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A bi - weekly newsletter of Tanganyika Law Society

TLS HAGM SUCCESSFULLY HELD ON 13TH AND 14TH AUGUST, 2010 AT CHIMWAGA HALL, DODOMA

The Tanganyika Law Society (TLS) Half Annual General Meeting (HAGM) was held at the Chimwaga Hall in Dodoma on the 13th and 14th August, 2010. The theme for the HAGM was *The TLS at "56" – the Role of the Law Society in Consolidating Rule of Law and Democracy in Tanzania*. The General Meeting was preceded by a full-day Roundtable on *Elections and Democracy*, which was co-hosted with the Friedrich Ebert Stiftung.

His Excellency, Dr. Jakaya Mrisho Kikwete, officiated the Roundtable and delivered an uplifting and insightful speech on the *Rule of Law and Democracy in Tanzania*. The Roundtable attracted a record attendance of 700 members, including representatives from sister law societies/bar associations within the region and several distinguished guests from the Bench, Government and Civil Society. The Roundtable was held as a follow-up to the February 2010 Roundtable in Arusha, which was co-hosted with the SADC Lawyers Association with funding from the Open Society Initiative of Southern Africa (OSISA) under a similar theme.

The Roundtable Series form part of the TLS' 2010 Elections and Democracy Project, which also includes a fact-finding mission and observation of the 2010 General Elections in Tanzania Mainland.

A Special Thanks must be extended to -

The Session Chair persons:

Ms. Joaquine A De Mello, Commissioner – Commission for Human Rights and Good Governance who chaired the session on *The State of Rule of Law and Democracy in Africa* ; **Professor**



His Excellency, Dr. Jakaya Mrisho Kikwete having group photo during HAGM at Chim-

Palamagamba Kabudi, Dean of the School of Law, University of Dar es Salaam, who chaired one of the sessions under the theme of *Rule of Law & Elections* along with **Dr. Stefan Chrobot**, Resident Director of Friedrich Ebert Stiftung who also provided the closing remarks.

The Presenters:

Dr. Zewdineh Haile, Ethiopian Bar Association who presented a paper on “Lawyers and Access to Justice in Africa – *A Look at the Successes and Challenges Faced by the Ethiopian Bar Association*”;

Ms. Pili Mtambalike, Programs Manager (Ag. Executive Secretary) of the Media Council of Tanzania (MCT) who presented a paper on “*The Role of Media in Reporting Elections*”;

Honourable John Tendwa, Registrar of Political Parties who presented a paper on “*The Election Expenses Act, Political Participation and the Role of Political Parties*”;

Mr. Arnold Tsunga, Director of the Africa Regional Programme, International Commission of Jurists (ICJ) who presented on the “*Rule of Law and Elections in Africa – Recent Experiences*”;

Mr. Dieudonne N. Tshiyoyo, Acting Manager of Elections and Political Process Department, Electoral Institute of Southern Africa (EISA) who presented on “*Way Forward: Election Observation and Monitoring*”; and

Mr. Darrel Pink, Executive Director of the Nova Scotia Barrister’s Society, Canada addressed the General Meeting on “*Institutionalizing Democracy and Good Governance at the TLS*”.

The Discussants:

Mr. Jenerali Ulimwengu of the *Raia Mwema Newspaper*, who discussed Ms Mtambalike’s Paper on “*The Role of Media in Reporting Elections*”.

Members and distinguished guests had an opportunity to take part in organized excursions, which included a guided tour to the new complex of the University of Dodoma (UDOM), the Parliament of the United Republic of Tanzania and the vineyards located on the outskirts of the city of Dodoma. Members also enjoyed and had the occasion to interact at the **New Dodoma Hotel** as the TLS Council hosted a Dinner & Dance, which attracted 400 members.

Sponsors of the 2010 TLS Half Annual General Meeting included:

**Friedrich Ebert Stiftung;
AAR Health Insurance;
SBC (T) Limited;
Tanzania Distilleries Limited; and
Tanzania Breweries Limited.**

TLS takes this opportunity to extend exceptional thanks to the Dodoma Chapter for their assistance during the HAGM. *All meeting papers can be accessed on the TLS website – www.tls.or.tz.*



H.E President Kikwete in a group photo with participants of the HAGM at the Chimwaga Hall, Dodoma



.TLS members listening to presentations given during the HAGM

THE SPEECH BY HON. FAUZ TWAIB (JUDGE) DURING TLS HAGM



Hon. Dr. Fauz Twaib taking an oath of allegiance during Judges' swearing ceremony at the State House recently.

