

# Banning of Party Politics in the Higher Learning Institutions in Tanzania: Its Implications on Political Rights

Edson Kilatu-LL.B

Tutorial Assistant Azania College of Management (Hons,UDSM) Currently pursuing with LLM in Constitutional and Administrative law, Mzumbe University

## Abstract

This paper is an attempt to discuss on the state of political rights in the higher learning institutions in Tanzania. This topic is purposely selected owing the statutory banning of the party politics in the campus in 2005. The point of interest is the rationality and proportionality of this measure in Tanzania. The measure has attracted a critical debate among the scholars, human rights activists and political analysts for some reasons. Some of the people find it unnecessary decision and unrealistic because even after this step political parties including the ruling party still have party wings in the higher learning institutions. The utility of the law is questionable as it is not observed even by the government officials. This law seems to have been politically motivated and meant to limit an equal play ground in the campus among the political parties.

## 1.0 Introduction

This paper is an attempt to discuss some important issues pertaining political rights in the higher learning institutions in Tanzania. This topic has attracted a concern because of the legislative banning of party politics in the campus in 2005. This paper zeros in some key areas particularly the concept of party politics and higher learning institutions, an overview over the global protection of political rights, the state of political rights in Tanzania and Africa general and the justification for abolishing party politics.

### 1.1 Definition of concepts

In order to make this paper understandable it is of essence to define some important concepts or terms. In this paper party politics literally refers to political activities conducted by or under the umbrella of a political party. The Universities Act<sup>1</sup> does not make use of this phrase but refers to phrase “engaging in political parties’ activities” which entails a number of aspects such as regular recruitment, training, registration or enrolment of political party members, regular organization of meetings, seminars and conferences. It also extends to operation of branch office or a cell. The definition is broad enough to cover matters of similar nature which presumably includes, public lectures and debates organized by political parties!

Higher learning institution literary entails universities, their colleges and tertiary institutions including their campuses. The campus is defined to include any place where affairs of the institution take place. It is immaterial whether the place is under licence or lease or owned by the institution. That is to say a privately owned hostel may as well constitute campus if it is hired or licensed by a university for the purpose of accommodating students. This definition may extend to any other facility such as a canteen, shop or bar which is under the control of university.

### 1.2 History of Politics in the campus

University originates from Latin word *universities* which literary means a chartered body or corporation. University is an institution of higher learning, a place where peoples’ minds are trained for clear thinking, for independent thinking, for analysis and for problem solving at the highest level<sup>2</sup>. Universities are meant for search of truth and therefore university intellectuals should be free to debate and raise questions both comfortable and uncomfortable ones. A university should reflect the universal nature of knowledge<sup>3</sup>. The history of universities in a modern form dates back to 1088 when a university at Bologna in Italy was founded. The universities were independent and free to search for truth without political constraint. In Europe many universities were founded by 15<sup>th</sup> century as a means of gaining political support of intellectuals although later on the academic freedom was compromised for political patronage<sup>4</sup>. In Africa most of universities were established in 20<sup>th</sup> after decolonization and they played a crucial role as discussed later in this paper.

## 2.0 A cursory survey on global political rights

The political reforms in various countries have a potential contribution in the global political rights trend. The

<sup>1</sup> Act No 7 of 2005, s.51

<sup>2</sup> Luhanga, M (2004);Address to 2004/2005 incoming Undergraduate Students, UDSM, 21<sup>st</sup> September 2004, p.7

<sup>3</sup> Mukandala, R:An Address to Incoming Freshmen and Women, UDSM, 30<sup>th</sup> September 2008, p.6

<sup>4</sup> Mukandala, R, An Address to Incoming Freshmen and Women, UDSM, 30<sup>th</sup> September 2008, pp.3-4

political movements in Europe particularly in England and France are the corner stone of the political and civil rights. The Glorious Revolution in 1688 is a stepping stone towards the fundamental rights; it prompted the adoption of the Bill of Rights in England in 1689 which among other things provided for political rights<sup>1</sup>.

Similar course was witnessed in France following its revolution in 1789 where the Declaration on Rights of Man and Citizens was adopted. Amongst the basic contents of the declaration was the role of political institutions in governance<sup>2</sup>. It recognized political associations as key institutions in democratic governance although by then there were no political parties in the modern style.

