THE INFLUENCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN TANZANIA: AN ASSESSMENT THROUGH JUDICIAL INTERPRETATION ON FUNDAMENTAL RIGHTS AND FREEDOMS

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All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood[2]

Abstract

The article assesses the influence of the Universal Declaration of Human Rights in Tanzania through judicial interpretation on fundamental rights and freedoms. It begins by revisiting the Universal Declaration of Human Rights and its elaboration, including nature and influence on human rights and freedoms. It proceeds with comparing the Declaration and the Constitution of the United Republic of Tanzania. The article finally attempts to show judicial influence of the Declaration through judicial interpretation. It is submitted that the Declaration embodies aspirational goals and cardinal provisions that are recognized and applied in Tanzania. The Declaration serves as a legitimizing power of the judiciary in interpreting human rights and freedoms. The article concludes that there has been back-forth movements in recognizing and applying the Declaration, though it sets a benchmark and a beacon upon which states may treat its citizens in protecting and promoting human rights and freedoms.

Key Words: *Universal Declaration of Human Rights, Influence, Judicial Interpretation, Tanzania*

1.0 Introduction

Human rights are moral claims, inalienable and inherent in all human individuals by virtue of their humanity.[3] In other words, it is a bundle of rights woven in perpetuity to the human life due to his birth and prior to state and law.[4] The rights are articulated and formulated to achieve certain standards, which are much higher than the animal living and have been translated into legal rights.[5] The basis of these legal rights is the consent of the governed, that is the consent of the subjects of the rights and available to all individuals on a preconceived notion that all are born equal in dignity and rights.[6] The principle of equality in rights, recognized in natural law,

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[2]Article 1 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 by the General Assembly of the United Nations, Resolution 217A, (the Declaration) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected (http://www.un.org/en/universal-declaration-human-rights) Accessed on 11th February 2016.

[3] B. Piechowiak, "*What are Human Rights?*", in RaijaHanski and MarkuSuksi (eds), *An Introduction to the International Protection of Human Rights*, Turku/Abo Academi University, 2000, p.3.

[4]*Rev Mtikila v. Attorney General* (1995) T.L.R 31, at p. 49.

[5] To a certain level, human rights are established by law, both national and international.

[6]First Preambular Paragraph to the Declaration.

was long accepted in many societies. Yet discrimination continued to exist owing to the ignorance, prejudice and certain fallacious doctrines, which tried to justify inequality. Such doctrines were used to defend slavery and discrimination on grounds of sex, race, colour, descent, national or ethnic origin or religious belief or on basis of class or caste systems, throughout history and even in, unfortunately, the modern times.[7]

The ideas of elaboration and protection of rights of human beings developed and gradually transformed into written norms. Many important landmarks formed the channelizing factors.[8] During the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions.[9] Thus, reflecting an almost contractual relationship between the state and the individual which emphasized that the power of the state derived from the assent of the free individual.[10]During the 19th century the principal social and economic rights began to be recognised by various independent states.

This conviction is reflected and reinforced by the United Nations Charter.[11] The Charter states the fundamental objective of the universal organization, namely: to save succeeding generations from the scourge of war[12] and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.[13] Article 1 of the Charter categorically stated that one of the aims of the United Nations was to achieve international co-operation *in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion*.[14] A major step in drafting the International Bill of Human Rights was realized on 10 December 1948, when the General Assembly of the UN adopted the Declaration as a common standard of achievement for all peoples and nations.[15]

2.0 The UDHR: Nature and Influence on Human Rights

The UDHR is not a binding instrument of the United Nations[16] but sets standards and norms upon which states should treat citizens.[17] However, the Declaration is

[7] F. Mtulya, "*The State of Constitutionalism in Tanzania 2008"*, in Khoti C Kamanga (2010) Constitutionalism in East Africa 2008, Fountain Publishers, Kampala, p. 99.
[8] Such as Magna Carta 1215- The Great Charter of Liberties of England , The Petition of Rights 1628 and The Bill of Rights 1689 in England, American War of Independence 1777, French Revolution 1789.
[9] See: The Bill of Rights in the Tanzanian Constitution.
[10] The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premise.
[11] Read: Article 1 of the UN Charter. The Charter was signed on 26th June 1945 in San Francisco, USA, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.
[12] Read: First Preambular Paragraph of the UN Charter.
[13] Read: Second Preambular Paragraph to the UN Charter.
[14]Article 1 (3) of the UN Charter.
[15] Read: Eighth Preambular Paragraph to the Declaration.
[16] The legality of the Declaration has been an issue. While it inspired and led to the fruition of most conventions, it is itself not a legally binding treaty in the sense that its breach will result in court or judicial consequences. A state in breach of any of the

powerful due to the support of public opinion across the world that it provides the basic minimum standards. Besides this, the Declaration has exported several principles to conventions and covenants[18] which themselves are legally binding.[19] The UDHR has attained the *Jus Cogens*[20] status in international customary law and therefore invites *ErgaOmnes*[21]obligation. Hansungule Michelo thinks that:

> …in positive terms, human rights statements are enshrined in the Universal Declaration of Human Rights. This document is humankind's reaffirmation of belief in human. Until 1948, there was no explicit statement authored by the international community confirming its belief in humanity. The Second World War was the single event that pricked humankind's conscience as to wake it up from slumber. Before that, of course, there were several human catastrophes such as slavery and colonialism. But, after the Second World War, humanity responded with one voice that enough was enough. In this sense, **the Declaration is the foremost instrument on human rights**…[22] (Emphasis added)

Hansungule adds that:

> …but the Declaration is powerful due to the support of public opinion across the world that it provides the basic minimum humans should be treated with. Besides this, the UDHR has exported several principles to conventions and covenants including the Covenant on Civil and Political Rights (CCPR) which are themselves legally binding. We have already alluded to the fact that most states make their domestic legislation on human rights based on the UDHR and these laws have legal force. Another source of legally binding system of law is the regional human rights system in Europe, Inter-Americas and Africa which were inspired by the UDHR and which have binding scope.[23]

Other scholars think that the Declaration has substantial impact in most of the constitutions of nations of the United Nations. Nancy Flowers, for instance, is quoted to have stated that:

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provisions of the Charter does not expect to be bound before a court of law or similar tribunal to be faced with legal accusations against its conduct.