CROSSING THE BRIDGE: FROM BAR TO BENCH

By Dr. Fauz Twaib

Judge, High Court of Tanzania,

and

Immediate Past President,

Tanganyika Law Society.

Mr. President and learned colleagues,

Thank you so much!

I say thank you for two reasons: For having invited me to this august meeting, and secondly, for the invitation to say a few words to my old colleagues at the Bar. Times really change very fast: two months ago, you were simply colleagues at the Bar. Today, you are already "old" colleagues! Well, perhaps moving from being an Advocate to the Bar as a Judge represents one of the most dramatic changes in one's lifestyle. One afternoon a few days after news of my appointment were made public, I parked my car at Life House along Sokoine drive, Dar es Salaam. There was a madafu vendor on the roadside, and I was happy to have one, as I was used to. Then came somebody who was selling pieces of roasted cassava. I wanted to have one as well. However, immediately after placing my order, I realized I was now a "judge-elect". I stopped short and cancelled the order.

A similar thing happened again about a week later. I was driving back to town from the University of Dar es Salaam. I wanted to stop at a certain joint (under *miarobani*) and have a good bowl of *mtori* with *mishkaki*. Upon parking my car, that same realization came, and I had to change my plans. Well, I am telling you this as a simple illustration of the transformation that a lawyer who moves from private practice to the public domain of legal work as a Judge has to go through in order to fit into the basic requirements of his new public position as a judicial officer. These are sample examples. In reality, however, the change goes much deeper, and permeate almost the entire lifestyle of any Advocate-turned-Judge.

Dear Colleagues, (I can still call you colleagues since I remain within TLS as a non-practising member)!

I didn't want to indulge in any serious talk this morning. This is a rare opportunity for me to share some good moments with colleagues. But the President has insisted that I should also say some hard things. I hope to be able to mix the soft and hard, but I cannot avoid sharing some light moments with you.

Let me first tell you what I miss the most, then I will move to some of the moments I remember as a TLS member:

I miss, of course, the camaraderie of fellow advocates. That is why I am so happy to be here today! As demonstrated by the *mihogo* and *nyama choma* examples I have given, I also miss some of my freedom. Obviously, I cannot behave *Laisser faire*. As an advocate, one is obliged to behave and conduct oneself in a manner befitting that office. As a Judge, the standards are much higher.

Mr. President,

I remember vividly the search for TLS President in 2007. I was approached to be President, but declined on grounds that I was not prepared. However, a further search produced some very fertile reasons from other members who were approached for not accepting the position. One candidate said he was expecting to move his base to Nairobi, Kenya, and could not therefore be President. Another said he had just enrolled himself for his PhD programme and would not have the time. Perhaps the highest level of ingenuity came from the one who told the membership he was planning to retire and move to Barbados!

Learned members of the Bar,

My journey as an advocate began on an otherwise usual December day in Dar es Salaam apart, of course, from the fact that I was being admitted as an advocate of the High Court of Tanzania. That was in 1993. That day marked the beginning my journey in private legal practice. It never occurred to me at the time that I would one day be the president of our Bar. Well, that has come to pass. On 15th February 2008, you elected me to be your leader. As I have said before, I will say it again: Being TLS President has been a privilege I shall always cherish. Once again, many thanks to the entire membership of the TLS for that honour.

When I started practicing, I was also a lecturer at the UDSM. Legal practice was merely part-time. Later on, in 1998, I swapped the two roles and became a full-time legal practitioner and a part-time lecturer.

Two months ago, I was appointed a Judge of the High Court. But, as they say, once a teacher, always a teacher. Teaching is one profession I have no intention of abandoning. And since judicial ethics do not prohibit Judges from engaging in teaching, I intend to continue being a teacher.

Learned members of the Bar,

It is my hope that there will be more members of the Bar who will join me on this side of the professional divide. So far, many of those who joined the Bench before me have done quite well. That's one reason why

there is more and more interest in recruiting private practitioners to cross the line.

Some of you know that it took some time for me to agree to cross the floor. It was, admittedly, a difficult decision. One important prohibitive factor is of course the thinness of the package. Despite commendable efforts by the present Government to improve the lot of the Judges and Magistrates, Judges' remuneration is still far below what advocates make in private practice. I believe, however, that there are other factors that should be considered. Foremost among them is the fact that there comes a time in life when you have to give back to society. After many years of making good money, prepare yourself financially and mentally. That way, the decision to cross to the other side will be much less difficult.

