



MEDIA STATEMENT

AT THE ANNOUNCEMENT OF THE ESTABLISHMENT OF THE PAN AFRICAN BAR ASSOCIATION OF SOUTH AFRICA (“PABASA”)

30 October 2018

Read by: Muzi Sikhakhane SC

Today marks our historic, bold and decisive declaration that we will take charge of our destiny and the future of our profession as advocates. This day marks our break with the past, our break with the shameful legacy of exclusion, the legacy of subjugation of black professionals, the legacy of inequality and injustice. Most crucially, it marks a bold statement by black and white advocates, men and women united by their commitment to the creation of a new and decolonized path.

Today, we take charge and announce that we shall establish a professional body of advocates that would have opened its arms to welcome Duma Nokwe, that would not have let Ismail Mahomed practice from the dingy passages simply because he was black. Today, African women in the legal profession of advocates declare to the world that no society, including our post-colonial and post-apartheid society, will reach its full potential as long as women continue to languish in the periphery of human development.

The legal profession is notoriously conservative. Its traditional values create a particular normative environment which can make it difficult for women – particularly black women – to succeed and to thrive. The Pan African Bar Association of South Africa (“PABASA”) is committed to dismantling patriarchy and to achieving gender equality. To do so, we want to build a work environment that is welcoming to all our

members, regardless of their gender or sexual orientation. That is one of the reasons why our constitution provides for a gender balance across its membership, and why our code of conduct will include measures to prohibit sexist and discriminatory conduct. It also encourages members to propose and secure the adoption of policies and codes of conduct that will safeguard their interests. We hope that these measures will help eradicate sexism within the profession.

Gender equality also requires that we break entrenched briefing patterns, so that we see more women and gender non-conforming advocates leading teams, practising in male dominated practice areas, sitting as arbitrators and equipping themselves to take appointment to the bench. Internally, we intend to develop training programmes that empower our members and put their expertise beyond question. Externally, we hope to influence attorneys and clients to select teams based not on their own habits or prejudices, but rather on the counsel's skills. Over time, this will inevitably result in legal teams that are diverse and inclusive.

PABASA subscribes to the values and objectives set out in the Constitution and the Legal Practice Act.

We announce that we shall look to no one but ourselves for the creation of an environment that is free from racist bigotry and patriarchy. We make a clean break from the failed efforts of tinkering with structures that were created for the continued survival of the fallacy of white supremacy and male domination. We assemble here to reject, based on our own experience, as futile the attempts at transforming structures whose foundations and objects are colonial, anti-African, and sexist.

We, here and now, announce that we shall create our own structures, whose foundations are freedom, justice and equality. PABASA will exist as the first forward-looking professional body that seeks to ensure that advocates provide legal services of the highest quality, advocacy that seeks to ensure that the rule of law is not a disguised excuse for the protection of white privilege, but shall be aligned with the noble objects of creating a free society, a society truly free from racist and sexist practices.

PABASA will seek to create a professional environment of excellence, of freedom, of ethical conduct, Afrocentrism, equality and justice. Most importantly, PABASA will establish a centre of public interest litigation that seeks to rid our society of the vestiges and ravages of gender, colonial and apartheid oppression. It shall

seek to take up cases whose object is to ensure that the majority of citizens are free from those aspects of the market and policy positions that keep them in the same position apartheid rule left them. While we shall work with the state and the private sector, we shall also challenge them where their decisions and actions seem to perpetuate an unjust and unequal social, economic and political order. We shall seek to take up cases that seek to ameliorate the plight of working-class people, in general and black Africans in particular.

PABASA will train advocates to become practitioners of the highest quality, unapologetically steeped in African excellence, rejecting all notions of law and constitutionalism that are designed to perpetuate the myth of African inferiority.

Today, we assemble to commit ourselves to training advocates that will ensure that our law becomes a platform of freedom and equality. We shall train advocates that will proudly swell the ranks of the judiciary in the future in order to guard society from all forms of power abuse, be it within the state, markets or other forms of gender, class and racial abuses of power in society. We shall ensure that our advocates are distinguishable by their cutting-edge advocacy, commitment to excellence, justice and equality.

We reject all ignorant notions that seek to describe women and black practitioners as subhuman and inferior. We will make sure that the briefing patterns are transformed to give opportunities to all legal practitioners. We will engage the private and public sector to do some honest self-reflection about how their practices in how they brief advocates. We will challenge them to give opportunities to our juniors, who are the future of the legal system. We will challenge them to give opportunities to women, who bear the brunt of dehumanizing prejudices. In return, we will, through our School of Advocacy, ensure that continuing legal education and our training methods produce advocates of the highest quality. We cannot do this if women and black advocates are not given opportunities in areas of law that remain the exclusive preserve of their white and male counterparts.

