rule by Law'. 17 June 1985 p. 1, trans. in JPRS-CPS 85-075 (30 July): 12-14.

[81] Li Buyun 1982

[82] Lee, Martin C. M. (1996) 'The Rule of Law in Hong Kong: Implications for 1997'. *Annals of American Association of Political and Social Science* 547: 165-70.Levin, Mark A. (1995) (Trans) 'Administrative Procedure Act, Law No. 88 of 1993'. *Law in Japan* 25: 141-59.Li, Buyun (1982) 'The Scientific Nature of the Concept of Rule by Law'. *Faxue Yanjiu*, No.1: 611, Trans in JPRS-CPS-809ll, 26 (May): 29-38.

Several of the underlying assumptions of this view of the world are at odds with the views taken in the west, though whether these opinions represent merely the ruling elites in these societies or are actually subscribed to be the population remains an open question. These assumptions are: first, that society is not really plural, even if there is evidence of this such as ethnic diversity, religious and regional pluralism, but rather society is a corporate whole where the emphasis is on unity rather than on diversity; second, that the political leadership should prescribe a ruling ideology, e.g., Indonesia's Pancilla, Singapore's national ideology, the four principles in China, and this principle should govern the legal order; third, that the stress should be on collective responsibilities rather than on the assertion of individual rights with the political leadership acting as the guardian of these collective responsibilities and having the duty to prescribe them in the interests of the nation; fourth, that criticism of Political governance is tantamount to criticizing the country and its overarching concerns, and that this is simply a danger to the social order, which in some variants is so precarious that anything could disturb it and trigger catastrophe.[83]

It follows from this that the state and its organs should suppress what the west calls dissent, but which in accordance with the view of Asian values is really an unacceptable threat to social and political stability. The emergence of these differences occurred early around the independence period[84] and presents a number of Asian states with a contradiction between their relatively liberal legal systems, at least on paper, and the authoritarian demands of their political and social systems.

[83] Chew, M. (1994) 'Human Rights in Singapore'. *Asian Survey* 34 **(11):** 933-45. Collins, Hugh (1982) *Marxism and Law.* Oxford: Oxford University Press.
[84] Houston, Robert F. V. (1964) *Essays in Constitutional Law.* (2nd Ed), pp.32-7. London: Stevens.

Fifthly, it follows from this that the law and its organizations are a weapon for the command of culture and, in specific, for the elimination of social hazards in the bud.[85]

3.3.2 East Asia: Legal Practices under the Rule of Law

The difficulty with talking about East and Southeast Asia is that, in fact, there are territories in this region ranging from Japan at one extreme to Burma and North Korea. On the other hand; with all the other countries somewhere between the sophistication of the legal order and the level of economic development in terms of t he sort of system. 86 It should be noted that institutions, economies and political systems do not always coincide. Thus the Philippines has a democratic political system, a free press, a modern constitution (1986), but a backward economy which is also in some areas based on semi-feudal land holding practices. Much the same could be said of India, while Pakistan has a weak democracy, a semi feudal economy, and along with Bangladesh, chronic political instability and endemic corruption.

Singapore, on the other hand, is clean in terms of corruption, has an efficient modern bureaucracy, a high standard of living but operates as a virtual one party state with a leadership that is paranoid about opposition.[87] While Malaysia shares some of these characteristics, the greater diversity of the country allows for a greater measure of

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[85] Seow, Francis T. (1994) *To Catch a Tartar: a Dissident in Lee Kuan Yew's Prison.* New Haven: South East Asian Studies, Yale University.

[86] Case, William F. (1996) 'Can the Halfway *House* Stand? Semi Democracy and Elite Theory in Three South East Asian Countries'. *Comparative Politics* 28 (4): 437-64.

[87] Haas, Michael (1989) 'The Politics *of* Singapore in the 1980s'. *Journal of Contemporary Asia* 19 (I): 48 77.

political freedom and a more independent minded judiciary than its 58ecogniz. Taiwan has undergone the early stages of legal as well as political modernization in the past decade and this has been attributed to cultural renaissance as well as are-interpretation of Chinese culture[88] as has South Korea.[89] Indonesia has a political order still dominated by the military but yet human rights debates occur[90] within the context of what has been called soft authoritarianism.

These various characterizations should warn the unwary against the notion that there is either one path to developed status or that there is something inevitable about it. Nevertheless, the emergence of a law-based political system needs certain organizational assistance, both for the implementation and support of the concept of the rule of law. At the very least, this involves a reference in the constitution either to the principle itself or, more generally, to the idea that the constitution is the highest form of law that will prevail over all lower forms of law and over policy.

This is scarcely adequate on its own, unless all that is attempted is a symbolic representation of the idea in a statutory tool. Normally, the concept is further backed by the presence of an independent judiciary and by the legislation governing the political and voting system. The required result of this agreement is that the Supreme Court, which has jurisdiction over the law, is in a situation to consider requests relating to legal errors in the voting system, and potentially the legislative system as

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[88] Winn, Jane Kauffman and Tang-chi Yeh (1995) 'Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation'. *Law and Social Inquiry* 20 (2): 561-600.

[89] Yang, Kun (1993) 'Judicial Review and Social Change in the Korean Democratizing Process'. *American Journal of Comparative Law* 41 (1): 1-8.

[90] Lubis, Todung. Mulya (1993) 'Human Rights Standard Setting in Asia: Problems and Prospects'. *The Indonesian Quarterly* 21 (I): 25-37. Ma, Herbert Han-po (1981) 'Communist China and the Rule of Law'. *Issues and Studies*

well. Of course, such challenges might lie unused until the political circumstances arise to invoke these laws. In addition to the minimal institutional requirements of a supreme law and judicial review by an independent judiciary, some states have made provision for other forms of legal accountability, such as an Ombudsman, an anti-corruption agency, and a system of administrative tribunals. If used, and if effective in use, these institutions will both extend the range of matters subject to external review and deepen the institutional grip of the law on the political-administrative process. Whether these institutions exist, and more importantly, whether they are actually deployed in an effective manner depends upon political as well as institutional arrangements.

Some states with these arrangements simply witness their formal existence because citizens are unwilling to use them. Another factor in the use of accountability mechanisms is the character of the personnel who staff these agencies and courts, and in particular, whether they are prepared to entertain applications from citizens and pursue them vigorously if the circumstances merit this. It would seem that citizens of regimes that are more advanced along the road to democratic accountability are more likely to resort to institutional uses of accountability mechanisms.

