

## **Sustaining a National Bar Association: Why and How?**

**A paper to be presented during the Tanganyika Law Society (TLS) Annual General Meeting in Arusha at AICC on the 5<sup>th</sup> April 2019**

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### **Introduction**

At the end of this conversation, I will have said to you 5 things. First, the flourishing and success of practicing advocates need a strong bar association. Second, a strong bar association must be financially stable. Third, a strong bar association is capable of wielding enormous influence in the country and the powers that be. Fourth, a strong bar association easily earns public support, which is necessary for it to maintain any influence in the country. Fifth, a strong bar association, which is financially stable and that which is capable of wielding such enormous power in the country, must first and foremost earn its place among its members.

My purpose is to engender a conversation in the Membership to find out what is our common interest as members of the bar and how best to further that interest. I am not standing before you to pontificate on anything but to convince you that investing in your bar association is an investment for your own benefits as a practicing advocate. That, I will say is the best practical way to sustain any bar association. So, if we want to sustain a strong and influential TLS we should be ready and willing to invest our time, efforts and resources in it. That is the only sure way of making TLS both financially independent and relevant to its members. I stand before you to urge you to own TLS. The way to own TLS is to play an activate role in the activities of TLS, to demand more accountability from the leadership and to respond when the leadership wants you to be there for your bar association.

### **Where are we?**

I often hear from members asking for fair subscription fees, and cheap or free CLEs that are really convenient to attend ... all the time. They want the bar to be relevant to them, and of value to their practice. Fees are always too high and shouldn't be raised next year. They want their bar to listen, to care, to jump when they call. Some

members seem to never know what's happening or who is making decisions for them. They want more and more communication and transparency. And yet, and yet, more than often they get lots of communication, but never see it or read it or listen for it ... it's a bar leaders quandary.

There is a general complaint among most of us that TLS is not relevant to our practice. That is the complaint most from the young lawyers section. We young lawyers do tend to believe that the bar association is not that helpful. We view TLS as the Master who harvests where he has not sowed and collects where he has not winnowed (Mathew 25:26). We have not been well served with our bar association.

To some extent from both the elders and the young sections, there is a complaint that TLS belongs to some members and not to others. There is a rupture between the elders and young section of our bar. Few years ago before the election of my learned friend Francis Stolla to the presidency of our bar, there was a huge cry from the young section of the bar that the bar belongs to the elders. The young saw themselves as not welcome. The situation has changed, largely due to the fact that the largest voting block belongs to the young lawyers section.

Some do complain that our bar association has failed its core mission of defending the rule of law and to be the voice of the voiceless. Others complain that our bar association has done nothing in protecting its members, while others charge that our bar has failed to further the welfare of its members. Still others complain that TLS is not taking sufficient disciplinary measures against rogue advocates who taint the image of the bar associations as a whole. It is a mixed bag of all sorts of complaints. I have committed myself not to pontificate on anything. I will therefore not pass judgment on anything but will offer some ideas about what we can do.

What is forgotten in such talks and complaints is the most important and what is true. What is true is that a bar association is essentially a lawyer's professional community. If you invest in your community, your community will invest in you. By joining a bar association and dedicating real time and effort to it, you can begin to develop the relationships you need in order to thrive. If we cannot invest our time, energy,

resources and ideas in TLS, it cannot serve us well. The first thing if you want TLS to serve you well, is for you to resolve to own TLS. Own it and make it part of you.

### **Why we are where we are?**

We are where we are because we have failed to live to our obligations to our bar association. That is the only reason why our bar association has failed to play the role it is required to play. As a consequence of that, now we are complaining of finding no value in our bar association. I stand here to convince you that the solution to all the complaints we have against our bar association is for us to fulfill our membership obligations to our bar association. We can address that challenge, if and only if we resolve and commit our time, efforts and resources to our bar association. Let us rekindle our passion, if it was there in the first place, in the affairs of TLS because that is how we can make TLS make a difference in our practice. That is how we can find value in TLS to our practice.