[17] The Universal Declaration of Human Rights: - http://www.ohchr.org/engl/udhr/pages/index - accessed 12th February 2016.

[18]Including the ICCPR and ICESCR.

[19] Provided states have ratified the covenant or convention.

[20]Is a peremptory norm or compelling law. It is a fundamental principle of international law that accepted by the international community of states as a norm from which no derogation is permitted.

[21]In international law, the concept of *ergaomnes*obligations refers to specifically determined obligations that states have toward the international community as a whole. In general legal theory the concept *ergaomnes* (Latin: in relation to everyone) has origins dating as far back as Roman law and is used to describe obligations or rights towards all.

[22] M. Hansungule, "*Introduction to Human Rights*", A Paper presented at Good Governance Course, held at Faculty of Law, University of Pretoria, 21st July 2008, at p.4.

[23] *Ibid*, p. 8.

> The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it as a common standard of achievement for all people and all nations.[24]

Before the adoption of Declaration, whenever human rights violations were openly condemned by third states, the authorities concerned countered with references to *unacceptable interference in internal affairs*. After the enactment of the Charter[25] and International Bill of Rights,[26] this argument has lost ground when human rights are at stake.[27]Article 55 of the UN Charter explicitly proclaimed human rights to be a matter of legitimate international concern. It states that:

> …the United Nations shall promote... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.[28]

Article 56 proceeds that:

> ….all Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55[29]

The commitments set out in Article 55 and 56 of the UN Charter were reaffirmed in the principles of the Helsinki Final Act of the Conference on Security and Co-operation in Europe[30] and during the Vienna World Conference on Human Rights of 1993.[31] The result of the Conference was the Vienna Declaration and Programme of Action[32] (The Vienna Declaration). The Vienna Declaration once more endorsed and underlined the importance of the Declaration.[33] It stated that the Declaration constitutes a common standard of achievement for all peoples and all nations. Using the language of the Declaration itself is that:

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[24] Nancy Flowers, "*Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights,*" (https://www1.umn.edu/humanrts/edumat/hreduseries) accessed on 12 February 2016.
[25] Read: Article 55 and 56 of the UN Charter.
[26] International Bill of Rights include three instruments, namely the Declaration, ICCPR and ICESCR.
[27] The Second World War constituted a turning point in the way the international community regards its responsibility for the protection of and respect for human rights. The long-standing principle of state sovereignty *vis-à-vis* one's nationals has in the course of the years been eroded by the Charter and international bill of rights.
[28] Article 55 of the UN Charter.
[29] Article 56 of the UN Charter.
[30]The Sixth and Seventh principles of the Helsinki Final Act of the Conference on Security and Co-operation in Europe of 1975.
[31] The Second World UN Human Rights Conference held in Vienna, Austria in 1993, the conference was attended by 171 states.
[32] The Vienna Declaration and Programme of Action, General Assembly of the United Nations, A/CONF.157/23, 12th July, 1993.
[33] Read: Part I Para 1 and 5 of the Vienna Declaration.

> The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.[34]

In its paragraph 5 of part I, the Vienna Declaration states that:

> All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis[35].

The Vienna Declaration then proceeds by putting a national margin of appreciation in practising human rights in the following words:

> The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.[36]

In its paragraph 5 of part I, the Vienna Declaration states that:

> All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.[37]

Therefore, the traditional broad interpretation of the principle of national sovereignty has been limited in two crucial, and related, respects. Firstly, how a state treats its own subjects is considered a legitimate concern of the international community. Secondly, there are now superior international standards, established by common consent, which may be used for appraising domestic laws, and the actual conduct of sovereign states within their own territories, and in the exercise of their

[34] Para 1 Part I of the Vienna Declaration.
[35] Para 5 Part I of the Vienna Declaration.
[36] Para 1 Part I of the Vienna Declaration.
[37] Para 5 Part I of the Vienna Declaration.

internal jurisdiction. Thus, whether a state has accepted international human rights norms, laid down in Charter or International Bill of Rights, is relevant but not the only decisive factor: human rights, as formulated in the Declaration have become a matter of international concern and do not fall within the exclusive jurisdiction of states. In other words, there is a right to interfere in case of human rights violations.[38]

The distinction between interference and intervention is relevant. The fact that the principle of non-interference does not apply to human rights questions does not mean that, states may react to human rights violations by making use of military means. This could amount to a violation of the prohibition of use of force, as laid down in the UN Charter.[39] Some human rights experts claim that the United Nations Security Council should decide that a certain human rights situation poses a threat to international peace and security and on the basis of that decision authorise military action for humanitarian purposes, undertaken under the auspices of the United Nations.[40] It must be noted in wholesome that the very basis of the UN Charter and Declaration is that the interest of one part of the world is bound up with the interests of human beings as a whole in every other part of the world.

The primary question, which arises then, is *What influence did the Declaration have on the United Republic of Tanzania Constitution[41]? and proceed with influence on judicial interpretation*. In an attempt to find answers, the article briefly, go through the history of constitution making in Tanzania and then cases decided by the court of law. It is important to note that the Declaration enumerates various Civil, Political, Economic and Social Rights.[42] It also had a great impact on the philosophy and ideology of the framers of Bill of Rights in Tanzania in 1984.[43]

3.0 Human Rights: The Declaration and Constitution of Tanzania

During the colonial period, human rights were not on the agenda.[44] The statist legacy of colonial rule worked against human rights.[45] For a colonial government to uphold fundamental rights and freedom would defeat the very aim of colonialism. Racism and discrimination were accepted as both a way of life and a matter of state policy.[46] The Human rights situation in Tanzania during this time was backward