In this volume, the chapters on Korea and Taiwan detailing their experience support this tendency. Other regimes that are less well developed politically, but in which tentative steps have been taken to institutionalize citizen complaint handling, such as Indonesia, are at the early stages of institutionalizing the rule of law. While the momentum for institutional change is probable to be fuelled by national stresses, it

also appears, considering the financial knowledge of 1997-8, which internal demands for transition can contribute to national trends and lead to higher institutional reform. The rise of the rule of law in Europe was partly a response to the requirement to provide a predictable and stable legal order on which to base economic and political development. It is unlikely, whatever local variants emerge, that the states of East and Southeast Asia will be able to stand aside from the pressures towards rule-based administration.

Even within systems where individual rights are not traditionally prized it has been 60ecognized that administrative review is desirable; hence its emergence in a number of East Asian states recently.[91] As most of these laws are very recent, no detailed assessment of their effects is at this stage possible. Potentially, these advances could contribute to higher government accountability, or they could be restricted by the general political culture and have little effect outside of the instances concerned.[92]

The open question is whether the emergence of legal institutionalization documented in the chapters in this volume will produce similar effects as in Africa particularly Tanzania or whether there really is some distinctive Asian way towards economically developed societies without an accompanying political and social liberalization.

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[91] Fa, J.P. and S.C. Lang (1991) 'Judicial Review *of* Administration *of* the People's Republic *of* China'. *Case Western Reserve Journal of International Law* 23 (3): 447-62. Finnis, John (1980) *Natural Law and Natural Rights.* Oxford: Clarendon Press. Ghai, Yash (1994) *Human Rights and Governance: The Asia Debate.* Occasional Paper *No* 1, Asia Foundation: Centre for Asian Pacific Affairs.

[92] Hickling, R. H. and D. A. Wishart (1988-9) 'Malaysia: Dr Mahathir's Thinking on Constitutional Issues'. *Lawasia* 47-79.

3.4 Rule of law under multiparty democracy: African experience

According to Jaba (2009), Botswana's Constitution (1966) is highly recommended as far as the election commission is concerned. Article 65A sets up the Independent Electoral Commission. Sub-Article (1) (a)-(c) provides for the commission's composition. The commission consists of the commission chairman who is a high court judge. A legal practitioner and five (5) other members appointed by the Judicial Service Commission from a list of persons recommended by all party conferences. The Judicial Commission appoints most members in Botswana; because it is the body that is impartial in its outlook and is not directly involved in politics.

The Secretary of the Electoral Commission is appointed by the President pursuant to Article 66(2). The President appoints the secretary to make the committee more integrative in its composition. Under Sub-Article (3), however, he or she is subject to commission supervision, discretion and direction. In Botswana, the security of tenure of the Commission members is highly guaranteed (Jaba, 2009). Under the same context, under Article 75(1), the Constitution of the Republic of Malawi grants the power to nominate the Chairperson of the Electoral Commission to the Judicial Service Commission and that such nominee must be a Judge.

Another democratically constituted body is presented by the South African Electoral Commission. The composition is provided for in Section 6 of the Electoral Commission Act, 29. The commission consists of five members, one of whom is a judge selected by the President after being recommended by the National Assembly. The President is assigned such a duty to make the commission more integrative. As

for other members, the procedure is that the panel recommends to the National Assembly about eight candidates. Then the National Assembly Committee nominates four members from a list submitted by the panel.

Researcher therefore argues that African nations 'constitutions and legal framework should set up independent election management bodies. These bodies should enjoy full tenure independence and security. In addition, commissioners 'selection and appointment procedures should be transparent, inclusive and sensitive to gender equality and embody diverse groups, particularly political ones.

Jaba (2009) further stressed that Liberia, Ghana, Uganda, and Germany have clauses in their constitutions that protect the multi-party system. Under Article 75, the Constitution of Uganda (1995) provides that the parliament has no power whatsoever to enact any law establishing a one-party state. In Article 3(1) (2), the Constitution of Ghana (1992) also leaves Parliament powerless to outlaw multiparty democracy. It also declares the act of any person or party aimed at unlawfully suppressing political activity. Remarkably, the Constitution of Liberia under Article 77(a) declares unconstitutional any law, regulation, decree or measure which may have the effect of creating a one-party state.[93]

3.5 Rule of Law under Multiparty Democracy: Tanzania experience

However, much needs to be done in the context of Tanzania. This is because the President nominates all of the Electoral Commission's top officials. In my conviction, the practice of constituting the Electoral Commission in Tanzania is

[93] Jaba, S. Challenges of a Democratic Constitution under the Multiparty System in Tanzania (1990)

undemocratic as the president (and his political party) participates in elections that all top NEC officials are his appointees. This is a one-sided arrangement, and one can see in whose favor such a body works. It is obvious that the president cannot nominate people who are likely to impede his or her political ambitions or that of his or her party. One example is the unjust delimitation of electoral areas.

The NEC appears to split constituencies where CCM has influence while merging constituencies where CCM has no popularity.[94] Pemba Island is a perfect example of such misconduct. The issue of the independence of (or lack of it) the National Electoral Commission and its connection to the appointing authority came up. There have always been accusations that the National Electoral Commission cannot be impartial especially with regard to the ruling party and in which the President is a member. This is much so because it is the President who appoints the Commissioners. A change in the law was therefore called for so as to make the Commission be and be seen to be independent. Some political parties wanted political parties to be represented in the Commission. The powers to appoint, so the activists thought, should be shared with the legislature.

The Kisanga Committee agreed with the government stand that the powers should remain with the President. No party representation would be effected as this would lead to party-politics in the Commission, and that no sharing with the legislature was required. Only insofar as the independence of the Commission did the 13th Constitutional Amendment made some changes. Article 74(7) of the constitution

[94] The 2005 Elections in Tanzania Mainland: Report of Tanzania Election Monitoring Committee (TEMCO), 2006.

now clearly pronounces the National Electoral Commission is an independent organ.[95]

This partly enhances the confidence of the National Electoral Commission. However, the amendment does not ascertain how the National Electoral Commission is going to exercise this independence especially in matters relating to financing. It is a hundred percent dependent on the government and we should once again note that the President is the one who appoints it. In line with these discussions, researcher suggests that the Constitution should contain an unequivocal clause on the protection of multiparty democracy to ensure the existence of political parties. This will create a friendly environment for the existence of rule of law and democracy in general. A lot of work remains to be done to build and entrench a culture of democratic multiparty competition for office. In this area, the government needs to do everything it can. This will help to improve inter-party dialog and cooperation. Each party operating in Tanzania must be guaranteed the right to develop and propagate its policies. But these parties must again have policies that are not harmful to national unity and concord.