At the global level a number of legal instruments were also adopted including the Universal Declaration on Human Rights (UDHR) which amongst other things provides for political rights such as the freedom of association, freedom of expression and the freedom of participation in the affairs of the state<sup>3</sup>. These rights are also reiterated in the international Covenant on Civil and Political Rights of 1966. However; in both instruments the running theme is that the restrictions against the fundamental rights should not unreasonably abrogate the democratic values<sup>4</sup>.

## 2.1 Political rights in universities

A cursory survey in few states including U.K, Lebanon, Malaysia and Ghana is done in order to get a picture of campus political situation. It is of great importance to mention that these states do not share uniform trend in regards to party politics in the campus. Some of these states have restrictive approach and others with liberal approach depending on the local circumstances.

### 2.1.1 Restrictive Approach

This approach encompasses states which bars party politics in the campus. In Ghana there is no statute restricting party politics but the Catholic University of Ghana (CUG) barred party politics in the campus during the 6<sup>th</sup> Congregation<sup>5</sup>. It also banned political groupings such as Tertiary Education Institutions Network on ground that they had affiliation with politicians thereby creating tension in the campus. So far no evidence has been disclosed to justify this decision.

Also in Lebanon following the Antoine Crisis party politics were banned. The crushes occurred in Antoine University, a Roman Catholic institution which was caused by Muslim students who were claiming prayer rooms for Muslims in the campus. Their demand was contrary to the university regulations being a religious institution. This prompted banning of politics in campus. USEK University is among the universities that instantly banned politics<sup>6</sup>.

### 2.1.2 Liberal approach

On the other hand some states allow party politics in the campus. In the United Kingdoms for a number of decades party politics in the higher learning institutions have been permitted. The political parties operate branches and/ or wings in the campus without any difficulties. There are number of political societies operating in the campuses. This freedom dates back to 1836 when the Conservative party established a party wing namely Glasgow University Conservative Association at Glasgow University in Scotland and University College of London conservative Society subsequently in 1908. Also Liberal Party operates political associations in various universities, first Oxford University Liberal Club, 1913 and Edinburgh University Liberal Club, 1955. Labour Party maintains Cambridge University Labour Club, 1905 and Glasgow University Labour Club, 1946. It also operates a National Organization of Labour Students in the United Kingdoms<sup>7</sup>. These are just few examples of the political societies operating in the campuses.

Of recent the Malaysia has laid down a new precedent. Initially Malaysia banned campus political activism since 1971 vide the Universities and the University Colleges Act, 1971 which barred students to take part in any sort of political actions on campus. The students who had just graduated at University of Kebangsaan were found to be campaigning during a by election in the District of Hulu Selangor and were thereby arrested and prosecuted for breaching the Act. Although they lost the case at the High Court the decision was subsequently overruled by the Court of appeal on account that the law was both unconstitutional and unreasonable for violating freedom of expression<sup>8</sup>. In deciding this case Justice Hishamuddin Mohamed Yunus categorically observed *inter alia* at page 22 that:

*“ Universities should be the breeding ground of reformers and thinkers and not institutions to produce students trained as robots , I am at loss to understand in what manner a student who express support for or*

<sup>1</sup> Del, D (178): Comparative government and Politics, p.109

<sup>2</sup> Declaration on the Rights of Man and of the Citizens, 1789 article 2

<sup>3</sup> UDHR, 1948 article 21

<sup>4</sup> International Covenant on Civil and political Rights, 1966, article 22

<sup>5</sup> <http://www.choicism.com>- Accessed on 2<sup>nd</sup> April 2012

<sup>6</sup> <http://www.blogbaladi.com>- Accessed on 2<sup>nd</sup> April 2012

<sup>7</sup> <http://www.en.wikipedia.org/students-political-societies>- accessed on 5<sup>th</sup> April 2012

<sup>8</sup> <http://www.topuniversities.com>- Accessed on 2<sup>nd</sup> April 2012

*opposition against a political party could harm public order since parties were legal entities carrying out legitimate political activities”*

The Judge remarked further that:

*“The provision relating to students political activity were irrational as they impede the healthy development of a critical mind and original thoughts an objective that higher institutions should strive to achieve”*

However the dissenting Justice Wira Low Hop Bink observed among other things that:

*“Political activities would stand in the way of the universities primary purposes of the pursuit of education... restrictions were necessary to prevent infiltration of political ideologies among students, vulnerable capable of being subjected to a peer pressure and easily influenced...”*

With regards to the dissenting opinion it is of essence to revisit the role of education. While inaugurating Faculty of Law university college of Dar es salaam on 25<sup>th</sup> October 1961, Mwal. Nyerere observed among other things that<sup>1</sup>: “...our young men and women have...education which not only given in Africa but also directed at meeting the present needs of Africa.”

