**Title: The Role of Tanganyika Law Society in Promoting Rule of Law and Good Governance**

**A paper presented during the Tanganyika Law Society Annual General Meeting Held on 1st August 2024 in Dodoma, Tanzania**

**Author: Dr. Anna Henga, Executive Director, Legal and Human Rights Centre**

**Senior Member, Tanganyika Law Society**

***Aristotle:***

***"The rule of law is better than that of any individual."***

# Summary of Key Issues

This paper explores the significant role of the Tanganyika Law Society (TLS) in advocating for the rule of law and promoting good governance in Tanzania. It examines the historical evolution of TLS, defines key concepts of rule of law and good governance as recognized by notable scholars, and discusses TLS's pivotal role through legal reforms, judicial support, and policy influence. The paper includes detailed discussions on landmark case laws. Moreover the paper discusses in a nutshell critique to the Society based on expectations from the public.

# Introduction

Founded in 1954, the Tanganyika Law Society (TLS) under the Tanganyika Law Society Ordinance of 1954, has played a crucial role in shaping the legal and judicial landscapes of Tanzania. It has been instrumental in championing justice, transparency, and the advancement of the rule of law and good governance. This article delves into TLS's historical background, definitions of key terms, contributions to the rule of law and good governance, enriched with specific case laws.

# Historical Background

TLS was established when the nation was approaching independence, there was a pressing need for a competent legal profession to support new governance structures. Over the decades, TLS has been at the forefront of major political and legal transformations in Tanzania, consistently advocating for legal reforms and upholding the principles of justice and equity.

Before TLS’s contribution to the rule of law, let us discuss a bit about some of scholars’ definitions of the ***rule of law.***

# Definitions and Frameworks

* **Rule of Law:** Defined by Thomas Carothers[[1]](#footnote-1) as a principle where laws are *publicly promulgated*, *equally enforced*, *independently adjudicated*, and *consistent* with international human rights norms.
* **Good Governance:** According to UNESCAP[[2]](#footnote-2), it involves the processes by which public institutions manage *public resources* and guarantee the realization of *human rights*, ensuring actions are *free of abuse and corruption* and compliant with the *rule of law.*

## Basic Elements of Rule of Law according to scholars are**[[3]](#footnote-3)**

1. The law is the highest authority in the Land
2. Equality Before the Law
3. Accountability to the Law
4. A Government of Laws and not of men or women
5. Fairness in the Application of the Law
6. Separation of Powers
7. Independence of Judiciary
8. Access to Justice
9. Participation in Decision Making
10. Legal Certainty
11. Avoidance of arbitrariness
12. Procedural and legal transparency

Hon. C.J Maraga as he then was quoted by Our own C.J Samatta in the book Supremacy of the Law, saying; I quote ‘*The rule of Law frowns at the principles of the animal Kingdom AND DEMANDS EQUALITY before the law. This is why in any constitutional democracy, where constitutionalism and the rule of law form the normative basis for the exercise of any power, where fundamental rights are cherished and enshrined, only the law rule, not individuals’*

Justice Samatta in another book titled; UTAWALA BORA, VITA dhidi ya Udhalimu, Rushwa na Elimu Duni, he refers to the rule of Law at the Best Ruler: *Mtawala Bora*

## Benefits of the Presence of Rule of Law

The presence of the rule of law is foundational for a stable and just society. It ensures that laws are applied uniformly, protecting the fundamental rights of individuals while maintaining order and limiting the arbitrary use of power. The rule of law promotes fairness in governance, with all members of society, including leaders, being accountable under the law. This transparency fosters an environment where businesses can thrive, contributing to economic growth. Furthermore, the rule of law enhances social well-being by providing mechanisms for resolving conflicts peacefully and fairly, thus contributing to overall societal harmony.