On the other hand, the Tanzania Civil and Political Rights Perceptions Index 2017, produced by Legal and Human Right Centre(LHRC) and Zanzibar Legal Service Centre (ZLSC), indicates that freedom of assembly was perceived poor in 2017, maintaining the grade of D+ that was scored in 2016.[96] The question here is, to what extent is Tanzanian government under the umbrella of multiparty democracy

[95] The URT Constitution, Article 74(7)
[96] Tanzania Human Rights Report of 2017 by LHRC Page 63

democratic? If the country is democratic and follows the rule of law as claimed, what makes it maintain D+ score in the Tanzania Civil and Political Rights Perceptions Index 2017?

3.6 Anchors and Vulnerability of the Rule of Law

The rule of law seems an important as well as a vulnerable rule. The importance depends on whether one prescribes a thick or thin definition of the rule of law. Even in a thin concept, according to which the rule of law implies foremost that the actions of government officials and those of citizens are bound by the law, the rule of law is of great significance. Simultaneously, the rule of law is also vulnerable. The rule of law is an unwritten rule which leaves the interpretation of this rule to the discretion of the judges and there are several rules of law undermining the rule of law.

The significance and vulnerability of the rule of law have regularly led to questions about anchoring the rule of law. For those who consider parliament to be the gatekeeper of the rule of law, specific parliamentary committees to control the rule of law compliance of statutes are suitable anchors. A high ranked Attorney General can be the anchor whenever one, expects government lawyers to be in control of this matter. A third rule of law anchor may be formed by constitutional courts, for those who like to see judges as the gatekeepers of rule of law, especially when it comes to conformity of statutes with the rule of law.

Countries differ in how many of these three rules of law anchors they implement. The UK, for example, has all three mentioned anchors, the Netherlands none of them. Both countries are, nevertheless, ranked high in the international rule of law

index and Dutch citizens have no doubt that they live in a rule of law country. However, they are frequently concerned about the development of the rule of law in other countries.

Pauline Westerman draws attention to concerns on a European level about the state of the rule of law in other countries. As an international donor-institution, the EU normally requires the receiving countries to fulfill rule of law requirements. This type of European foreign policy makes the rule of law an export product, which increases security but leaves hardly any room for democratic participation in the rule making. This policy not only undermines democracy in the receiving countries, but undermines the development of the rule of law as well, because of not having a legislation process by which governments and citizens bind each other in a mutual and reciprocal context.

Legislation against the rule of law is both possible and to be expected. The chances of such legislation increase as the definition of the rule of law becomes thicker, and thus such legislation is more likely due to the actual political climate in which political leaders show their relativism about the law. Whether legislation against the rule of law is problematic or not, depends on how one perceives the rule of law as a legal concept. Does one consider it as an ultimate legal principle or just as a guideline? Moreover, is legislation seen as the most important source of law or do we regard it as just a temporary?

3.7 Chapter Summary

It could generally be argued that constitutional practices of the rule of law under multiparty democracy differ from one country, state or nation to another. Different

governments have been practicing what they call rule of law depending on their interpretations. This means that what is said to be constitutional legal practices of the rule of law in one country may contain what is not friendly in the eye of either human rights bodies or international states. These differences are witnessed via the rate of transparency, accountability, and deliberately mismanage intra-party elections. In general term, presence of multiparty system, tangible branches of the government do not in one way or another imply viable practices of the rule of law as indicated in this chapter.

To this regard, this chapter presented constitutional practices of the rule of law under multiparty democracy by analyzing the experiences in other countries in relation to Tanzania. It also investigated issues such as constitutional statuses in different countries and Tanzania in particular by looking at the constitutional duties of a political party; an experience of other countries outside Tanzania and relating the situation with Tanzania multiparty democracy and the rule of law. The chapter concluded by looking at the summary of the chapter. The next chapter assesses an overview of the rule of law and its legal practices in Tanzania.

CHAPTER FOUR

OVERVIEW OF THE RULE OF LAW, ITS LEGAL PRACTICES AND CHALLANGES IN TANZANIA

4.1 Introduction

The rule of law is the reverse of power rule. It stands for the supremacy of law over person will power. But to tell this is to talk only in the most particular terms. As with all abstract multiparty system and political values, the demands of the rule of law are challenged. Dicey in his book the law of the constitution 194 (9^{th} ed)[97] highlighted three characteristics of the rule of legislation: the need to limit the conferral of discretionary power to public authorities in the interests of security and predictability; the capacity to seek justice in autonomous judiciary should the government act illegally; and the significance of equality before the law.[98] Again, the rule of law should therefore mean that every individual is subject to the law, including those who are lawmakers, law enforcement representatives, and magistrates.

In this context, it contrasts with a monarchy or oligarchy where the leaders are kept above the law. There is a lack of rule of law in both democracies and monarchies, for instance, due to negligence or ignorance of the law, and the rule of law is more likely to decline if a state has inadequate corrective processes to restore it. This chapter explores the rule of law as well as its legal practices and the existing challenges under multiparty democracy in Tanzania. It confines itself within literature related to Tanzania context. It also summarizes different discussions related to the rule of law.

[97] Dicey, A. (1950). *The Law of the Constitution 194 (9th ed).* London: MacMillan.
[98] Macquarie Law Journal, Denise Meyerson; 2004

4.2 Overview of the Rule of Law under Multiparty Democracy

The rule of law is the bedrock on which democracy and democratic practices are supposed to be anchored. Although democracy in one form or another is well established through the regular holding of multiparty elections in sub-Saharan Africa, there are many signs of creeping authoritarianism. Therefore, if law is to restrict authority efficiently, it is not enough, as Dicey saw, to authorize the practice of authority by simple legal guidelines. Again, the government officials must also follow the laws passed by Parliament, and this can only be assured if the judiciary have jurisdiction to implement the legal boundaries governing the exercise of executive power. It states that private clauses–provisions that try to restrict or exclude citizens ' capacity to contest public agents ' exercise of authority in autonomous judiciary–are an attack on the rule of legislation.

Making reference to the case of Chumchua s/o Marwa v Officer in charge of Musoma Prison & the Attorney General (Misc. Criminal Cause No. 2 of 1988), Prof. Fimbo relied on the definition of Rule of Law espoused in this case, where the trial judge stated:

> *"I believe that the Rule of Law means more than acting in accordance with the law. The Rule of Law must mean fairness of the government. Rule of Law should extend to the examination of the contents of the laws to see whether the letter conforms to the ideal; and that the law does not give the government too much power. The Rule of Law is opposed to the rule of arbitrary power. The Rule of Law requires that the government should be subject to the law rather than the law being subject to the government. If the law is wide enough to justify a dictatorship, then there is no rule of law. Therefore, if the Rule of Law all it means is that the government will operate in accordance with the law, the doctrine of Rule of Law becomes a betrayal of the individual if the laws themselves are not fair but oppressive and degrading. The Courts have to bridge the*

> *yawning gap between the letter of the law and the reality in the field of Rule of Law."*

From the above, it can be noted that for Rule of Law to be applicable, the government must act in accordance with the law; the law must be fair and should not grant arbitrary power to the governments. Apart from this, courts are also required to come to the aid of the individual.