The important question at this juncture is whether politics is not among the pressing needs of a society which education has to address. If the answer is affirmative it is unfair to deny this right to universities. Literary in the higher learning institutions all ideas should be invited to meet the intellectual test thereby and realize the role of the university.

In Africa party politics dates back to colonial era where school- based political associations played a significant role for liberation. In 1925 Gold Coast Students Union and Nigerian Progressive Union were formed and were subsequently merged to form West Africa Students Union (WASU). WASU was responsible to discuss all matters affecting West Africa politically amongst other things; it is worth noting that WASU was affiliated to National Congress of British West Africa<sup>2</sup>.

In Nigeria, Sierra Leone and Ghana students’ political activities were not restricted; students’ organizations in four out of the five university colleges canvassed arranged political meetings and conferences although only one of the four permitted active students participation in national politics complete with local branches of national parties<sup>3</sup>. The students had right for campaigning in national elections among other things. Also the members of existing political parties were given turns at addressing students without discrimination or favoritism. For example Nkrumah supported Nationalist Socialist Students Organization (NASSO) which was an affiliate of Convention for Peoples Party (CPP). NASSO was responsible for political education among other things. Also the CPP established young pioneers to disseminate political education at the grass root thus in both secondary schools and universities<sup>4</sup>.

### 3.0 Rationale for Party politics in the campus

Political parties are key players in the modern politics since 20<sup>th</sup> century<sup>5</sup>. The parties in the true sense emerged in 1850 in USA although organizations like clubs, troops and committees were known even before and played more or less the role of political parties and in fact were regarded as political parties. The political parties are the vehicles for winning political power and exercise it<sup>6</sup>.the constitution of Tanzania guarantees freedom of association which literary entails the right to join civil societies and political parties at will<sup>7</sup>.

### 3.1 Forum of participation

In some states right of participation, among others is traditionally exercised through the media of political associations<sup>8</sup>. Constructively excluding a person from party politics means denying the right of participation in political affairs. Tanzania is amongst the countries where political parties are the only vehicles for participation in politics<sup>9</sup>. It is because independent candidature is not recognized unlike in other countries like Malawi. By denying party politics this freedom is also limited to a significant extent. It is also true that political parties enjoy lions share on the national politics than any other agency such as civil societies.

### 3.2 Freedom of Expression and assembly

It also entails a good forum to exercise freedom of expression. By denying participation in party politics this

1 Nyerere, J.K: Freedom and Unity, p.131

2 Kimble, David(1963): Political History of Ghana 1850-1928, Oxford, Great Britain, p.549

3 Passin, H (1963): Africa: the Dynamics of Change, Ibadan University Press, Ibadan p.158

4 Chiume, K (Trans),(1974): Ndugu Kwame Nkurumah, Panafu Books Ltd, London, p.58

5 Duveurger, M(1961): Political Parties, London, Methuen & Co Ltd, p.xxiii

6 Op.cit

7 Constitution of the United Republic of Tanzania, 1977 article 20

8 Deol (1988): Comparative Government and Politics P.211

9 REDET(2005): Democratic Transition in East Africa, E&D Limited, DSM p.116

right is also restricted in effect. The thing here is, among the fora through which the people may air out their concerns are the political parties. Unlike in other forms of societies, political parties have open membership hence may accommodate a significant population thus huge freedoms can be realized through political associations.

### 3.3 Academic career

Some students are pursuing political science and similar programs and therefore partisan politics has a learning implication to them. For a political science student politics is a cadaver for testing their academic career and nourishing their intellect hence participating in party politics is a part of practice learning.