[38]Interference can be defined, in this context, as any form of international involvement in the affairs of other states, excluding involvement in which forms of coercion are used. Intervention is laid down in the UN Charter and international law.
[39]Article 2(4) of the UN Charter.
[40] K. English and Stapleton A (1995) *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights* Colchester Ennifield.
[41] The United Republic of Tanzania Constitution, Cap. 2 R. E. 2002.
[42] Read: Article 1 to 28 of the Declaration. Article 29 (1) provides for duties and article 29(3) states that the rights and freedoms may in no case be exercised contrary to the purposes and principles of the UN.
[43] Article 9 (f) of the Constitution, Fundamental Objectives and Directive Principles of State Policy and Basic Rights and Duties (Part I, Part II and Part III of Chapter I of the Constitution).
[44]Mtulya, *op. cit*., p. 104.
[45]Ndumbaro, L., "*The Sate of Constitutionalism in Tanzania 2003*", in Tusasirwe, B., (ed), *Constitutionalism in East Africa: Progress, Challenges and Prospects in 2003*, East African Centre for Constitutional Development, p. 12.
[46] Peter, C.M., *Human Rights in Tanzania: Selected Cases and Materials*, Koln RudiigerVerlag, 1997, p. 2.

even by African social science standards.[47] In this state of affairs, one could not talk of the Declaration.

After colonialism,[48] hopes for protection and promotion of human rights were high, but the nationalist government encroached upon human rights.[49] The incoming government, right after independence rejected the guarantee of fundamental rights and freedoms in the form of a Bill of Rights.[50] The nationalists argued that the Bill of Rights would hamper the new government in its endeavour to develop the country, it would be abused by the court of law to frustrate the government by declaring most of its actions unconstitutional, and it would invite conflict.[51] The courts of law were also reluctant to take note of the Declaration. For instance, in the case of *R v. Klosser,*[52] Hamlyn, J., (as he then was) stated that: *I do not think that the Declaration has any bearing upon the applicant*.[53] The Interim Constitution of 1965 contained a preamble, which listed constitutional guaranteed usually found in a Bill of Rights.[54] But Justice Biron (as he then was) in the case of *Hatimali Adamji*[55] held that preamble to the constitution does not in law constitute part of the constitution and so does not form part of the law of the land.[56] However, a schedule to the constitution forms part of the constitution.[57] Acting Justice Mfalila (as he then was), in the case of *Thabit Ngaka*,[58] held that schedule to the constitution is part of the constitution and therefore can be enforced.

3.1 Enactment of Permanent Constitution, 1977

The Permanent Constitution was enacted by the Constituent Assembly in 1977.[59] The Constitution did not contain a Bill of Rights or TANU Constitution attached to its

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[47] I. G. Shivji, *The Concept of Human Rights in Africa*, Dakar CODESTRIA Book Series, 1989, p. vii.

[48] Tanzania got its independence in 1961, and its first Constitution was a consensus one between the colonialist and the Tanzania rulers, reflecting the Westminster Model- The Tanganyika (Constitution) Order in Council, 1961, The Tanganyika Independence Act, 10, Eliz. 2.

[49] S. O. Warfa, *Challenges Facing Africa as it Embraces Pluralism*, Special Human Rights Report, Published in Daily Nation, 16th March 1992.

[50] Peter, *op. cit*, p.3.

[51] *Ibid*.

[52] R v. A. J. Klosser (1969) HCD 183.

[53] *Ibid*, held no. 4 of the case.

[54] This was noted by Said, J in 1970, but as an *obiter dictum*. His Lordship, in the case of *R v. SyaksyaMwambengo* (1970) HCD 218, stated that: 'the TANU Constitution and the Interim Constitution of Tanzania in its Preamble both declare that all human beings are equal'.

[55] *HatimaliAdamji v. E.A.P.T Corporation* (1973) LRT 6.

[56] Read: separate judgment of Kisanga J, in *Attorney General v. LesinoiNdeinai* [1980] TLR 214, when he stated that one cannot bring a complaint under the constitution in respect of violation of any of the rights in preamble to the constitution.

[57] It happened that TANU Constitution, which contained some of the basic rights, was appended on its schedule

[58] *ThabitNgaka v. Regional Fisheries Officer* [1973] LRT 24.

[59] History towards making the 1977 Constitution shows that there was no public debate. On the 5th of February 1977 the two existing political parties, TANU and ASP merged to form Chama cha Mapinduzi (CCM). On the 16th of March 1977 the President of the United Republic of Tanzania appointed a twenty-person joint party committee headed by ThabitKombo to propose a new constitution. On 25th of March 1977 the same party Committee was appointed as a Constitutional Commission in accordance to the Act of Union. The Commission submitted its proposals to the National Executive Committee (NEC), which adopted them in camera in a one day meeting. The proposals were published as a bill and within seven days submitted to the Constituent Assembly. The Constituent Assembly passed the Constitution within three hours. (for details read: Chris Maina Peter (2001) "Constitutional Making in Tanzania: The Role of Civil Organizations", in KivuthaKibwana et al. (eds.) (2001) *Constitutionalism in East Africa: Progress, Challenges, and Prospects in 1999*, Kampala, East Africa Centre for Constitutional Developments; Issa G. Shivji, (ed.), State and Constitutionalism: An African Debate on Democracy, Harare: SAPES; and

schedule. This might be because of the decision in *Thabit Ngaka*. The Permanent Constitution underwent several amendments[60] to its provisions, but only one, which entrenched few human rights.[61] It has been opined that the Bill of Rights was included in the Constitution not out of the state's genuine commitment to protect human rights, but rather a pressure from the people and other external forces.[62] Chris Peter Maina believes that, in Tanzania, the history indicates the existence of a government with no intention of promoting or protecting fundamental rights and freedoms of the people throughout the post-independence era. To appreciate his words, the quote moves:

> …governments in office have always been in a need of a constant push in order to do any pro-human rights action. Otherwise, nothing positive moves from the side of the state…[63]

Maina contends further that at the beginning, the reasons for rejecting inclusion of a Bill of Rights include, among other things, the need to bring about rapid development of the country and its people.[64] Later when the party and its government eventually accepted to have the Bill of Rights incorporated in the Constitution, there were a number of hindrances to the realization of the rights and freedoms enshrined therein.[65] Despite the observation by Maina, the fact remain that in the legal history of Tanzania, the inclusion of the Bill of Rights in 1984 is the most significant constitutional amendment. Still, Government has undertaken various efforts towards protection and promotion of human rights.[66] For instance in 2005, without any petition from human rights activist, the government decided on its own volition to remove most of the claw-back clauses in the Bill of Rights.[67]

JwaniMwaikusa (1995), "Towards Responsible Democratic Government: Executive Powers and Constitutional Practice in Tanzania 1962-1992",Ph.D. Thesis, University of London, (School of Oriental and African Studies).