## Examples of Countries with Rule of Law

Globally, countries such as the Nordics[[4]](#footnote-4) consistently rank high in global indices measuring the rule of law. What has made these countries rank high is that these nations are characterized institutions that enforce laws impartially, comprehensive legal frameworks that protect human rights and property, and judicial systems that are independent and free. The stability and transparency provided by the rule of law in these countries contribute to high levels of trust in public institutions and economic prosperity, making them models of good governance and societal wellbeing.

In Africa, ranking countries definitively on the rule of law can be challenging due to the dynamic nature of governance and legal systems, as well as differences in data and measurement methodologies. However, according to various international assessments such as the World Justice Project's Rule of Law Index, which considers factors like constraints on government powers, absence of corruption, open government, and fundamental rights, a general ranking from higher to lower performance among the mentioned countries might look like this:

1. **Mauritius** - Often ranks highest among African countries in the Rule of Law Index, reflecting strong adherence to democratic principles and effective governance.
2. **Botswana** - Consistently praised for its governance and low levels of corruption, Botswana ranks well in rule of law assessments.
3. **South Africa** - While facing some challenges, South Africa's strong legal framework and independent judiciary support a relatively high ranking in rule of law compared to regional peers.
4. **Namibia** - Like South Africa, Namibia has a sound legal system though it may face challenges in other governance areas.
5. **Ghana** - Known for its democratic values and improving governance, Ghana is making strides but still ranks slightly lower compared to the others listed above in terms of rule of law.

These rankings are indicative based on the latest releases of global indexes and reports; actual conditions may vary as new data becomes available and as countries develop or reform their legal and governance systems.

## Examples of When Rule of Law Was Hampered

In Tanzania, the rule of law has occasionally been undermined by actions such as denial of basic freedom as a result of shrinking space, media freedom and others. However, under the sixth administration there is an improvement at least in practice.

In Africa, Zimbabwe provides a stark example where the rule of law has been compromised. Land reforms initiated in the 2000s, which involved the seizure of land from white farm owners without fair process or compensation, were a significant departure from lawful procedures and had long-lasting negative impacts on the country's economy and international relations.

In East Africa, Uganda has seen instances where the rule of law was compromised, especially around election times. The house arrest of opposition figures without judicial orders and the suppression of protests through disproportionate use of force by security agencies are examples of the rule of law being sidelined, leading to domestic instability and international criticism.

These instances highlight the importance of upholding the rule of law to ensure that power is not abused and that all individuals can rely on legal institutions for fair and equitable treatment under the law**.**

# TLS'S IMPACT ON THE RULE OF LAW

### *TLS statutory mandate include:*

a) to maintain and improve the standards of conduct and learning of the legal profession in Tanzania.

b) to facilitate the acquisition of legal knowledge by members of the legal profession and others.

c**) *to assist the Government, the Courts and the Parliament in all matters affecting legislation, and the administration and practice of the law in Tanzania****.*

d) to represent, protect and assist members of the legal profession in Tanzania as regards conditions of practice and otherwise.

e) to protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law.

f) to acquire, hold, develop or dispose of properties of all kinds, whether movable or I immovable, and to derive capital or income from them, for all or any of the foregoing objects.

g) to raise or borrow money for all or any of the foregoing objects in any manner and upon any security which may from time to time be determined by Society.

h) to invest and deal with moneys of the Society not immediately required in any manner which may from time to time be determined by the Society.

i) to do all other things which are incidental or conducive to the attainment of the foregoing objects or any of them.

## TLS has contributed significantly to the rule of law through:

1. **Legal Reform Advocacy:**

The Tanganyika Law Society (TLS) has been instrumental in advocating for legal reforms that significantly impact social justice and access to legal resources in Tanzania. A prime example of this advocacy is the Legal Aid Act of 2017. This critical piece of legislation was vigorously supported by TLS and marked a substantial advancement in ensuring that marginalized and underrepresented groups in society could access legal services. By advocating for such reforms, TLS has played a crucial role in broadening the reach of justice, making it more accessible and equitable for all segments of the Tanzanian population. This act not only facilitated a greater number of individuals in receiving legal representation but also strengthened the overall framework for legal aid in the country, thereby enhancing the rule of law and ensuring that justice is both attainable and fair.