We are unapologetically black, and woman orientated. We are creating an atmosphere where being black and being a woman are the norm. We are creating an atmosphere in which black people and women do not have to explain themselves, do not have to seek white male validation to be recognized. Most importantly, we seek to create a platform in which black professionals and women must excel, must work to dismantle

white and male normativity, that has permanently kept black people as perpetual slaves to white power, and has kept women permanent inferiors to their male-counterparts.

PABASA is a body of black and white advocates who reject with the contempt it deserves, the practice of law that seeks to keep black and women advocates on the peripheries of the economy. We reject the practice of law that seeks to reinforce white and male domination of the profession.

We are taking pro-active steps to ensure that our advocates are skilled in various areas of law, areas that have been the preserve of white males for no other reason but to keep the skewed distribution of wealth and economic power in society, and perpetuate the distortions created by apartheid colonialism in our economy.

For the first time, South Africa will have a full time School of Advocacy, primarily conceived and instructed by judges to bridge the gap between the profession and the judiciary. For too long, it has been held by those reluctant to transform, claims that black and women lawyers lack certain skills such in commercial law such as aviation, competition and tax. For this reason, PABASA will focus its training in areas previously inaccessible to black and women legal practitioners. Finally, it is intended that the school will include attorneys, judges and academics, who are specialists in certain areas, acting as teachers. The advantage of this approach is to address relationships with attorneys which is perceived as a stumbling block to access lucrative legal work by junior practitioners.

We will take charge of our destiny. We reject the coded messages about blackness, according to which those of African descent, are a sub-species of those who colonised them, are intellectually inept, culturally inferior and morally crooked. This carefully constructed narrative and its *raison d'être* is to resist the fundamental transformation of colonial and apartheid relations. Like corruption, it has become the most dangerous seed that will germinate into unprecedented civil conflict in the future.

This bigotry, even by our so-called progressive colleagues and compatriots constitutes one of the biggest threats to non-racialism and perpetuates the psychological impact of colonialism and apartheid on our society. This belief in the inferiority of black people and women is at the heart of the unjust socio-economic relations that have become our lived reality, even in post-apartheid South Africa. Most painfully, it informs

the skewed briefing patterns in the legal profession, the marginalization of black thought and the retention of the racist and patriarchal features of our profession and social relations in society as a whole.

All of this is a function of the ideology of whiteness, which is not only regressive but has become the dominant content of cultural and economic relations in our society, co-opting many of our own and turning them against their self as they seek validation from those who despise them. These versions of skewed social relations have become mutually reinforcing social realities that undermine freedom, justice and equality. For us equality includes race, gender and class equality, all of which must be pursued with equal determination.

It is time for reflection; honest reflection and action. We cannot do so unless we assemble courageous South Africans, black and white, men and women, who reject these archaic, stone age prejudices. PABASA is an assembly of those advocates, black and white, men and women, seeking to determine their destiny and define their own cause. We are indifferent to our detractors and will work with them if they ever rise above destructive pettiness and disunity that has been the feature of the historically oppressed for too long.

We have been here long enough to know that the most pernicious form of racism is that of those who profess the opposite. If we sit by and do nothing, this colonial and paternalistic mentality and the failures of the post-apartheid state may conspire to create conditions for a perfect storm of discontent in society and if not stopped, may also bequeath to young South Africans a future of hopelessness and despair. As advocates and future jurists, we cannot allow conditions of injustice to persist without being challenged. In our own profession we must demonstrate our rejection of all forms of injustice, discrimination, inequality and racism.

The failure to do away with the colonial features of our economy, and wealth distribution is the most disturbing feature of our post-apartheid constitutional order. Conflicts about transformation are therefore the axiomatic truth about the extent to which critical relations remain untransformed. The pious indignation of enlightened racists bemoaning the passing of an age when, as the *eminence grises* of the liberation struggle, they gave guidance to the liberation movement, are of no use to the challenges we have to confront today. Attempts at presenting whiteness as all things noble, and blackness all things ignoble should not be part of our moral universe and how we practice law.

We state here and now that without moral courage and a clear policy framework for a South Africa that is the antithesis of apartheid society, there can be no real transformation of society. Freeing ourselves from the mental slavery of whiteness and apartheid colonial patterns of thought will lay the foundation for a truly transformed and peaceful South Africa. PABASA is founded on a new belief system, that seeks to create new institutions, whose foundations are justice and equality, and the rejection of colonial and apartheid socio-economic relations.

Ours is a society with deep wounds, exacerbated by the still visible scars of apartheid's dehumanizing presence and the arrogance of some of our white compatriots, most of whom still see reconciliation as something only black people must do. The refusal of traditional white institutions to accept Africans as equals reveals the destructive arrogance of people who believe that their world view and ways of seeing constitute the only legitimate state of being, a universe created for their exclusive convenience. PABASA rejects this as outdated and a belief that should never have been permitted to persist.