Again the overview of Mtikila and others v. Tanzania where the judgment was rendered on 14th June 2013 and concerns two applicants (collectively "Applicants"): the first, two Tanzanian NGOs, the Tanganyika Law Society and Human Rights Centre("NGOs"), the second Reverend Christopher R. Mtikila ("Mtikila") with broadly the same case; that current Tanzanian election laws, prohibiting independent candidates from running for public office were in breach of various articles of the African Charter on Human and Peoples' Rights ("the Charter"), the International Convention of Civil and Political Rights ("ICCPR"), the Universal Declaration on Human Rights ("UDHR") and the rule of law.

One of the necessary features of a country where democracy thrives is the presence of free, fair and competent political parties. The political parties have been described as the most important ingredients of a democratic government. Political parties therefore have deeper knowledge of the policies, government accountability and responsibilities. Tanzania as a country has adopted multiparty democracy in 1992. The amendments to the Tanzanian Constitution required all candidates for presidential, parliamentary and local government elections to be members of and be sponsored by a political party.

In 1993 Mtikila filed a case before the Tanzanian High Court challenging these amendments, arguing that the prohibition on independent candidates conflicted with the Tanzanian constitution. On 24th October 1994 the Tanzanian High Court found in favour of Mtikila and declared the amendments unconstitutional. Just prior to this judgment, on 16 October 1994, the Tanzanian government tabled a bill in parliament seeking to prohibit independent candidates. On 2 December 1994 parliament passed the bill, which in effect restored the position prior to the High Court's October judgment and continued the ban on independent candidates.

Given the importance of the rule of law as an instrument for promoting social, political, economic and social development, all of which are critical to peace and stability, the ominous decline in respect for the rule of law cannot be ignored. Fombad & Kibet in their sutdy titled 'Editorial introduction to special focus: The rule of law in sub-Saharan Africa: Reflections on promises, progress, pitfalls and prospects'[99] demonstrated that for nearly two decades, there has been a steady decline in the state of the rule of law in Africa. This is of concern especially considering that even in countries that had recorded significant gains as far as the rule of law is concerned, there has been a steady decline, while some countries have consistently scored poorly over the years.

In Tanzania, for example, one of the first measures that the president took, and perhaps the most disturbing to date, was to ban opposition political party activities. More recently, in July 2016, the president declared that there should be no political

[99] Fombad, C., & Kibet, E. (2018). 'Editorial introduction to special focus: The rule of law in sub-Saharan Africa: Reflections on promises, progress, pitfalls and prospects' . *18 African Human Rights Law Journal* , 205-212

activities in the form of public rallies or demonstrations until the next election in 2020. The security services have been ordered to enforce this decision, but it is a blatant violation of the constitution and the laws governing political parties. Essentially, by banning political activities, the president was declaring a de facto one-party state in a country that has enjoyed multi-party politics for over 20 years. It has taken a more dangerous turn more recently with the arrests and harassment of members of the opposition. Just as worrying, at least four media outlets have been suspended or shut down indefinitely.

Recently, the president commented that he has his eye on two more newspapers. The new Media Services law affords the government sweeping powers to control and censor the sector, and to criminalize free speech. Live television broadcasts of parliamentary sessions have been terminated, and MPs expressing their discontent were banned from the House. Meanwhile the president ensures that all his public appearances, however insignificant they may be, are broadcast live by all media outlets.

Consequently, there is increasing self-censorship in the media fraternity for fear of incurring the wrath of the head of state or his acolytes. This undermines his fight against corruption, as media has always played a key role in enforcing accountability in Tanzania. The current regime has swiftly and arbitrarily applied the draconian Cybercrimes Act and Media Services Act to crack down on mainstream and social media. Just recently, journalists have been missing and some of them have been arrested for allegedly reporting government misconducts. Some of them were inexplicably denied bail. The owner of JamiiForums, a popular social media

platform, have been facing criminal charges for allegedly denying police officers access to personal information of the platform users. JamiiForums has been an important platform over the years for whistleblowers of government corruption and has been a rallying point for many who wish to criticize the regime anonymously.

Just as worrying, at least four media outlets have been suspended or shut down indefinitely. Recently, the president commented that he has his eye on two more newspapers. The new Media Services law affords the government sweeping powers to control and censor the sector, and to criminalize free speech. Live television broadcasts of parliamentary sessions have been terminated, and MPs expressing their discontent were banned from the House. Meanwhile the president ensures that all his public appearances, however insignificant they may be, are broadcast live by all media outlets.

The actions described above are disturbing developments which undermine progress towards democratization in Tanzania. Local governments remain ineffective and subject to the authority of presidential appointees in the form of regional and district commissioners. The media and other civil society organizations are systematically being attacked and have resorted to self-censorship for survival. To this regards, difficult issues must be raised with the government to ensure that it does not dismantle the foundations of democracy painstakingly established over the past two decades.

It should therefore be noted that, multiparty system has in a way also influenced the behavior of the judicial branch of government. To this regard, independence of the

judicial system is critical for the expansion of democracy. The Nyalali Commission which recommended the re-introduction of Multi-party politics in Tanzania emphasized that for expanded democracy to take shape in Tanzania, the judicial system has to remain autonomous from executive and parliamentary control. Furthermore, the judiciary must ensure that "no parliamentary legislation undermined the constitution. Also, the judiciary must be empowered to review executive actions, to make sure they do not violate basic human rights enshrined in the constitution.

Tanzania's legal system and profession can be split into three parts: the Bench, the Private Bar and the Public Bar.[100] The Bench consists of at least 5 judges of the Court of Appeal, at least 15 members of the High Court, and several magistrates of the Resident, District and Primary Court. The Private Bar consists of lawyers involved in personal exercise in legislation, while the Public Bar consists of State Attorneys acting on behalf of the Government and working in the rooms of the Attorney General, and the Corporation Counsel employed by the Tanzania Legal Corporation acting on behalf of government companies.

Surprisingly, the office bearers of these benches (with exception of the private bars) are the president appointees. This poses a lot of questions on the environment within which law execution and practices are exercised in Tanzania. Is this what is termed as the sub – Saharan based rule of law where the president has excretion and unquestionable power of appointments? To this regards, despite the governmental claims to address challenges witnessed in the daily legal practices, there are

[100] Tanzania Affairs

challenges of the rule of law under multiparty democracy practices in the country.