1. **Education and Awareness:** Regular workshops and seminars raise awareness of legal rights among the public and professionals.
2. **Upholding Judicial Independence:** TLS promotes judicial independence essential for the unbiased administration of justice[[5]](#footnote-5).
3. **Advocacy for Constitutional Reforms**

TLS has been at the forefront of advocating for constitutional reforms to ensure that Tanzania's constitution reflects the needs of its people and the principles of good governance and the rule of law. This includes campaigns for the transparency of the constitutional review process and public participation in the drafting of constitutional amendments.

The Tanganyika Law Society (TLS) has played a significant role in the constitutional development of Tanzania, particularly during the critical period from the 1980s to the 2000s. This involvement reflects TLS's commitment to promoting the rule of law and ensuring that legal frameworks in Tanzania align with democratic principles and human rights standards.

1. **Involvement in the 1980s and 1990s**

During the 1980s and 1990s, TLS began to intensify its advocacy for constitutional reform as part of its broader commitment to legal and judicial reforms.. TLS provided a platform for legal professionals to discuss and advocate for legal reforms and more democratic governance structures. They were instrumental in fostering a legal environment conducive to open discussions on governance and the constitution.

The Tanganyika Law Society (TLS) played a significant role in the inclusion of the Bill of Rights in the 1984 amendment of the Tanzanian Constitution. This was a pivotal moment for human rights in Tanzania, marking the first time that a comprehensive list of rights was constitutionally guaranteed for the citizens.

TLS actively participated in the advocacy and drafting process leading to the 1984 constitutional amendments. Their efforts were primarily aimed at ensuring that fundamental human rights were formally recognized and protected within the country's legal framework. This involvemprocess and lobbying, providing legal expertise during the drafting process, and advocating for a robust and enforceable Bill of Rights that would safeguard various civil liberties.

This advocacy by TLS and other civil society groups was instrumental in shaping the contents of the Bill of Rights, ensuring that it covered a wide range of rights including the right to equality, freedom from discrimination, the right to personal freedom and security, freedom of expression, and the right to a fair trial, among others. These efforts have had a lasting impact on the promotion and protection of human rights in Tanzania.

1. **Push for Multi-Party Democracy**

As Tanzania transitioned towards multi-party democracy in the early 1990s, TLS's role became increasingly crucial. The society actively participated in the debates and consultations that led to the 1992 constitutional amendments, which officially introduced multi-party politics in Tanzania. TLS members contributed legal expertise in drafting amendments and advocated for a more inclusive and transparent political process.

1. **Advocacy and Consultations in the 2000s**

The 2000s marked a period of intensified efforts by TLS in the constitutional review processes. TLS played an advisory role, offering legal expertise to the constitutional review commission and engaging in public education on constitutional matters. They organized forums, workshops, and discussions that allowed legal experts and the public to voice their opinions and contribute to the formation of a constitutional framework that better reflected the evolving democratic values and human rights standards of Tanzania.

1. **Contribution to the Warioba Commission**

A significant milestone in TLS's advocacy efforts came with its involvement in the Warioba Commission, officially known as the Presidential Commission on Constitutional Review, established in 2011 and which presented its report to the then Constituent Assembly. TLS members were part of the commission and others provided expert submissions, advocating for comprehensive reforms that included enhanced checks and balances, greater judiciary independence, and the protection of human rights.

1. **Legal Education , Bill Analysis and Public Awareness Campaigns**

TLS organizes numerous legal education sessions and public awareness campaigns aimed at informing citizens about their legal rights and the importance of the rule of law. These sessions help to demystify legal processes and encourage public participation in legal matters, thereby fostering a culture of lawfulness. TLS has been constantly and actively engaging herself on Bill Analysis and present before the Parliamentary Committee on Legal Affairs during public hearing of new Bills.