As an advocate within the Judiciary, I want to assure you that I will do my best to be a good ambassador for the TLS. I know this mission will have its limits. But within those limits, I intend to do my best to promote relations between the two institutions, to enhance the image of the private Bar and to promote the interests of legal practitioners—all geared towards the achievement of the common goal of our profession (Bench and Bar): The betterment of our system of administration of justice.

As you all know, it is you, those who practice in our courts, who are the best depository of the good and bad things about the way our Courts perform their duties. As advocates, you should act a mirror for us in the Judiciary. The purpose should be to improve the system of justice delivery. The challenge is how that change is to be effected.

As judges, we take pride in the honour and respect we enjoy. But this respect should be reflected in the manner we perform our functions as judicial officers. Nowhere is this more obvious than in the practice and procedures applicable in our courts. Practicing lawyers have to prepare for court work. Advocates read decisions of the higher judiciary as much as do the Judges themselves. You draft contracts and transaction documents that require meticulous attention to detail, because clients expect high performance. The preparation of pleadings and other court papers is an everyday routine for a court lawyer.

As practitioners, you have to be extra careful. In that process, you learn. For, you know you encounter P.O.s from the opposite counsel when you make mistakes in the preparation of these papers. You are also aware that you may face the wrath of us the judges. We are sometimes only too happy to strike out defective complaints whenever the opportunity presents itself.

Learned members of the Bar,

I believe that certain changes are capable of being effected in the way we in Courts do our work as judges sooner rather than later.

I will try my best to improve things, in my position as a Judge. Remember, this is essentially a two-way street. The Bar also has an important role to play. Among these possible changes, let me mention but a few. These are not in isolation, but in combination:

- Speeding up the hearing/disposing of cases. It is better to show by examples, if we can.
- Reduction of the long hours of waiting in court corridors. One way of doing this is to try, as much as possible, fix different time for cases, rather than calling all cases at 9 am.
- Trying to remove the almost complete disregard for etiquette under which the more senior members of the Bar are to be attended first before the junior ones; As much as possible, this legal protocol has to be observed.
- Promotion of the practice of hearing cases in open courts (which is more convenient for advocates and will allow more people to see the court process in action, including giving junior members of the Bar a chance to learn from their more seasoned colleagues), etc.
- The other issue which I think needs urgent solutions and co-operation from the Bench and Bar is the process of execution. Legal recognition of a right must be backed up by a remedy or relief to the victim. Otherwise, it is meaningless. It is just as absurd where such a remedy, though available in law, is practically impossible or extremely difficult to enforce.
- Discouraging frivolous claims, unnecessary adjournments, groundless P.O.s, etc.

Learned members of the Bar,

I wish to end up by reminding you that Judges do not cease to be human once appointed. They retain their humanity and sense of humour. They also share with all lawyers a desire to ensure the achievement of a high standard of justice for all Tanzanians. That, I believe, is the common goal that should move us closer together.

With that spirit, I wish to assure you, Mr. President, and through you the entire membership of the TLS, that I will do my best in those endeavours.

Mr. President, learned members of the TLS, I wish you constructive deliberations at this meeting, and thank you for listening to me.



TLS GOVERNANCE WORKSHOP HELD ON 16TH JULY, 2010 AT SEA CLIFF HOTEL, DAR ES SALAAM.

The TLS held a governance workshop for Council members, Committee Chairpersons and Chapter Conveners on 16th July, 2010 at the Sea Cliff Hotel. The workshop was facilitated by TLS Consultant under the Business Environment Strengthening for Tanzania (BEST) program, Mr. Darrel Pink.

During the workshop, participants dis-

cussed annual work plans, expectations and how to manage planned activities, and roles and responsibilities with the aim of institutionalizing good governance principles at the Tanganyika Law Society.

The participants recommended that a similar workshop be held after every Annual General Meeting and Half Annual General Meeting.



Participants of the TLS Governance workshop taking a group photo at the end of workshop at Sea Cliff Hotel, Dar es Salaam.

TLS HAS PROUDLY FORMED A YOUNG LAWYERS CAUCUS.

TLS introduces to its members a Young Lawyers Caucus, which was formed on the periphery of the Half Annual General Meeting (HAGM) with the aim of integrating the young lawyer aged 35 years and below (as at the next AGM) into the leadership and general participation within the TLS.

With the new influx of lawyers from the Law School of Tanzania, young lawyers occupy a majority in the TLS membership.

The first caucus meeting was held at Chimwaga Hall, Dodoma after the Half Annual General Meeting as an initiative taken by Mr. Eric Ng'maryo on behalf of the TLS President.

During the meeting Patricia Eric, Kay

Ngalomba, Elias Nawera, and Asina Omari were elected as interim leaders to organize and mobilize young lawyers caucus.