[60] Fourteen amendments from 1977 to 2015–Read: Nyamaka, D. M., "Processes and Institutions of Constitutional Making with Reference to Tanzania", *Saint Augustine University Law Journal, Vol. 1 No. 2, 2011,* p. 29 at p. 49.

[61] See The Fifth Constitutional amendment to the 1977 Constitution 1984. The Bill contained mostly civil and political rights, leaving aside social, economic, and solidarity rights. According to Chris Maina Peter, the fundamental rights and freedom came late in Tanzania…and that the Bill of Rights was not a perfect one. It was old-fashioned and full of claw-back clauses and a derogation clause. Read: Chris Maina Peter, "Human Rights Situation in Tanzania: Challenges and Main Priorities for Protection and Promotion of Human Rights", A Paper Presented at the National Consultative Workshop organized by the Commission for Human Rights and Good Governance and the Office of the United Nations Office of the High Commissioner for Human Rights, East African Regional Office, held at Dar Es Salaam International Conference Centre, Dar Es Salaam, 28th October 2009, p. 31.

[62]Mbunda, L.X., "The Bill of Rights in Tanzania: Strategies for Protection and Promotion of Fundamental Rights and Freedoms in a Multi-Party Tanzania", in C. Mtaki and J. Okema (eds.) *Constitutional Reforms and Democratic Governance in Tanzania*, Dar Es Salaam, 1994, DUP.

[63] Peter (1997), o*p. cit.*, p. 762.

[64] According to the Professor, the results of rejecting inclusion of the bill of rights were that fundamental rights and freedoms were denied and no serious development was achieved.

[65] Two of the most given reasons were that the Bill of Rights had claw-back clauses and there were no mechanisms to be provided to enforce it. All these were taken care of, as the Basic Rights and Duties Enforcement Act was enacted 1987 and most of the claw-back clauses were removed in 2005.

[66] See The 8th amendment to the Constitution of the United Republic of Tanzania in 1992 to introduce a multi-party system of government, 13th amendment to the United Republic of Tanzania in 2000 to give judicature final authority over dispensation of justice and adjudication of rights and obligations, and inclusion of article 129 (1) on the establishment of the Commission for Human Rights and Good Governance with the aim of protecting and promoting human rights in the country.

[67] See: The Fourteenth Amendment to the Constitution of the United Republic of Tanzania, 1977.

Whatever said, the fundamental rights and freedoms were enshrined in the Constitution and largely influenced by the Declaration. The then Prime Minister of Tanganyika (now Tanzania), Julius Nyerere was quoted to have stated that Tanzania is committed to the Declaration norms. To quote his own words:

> …we shall try to use the Universal Declaration of Human Rights as a basis for both our external and our internal policies…[68]

Because of Nyerere's stance and his respect as father of the nation in Tanzania, the Declaration and human rights are specifically mentioned in the Constitution. Article 9 of the Constitution provides that:

The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord… Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring:

(a) that human dignity and other human rights are respected and cherished.[69]

(f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights.[70] (Emphasis added)

The influence of the Declaration in the Tanzanian Constitution can be easily summarised in Table 1.[71]:

Table 1: The influence of the UDHR in the Tanzanian Constitution

UDHR	TZ CONSTITUTION	RIGHT
Article 1	Article 12 (1)	Equality of human beings
Article 7	Article 13 (1)	Equality before the law
Article 2 & 7	Article 13 (2)	Protection against discrimination
Article 10	Article 13 (6) (a)	Right to fair and public hearing
Article 11 (1)	Article 13 (6) (b)	Presumption of innocence
Article 11 (2)	Article 13 (6) (c)	Freedom from ex post facto laws

[68] J. Nyerere, "Independence Address to the United Nations" in Julius Nyerere (1966), *Freedom and Unity: A Selection from Writings and Speeches,* 1952 – 1965, p. 146.
[69]Article 9 (a) of the Constitution.
[70]Article 9 (f) of the Constitution.
[71] The Chart was copied, with few amendments to reflect the Declaration, from F. H. Mtulya and H. OmarI, "Fifty Years of Constitutionalism and Human Rights in Tanzania: Looking Back to See Forth (1961 – 2011)", *Saint Augustine Law Journal*, Vol. 1 No. 2 of 2011, p.1-27, at p.11.

		or punishment
Article 1	Article 13 (6) (d)	Protection of human dignity in all matters partitioning his rights
Article 5	Article 13 (6) (e)	Prohibition of torture, inhuman or degrading treatment or punishment
Article 3	Article 14	Inherent right to life
	Article 15	Right to personal freedom
Article 12	Article 16	Right to privacy
Article 13	Article 17	Freedom of movement
Article 19	Article 18	Freedom of opinion and expression
Article 1, 2 & 18	Article 19	Freedom of thought, conscience, belief, faith and religion
Article 20 (1)	Article 20	Freedom to peaceful assembly and association
Article 21 (2)	Article 21	Freedom to participate in public affairs
Article 17 (1)	Article 24	Right to own property
Article 23 (1)	Article 22(1) & 11 (1)	Right to work
Article 23 (2)	Article 23 (1)	Equal pay for equal work
Article 23 (3)	Article 23 (2)	Entitlement to just remuneration
Article 7 & 23	Article 9 (g) & (h)	Protection against discrimination
Article 26 (1)	Article 11 (1), (2) & (3)	Right to education

Source: Authors' illustrations

As can be seen in Table 1 above, the Tanzanian Constitution has absorbs and reflects the basic spirit and intent of the important provisions of the Declaration,[72] thereby

[72] D. R. Mukangara, UTAFITI (New Series), Special Issue, Volume 4, 1998 – 2001:131 – 150, p. 144.