1. **Supporting Legal Frameworks for Anti-Corruption**

Corruption is a significant challenge to the rule of law, and TLS has been actively involved in supporting legal frameworks that combat corruption. This includes the advocacy for the enactment and enforcement of anti-corruption laws and supporting governmental and non-governmental efforts in transparency and accountability.

1. **Engagement in Landmark Legal Cases and Strategic Litigations**

TLS has actively participated in or supported landmark legal cases that have shaped the interpretation of the law in Tanzania. These cases often involve significant human rights issues, governance practices, and challenges to existing laws that are seen as detrimental to the rule of law.

1. **Enhancing Access to Justice through Legal Aid**

TLS has significantly contributed to enhancing access to legal aid in Tanzania, which is a crucial aspect of the rule of law. By ensuring that legal representation is available to those who cannot afford it, TLS helps maintain a balanced and fair judicial system. This is done by her members providing probono services to indigents in both criminal (murder) and some civil matters.

1. **Promoting Good Governance**

**Monitoring Good Governance:** TLS ensures good governance and ensures duty bearers’ actions adhere to good governance, especially during democratic processes.

**Policy Influence:** TLS influences policies to align with human rights standards.

1. **TLS Members founding important organisations for rule of Law in Tanzania**

Members of the Tanganyika Law Society (TLS) have been instrumental in founding various organizations that play significant roles in legal and human rights advocacy in Tanzania. Some of these include:

1. **Legal and Human Rights Centre (LHRC)** - This is a prominent organization in Tanzania focusing on human rights advocacy and legal aid. It was established by five (5) TLS members to extend legal services and human rights advocacy beyond the traditional scope of the legal profession.
2. **Tanzania Women Lawyers Association (TAWLA)** - TAWLA is an association formed by women lawyers from Tanzania, most of whom are members of TLS. It focuses on promoting equal rights and access to justice for women and children.

**Challenges and Critiques**

Throughout these decades, TLS faced various challenges, including resistance, limited public awareness, and the slow pace of legislative processes. Despite these obstacles, TLS continued to work within its capacity to influence policy, educate the public on legal rights, and ensure that the voices of the legal community were heard in the national discourse on constitutional reform.

TLS's involvement in pushing for a new constitution in Tanzania showcases its enduring commitment to legal reforms and democratic governance. By providing expertise, fostering dialogue, and advocating for rights-based constitutional frameworks, TLS has been a pivotal force in shaping the legal landscape of Tanzania.

TLS has been critiqued for remaining silent in matters which are for public interest like Patriarchy, Child abuse, killings of People with Albinism, Denial of Basic Freedoms, Femicide, Infanticide, criminal injustices and other civil rights.

**Conclusion**

Through the above examples of initiatives and many others, the Tanganyika Law Society is still a very important professional body for advancement of rule of law in Tanzania.

TLS faces challenges such as managing public expectations, limited resources, external and internal pressure, and adapting to technological changes. Overcoming these challenges requires persistent advocacy and innovative solutions to maintain the efficacy of TLS’s role.

1. * Carothers, T. (1998). *The Rule of Law Revival*. Foreign Affairs.

   [↑](#footnote-ref-1)
2. UNESCAP stands for the **United Nations Economic and Social Commission for Asia and the Pacific**. It is a regional arm of the United Nations, tasked with promoting sustainable and inclusive economic and social development in the Asia-Pacific region. [↑](#footnote-ref-2)
3. C.J Samatta, supremacy of Law [↑](#footnote-ref-3)
4. Denmark, Norway, and Sweden [↑](#footnote-ref-4)
5. * Peter, C.M. (2007). *The Struggle for Law in Tanzania*. Mkuki na Nyota Publishers.

   [↑](#footnote-ref-5)