### 3.4 Academic freedom and Autonomy

It entails a group of rights claimed by teachers, the right to study, to communicate ideas, and to publish the results of reflection and research without external restraints<sup>1</sup>. The principal justification of academic freedom is that through the unhampered interplay of ideas, the world's stock of usable knowledge is enlarged<sup>2</sup>. It is worth mentioning that banning politics in the campus implies encroachment of academic freedom as guaranteed under the Declaration on academic freedom<sup>3</sup>. Banning of party politics has a grave impact on academic freedom in Tanzania; the government officials have been reported in several occasions threatening to dismiss lectures who comment negatively on the government and ruling party because that is viewed as a political activity. This is even worse because academicians possess sufficient knowledge over diverse social, political and economic matters and therefore they play a crucial role in challenging the government or enlightening students on political matters among others. These threats should not be taken lightly.

The question of academic freedom has been thoroughly discussed in case law<sup>4</sup>; the Court once upheld a Marxist professor's refusal to answer questions about his teaching and political views<sup>5</sup>. This is a land mark case as far as academic freedom is concerned and was decided in the period of cold war when communist ideas were perceived as destructive. The court found such state action as interference against academic freedom as guaranteed by the constitution.

### 3.5 Culture of tolerance

Participation in party politics at this level may create a culture of tolerance among scholars with opposing ideologies. Thus participating in political forum may bring together students with different ideologies. They may learn to agree on their disagreements and confront each other without fighting.

### 3.6 Publication and recruitment of members

Among the rights of political rights is recruitment of members in the united republic of Tanzania<sup>6</sup>. By barring political activities in the campus this right is abrogated because the political parties can not have access to thousands<sup>7</sup> of people in the campus. Parties are denied to recruit the potential members into their respective parties. This matter cannot be underestimated in a democratic state like Tanzania<sup>8</sup>. It is a marginalization of thousands from political activities.

## 4.0 Abolition of Politics in campus: A necessary Evil?

In Tanzania Higher Education is amongst the union matters<sup>9</sup> and therefore banning party politics in higher learning institutions affects both parts of the union<sup>10</sup>. This work evaluates the state of political rights in Higher Learning institutions in Tanzania, a union aspect as reflected in the application provision of the Universities Act (*supra*). Partisan politics in the Campus was practiced for decades. It was not even affected by the Presidential

<sup>1</sup> <http://www.answers.com>-accessed on 21 April 2012

<sup>2</sup> Loc.cit

<sup>3</sup> The Declaration on academic Freedom and Social Responsibility of Academics, this was adopted on 19<sup>th</sup> April 1990 by the delegates of the Staff Associations of Institutions of Higher Education in Tanzania. It was also recommended by Tume ya Raisi ya Chama kimoja cha Siasa au Vyama Vingvi Vya Siasa, 1991, p.163

<sup>4</sup> *Sweezy v.s New Hampshire* (1957) 354 US 234

<sup>5</sup> <http://www.answers.com>-accessed on 21<sup>st</sup> April 2012

<sup>6</sup> Political Parties Act, 1992 Cap258 R.E 2002 s.11(1)(a)

<sup>7</sup> Kopoka, P.A: Present Day Higher Education in Tanzania: A one-way street to Disempowerment and Dependency, Paper Presented at a workshop to Commemorate the Late Mwalimu J.K Nyerere, held at Mzumbe University on 16<sup>th</sup> November 2011, p.6- that a total of 52,831 students are in both public and private universities

<sup>8</sup> Constitution of the United Republic of Tanzania, 1977 article 8(1)

<sup>9</sup> Constitution of the United Republic of Tanzania, 1977 article 3 and the first schedule there to

<sup>10</sup> The Universities Act, 2005, s.2

Commission in 1991<sup>1</sup>. It goes without saying whether or not the presidential commission did not find any problem with campus politics. It is worth noting that the Commission recommended for the involvement of Universities in providing civic education on multiparty politics<sup>2</sup>. The campus politics has survived for about thirteen years without being questioned. But in 2005 party politics were statutorily banned in the campuses in Tanzania through the Universities Act<sup>3</sup>. It is a matter of interest to find out the factors that prompted the government to change its course of action in 2005 towards party politics in the campus. Literally the law does not seem to have been prompted by any real mischief.

According to International Covenant on Civil and Political Rights<sup>4</sup> such restrictions may be for public good. The convention requires the restrictions to abide to democratic standards which means the restrictions should not of such a way to derogate from the standards of a democratic society.