reflecting the spirit of the Tanzanian state in being part of the wider community of nations protecting and promoting human rights.[73] The provisions of the Constitution are part of a dream that the founding father of the nation, Nyerere, had in his mind. The dream of a Tanzania where all human beings enjoy their rights and freedoms enshrined in the Constitution. However, this merely in the text, the dream needs to be shown in practice through judicial interpretation. That is why their Lordships in the case of Ndyanabo took time to show the importance of enjoying fundamental rights in the following words:

> …the provisions touching fundamental rights have to be interpreted in a broad and liberal manner, thereby jealously protecting and developing the dimensions of those rights and ensuring that our people enjoy their rights…[74]

In that, Hon. Mr. Justice Samatta, C.J (as he then was) added the following key words to the courts of law:

> …courts must therefore avoid to crimpling it technically or in a narrow spirit. It must be construed in a tune with the lofty purposes for which its makers framed it. So construed, the instrument becomes a solid foundation of democracy…[75]

It is therefore anticipated that, our judicial officers will interpret the Constitution as according to the recorded advice above and avoid the technicalities.[76]

4.0 The Declaration and Judicial Interpretation in Tanzania

The final authority in interpreting laws in Tanzania rests in the Judiciary.[77] In delivering its decisions, the Judiciary is required to dispense justice without being tied up with technicality provisions, which may obstruct dispensation of justice.[78] With regard to freedom from interferences of public and private persons, the Constitution is very clear on it. The Constitution states that:

> …in exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.[79]

Before this enactment, the then Tanzania President, father of the nation, Julius Nyerere was quoted to have stated that:

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[73]Mtulya (2008) p. 110 -111.
[74] *Julius Ishengoma Francis Ndyanabo v. Attorney General*, Court of Appeal of Tanzania, Civil Appeal Number 64 of 2001, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), at p. 16.
[75] *Ibid*, p. 15.
[76] Article 107A (2) (e) of the Constitution, op. cit.
[77]*Ibid*, Article 107A (1).
[78]*Ibid,* Article 107A (2) (e).
[79] *Ibid*, Article 107B.

> …our judiciary at every level must be independent of the executive arm of the State. Real freedom requires that any citizen feels confident that his case will be impartially judged, even if it is a case against the Prime Minister himself…[80]

On the question of enforcing fundamental rights and freedoms, article 30 of the Constitution provides that any person claiming that any provision in Part III of Chapter One or in any law concerning his right or duty has been violated by any person may institute proceedings for redress in the High Court.[81] After enactment of the Bill of Rights in the Constitution, many people started to approach courts of law, through this provision, to enforce their rights. On their part, the courts of law took back and forth movements in recognising and enforcing fundamental rights and freedoms entrenched in the Bill. For instance, in the case of *Ntiyahela Boneka*[82] the court held that the law in Tanzania did not sanction seizure of an individual's property in the absence of any enabling written law and without adequate compensation. The same position was applied in the case of *Bunzari Mpiguzi*,[83] in which the court held that Section 24 of the Fourth Constitutional Amendment Act 1984 unequivocally provides that nobody should be deprived of his property contrary to the law and without compensation commensurate to the value of such property, if such deprivation is necessary.[84]

Talking of the Bill of Rights in the Constitution and the importance of enforcement, Justice Lugakingira (as he then was) stated that:

> …modern constitutions like our own have enacted fundamental rights in their provisions. This does not mean that the rights are thereby created; rather it is evidence of their recognition and the intention that they should be enforced in a court of law…[85]

This kind of interpretation is expected from the father of nation and citizens in Tanzania. That is why the advice from the senior members of the Judiciary in Tanzania to judicial officers is to make difference in the subject of human rights. The then Honourable Chief Justice of Tanzania, His Lordship Barnabas Samatta, acknowledging the idea required judicial officers to make a difference on the subject of human rights. He stated:

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[80] Quoted in Peter, C.M., "Independence of the Judiciary in Tanzania: Many Rivers to Cross", http//files.350041/htm.independenceofthe judiciary/tanzania –accessed 22 September 2012.
[81] Article 30 (3) of the Constitution.
[82] *NtiyahelaBoneka v. Kijiji cha UjamaaMutala* [1988] TLR 156.
[83] *BunzariMpiguzi v. LumwechaMashili*[1983] TLR 156.
[84] Right to own property is categorically provided under article 17 (1) of the Declaration.
[85] *Rev. Mtikila v. Attorney General* (1995) T.L.R. 31, at p. 49.

> …we have, as judicial officers, both the ability and responsibility to make a great difference, by promoting the respect of human rights norms….'[86]

This statement was echoed by the then Justice of Appeal, Honourable Robert Kisanga, when he stated that:

> …the courts resolves human rights dispute brought before them by applying the norms or standards articulated in the Bill of Rights or any other law enacted by the Parliament making provision of human rights. In so doing, the courts must have regard to the norms as developed or proclaimed by international and regional human rights instruments…[87]

In fact, courts of law in Tanzania have accepted that advice and accordingly interpret provisions of human rights in the Constitution without fear or favour. They always refer to the international instruments as a source of guidance in constitutional and statutory construction. In this case, the Declaration has been very influential.[88] The list is a long one, and for purposes of this article, just few decisions will be considered in order to highlight the influence of the Declaration.[89]

In the case of *Thomas Mjengi v. R*,[90] there was a conflict between the derogation clause in the constitution and international instruments. The High court held that: a derogation clause should not be interpreted as entitling the government to impose vague or arbitrary limitations on basic human rights; but that limitation should be reasonable and only be invoked when there exists adequate safeguards and effective remedies against abuse.[91] In mentioning the Declaration specifically, the court stated that:

> …in fact the right to legal representation for the poor is recognized all over the world. It is contained in the **Universal Declaration of Human Rights (1948)**, the International Covenant on Civil and Political Rights (1976), Article 7(1) of the African Charter of Human and People's Rights (1981), and Article 6(3) (1) of the European Convention on Human Rights (1950). Therefore, the right to legal representation is accepted by the community of nations as a birth right for every human being…[92] (Emphasis added)