4.3 Legal Practices and Challenges of the Rule of Law under Multiparty Democracy

A hallmark of a democratic society is the opportunity for free and public debate, in which dissenting opinions can be fully voiced and views can be disseminated. Freedom of view and speech must be fully ensured and shielded in order for a democratic society to thrive. The right to freedom of opinion, expression, and information has long been regarded as "a fundamental human right and an essential foundation of a democratic society. It is a right whose existence allows other democratic freedoms to be guaranteed".[101]

The right to freedom of opinion, expression, and information is provided under Article 18 of the Constitution. Several laws currently in force impact the exercise of this freedom, and merit a more detailed discussion of their compliance with international standards. Tanzanian law provides that restrictions on the freedom of opinion, expression, and information must be in the interest of peace and good order. For example, the Newspapers Act of 1971, Cap 229 allows the Government to halt the publication of a newspaper if found to be against public interest or in the interest of peace and good order.

The law also empowers the President to restrict importation of a publication if he or she finds that it would be contrary to the public interest. The National Security Act of 1970, Cap. 47 allow the Government to control the dissemination of information

[101] Commonwealth Secretariat, Freedom of Expression, Assembly and Association: Best Practice, Marl brough House, London, 2002, p. 15.

to the public in the interest of national security. The Broadcasting Services Act of 1993, Cap. 306 permits similar regulation of electronic media. Within these laws, there is a debate over the scope of these terms and whether they can be used to arbitrarily deny the right to information and expression.

In Tanzania reintroduction of multiparty politics is regarded as an enormous historical case that required the constitution to be rewritten. It was considered as a way to strengthen freedom of opinion, expression and assembly as well. This was driven by opposition political parties, mostly in terms of the need for a Tanzanian political game to be performed on a level playing field. There was also a need to shake off the legacies and vestiges of the former single-party state, which continued to have oppressive legislation, dictatorial practices, and undemocratic means of entry to political and other elective positions.

Additionally, establishment of the rule of law is one of the main problems in the Global South. Unfortunately, while individuals are concentrated on attaining this noble goal, others are working to hold back the cycle. Therefore, civil society as a whole need to intensify its watchdog role vis-à-vis not only where the rule of law still has to be created but also where it has already been developed. Indeed, the rule of law is endangered in the DRC, Kenya, Venezuela, and Nigeria today. In other nations, tomorrow may be under threat. As the Global South struggles to stop the culture of leaders for life, the slogan "as I am here now it is indefinitely" has to be abolished because it takes two strides back for every move forward toward a rule of law in the Global South. The end outcome is gross violations of human rights.

In Tanzania there have been cases of violation of the rule of law and human right for over ten years up-to-date.[102] For instances, Bashiru, A[103] assessed the 2000 general elections concluded by stating that the election was full of malpractice. So it was not free and fair. People were under the governing party's fear and there was no civic education. It is his opinion that individuals should be conscious of their voting rights in order to fight against electoral malpractice, so they should be willing to protect them. Although Bashiru does not address voting right in his job, this job is essential as it demonstrates the reason why individuals are unable to protect their voting rights.

There are some incidences such as, Mwananchi Communication journalist Azory Gwanda who was vanished in the district of Kibiti in the Pwani region in November 2017 while reporting on a spate of unexplained murders in the region and stayed missing at the end of the year.[104] Observers from the press and civil society asserted that Gwanda may have been banned for reporting on a delicate safety issue. Chairman of the Kibondo District Council was kidnapped by unidentified individuals while leaving his post in July 2017. His relatives claimed that his death was politically driven and linked to his position on certain board problems. Ben Saanane, a policy analyst at CHADEMA, also vanished in early 2016. Investigations were underway as at the end of the year the males stayed missing.

Also, Conditions in prison stayed rough and life threatening. Inadequate nutrition, overcrowding, bad hygiene, and inadequate medical care were pervasive. For

[102] LHRC, 2017
[103] A Bashiru, The Politics of Election Administration in Tanzania under Multipartism: The case of 2000 General Election, LLM Dissertation, University of Dar es Salaam 2001.
[104] Country Reports on Human Rights Practices for 2018

example, the prisons, whose complete constructed capability was for 29,552 prisoners, kept 31,382 as of 2015; 6 percent above, constructed capability. Pre-trial detainees and sentenced inmates were kept together.[105] The constitution of Tanzania prohibits practices such as torture and other cruel, inhuman, or degrading treatment or punishment of prisoners; however, the law does not represent this legislative limitation or specify torture. There have been claims that police officers, prison guards, and troops have intimidated, endangered, and otherwise mistreated civilians, alleged criminals, and inmates. These abuses often involve beatings. Police policemen badly hit Wapo Radio sports journalist Sillas Mbise on August 8 while broadcasting a soccer game at Dar es Salaam's domestic stadium; a video of the event came online on social media.

According to the 2018 Mid-Year Human Rights Report of the Legal and Human Rights Center (LHRC), a friend of a parliamentarian was shot to death in April while in police custody; a police officer was detained for the crime. The law enables for caning. Local public authorities and courts have occasionally used caning as a penalty for both juvenile and adult offenders. Caning and other corporal punishment have also been regularly used in classrooms. On August 27, a 13-year-old student from Kagera Region died after being severely beaten by a teacher after mistakenly being accused of theft. On October 22, court proceedings began in a case involving two teachers accused of murdering the student.[106]

[105] LHRC, 2017
[106] Country Reports on Human Rights Practices for 2018

Again, Tanzania's constitution ensures equality before the law and equal protection before the law as provided for in Article 13(1).[107] Tanzania's people's right to access justice is confronted with countless difficulties. These challenges are either systemic and, in some cases, structural. Some of the problems come from those who are expected to or are seeking access to justice, others from those who are dispensing or are expected to provide justice and related facilities. However, it should be noted that access to justice is merely the capacity to pursue and acquire a solution through a formal or casual justice scheme and/or organization. This is a right; it emanates from human rights standards that guarantee equal treatment for all before the law, the right to be handled reasonably by any tribunal, among others.

The constitution provides for an independent judiciary, but component of the judiciary remained underfunded, corrupt, inefficient (especially in the lower courts), and subject to executive influence. Judges and junior judicial officials are all the President's political appointees. The need to travel lengthy distances to the judiciary imposes logistical and economic limitations that restrict access to justice for rural people. There were fewer than two magistrates per million people. Court clerks allegedly began to hold bribes to open instances or to conceal or misdirect the documents of those convicted of offenses. Magistrates of lower courts occasionally accepted bribes to determine the outcome of cases.