The government has been accusing party politics in the university as being responsible for fueling persistent politics. This plea has received support by some media<sup>5</sup>. It is very surprising to find that other variables such as poor education policies and undue delays in disbursement of Loan by HESLB are not considered in analyzing the root cause for strikes. It is important that students leadership has taken trouble to clear the throat<sup>6</sup>. The coalition of leaders from various higher learning institutions recently published a statement refuting any political patronage behind their strikes instead they pointed some policy and administrative issues as fueling the situation.

### **Credibility of the reasons for abolition**

The abolition of party politics in campus raises many questions than answers because the utility of the law banning campus politics is highly contested. Even the ruling party is still running party wings in the universities. Of recent TECU branch was launched in 2009 having 706 members and by June 2012 its members reached 1,777<sup>7</sup>. It is very unfortunate that the branch was launched by a minister being aware of the law banning party politics in universities. This circumstantial evidence cannot be discarded. It may be indicative of the motive behind banning party politics in the campus.

CCM central council resolved to build a strong party base in universities<sup>8</sup>. Also there have been allegations for secret moves by the ruling party calculated to fade the emerging opposition base in the campuses<sup>9</sup>. There are evident circumstances where lecturers with affiliation to opposition parties lost their jobs where as those belonging to the ruling party remained secured under similar circumstances<sup>10</sup>.

### **4.1 Striking a balance between proportionality and Necessity.**

Proportionality is a basic principle of administrative law. This principle was developed by the judiciary in order to curb unnecessary restrictions on the fundamental rights on the understanding that state authorities may adopt disproportionate measures to meet a legitimate goal. The theory works on assumption that administrative [and legislative] actions ought not to go beyond what is necessary to achieve its desired results<sup>11</sup>.

Law may lay out prohibitions only if they are needed, and if the inconveniences caused by this restriction do not exceed the inconveniences that the prohibition is supposed to remedy<sup>12</sup>. In other words one should not use a sledge hammer to crack a nut<sup>13</sup>. In this principle normally an action must strike for a balance between harm and good hence if a measure is amenable of doing more harm than good in reaching a given objective it should be discarded. This principle was amplified in the case of **B V/s Secretary of State for home Department**<sup>14</sup> where the court observed *inter alia*:

“...a measure which interferes with a community or human rights must not only be authorized by law but

1 Jamhuri ya Muungano wa Tanzania (1991): Tume ya Raisi ya Mfumo wa Chama Kimoja au Vyama Vingi Vya Siasa Tanzania: Taarifa na Mapendekezo ya Tume Kuhusu Mfumo wa Siasa nchini

2 Ibid p.164

3 No 7 of 2005

4 Article 22(2)

5 Mtanzania ISSN No 5842 of Sunday 15<sup>th</sup> January 2012, contained an article titled- Vurugu UDSM:Uongozi wa Chuo Wadai waliofukuzwa ni Wanasiasa

6 Jamhuri No ISSN No 1821-8156 of Tuesday April 3<sup>th</sup> -9<sup>th</sup>, 2012 P.10-11

7 Uhuru News Paper, 28<sup>th</sup> June 2012, ISBN 0876-3896 No 21228- titled “Wanachuo TECU waipongeza CCM”

8 Tanzania Daima, ISSN 08569762 No.2720, p.2

9 Tanzania Daima, Sunday 18<sup>th</sup> December 2011, had an editorial blaming CCM to have passed resolution pressurizing the university authorities to expel students allied to opposition politics and terminating employment for lectures who criticize CCM and Government. Also found at www.freemedia.co.tz-accessed on 12nd April 2012

10 LHRC: Human Rights Report, 2010, p.105

11 Leyland, P(2009): Text book on Administrative Law, 6<sup>th</sup> ed, Oxford University Press, London, P.295

12 <http://www.termwarehouse.com>-accessed on 18<sup>th</sup> May 2012

13 *ibid*

14 [2000] UKHRR,502,CA

*must correspond to a pressing social needs and go no further than strictly necessary in a pluralist society to achieve its permitted or more shortly must be appropriate and necessary to its legitimate aim”*

The democratic ideals like freedom of association are among the pressing social needs in Tanzania which can only be limited where it is reasonably necessary and yet the limitation should be proportional. This principle is not new in Tanzania; in the case of **Ndyanabo**<sup>1</sup> the court reiterated the importance of the principle of proportionality. It was observed among other things that state authorities should take measures only to the extent necessary to meet the legitimate objective.