Ms. Asina Omari was elected as Chairperson of the Young Lawyers Caucus. Members present recommended that the newly formed Committee prepare modalities for operation, which should be tabled before the TLS Council.

Immediately after the meeting, a Facebook account was opened with name “**Tlsyoung Lawyers Caucus**” to allow for young lawyers to interact and exchange ideas.

Young lawyers are urged to join the Young Lawyers Caucus.



Newly admitted advocated during their swearing ceremony in June 2010

THE ICC CAMPAIGNS FOR FEMALE LAWYERS IN DAR ES SALAAM, TANZANIA



Her Excellency, Judge Sanji Monageng presenting her paper during ICC Campaigns for Female lawyers at Sea Cliff Hotel, Dar es Salaam

Over 120 lawyers attended a brief seminar on **Friday, 3rd September, 2010** from 1400hrs to 1600hrs at the Sea Cliff Hotel to promote the ICC campaign, "Calling African Female Lawyers" hosted by the Tanganyika Law Society (TLS) in conjunction with the International Criminal Court (ICC).

On 12th May 2010, the ICC and the Inter-

national Bar Association (IBA) jointly launched a major information campaign to **increase the number of female counsel practicing at the ICC**. The initial focus of the campaign is on African countries, but the ICC and IBA will look at the possibility of expanding the campaign to other regions of the world at a later point. During the six month campaign, comprehensive information packages will be distributed in a number of African countries, mainly through the national bar associations. More information on the campaign can be found at <http://www.femalecounsel.icc-cpi.info/>.

Her Excellency, Judge Sanji Monageng and Mr. Esteban Peralta Losilla (Chief of the Counsel Support Section) discussed the application process for the *ICC List of Counsel* and *List of Assistants to Counsel*.



Hon. Judge Sanji Monageng and Mr. Esteban Losilla addressing media during the ICC Campaigns for female lawyers at Sea Cliff Hotel, Dar es Salaam.

THE UPCOMING SAHCA CLE

TLS wishes to inform its members of an training opportunity to be conducted by the Solicitors' Association of the High Court Advocates (SAHCA), which will focus on advocacy skills training for lawyers.

The seminar will run for three days from

17th through 19th November, 2010. The venue will be announced in due course.

The seminar will be offered at a TZS 150,000 per participant and will attract 5 CLE Points. More information will be communicated to members soon.

SADC LAWYERS ASSOCIATION (SADCLA) HAS CHOSEN NEW LEADERSHIP

Ms Poyo-Dlwati, attorney from Pietermaritzburg was elected as the President of the SADC Lawyers Association (SADCLA) at the Annual General Meeting, which was held in Lubumbashi, Democratic Republic of Congo (DRC). She is the first woman to take this leadership position at the SADCLA. Renowned Zimbabwean human-rights lawyer Beatrice Mtetwa was elected Vice-President, Yvonne Chilume of Botswana, Kondwa Sakala-Chibiya of Zambia and Patrick Mulo-wayi of the Democratic Republic of the Congo, were elected to the SADCLA Executive.

In related news, during the SADC LA Annual Conference/AGM in Lubumbashi, Ms. Joaquine De Mello and Mrs. Jessie Mnguto were elected onto the SADC LA Council for a two-year term, as the Tanganyika Law Society (TLS) representatives. Other TLS members present included Mr. Charles Rwechungura (present as an outgoing member of the Executive Committee of the SADC LA Council), two advocates working with the Tax Revenue Authority (TRA), and one with Parastatal Pensions Fund (PPF).

During the meeting, Ms. De Mello made a presentation on "Protecting Minorities: The Plight of Albino Communities in Tanzania" and Ms. Emilia Siwingwa, TLS

CEO, presented a paper titled "Law Firm Management and Cross Border Practice: East African Perspectives and Lessons for the SADC Region" on behalf of Mr. Tito Byenkya, the CEO of the East Africa Law Society (EALS), which was discussed by Mr. Rwechungura.

In additional news, Chief Executive Officers and Executive Directors of law societies/bar associations in the SADC regions met on the periphery of the SADCLA meeting and have formed a "Director's Forum" to encourage better information exchange and collaboration within the region.

The results of the elections was as follows: Chairperson - CEO, Law Society of South Africa, Mr. Raj Daya; Vice Chairperson - CEO, TLS, Ms Emilia Siwingwa; Secretary – CEO, Law Society of Botswana, Mr. Tebogo Moipolai; Treasurer – Director, Kwa Zulu Natal Law Society, Mr. Gavin John; Member – Executive Director, Law Society of Zimbabwe, Mr. Edward Mapara.