Therefore, much work remains to be done to build and entrench a culture of the rule of law and multiparty democratic competition for office. In this area, the government needs to do everything it can. We will do our best to improve inter-party dialog and

[107] Challenges of Strengthening Access to Justice in Tanzania: A Governance Point of View by Adv.Asina Omari

cooperation. Each party operating in Tanzania must be guaranteed the right to develop and propagate its policies. But these parties must have policies that are not harmful to national unity and concord.[108]

Since the reintroduction of multiparty system, the main regulatory law has been the 1977 constitution of the United Republic of Tanzania as severely amended. Several amendments have been made to the constitution. It was amended to accommodate multi-party elections.[109] The question is, are these amendment support fair practices of the rule of law within the multipart democatratic context in the country? How does other oppoesition parties such as CUF, CHADEMA, NLD, ACT-WAZALENDO and alike benefits from these amendments? This study therefore tries to look at the rule of law under multiparty democracy in Tanzania based on laws and practices and the associated challenges.

Researcher therefore argues that when the government exercises coercion against citizens, it must do so in accordance with legal rules stated in advance, in a manner consistent with the dictates of formal legality. Legal rules must affirmatively authorize the government action. Government action can not violate any existing legal constraints. At some point there must be recourse to an independent court dedicated to upholding the law that will make a determination of the legality of the government's action. And the ruling of the court must be respected by government officials.

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[108] URT, 2000

[109] Fimbo, & Mvungi. (1993). *Constitutional Reforms for Democratisation in Tanzania, Faculty of Law University of Dar es Salaam.* Dar es Salaam: DUP

The rule of law demands this much, at least. It goes without saying that no nation perfectly lives up to the ideals of the rule of law. A number of systems fall so short of these ideals that they must be denied the label, regardless of their claims otherwise. All the rule of law systems, even those that are admirable in many respects, have their failings and exceptions and flaws. But any nation that hopes to meet the core demand of the rule of law must insure that when the government exercises coercion against citizens, it does so in accordance with standing laws and it must insure that the government is answerable in court for its actions. Everything else aside, this lies at the heart of the rule of law.

4.4 A Legislative Focus on the Rule of Law

As a public concept, the rule of law, like representative democracy and the division of forces, has both official and aspirational elements. It has a certain minimum content; but the principle is usually invoked in a manner that either assumes, or explicitly asserts, more. The definition of representative democracy given by John Stuart Mill in the 19th century[110] falls short of describing a system that would satisfy the expectations of citizens in a liberal democracy of the 21st century.

This study investigates as though there are degrees of democracy, and make contestable claims about those degrees. Is compulsory voting more or less democratic than optional voting? Is the first-past-post electoral system more or less democratic than the preferential voting system? The minimum formal content of representative democracy may be generally accepted, but the extent of the principle may be in dispute in a given society, and its practical application varies with time

[110] Mill, *Considerations on Representative Government* (1861) at 557.

and place. The same can be said about the separation of powers. The nature and degree of separation varies, even among societies that this study regards as having comparable systems of government. The concept of the rule of law is of a formal nature, but contentious statements are raised about its substantive material in distinct locations or situations. [111]

Although the rule of law indeed cannot exist without being challenged on variation in contexts and environment, there might be some reasons for concern. It seems to be more important than ever to emphasize the significance of the rule of law and the boundaries. For the most part, the position countries take on rule of law rankings is caused by the accessibility of an independent court. It is about time to look at the rule of law requirements that need to be met by the legislator. This study therefore examines the rule of law from a legislative perspective.

More specifically, researcher is interested in laws that run against the rule of law. One might wonder how this is even possible if the legislator is the highest authority in law-making responsible for protecting the rule of law. Many authors have reflected on this question.[112] They agree that it is possible that legislators rule against the rule of law; however, they differ on many aspects, such as: how this happens, the way in which this comes to the fore and the severity of infringements on the rule of law.[113]

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[111] For a discussion of some of the competing theories, see Craig, *Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework*; [1977] Public Law 467; Hutchison, "*The Rule of Law Revisited: Democracy and Courts"* in *Recrafting the Rule of Law: the Limits of Legal Order*, (1999) ed. D Dyzenhaus at 196

[112] Peter van Lochem (2017) Legislation against the rule of law – an introduction, The Theory and Practice of Legislation, 5:2, 95-100, DOI: 10.1080/20508840.2017.1387729

[113] Ibid

4.5 Legal Systems and Practices of the Rule of Law

The common theme within the rule of law is formal legality. The requirements of formal legality all derive from the nature of rules i.e. what rules are and how they operate. These requirements are that laws must be set forth in advance, they must be general, they must be publicly stated, they must be applied to everyone according to their terms, and they cannot demand the impossible. A legal system that lacks these qualities cannot constitute a system of rules that bind officials and citizens. Formal legality is the dominant notion of the rule of law within any nation (Tanzania inclusive). Above all else, formal legality provides predictability through law. As Hayek put it, the rule of law makes "it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge".[114] This allows people to know in advance which actions will expose them to the risk of sanction by the government apparatus.

According to liberalists, formal legality enhances liberty of action or individual autonomy because people are advised of their permissible range of free action. There can be no criminal punishment without a pre-existing law that specifies a given action as prohibited. Thus, citizens are free to do whatever they like as long as the stated rules are not violated. In relation to a capitalist economic system, public, prospective laws, with the qualities of generality, equality of application and certainty, help facilitate market transactions because predictability allows merchants to calculate the likely costs and benefits of anticipated transactions. Laws of contract

[114] Friedrich A. Hayek, The Road to Serfdom (Chicago: University of Chicago Press, 1994)

encourage more transactions between people because they have assurances that a sanction would follow should a party breach the contract. Laws protecting property encourage productive efforts because people know the law will secure their right to enjoy the fruits of their hard work. A growing body of evidence indicates a positive correlation between economic development and formal legality, which is attributed to the enhancement of predictability, certainty and security.[115]

However, there are numbers of limitations faced by the legal systems. This study identifies three limitations of formal legality. The first limitation is that all rules suffer from the problem of over-inclusiveness and under-inclusiveness. Rules are general directives stated in advance to achieve particular purposes or to maintain normative order. The problem is that situations arise that do not conform to the purposes of the rule or the normative assumptions behind the rule. Rules by their nature are over-inclusive and under-inclusive. By over-inclusive, it means that rules will sometimes produce results that are not consistent with the aim of the rule; by under-inclusive, it means that sometimes, rules will fail to extend to situations that would advance the purpose of the rule. An example of a single rule that can be over and under-inclusive is that, under the law, citizens cannot obtain a driver's license until they reach the age of 18.