At this juncture one may ask where the measures adopted by Tanzania taking into account the political circumstances are necessary and proportional. Unless the answer is affirmative the measures constitute breach of political rights. If on the other hand the political situation in the campus was not so critical the alternative measures would be adopted such as proper guidelines regulating party politics to balance the interests. But I am hesitant to accept such magnitude of danger as to warrant such legislative action taking into account the situation at the ground.

## 5.0 Conclusion

In summing up the discussion, it is not fatal to stress that the banning of party politics in Tanzania needs to be reconsidered for democratic and healthy political future of Tanzania. From this analysis banning of politics appears to be pragmatic as it does not meet both necessity and proportionality test. Also there is no empirical evidence in regards to the adverse impact of politics in the campus. Also from this discussion this law is contrary to the rule of law because it is not of general application, literary it bars freedom of association, right of participation and freedom of expression.

Although it may not be wise to dismiss the rumors raised by the ruling regime completely, demos and riots may be attributed to unsatisfactory policies as well as the failure of the government to address the challenges facing higher learning institutions especially the problem of cost sharing and the hostile learning environment generally. It is high time to lift the political restrictions in the campus in order to broaden the scope for right of participation and realize the role of intellectuals in the politics.

## References

### Books

- Chiume, K (Trans),(1974): Ndugu Kwame Nkrumah, Panafu Books Ltd, London  
Deol, E (1988): Comparative Government and Politics, Sterling Publishers Private Ltd, New Delhi  
Duveurger, M (1961): Political Parties, London, Methuen & Co Ltd  
Kenneth, R (1961): America Democracy in theory and Practice, Rinehart& Co Inc, New York  
Kigunga,R (1994): An thropology of Self and the Question of Precreation in Myth: A philosophical Reflection on Thought and Social Life in East and South-East Africa  
Kimble, D (1963): Political History of Ghana 1850-1928, Oxford, Great Britain  
Leyland,P(2009): Text book on Administrative Law, 6<sup>th</sup> ed, Oxford University Press, London  
Passin, H (1963): Africa: the Dynamics of Change, Ibadan University Press, Ibadan  
REDET (2005): Democratic Transition in East Africa, E&D Limited, DSM

### Papers and journals

- Kopoka, P.A: Present Day Higher Education in Tanzania: A one-way street to Disempowerment and Dependency, Paper Presented at a workshop to commemorate the Late Mwalimu J.K Nyerere, held at Mzumbe University on 16<sup>th</sup> November 201  
Kyando, N.M: Democratic Governance of Schools: policy Reflections, Open University Law Journal, Vol.2 No 1, July 2008

### Reports

- Jamhuri ya Muungano wa Tanzania (1991): Tume ya Raisi ya Mfumo wa Chama Kimoja au Vyama Vingi Vya Siasa Tanzania: Taarifa na Mapendekezo ya Tume Kuhusu Mfumo wa Siasa nchini  
LHRC: Human Rights Report, 2010

### News Papers

- Jamhuri ISSN 1821-8156 No 18 of Tuesday April 3<sup>th</sup> -9<sup>th</sup>: 2012  
Mtanzania ISSN 5842 of Sunday 15<sup>th</sup> January 2012  
Tanzania Daima, ISSN 08569762 No.2720, Dated 15<sup>th</sup> May 2012

### Speeches

- Luhanga,M, Address to 2004/2005 incoming Undergraduate Students, UDSM, 21<sup>st</sup> September 2004  
Mukandala, R, An Address to Incoming Freshmen and Women, UDSM, 30<sup>th</sup> September 2008

<sup>1</sup> Ishengoma Francis Ndyanabo vs. the Attorney General, Civil Appeal No. 64 of 2001

**Websites**

[http:// www.choicism.com-](http://www.choicism.com)  
<http://www.freedia.co.tz>  
<http://www.getlocal.ne.w>  
<http://www.answers.com>  
<http://www.blogaladi.com>  
<http://www.topuniversities.com>  
[http://www.en.wikipedia.org/ students/ political societies](http://www.en.wikipedia.org/students/political_societies)  
<http://www.termpaperwarehouse.com>