All the CEOs and EDs of law societies within the SADC region will form the general membership of the Director's Forum.

The next SADCLA meeting location and date will be Maputo, Mozambique on 5th and 6th August, 2011.

THE UPCOMING EALS ANNUAL GENERAL MEETING (AC/AGM)

The 2010 EALS Annual Conference and General Meeting (AC/AGM) will take place on November 19th to 20th, 2010 in Bujumbura, Burundi under the theme " **One East Africa: Democracy & Good Governance**".

Invited dignitaries include the President of the Republic of Burundi, His Excellency, Pierre Nkrunziza as the Chief Guest and high ranking government officials in Burundi and the rest of the Partner States. The former President of the United Republic of Tanzania, H.E. Mr. Ben William Mkapa has been invited to deliver the keynote address.

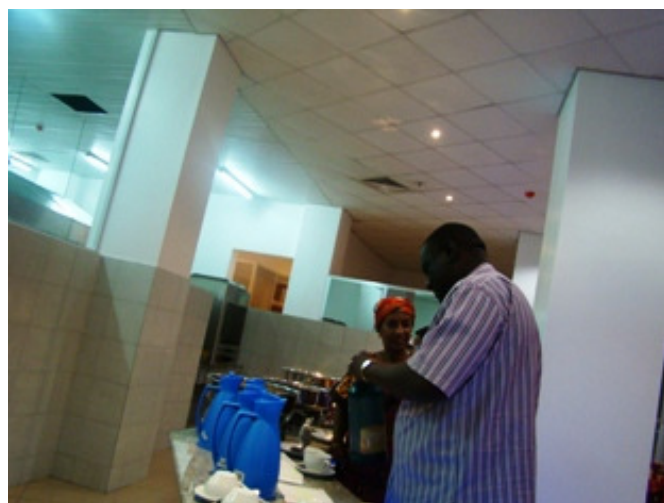
Registration for the 2010 AC/AGM is USD **200 per participant**. Registration is payable to EALS either

directly, or through the National Law Societies (clearly marked EALS AC/AGM 2010). Payment should be in cash or cheque in favour of the **East Africa Law Society**. This should be accompanied by a duly filled registration form(s).

Members shall be expected to make their own travel and accommodation arrangements. A list of suitable hotels has been uploaded on the EALS Website. For more information kindly visit the EALS official website: www.ealawsociety.org/ealagm

Please note that the EALS strongly advises that members should not plan to attend if they have not made the necessary hotel bookings as has been the case in the past. The TLS Secretariat shall look into group travel and accommodation options for TLS members. It is our sincere hope that members shall timely take advantage of the information that shall be provided.

TLS HOSTS IFTAR DINNER FOR SECRETARIAT AND COUNCIL



TLS Secretariat and council members having an Iftar dinner at the Blues Restaurant located at Mawasiliano Towers on Wednesday, 8th September, 2010



A CALL FOR NOMINATION FOR THE TLS YOUNG LAWYER AWARD, 2011

The TLS is proud to announce a calls to its members and community at large to nominate persons eligible to be awarded the **TLS Young Lawyer Award,2011**. This prestigious Award is annually conferred upon the young lawyer whose work and achievements embody the vision and mission of the TLS.

Each year the TLS recognize and accolade a young lawyer who over the course of the previous year made a sufficiently worth contribution to Tanzania legal profession and at the same time demonstrate a personal and selfless commitment to the public interest activities.

The nominee for the Young Lawyer Award should be **NOT OLDER THAN 35 YEARS AT THE TIME OF NOMINATION**.

Please Note that TLS members of Council and Secretariat are not eligible for Nomination.

ALL QUERIES OR NOMINATIONS SHOULD BE SENT TO YOUR CHAPTER CONVERNER OR THE TLS SECRETARIAT

DEADLINE TO RECEIVE NOMINATIONS IS 0500PM 10TH DECEMBER, 2010

The TLS Young Lawyer Award is proudly sponsored by Mr. Nyaga Mawalla, Director of Mawalla Advocates.

EDITOR'S NOTE TO MEMBERS

Dear Members,

We hope that you enjoy this edition of the *Newsflash*. Please feel free to e-mail us your comments and /or suggestions to info@tls.or.tz.

Otherwise, should you have any articles that you would wish to contribute for future editions, kindly forward them to Secretariat no later than close of business on the 1st and 3rd Fridays of the month. Please be sure to include your name, contact information and a picture if available.

Articles should provide information about legal updates or developments and should be no longer than 500 words.