The Bar association is an integral part of the legal profession and an essential feature of our legal system, as a whole. That is why it is difficult to imagine a member of the bar association, holding the view that TLS has no value to his/her practice. That is difficult to take. Allow me to remind you why that is the case?

The bar aims to benefit three principal target groups: first is the individual lawyers, second the legal profession generally, and third the public at large. First, the bar aims to benefit individual lawyers by providing them with opportunities to improve their professional skill and knowledge, to develop useful professional contacts, to expand their client base, and to increase their income. I must concede that may be TLS has not fared well on this score. Is there room for improvement? Yes. Can it be done? Yes, it can and it should be done.

Second, the bar aims to benefit the legal profession generally by helping to maintain a competent, respected, and ethically responsible body of lawyers and by protecting the profession from unqualified legal service competition including encroachment from other professions. For example, right now, there is encroachment from accounting firms taking and doing works which are largely legal practice. Well, though the benefits might seem to go to non-lawyers, ultimately the benefits return to the

lawyers. Make no mistake. Our practice is based on trust. If the public cannot trust us, we are out of practice. Therefore, it is in our own best interest to maintain a competent, respected, and ethically responsible body of lawyers. It is only in doing so that we sustain our bar. So, when the Advocates Committee or the TLS Ethics Committee takes stern measures against us, we should be happy that it is doing the right thing and when it does not we should be up in arms. Equally, we should take serious interest in the Council for Legal Education. Right now there is a huge outcry to the effect that some of us are not well qualified and have poor communication skills. This is something the bar must fight to root out unqualified lawyers. We should put in efforts and work closely with the Law School of Tanzania in training, and with the Chief Justice in admission of advocates. Admission should really be a process not event.

Thirdly, the bar aims to benefit the general public by protecting and strengthening the administration of justice, by enhancing public understanding of and respect for law and legal institutions, and by identifying and advocating needed changes in the law and opposing those they consider undesirable. This, even though a public good, in the end, we lawyers are the ultimate beneficiaries. This is how we garner support from the public and create opportunities for our practice. We forge better relationship and secure public support when the public realizes that what we lawyers do is in the public's best interests. Now, is it the case that TLS has failed to deliver these benefits? If so, are these aims not worth fighting for? If that is the case why has TLS failed to deliver?

Now, it is time for me to suggest to you, that these three aims of any bar association are worthy goals to fight for. Any bar association, which fails to fight for these aims and goals, certainly cannot be sustained. The question is how TLS has fared in all these? What score can we give to TLS with respect to those aims?

I have no doubt that TLS has tried in benefiting individual lawyers by providing them with opportunities to improve their professional skills and knowledge, to develop useful professional contacts, to expand their client base, and to increase their income. I cannot guarantee to what extent but what I know is that there is room for improvement. Many complaints have been raised with regard to the quality of the

CLE. I agree that is something, which can be discussed, and improvement made.

What about the second aim? How far have we succeeded in benefiting the legal profession generally by helping to maintain a competent, respected, and ethically responsible body of lawyers and by protecting the profession from unqualified legal service competition, or difficult working conditions from the state? My view on this aspect is that professional malpractice is extremely dangerous to the sustenance of our bar association or any other bar association for that matter. The moment we fail to act professionally and ethically is the moment we lose it all. Unprofessional conduct takes away the public support. Once the public support is gone it becomes easy for the enemies of our bar association to call for its disbandment or any other calls of the similar nature.

For the third aim, I have mixed feelings. Has the bar succeeded to benefit the general public by protecting and strengthening the administration of justice, by enhancing public understanding of and respect for law and the nation's legal institutions, and by identifying and advocating needed changes in the law and opposing those they consider undesirable? We have played a dismal role in advocating for the law reform. There is no doubt about that. Exhibit number is the way we conducted ourselves with regard to the process of the constitution making in 2012 – 2015. When I compare that episode with what our brothers and sisters did in Kenya, prior to that, I realize how a big mistake it was on our part. Opportunity wasted. We can do more.