This case justifies that the Declaration can be judicially considered in Tanzania as part of the interpretative tool. The High Court in the case of *Bernando Ephraim v.*

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[86] Barnabas Albert Samatta, *A Paper Submitted in the Opening Ceremony of Jurisprudence of Equality Seminar for Judges and Magistrates* held at the PPF House Dar Es Salaam, 19th June 2001, p.3.
[87] R. H. Kisanga, "Human rights and the Role of Courts in Their Promotion", A Paper Presented at the Conference of Improving Administration of Justice- Measures to be Taken, held at Impala Hotel, Arusha, 27th November 2001, p.7.
[88] See: *Director of Public Prosecution v. Daudi Pete* [1993] T.L.R 22, *Transport Equipment Ltd v. Devram P. Valambhia* [1993] T.L.R 757, and *Bernado Ephraim v. HolariaPastory* (1990) L.R.T 757.
[89] Take note that the cases are only those mentioned the Declaration specifically. However, most of the provisions of the Declaration are entrenched in the Bill of Rights of the Constitution in Tanzania.
[90] [1992] TLR 157.
[91] *Ibid*, p. 174.
[92] *Ibid*, p. 160.

Holaria Pastory[93] stated what is to be expected from the civilized nation like Tanzania. In that, decision the court held that:

> …the principles enumerated in the Universal Declaration of Human Rights… and the African Charter on Human and Peoples' Rights are standards below which any civilized nation will be ashamed to fall...[94]

In determining cases, courts of law are also required to be guided by the Declaration, and in some cases the Declaration is considered highly persuasive in deciding cases in Tanzania. In the case of *John Mwombeki Byombalirwa v. Regional Commissioner and Regional Police Commander, Bukoba and Another*[95], the court invited the Declaration into the interpretation of the Constitution. The Court stated that:

> Although the failure by any person or state organ to observe any of the provisions of the Universal Declaration of Human Rights will not attract legal censure or invalidation by court, I have no doubt that the courts are required to be guided by it in applying and interpreting the enforceable provisions of the Constitution and all other laws[96].

To make it clear, the court stated that:

> I wish to point to Article 17 (2) of the Universal Declaration of Human Rights of 1948 which provides that no one shall be arbitrarily deprived of his property[97].

This practice paved the way for other judges to invite the Declaration without any hesitation in interpreting basic right of individuals in Tanzania. The decision in *Legal and Human Rights Centre*[98] was a much clear judgment when it comes to the Declaration. Its statement is to the effect that:

> The Universal Declaration of Human Rights, which is the core of International Human Rights law, is incorporated in Article 9 (f) of our Constitution. Article 7 of the Declaration provides for equality before the law and bars discrimination. Article 21 of the Declaration provides for the right to participate in the government of one's country directly or freely chosen representative[99]

It is, therefore, important for a court of law, when finds difficulties in interpreting law or ambiguities in law, to consult the international bill of rights or practice from

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[93] *Bernado Ephraim v. Holaria Pastory* (1990) L.R.T 757.
[94] The case concerned about customary law which is discriminatory to women on account of sex, which is contrary to article 13 of the Constitution and articles 2 & 7 of the Declaration.
[95] *John MwombekiByombaliwa v. Regional Commissioner and Regional Police Commander, Bukoba and Another* [1986] T.L.R 73.
[96] *Ibid*, p. 84.
[97] *Ibid*.
[98] *Legal and Human Rights Centre, Lawyers' Environment Action Team, and national Organization for Legal Assistance v. Attorney Genera*l, High Court of Tanzania, Dar Es Salaam, Miscellaneous Civil Cause Number 77 of 2005 (unreported).
[99] *Ibid*, p. 39.

other jurisdiction. This advice was stated in the case of *Attorney General v. Lesinoi Ndeinai,*[100] when the court stated that:

> …on a matter of this nature it is always very helpful to consider what solutions to the problems other courts in other countries have found, since basically human beings are the same though they may live under different conditions[101]

This practice was echoed later in the decision of *Paschal Makombanya*[102] when the court stated that if there is any ambiguity or uncertainty in our law, then the courts can look at the international instruments as an aid to clear up the ambiguity and uncertainty seeking always to bring into harmony with the International Conventions.[103]

Despite the practice being recognized and applied by courts in Tanzania, there are still difficulties in invoking the international bill of rights and precedents from other countries. Tanzania follows the common law legal tradition where international treaties are not part of the laws of the land and therefore cannot be enforced directly, until they are domesticated through the parliament.[104] Some judges may be reluctant to accept arguments based on human right treaties, even if ratified by Tanzania, because not all of them have been domesticated into municipal law.[105] Other factors that stumbles human rights litigation in Tanzania, include; but not limited to; lack of education inhuman rights,[106] claw-back clauses and derogation in the Constitution,[107] non-jucticiability of social economic rights,[108] and passing pieces of legislation that undermine the judgments of the courts of law.[109]

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[100] *Attorney General v. Lesinoi Ndeinai and Joseph Selayo Laizer and Two Others* [1980] T.L.R 214.
[101] *Lesinoi Ndeinai* judgment, o*p. cit*, p. 222.
[102] *Paschal Makombanya Rufutu v. The Director of Public Prosecution*, Miscellaneous Civil Cause Number 3 of 1990 (unreported).
[103] *Ibid*, pp 10 – 11.
[104] J. Mwalusanya, "The Bill of Rights and the Protection of Human Rights: Tanzania's Court Experience" in Chris Maina Peter and KijoBisimba (eds.) *Justice and Rule of Law in Tanzania: Selected Judgments and Writings of Justice James Mwalusanya* (2005), p. 624.
[105] For detailed discussion, see C. B. Murungu, "The Place of International Law in Human Rights Litigation in Tanzania", in Magnus Killander (ed.), *International and Domestic Human Rights Litigation in Africa*, Pretoria University Press, 2010, pgs. 57 -69, at 68: F. H. Mtulya, "State's Obligation on Protection of Human Rights of Refugees in Tanzania", *The Open University Law Journal*, Volume 2, Number 1, July 2008, p. 158.
[106] Education in and for human rights is essential and can contribute to both reduction of human rights violations and building of free, just and peaceful society (See: *Human Rights Questions: Alternative Approaches for Improving the Effectiveness Enjoyment of Human Rights and Fundamental Freedoms*, General Assembly Fifty-Second Session, Agenda Item 112 (b), paragraph B (12), 20th of October 1997.
[107] C. M. Peter (2008), *op. cit*, p.5 - 6, argues that the derogation in article 30 (1) provides, *inter alia*, that rights could be suspended for among other things what is referred to *as public interest*, but it is not defined and thus making the *sky* the limit as to what can be characterized as public interest.
[108] Social and economic rights are provided under Part II of the Constitution, and article 7 (2) of the Constitution provides that provisions under Part II are not enforceable by any court of law.
[109] *See: Rev. Christopher Mtikila and Others v. Attorney General* [1995] T. L. R. 31, about a week before the learned judge in this case delivered his landmark judgment, the Government tabled a Bill before the National assembly seeking to deny the existence in law of the fundamental right which Rev. Mtikila had asked the High Court to recognize and give effect. Also read the judgments in *Julius Ishengoma Francis Ndyanabo v. Attorney General*, Court of Appeal of Tanzania, Civil Appeal Number 64 of 2001 (unreported).