The law-makers picked that age limit because they were trying to identify people who are physically and mentally mature enough to drive an automobile safely. However, there are some 17 year olds who are mature enough to drive automobiles

[115] See Robert J. Barro, Determinants of Economic Growth: A Cross Country Empirical Study (Cambridge, MA: MIT Press, 1997)

safely and there are some 19 year olds who are not. According to the law, the mature 17-year-old will be denied a license, while the immature 19-year-old will be granted a license. In both cases, the application of the rule in accordance with its terms will have consequences that are inconsistent with the purpose behind the rule.

Formal legality, which requires making decisions in accordance with rules, will in this manner occasionally produce non-optimal or undesirable results. The authority might amend the rule to add two exceptions: (1) that mature people less than 18 can get a license; and (2) that immature people over 18 can be denied a license; and the civil servant at the licensing bureau will decide whether the applicant meets the maturity requirement. But notice that this amendment destroys the rule-based nature of the law. That is because the determination of whether a person is sufficiently 'mature' is not a rule of general application. Rather, it calls for an individualized judgment to be made on a case-by-case basis. Notice also that the addition of this clause diminishes the predictability of the law. Prior to the amendment, everyone under 18 knew they could not get the license and everyone over 18 knew that they could (assuming they passed the driving test). With the amendment, these results no longer automatically follow.

This example nicely demonstrates the strengths of a rule-bound system (enhanced predictability), as well as its limitations (occasionally bad results). This is the downside of formal legality. Many legal systems manage the problem of over-inclusiveness by allowing judges to consider fairness, equity or justice to avoid bad results that follow from a rule (under-inclusiveness cannot be solved this way). But

this cannot be done too often, for it would reduce the overall rule-bound quality of the system and increase the level of uncertainty.

Another limitation of the rule of law understood in terms of formal legality is that it is compatible with a regime of laws with inequitable or evil content. It is consistent with legally imposed segregations and abuse against opposition political parties, activists and other Organizations seem criticizing the government particularly African goverment, as confirmed by the examples of the Rwanda, Burundi, Sudan, Uganda and the current situations in South Africa. It is also consistent with authoritarian or non-democratic regimes witnessed in most of African nations. An unjust set of laws is not made just by adherence to formal requirements. On the contrary, when the laws are unjust, formal legality can actually bring about greater evil because the system is dedicated to carrying out these unjust laws. An effective system of the rule of law may strengthen the grip of an authoritarian regime by enhancing its efficiency and by providing it with the appearance of legitimacy.

A third and final limitation is that there are many circumstances under which formal legality is not appropriate or socially beneficial. Many areas of government policy, especially when uncertainties or complexity exists, will be undermined by attempts at restricting government decision-making in advance by legal rules. There are situations in which officials must gather information, apply expertise, exercise discretion, and make judgments. The main example of this in the modern state involves administrative agencies that exist to advance social policies, like enhance education or protect the environment.

Dicey and Hayek expressed great concern that the expansion of administrative decision-making by government officials was antithetical to the rule of law because these kinds of decisions are not strictly determined by rules and because final decisions in the administrative context were not made by ordinary courts. It therefore remains true that much of the core decision-making made by government agencies aimed at achieving social policies is not strictly rule-governed. To this regards formal legality does not work in complex situations when particular judgments must be made.

Another context that is not always suited to formal legal decision-making involves small-scale communities with a communitarian orientation—to be ruled in strict accordance with rules might be harmful when the results dictated by the rules would leave the community unsettled. Or in situations that threaten an eruption of violence within or between communities—peace might better be achieved through political efforts. When responding to disputes of this sort, the primary concern often is to come to a solution that everyone can live with; long term relationships and shared histories matter more than what the rules might dictate. Coming to a compromise may better achieve this goal than strict rule application.

These observations also apply to commercial transactions; which formal legality is closely identified with. Locally as well as internationally, business partners have regularly demonstrated a desire to resort to mediation or other forms of resolution over court proceedings[116]. This is in part owing to the expense, delay and sometimes,

[116] See Yves Dezalay & Bryant Garth, Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order (Chicago: The University of Chicago Press,

to the unreliability of local, national or international courts. But it is also owing to the fact that business partners desire to continue profitable relationships and to maintain good reputations in the business community by demonstrating a willingness to come to a mutually acceptable resolution. Rules frequently have an all or nothing consequence, resulting in winners and losers, but communities, whether social, political or commercial, are often better served by a compromise that allows both sides in a dispute to walk away satisfied.

The statement that merchants or businessmen can under certain circumstances function without resorting to legality, researcher emphasize, does not suggest that legality is irrelevant to commercial enterprise and markets. On the contrary, the establishment of a background framework of reliable legality is an important ingredient to capitalism as currently constituted.[117] Having this background to fall back on in case of failure helps merchants work toward achieving an acceptable compromise. And the same is true of disputes more generally within many types of community.

Owing to the three problems this study has identified—the problem of over and under inclusiveness, the problem of bad laws and situations where discretion is necessary or compromise is better than winners and losers—formal legality does not do well under all circumstances. Sometimes, a rule of law system that strictly complies with the demands of formal legality will produce negative results.

1996); Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study" (1963) 28 American Sociological Review 55.

[117] See Ibrahim F.I. Shihata, Complementary Reform: Essays on Legal, Judicial and Other Institutional Reforms Supported by the World Bank (The Hague: Kluwer Law International, 1997).

This recitation of the disadvantages of formal legality, however, should not be interpreted to disparage its value. Formal legality is perhaps best appreciated by comparison to when it is lacking. To not know in advance how government officials will react to one's conduct, commercial or otherwise, is to be perpetually insecure. Societies that operate within a regime of formal legality benefit greatly by reducing this state of uncertainty.

4.6 Chapter Summary

This chapter focused on overview of the rule of law and its legal practices in Tanzania. The chapter traced the practices of the rule of law within Tanzania context. This chapter also presented historiography of the rule of law and its constitutional practises by looking at some appeals and cases made by Tanzanians on practicability of the rule of law. Furthermore, this chapter also presented the judicial practices and defence towards multiparty democracy in Tanzania. This also chapter presented legal practices and challenges of the rule of law under multiparty democracy in Tanzania. It introduces Tanzania's legal system and profession by looking at its splits. This chapter also analysed how different laws and practices coincide or undermine the system of rule of law in the country by looking at the practices of the ruling party (CCM) against other opposition parties. Finally, the chapter tried to investigate the main regulatory law of 1977 national constitution and how it relates to the current environment of the rule of law in country.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter concludes the study and presents its contribution to the existing body of knowledge about the law and practices of the rule of law under multiparty democracy in Tanzania. The chapter constitutes three major sections: the study conclusions, recommendations, areas for further studies and chapter summary.