My views are that TLS has not done well due to our own lack of interest in its affairs. It is our lack of interest in doing what we have to do for our bar that has brought us here. We complain more than what we have to do. If we cannot meet our obligations to our bar association, there is no way TLS will succeed. Central to this is the availability of funds to run the bar, among other things. The success and failure of the bar depends largely to the extent with which its members are prepared to commit in resources and their time to enable it to deliver on its core objectives.

Like organizations of all kinds, TLS depends on, and is limited by, the resources available to it. The principal resource of bar associations is their members. In addition to providing the funding and leadership of the organizations, members do most of the

work. Most bar association income comes from annual member dues (subscription fee). It follows therefore that the number of members and the rate of dues are crucial resource considerations. Additional sources of income include publication sales and advertising, CLE fees, section membership fees, gifts, foundation grants, and insurance programs that an association may provide or sponsor.

Let us ask ourselves how much we have given to our bar association? Apart from the mandatory subscription fees how much have you given to your bar? What ideas have you brought to your chapter; secretariat and the governing council which if implemented will generate funds for your bar? These are the little things which if done individually or as a team can have huge impact for generating the necessary funds needed to run TLS. I can hear some of my friends groaning right now. To them I am a mad man because they believe that TLS makes a lot of money which ends up being embezzled by the leadership. You are wrong. In due I will tell you, why I believe that you are wrong.

What about the things we can do without money? To what extent have we given our time to work for TLS? Have you made any publication for TLS? What about taking time to write an article to a newspaper to educate the public? What about participating in talk show on a radio station or television? What about pro-bono work? How many indigents have you helped in your legal career? Have you worked with others or personally taken a constitutional case to advocate something for the good of public?

In addition to membership resources, another valuable asset of a bar association is its reputation in important circles, both public and private. Well-known and highly regarded members help further the bar's interests through their contacts, and they are often expected to support their proposals with carefully prepared position papers or draft legislation. Their reputations carry the potential to develop cooperative ties with other organizations and facilitate relations with courts and government agencies. What have we done for our bar; especially the most senior advocates of our bar, what have we done for our bar? What has been our contribution to the bar especially the most fortunate members of the members – I ask.

A bar association must seek to fulfill its aims or policy objectives through a number of programs relating to the justice system generally, and to the legal profession in particular. Where do we stand? Let me explain such programs and see, where we stand:

#### *A. Legal Education*

Continuing legal education is a necessity for lawyers to keep up with the legal developments. They clearly help to fulfill a major need, as legal education should not end with law school.

How has TLS fared in this respect? If there is one area where the performance of TLS has come to scrutiny is this one. Many members believe that CLE add no value to their practice. From cases of poor topic selection to unprepared presenters, incompetence of presenters to the depth of the needed skills all has been said. And yet, and yet, the problem is one of members not paying attention to their affairs. I am aware of many instances where the secretariat has asked members to select topics and presenters, only to have no response from the members. This is what I mean by less or no interest or passion in the affairs of our bar association.

Our bar association must be providing quality services and help to its members. In that class I include things like well resourced libraries and well qualified librarians who can provide assistance on time and well. We know how difficult it is in this jurisdiction to search and find authorities. What about quality CLE? It is a fact that most of our CLEs are of low quality. That is the reason why they are poorly attended and members demand that the costs be reduced. The situation is dire to the extent that some members do pay to get points but never attend them. This can be addressed by ensuring that CLE are carefully crafted to meet the needs of the attendees. It is time I suggest a Director of CLE be employed at TLS secretariat. This must be a well-versed individual in the development of the law and who can help prepare the organization, selection of topics in consultation with the Committee after taking views of the members. I do suggest this even though I am fully aware that this will increase costs of running TLS. But, I believe that the value which such person brings is worth more cost.

### *B. Professional Conduct*

Any bar association must give extensive attention to encouraging and enforcing ethical and professionally responsible behavior by members of the Bar. Different programs should be in place for dealing with different aspects of this concern. How have we fared? We have heard reports of advocates reaping decrees for their clients and other similar instances of that nature. We have been accused of being agents of corruption within the judiciary. This is terribly damaging to the profession. TLS can do more to protect the untainted advocates. Are the Advocate's Disciplinary Committee and TLS Ethics Committee enough to deal with this issue? I leave it for your intelligent and wise consideration.