Overall, courts of law have the duty and responsibility to interpret the Constitution in a more liberal technique. The guiding principles on how to go about that are provided in the case of Ndyanabo, when their Lordship stated that:

> …the provisions touching fundamental rights have to be interpreted in a broad and liberal manner, thereby jealously protecting and developing the dimensions of those rights and ensuring that our people enjoy their rights, our young democracy not only functions as but grows, and the will and dominant aspirations of our people prevails. Restrictions on fundamental rights must be strictly construed…[110]

In that, Hon. Mr. Justice Samatta added the following note:

> …the Constitution of the United Republic of Tanzania is a living instrument, having a soul and consciousness of its own reflected in the Preamble, Fundamental Objectives and Directive Principles of State Policy. Courts must therefore avoid to crimpling it technically or in a narrow spirit. It must be construed in a tune with the lofty purposes for which its makers framed it. So construed, the instrument becomes a solid foundation of democracy…[111]

It is expected that our courts of law will interpret the Constitution as according to the recorded above advice and consider the Declaration in interpreting human rights matters. Judicial officers must avoid the sayings of Justice E. O. Ayoola[112] that timorous and unimaginative exercise of the judicial power of constitutional interpretation leaves the constitution a stale and sterile document. Despite this advice, the Court of Appeal in Tanzania has shown that they can reduce the Constitution to an empty shell. It has been stated that it is not even wise to imagine our judges leading the country to that destination. To quote the words of Retired Chief Justice Barnabas Samatta:

> …it is a primary function of judges in this country to zealously protect the democratic values and principles enshrined in the country's Constitution. They must refuse whatever the cost to themselves, to reduce the fundamental law to an empty shell. It is not even wise to imagine our judges leading the country to that destination.[113]

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[110] *Ndyanabo* judgment, *op. cit*, p.16.
[111] *Ibid*, p. 13.
[112] E. O. Ayoola, "Independence of the Judiciary", A Paper Presented at the Seminar on the Independence of the Judiciary, held in Port-Louis, Mauritius, October 1998.
[113] Barnabas Albert Samatta [Chief Justice (rtd)], "Judicial Protection of Democratic Values: The Judgment of the Court of Appeal on Independent Candidates", A Public Lecturer delivered at Ruaha University College, Iringa, 25th of November 2010, p. 23.

These words are after the decision of the Court of Appeal in Reverend Christopher Mtikila[114] in 2010. The case was about validity of certain controversial constitutional amendments that denied independent candidate to contest in presidential, parliamentary and local elections. Rev. Mtikila's contention before the High Court was that the requirement for membership of and sponsorship by a political party abridged the right to participate in national public affairs under article 21(1) of the Constitution.[115] The High Court declared and directed that it is lawful for independent candidates, along with candidates sponsored by political parties, to contest for presidential, parliamentary and local council positions[116]

Soon after the decision the Attorney General reacted in two simultaneous ways: first, he filed an appeal in the Court of Appeal and second, he sent to Parliament the Eleventh Constitutional Amendment,[117]whose effect was to nullify the declaration and the direction of the High Court and to maintain the constitutional position which had been before the case was petitioned. However, the Attorney General later on abandoned the intended appeal and decided to continue with the Bill before the Parliament, which became law in 1995.

Reverend Mtikila was of the opinion that the constitutional amendments were invalid and challenged the constitutionality before the High Court. His complaints, according to the petition, were: First, that the said constitutional amendments are violative of the basic human rights as proclaimed in Article 21 (1) of the Constitution,[118] Second, that the said constitutional amendments are violative of Article 9 (a) and (f) of the Constitution,[119] Third, that the said amendments are violative of Article 20 (4) of the Constitution,[120] and Fourthly, the said constitutional amendments are a violation of international covenants on human rights to which the United Republic is a party.[121] According to the petition, the effect of all these amendments is that an ordinary Tanzanian is forced to join a political party in order to participate in government affairs in order to be elected to any of the posts of

[114]*The Honourable Attorney General v. Reverend Christopher Mtikila*, Court of Appeal of Tanzania, at Dar Es Salaam, Civil Appeal Number 45 of 2009. The judgment was delivered on 17th of June 2010, before Ramadhani CJ, Munuo JA, Msoffe JA, Kimara JA, Mbarouk JA, Luanda JA, and Mjasiri JA.

[115] Article 21 (1) of the Constitution provides that every citizen of the *United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people in conformity with procedures laid down by, or in accordance with, the law.*

[116]Reverend Christopher Mtikila Judgment (1993) g. 32.

[117] See: Act Number 34 of 1994.

[118]Similar to 21 (1) and 20 (2) of the Declaration.