5.2 Conclusions

The democracy and the rule of law in Tanzania are still in its initial phases. It has to be strengthened. Since the reintroduction of multiparty politics in 1992, some strengthening measures have been taken, including the running of three general elections, the ongoing registration of political parties, some constitutional amendments that led to some democratic characteristics that were not there before, and the government's overall attempts to strive for good governance. More demands to be achieved, as if we go by the stage of strengthening we are at, we are only attempting to create sure that our scheme does not revert to an undemocratic one, rather than turning our scheme into a more democratic one. The above-mentioned issues need to be addressed and thus may be more accessible and the rule of law under the democratic political system will flourish.

Again, Tanzania's democracy is seen to be in its initial stages. It needs to be consolidated. Some consolidation steps have been taken ever since the reintroduction of multiparty politics in 1992 including the running of three general elections, the continued registration of political parties, some constitutional amendments which

ushered in some democratic features that were not there before, and the general efforts made by the government to strive for good governance. More needs to be done as, if we go by the level of consolidation we are at, we only are trying to make sure that our system does not revert to an undemocratic one rather than developing our system into a more democratic one. The challenges mentioned above need to be met and like that may be a more open and democratic political system will emerge. Also, the democratization process has to go hand in hand with the improvement of vibrant civil society, the free media and concerted civic education campaign.

Categorically, the rule of law is characterized by four key features. First, that a country's key institutions are effective, incorruptible and impartial. Secondly, a culture in which rights are respected and effectively enforced. Thirdly, that justice is accessible – costs are not a barrier to resolving disputes for the poor and the vulnerable, the legal process is easily navigable, and there are no inordinate delays. Fourthly, the entire legal system is predicated upon fairness, a concept which implies moderation and proportionality in the content and enforcement of our laws.

5.3 Recommendations

The researcher proposes that matters discussed herein and recommendations should be taken into consideration so as to achieve efficiency and remarkable speed in resolving the legal practices of the rule of law under multiparty democracy in Tanzania. In addition, recourse to the "rule of law" within the traditional setting of international law creates problems, particularly when conditions force a nation to cross the circle by accommodating normative demands with state legal instructions, fundamental rights and democracy. Unsurprisingly, in recent cases brought before

supranational courts, such as the European Court of Justice (Kadì and Al Baarakat, for example) or domestic courts, such as the URT Supreme Court, the import and notion of the rule of law have been interpreted in ways that reveal the uncertainty surrounding the concept and the rather idiosyncratic or instrumental uses to which it is put forward.

In the study of such cases, this paper recommends a re-statement of the rule of law that better describes its use beyond national borders. Given that the autonomy of legal instructions is a crucial modern fact, the conflict between them and international law seems to replace the official primacy of the sources, as well as the blind or dogmatic closure, with content-dependent constitutional estimates. In this connection a road taken by the country and other international environment shows that communicative pluralism can embark on a practice of giving reasons inherently capable of producing common standards, the rule of law within the lines of democratic principles. All of these factors are ingredients that might finally help shaping the environment within which the rule of law operates.

Again, the suggestion for this literature review would be before Government Bills to be tabled before Parliament; they must first be scrutinized and vetted by the Ministry of Law and Constitution to ensure that the proposed laws are consistent with Tanzania's Constitution and the principles which underpin the rule of law.Unless the freedom of electing or being elected is exercised in a fair and free environment, there is no reason to suggest that democracy is embedded in that Tanzania. All of these can be accomplished when the regulations that direct the voting method are in a way that encourages democracy, because it is through the legislation (electoral

regulations) and those that cope with the rule of law and the multiparty system that will set the basic guideline for free and fair elections and also encourage the development of democracy.

Again, it seems that the organizations involved in rule of law promotion adopt a top-down or supply-driven approach to rule of law promotion. Rule of law promotion means that recipient states establish or strengthen institutions which play a vital role in the rule of law in the West. The idea that rule of law promotion should be organized as a demand-driven activity, which would be more sensitive to local needs and what is locally available (dispute resolution mechanisms, norms, etc) does not seem to play a role. Furthermore, rule of law promotion should go hand in hand with the promotion of democracy and human rights. Sometimes, this is true by definition, in that all these elements are embodied in the thicker conception of the rule of law that is used. There appears to be little clarity, however, as regards the connection between these elements, and the sequencing and prioritizing of the activities in the spheres of the rule of law, democracy and human rights.

Additionally, theorists have often remarked that the rule of law has no agreed upon meaning. While there is much disagreement, to be sure, I am not convinced that it extends as deeply as is often suggested. In this talk, I have focused on a widely recognised, core overlapping meaning. The key insight, in researcher's view, is not that there is no one meaning, but that there is no one manifestation of the rule of law. There are many different ways and textures to how countries manifest the rule of law—to how they instantiate a society in which government officials and citizens are

bound by and abide by the law. The rule of law varies from one country or society to another in term of its operations. All of these cultures have clearly solid rule of law schemes, albeit with varying strengths and weaknesses. And within each society, the implications of their rule of law system— how it plays out in daily life—is a function of the surrounding political, economic, cultural and social environment.

What this insight tells us is that when a working rule of law system is in place, focusing on 'the rule of law' itself, as a political ideal or a theoretical construct or a set of quantitative indices, does not get us very far, and having this as the central focus might even serve as a distraction. What really matters is the role law plays within the broader government and society on issues of importance to the people, whether the legal system on the whole, or in particular instances, is a positive force for the good, or not.

5.4 Recommendation for Further Studies

A replica of the study to be in other areas to determine whether the same findings derived from this study would be the same as in those areas. The study should also cover other techniques apart from comparative literature review to provide a comparison and synthesize in findings. The study should also use both qualitative and quantitative methodology so as to determine whether the same result may also occur in findings. Future studies should also include other variables and instruments with a greater number of participants which would be crucial in knowing how to validate, modify, or redesign current model of the rule of law and lastly meet legal demands at all levels.

5.5 Chapter Summary

The chapter presented the conclusions and recommendations of the thesis. Generally speaking, the thesis demonstrates a significant knowledge contribution to the existing knowledge base on rule of law under multiparty democracy in Tanzania. The study also addresses the law and practices of the rule of law in Tanzania by looking at its legal and environmental challenges. In particular, this thesis contributes knowledge of the rule of law from the perspective of the developed and developing economy in the aspects of international multiparty democratic literature. The next section presents the references that support the thesis.

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