### *C. Legal Services for the Poor and Persons of Moderate Means*

In principle a bar association must provide needed legal services to the poor at little or no cost. The Bar should consider access to the legal system by all, rich or poor, an essential feature of any legal system. By doing so the Bar gains support from the public for its own existence. That is how the Bar succeeds to inform the public that it does not exist merely for the interests of its members only but equally for the interest of the public at large. I must admit that our performance under this category has been dismal. Rarely have we taken seriously our obligation to enable access to justice for all. Our *pro bono* system is barely working. What can we do? I do propose for a rule which will requires each and every advocate, irrespective of the age to have one case of pro-bono annually. One can opt out of that by paying TZS20M to TLS to fund lawyers who would be ready and willing to do that job. In the beautiful lyrics of *John Lennon – Imagine* – “You may say I am a dreamer, but I am not the only one. I hope one day you will join us.”

### *D. Substantive Law Reform*

Substantive law in all fields is, of course, always subject to change and proposals for change are frequent. Any bar association must be concerned with law reform. It must regularly review current proposals - especially pending legislation-and often seek to influence the final adoption process by initiating its own proposals. If you followed the process of constitution making in Kenya, this is exactly what our friends in Kenya did. If there is one area where we have recorded zero is this one. It is time we form a Law Reform Committee of TLS and try to influence the process. Our Bar should

persistently and aggressively try to resolve the most serious problems facing our justice system. Among these problems are: (1) court congestion and delay, (2) pro bono legal representation for those in poverty; (3) cheaper and more readily available legal services for the poor and those of moderate income who can afford to pay reasonable lawyers' fees; and (4) above all to prevent the use of the legal system for goals other than the quest for justice.

### **What can we do?**

So far, I have said that it is in our own interests to sustain our bar association. The practical way to best sustain our bar association is for TLS to prove its value to its members. The Bar must prove to have value to members. However, for TLS to be of value to its members, the members must first and foremost be ready and willing to commit resources, time and efforts for the operation of TLS. Our bar association can become stronger and sustainable if and only if we commit and play an active role in its affairs and remain faithful to its core objectives. We can do a lot of things to sustain it. Here, I consider what I believe we can do to achieve that goal.

1. The first thing that we have to do is to own our Bar. We have to treat it just the same way as we treat our own law firms or offices for those of us who run solo practices. I have said earlier on that if you invest in your community, your community will invest in you. That is equally true for TLS. If we invest our time and efforts in TLS, it will definitely work for us. We have every reason to invest in TLS if we want TLS to serve us well.
2. You do not have to be the President of TLS, a member of the Governing Council of TLS or the Chapter Convener to make a difference in TLS. All of us cannot be presidents, or members of the governing council or chapter conveners. But for TLS to be successful all of us must and have to play an active role in the affairs of our bar association. Individually there are lots of things we can do to sustain TLS. So what can we do individually?
  - (i) What is needed is for each and every one of us to have an idea, mobilize members of the like mind, or idea and make a compelling case for that idea, within the chapter and at the

national level. Bring out what you have and advocate for that idea. If you can manage to mobilize sufficient number of members then certainly a resolution will be passed and your idea will be implemented. Stop the unproductive talks of TLS being owned by somebody else. Own it yourself.

(ii) Stand up for something. As an advocate you cannot afford to be passive. Stand up for the rights of the others. Your rights in the bar association, in the courtrooms, and the public at large. Speak for the voiceless. Your legal knowledge is the voice, which a millions in this country do not have. TLS is your platform. It has both national and international reach. Use it. It is yours.

(iii) Be active in public affairs. Let us take seriously our role of advocating for justice in our society. It is by advocating for what we believe is right and just is how we garner public support. We must strive to have the public on our side. Our sustenance as advocates will depend largely on how much faith the public has in our practice. The moment the public realizes that their own good is inextricably bound up with our practice, the public will support us.