[119] Article 9 (a) of the Constitution provides for *human dignity and other human rights to be respected and cherished by the state authority and all of its agencies* and 9 (f) provides that state authorities and all of its agencies to make sure that *human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights.*

[120] Article 20 (4) of the Constitution provides *that it shall be unlawful for any person to be compelled to join any association or organization, or for any association or any political party to be refused registration on grounds solely the ideology or philosophy of that political party*. This is similar to article 20 (2) of the Declaration which provides that *no one may be compelled to belong to an association.*

[121] Some of the instruments, which Tanzania is party, are: The African Charter on Human and Peoples' Rights, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights.

President or Member of Parliament. After a long analysis, the High Court constituted by three judges[122] held that:

> …we have carefully weighed the balance of the scale of the purposes, effect and importance of the impugned Articles, against the nature and effect of the infringement caused by the said Articles, and we are satisfied that the infringement is a substantial and unjustified inroad into the fundamental rights and we think such trends must be nipped in the bud, if our constitution has to remain a respectable fountain of basic rights.[123]

It should be noted that the learned judges made that holding after having consulted various authorities and long analysis of the issues. The Attorney General was aggrieved by the learned Judges' finding. He then decided to appeal against the decision to the final court of appeal in judicial hierarchy in Tanzania, the Court of Appeal. The Court of Appeal strongly disagreed with the High Court's judgment. It stated, among other things, that:

> …in our case, we say that the issue of independent candidates has to be settled by Parliament which has the jurisdiction to amend the Constitution and not the Courts which, as we have found, do not have that jurisdiction...[124]

The Court of Appeal then volunteered an advice to the Attorney General and Parliament to the effect that:

> …we give a word of advice to both the Attorney General and our Parliament. The United Nations Human Rights Committee, in paragraph 21 of its General Comment No. 25, of July 12, 1996, said as follows on Article 25 of the International Covenant on Civil and Political Rights… very similarly worded as our Article 21: The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties…We should seriously ponder that comment from a Committee of the United Nations.[125] (Emphasis added)

As the Court of Appeal is final in interpretative authority in judicial hierarchy, the decision would stand until when the Court of Appeal itself decides to depart from this decision, or else the Parliament, the law-making organ. Some retired judges have criticized the judgment and to it have posed several questions. That is why Retired Chief Justice, Barnabas A. Samatta, states that prior to the delivery of the

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[122] *Reverend Christopher Mtikila v. The Attorney General,* Miscellaneous Civil Cause Number 10 of 1995, High Court of Tanzania, Dar Es Salaam, before Manento, J.K,, Massati, J., and Mihayo, J.

[123] *Reverend Christopher Mtikila* Judgment, *op. cit*, (1995) p. 21.

[124] *Reverend Christopher Mtikila Judgment*, *op. cit*, (2010) p. 48.

[125] *Ibid*, p. 48-49.

Court of Appeal's judgment Parliament had no such powers. As a result of that judgment, it now has. In giving his reasoning, His Lordship states that:

> …the legislative organ does not have power to make amendment whose result would be to render the Constitution an empty shell or which would make aspirations of the people, firmly and solemnly declared in the preamble to the fundamental instrument, no more than high sounding words of no political significance[126]

It is unfortunate that the power given to the legislature still maintained in the Proposed Constitution of Tanzania, 2014.[127] Those who cherish human rights and the Declaration thought the Proposed Constitution would have resolved the problem by setting the basic structure or entrenched articles. The entrenched articles cannot be amended unless approved by the people in a referendum. This is intended to uphold the sovereignty of the people and shield some of the key pillars of the Constitution from arbitrary alterations by any person or any authority without full participation of the people.[128] The entrenched matters could be the supremacy of the Constitution; the territory of Tanzania; the sovereignty of the people; the national values and principles of governance; the Bill of Rights; the term of office of the President; the independence of the Judiciary and the functions of Parliament.[129]

5.0 Conclusion

The Declaration is recognised in the Constitution and applied by the courts in Tanzania. The Constitution mentions the Declaration specifically and takes various articles in its enforceable part. The courts of law also pay a lip service to the Declaration. However, chronological assessment of the trend of the courts depicts back-forth movements in interpreting the Declaration. Before independence and immediately after, courts were reluctant to recognise or make reference to the Declaration, and where the Declaration was recognised, it was not given the weight it deserves. This is a strict interpretation of the scope of Declaration and human right. The rigid and pragmatic approach of the 1960s was washed away after enactment of the Bill of Right in 1984 attempt was done to interpret the human rights and freedoms in the Constitution with the aid of Declaration and other international human right instruments, to which Tanzania is a party as thus it is obligatory to enforce them. The Declaration was, to some extent, understood by the citizens and courts. As it is shown in the paper, it was possible for the courts to rely heavily on the specific provisions of the Constitution for construction of human right and

[126] Samatta, *op. cit*, (2010) p. 11.
[127] The parliament has power to amend the Constitution, provided it follows the laid down procedure under the Constitution. This procedure is provided under article 134 (1) of the Constitution, which provides that Parliament may enact law for altering, any provision of the Constitution, save for article 134(1) (c) which regulates structure and existence of the United Republic. Examining article 134(1), its letters shows that people, who old sovereign power, are side-lined in constitutional making or amending process.
[128] A good example is the Constitution of Kenya as Revised in 2010. Read, Article 255(1).
[129] Read, for instance, article 255(1), 256 and 257 of the Constitution of Kenya, 2010.

freedoms standards. The standards emanate from the Declaration. The change of reasoning in the part of the courts made them to move from a mere interpreter to enforcer. At recent time, more and more emphasis is given by the courts on the international standards to secure the citizens the same rights and freedoms that are available in the Declaration in their real sense.

However, the passage in the case of Mtikila in 2010 on the mandate of the court has a substantial shift again in the judicial interpretation of the provisions laid in the Constitution and Declaration. With this shift, the international human right standards are in jeopardy. Now, the parliament can abrogate provisions of the Constitution or international standards set in the Declaration without interferences by the courts, provided the parliament follows the laid down procedure of abrogated the rights. At this era of human rights and freedoms courts are advised to keep raising the standards of human rights and freedoms as set in the Constitution or Declaration rather than putting them in jeopardy. If that happens, the intention of the international community, through the Declaration, and state in Tanzania, through the bill of rights, is achieved in protection and promotion of human rights and freedoms of the persons.