We must accept that reconciliation and true freedom can only thrive in conditions of socio-economic justice. As PABASA we seek to ensure that public interest litigation is designed to uplift those left behind by the promise of freedom. We have an obligation to do so. If we don't, and if society perceives the legal and judicial functions as yet another platform for unhelpful political power contestations, they will lose faith in the legal system. In the not so distant future, the majority will revolt against the Constitution and the legal system. They will see it as the domain of minority interests, a process by which minorities seek to dominate society, and maintain their privileges.

PABASA declares its commitment to respond to societal challenges in its own way and invites other professional bodies to do the same. We must rise up together to debunk the myth of white and male supremacy. We will endeavor to be the home of all advocates who are members of progressive formations. We recognize the efforts of NADEL, BLA and AFT in the fight for transformation within the legal fraternity.

PABASA subscribes to progressive and transformative constitutionalism. We will seek to assist the state in its endeavours to ensure access to justice.

PABASA shall be formally launched during the first term of 2019 and will comprise CHAMBERS in various towns and cities within the Republic of South Africa.

PABASA shall, in its membership seek to reflect the demographics of South Africa. It embraces Pan Africanism and rejects all anti-African conceptions of modernity.

PABASA will open a professional School of Advocacy, which shall ensure that it produces advocates of the highest world standards, with unquestionable ethical pedigree. We shall enlist the services of judges and industry experts to develop our skills. The school shall be managed by a board comprising Judges and experienced advocates. It shall have various faculties and full-time lecturers. Practicing members of PABASA shall be obliged, when called upon, to give lectures in their areas of expertise.

PABASA will provide wide-ranging training facilities for legal practitioners in both the private sector and within the State in order to assist in the development of skills that will ensure that in the future, we have a judiciary that is skilled in all the aspects of law.

PABASA will run an arbitration centre that will assist in the arbitration of disputes that relate to procurement within the state. This will assist the state and free the space within our courts to focus on access to justice to those without the means.

PABASA will open a public interest litigation centre run professionally and designed to challenge those aspects of policy and conduct of the public and private sector that continue to subjugate working class people and condemn them to a state of permanent poverty, servitude and landlessness.

PABASA seeks to be the home for advocates to develop their skills and practice their craft without prejudice. We shall engage the state and the private sector to cooperate with PABASA in ensuring access to justice. We will cooperate with the rest of the continent and the world at large to widen our scope and create training and work opportunities for our young and junior advocates.

PABASA does not seek to issue hand-outs to advocates but wishes to fight for an environment of dignity and an environment which recognizes every practitioner and provides him/her with equal opportunities to demonstrate his/her skill to clients.

PABASA will challenge the State and the private sector to work with us in dismantling all the prejudices that define briefing patterns. In return, we shall embark on rigorous training, programmes of advocates that will be a marvel to the world at large. We shall make sure that a South African advocate, a member of PABASA in particular, is a shining example of advocacy and a source of comfort to clients.

PABASA will ensure that we dismantle all the boulders strewn along the path to unity. We will seek constructive ways of resolving differences and rally all around our call "TO RISE UP" and be counted. To rise up and embrace programmes of decoloniality. To rise up and leave behind our petty differences that have blunted our collective weapon to create a better society, a just society, an equal society.

We make the above declarations, in recognition of the unique conditions of our profession and society. Most importantly, we do this to fulfil the struggles fought and the road travelled by those who came before us, Oliver Tambo, Nelson Mandela, Duma Nokwe, Victoria Mxenge and Griffiths Mxenge, Pius Langa, Pitje, Ismael Mahomed, Bram Fischer, Alfred Mangena, Arthur Chaskalson, Felicia Kentridge (who started the LRC), Thandi Orleyn, Navi Pillay (the first black female attorney to open her own practice in Natal in 1967) and Desiree Finca.

We draw strength from the presence of some of the young lions of the anti-apartheid struggle in the 1980's. Here among us Gcina Malindi, Dali Mpfu and Azhar Bham, all of whom have done more than just being advocates, but were at the forefront of the gallant fight for freedom.

Most importantly, ladies and gentlemen, we recognize, here among us, the man who bears the scars of the brutality of the system. Dumisa Ntsebeza SC is a constant reminder of the road we have travelled. We recognize his sacrifices and are proud that we are in his presence. We hope that this initiative is a culmination of the struggles of his generation and a reward for his sacrifices, and will stir and awaken the spirits of his fellow travelers who paid the ultimate price: Griffiths Mxenge, Victoria Mxenge, Matthew Goniwe, Fort Calata, Sparrow Mkonto, Sicelo Mhlauli, Bathandwa Ndondo and others.

We ask all advocates and other professionals to rise up and take their rightful place to provide intellectual and practical leadership towards true freedom. To rise up against disunity, against ignorance, against carefully constructed narratives against black people and women. We ask you to rise up, to rise up and to rise up so that we bequeath to future generations structures that are designed and created for their freedom.

END