3. We have to have CLE of significance value. They have to be real continuing legal education. The attendees must be satisfied that both their money and time was not put to waste. The current situation is telling it all. If there is a significant number of attendees who simply buy points, but do not attend then the problem is gravely real. I have already recommended for the Director of CLE.
4. Truth be told, if we have to attract the best candidates to work for us we have to be ready and willing to pay them commensurate with their knowledge and expertise. We should be prepared to pay for what the market demands. This in turn asks us to be read and willing to pay more in subscription fees and being

generous to our bar association for those of us who have become more fortunate advocates financially than others. In fact I have an idea that if we manage to have more competent staff which is well paid and well respected we can get more from that kind of staff. I am thinking of staff, which can think creatively to put in place programs, which can generate more money for the society.

5. Create *Outreach* Committees. I am not aware of any successful organized body that has succeeded without having a well-orchestrated outreach. What if we manage to have different committees, aiming at reaching to powers that be to further the aims and goals of TLS? The task of the committees is to reach out to policy makers, lawmakers and law enforces to find common ground. Imagine if we have had a judiciary outreach committee composed of members all of whom happens to be classmates and friends or former teachers of the Chief Justice and the Principal Judge? And have another to have a cup of coffee with the Minister for Justice, Judicial Service Commission; AG, DPP, Solicitor General, the Law Reform Commission, Commissioner General TRA, the IGP, the Commissioner of the Prisons, etc.? Wouldn't this make a difference? Can we do it? Is it feasible? Can it be done without compromising our goals and objectives? I bring this to you for your intelligent and wise considerations.
6. The future of the Bar is the young lawyers. Young lawyers will inevitably demand different resources and programs than their more established colleagues within an association. It will be a difficult task for an association staff members and leaders to keep in mind each of these desires, while balancing the needs and resources available to them. We can do the important things:
  - (i) Create a welcoming environment for new members. Create a young lawyer's section. Provide all assistance that is needed to them. Listen to their concerns. Fostering networking and mentorship should be at the core of bar associations' goals moving forward.

- (ii) Listen to their concerns and attend them. Be concerned with how they are going to get a job, make their student loan payments on time, and begin saving for the future, younger lawyers expect a helping hand from TLS. The best thing Bar can do going forward is to provide mentorship opportunities and constant networking chances. This should be institutionalized by TLS rather than let individual young advocates seek out mentorship on their own.
  
- (iii) Integrate young lawyers into sections, committees and divisions. Because of their age or number of years in practice, young lawyers are often grouped into their own division, section, or committee within a bar association. Many of our peers do not get involved in Bar, nor do they have any idea why we do what we do. They do not see the value, either time-wise or financially. But by providing discounts to substantive sections within a bar association, young lawyers are immediately exposed to what that section or committee does. From annual meetings to CLE events, discounted programming will allow younger lawyers immediate exposure, at a price they can afford.
  
- (iv) Create opportunities for the young lawyers. Bar associations should develop ways to get young lawyers involved in leadership in sections, divisions, committees, and on their governing boards. With chances for advancement, a taste for actual responsibility, and big decisions that young lawyers and law students can have a say in, you are more apt to retain members. All that any young lawyer or law student wants is a seat at the table if a bar association is making decisions, so create the opportunities. Create a young lawyer leadership academy or a young lawyers' committee within Bar sections.
  
- (v) Mentorship for young lawyers. Our Bar must have a section for advocates fresh on the scene. Law is a practical discipline. It is knowable to practitioners not professors in the academy. Belonging to

the Bar must help young advocates to build a foundation that probably did not have coming out of law school. The certainty of the kind of practice that the young advocate wants, a job and clients in that practice area; and a professional network that includes lawyers from every other area of practice. For those who have already found their ideal practice, they can still learn how to develop that practice (and boost their client referrals) by being involved in the Bar.

7. Strengthen our Chapters and/or Create Sections. It is clear that membership in TLS is increasing at a very high rate annually. For that reason the organization's systems must change to accommodate that increase. Our bar cannot operate smoothly as it did in the 1970s, 1980s, 1990s with the same structures. I have two proposals with regard to this aspect. The first is that let the Chapters be the focal point of activities of TLS but working closely with Governing Council through the TLS secretariat. All the structures that we have at national level must exist within each and every chapter. In that case the central activity of the secretariat becomes one of coordinating these many chapters, which are run independently at the chapter's level. The second is to have sections. These are created by members on the basis of their preference, mainly determined by their specialization, e.g., family, regulatory, criminal, constitution, corporate, tax sections. Each section will have its leadership and organization in place, working closely with TLS at the national level.
8. Strengthen the current committees, which we have. We need strong constitution section, the criminal justice section, civil justice section, family law section, regulatory law section, etc. Each chapter must have these sections just as they must be available at the national level. Their primary duties are to be the voice of TLS for each and every thing happening in the nation. They must be TLS's spokesperson. To speak out and educate the public on all matters falling in their area. That must go hand in hand with public education committee and pro-bono education committee. These committees are central for our public image and for our role in society to champion justice for all.

9. Establish a Strategic and Planning Committee (S&P) with a mandate to develop a Strategic Plan for TLS (the blueprint). That plan should be the road map of TLS, to govern the future presidency and the governing council. Regard being had to the fact that the president and the council hold office per a year we can reduce inconsistency in policies if we have a blueprint in place, which has the mandate of the membership as a whole. The governing council must be fully involved in establishing a strategic plan of the bar association and it must be finally voted during the AGM. It is the strategic plan which will determine how much the subscription fees must be, the CLE fees, the recruitment of staff, payment of staff, what the Bar should do for a particular year, etc. Now, this has to be thoroughly considered by the GC and brought for a vote in the AGM or HAGM.
  
10. Create Monitoring and Evaluation Committee (**M&E**) with a mandate to monitor and evaluate the work of the bar association and report to the membership accordingly. Its major task should be to monitor and evaluate to see that the blue print is being carried out as intended and expected. This is the best way not only to achieving the goals and objectives but also equally for transparency reasons. Yes transparency matters most. It is all about accountability. There is a huge cry that member's money is being spent unwisely or for no good cause. Yes, there is a distrust in the leadership, rooted from a perception that money is being embezzled. Some of our members wrongly or rightly do believe that the Governing Council and secretariat is embezzling the member's money. Embezzlement. Real? I do not even think so even for a second. So, how to avoid this perception? Be transparent. Let the audit report made available one month before the AGM for a meaningful discussion during the AGM. This practice of laying the audit report during the AGM is completely wrong practice. How can we raise any query is brought during the session. Fairness grounds would necessitate that such report be made available before the session. This must also apply to all matters related to funds. This Committee, the (M&E), which is an independent, will be able to

tell the AGM on how the money of TLS is being spent and whether it was good or bad expenditure. Such information coming from an independent entity makes a difference. Accountability matters most.

### **Conclusion**

I am not under any illusion, for I am not living in the Plato's cave. I neither think nor believe that things are easy. I hope you do. They are not! Bar associations can sometimes be dysfunctional. Advocates are challenging members. More often we do not agree with each other. What one person says everyone wants, another person says nobody wants. Leading thousands of lawyers is a sacrifice. It is not an enviable job unless one seeking it for your personal gains not those of the membership. Our leadership deserves more support from members than what we have done in the past. We naively think or believe that our President can do each and everything for us. And all will be well! If they cannot then we conclude that they were bad presidents who did not deserve that office. We are wrong. The President cannot succeed on their own! Their success depends on how much we are there for our Bar.

When all is said and done, one thing is true. Bar associations are only as good as their staff and the effort and time that their members put into the bar association. If a bar association is comprised of lawyers who give it short shrift and treat it as a glorified drinking club, it is unlikely they are ever going to get much out of it. If the lawyers who comprise the Bar treat it with the same diligence and attention they give to their work, then it is likely to be that much more useful to its members. To sustain a bar association requires remaining true to the core of the bar association. Defend the rule of law, be ethical professionally and dedicate your time to your Bar. These are the goals clearly spelt out under section 4(a) – (i) of the Tanganyika Law Society Act, [Cap 307 R.E. 2002].

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