

CONSTITUTION
OF THE
PAN AFRICAN BAR ASSOCIATION OF SOUTH AFRICA
(AS AMENDED AT THE AGM ON 30 OCTOBER 2021)

We, the undersigned advocates practicing as admitted advocates and arbitrators in terms of the Admissions of Advocates Act 74 of 1964 and the Legal Practice Act 28 of 2014, duly conscious of the challenges that confront our society in general and our profession in particular, and more particularly Africans and women, and cognizant of our duties and responsibilities to the broader society in which we live and practice law; hereby commit ourselves to independence, professionalism, excellence, the promotion of democracy, gender equality, anti-racism, anti-sexism, the protection and enhancement of the rule of law, to the ideal of an open society founded upon human dignity, the achievement of equality and the advancement of human rights and freedoms.

We hereby associate ourselves with the objectives of the Legal Practice Act 28 of 2014 and to the Legal Practice Council, as the first post-apartheid society of advocates. We seek to assist in the training and development of advocates to meet the demands of our new society and to assist in ensuring access to justice by all. Our members are committed to carrying out community service as envisaged in the LPA. We commit ourselves to developing high level legal skills among our members and the production of excellence in the craft of advocacy, and to promote and uphold the highest professional and ethical standards.

1. CONSTITUTION

There is hereby constituted a voluntary association of advocates, the Pan African Bar Association of South Africa (“PABASA”).

2. OBJECTS

- 2.1. To fulfil the values contained in section 1 of the Constitution of South Africa, namely equality, freedom and dignity in the profession and in service of the needs of our clients.
- 2.2. To practice as advocates, promote and deal with all matters concerning the training of advocates, the practice of the law and the administration of justice.
- 2.3. To promote the interests and aspirations of female and black practitioners, and in particular the interests and aspirations of black female practitioners, to practice their chosen profession as advocates.
- 2.4. To eradicate all forms of discrimination against individuals and groups, more specifically to confront overt and covert forms of discrimination based on sexual orientation, gender, nationality, disability and race in the practice of advocates profession.
- 2.5. To deal with all matters affecting the profession, and our members, and to ensure that our members comply with the statutes and rules governing our profession.
- 2.6. To uphold the ethical codes of the profession and the legitimate interests of advocates.

- 2.7. To act, within the advocates' profession, as an agent of change in post-apartheid South Africa and to strive towards excellence, freedom, non-racism and non-sexism in our society.

3. GUIDING PRINCIPLES

- 3.1. High standards of professional excellence;
- 3.2. Independence;
- 3.3. Transformation of the legal profession and society;
- 3.4. Non-racism, non-sexism, non-binarism, non-gender conformism;
- 3.5. Democracy;
- 3.6. Transparency;
- 3.7. Equality;
- 3.8. Mutual collegial respect;
- 3.9. Respect of clients and their confidentiality; and
- 3.10. High standards of professional ethics

4. COMPOSITION AND MEMBERSHIP

4.1. Membership

4.1.1. To apply for membership of the Association, an applicant must:

4.1.1.1. be an advocate admitted to practice under the Admission of Advocates Act 74 of 1964 or the Legal Practice Act 28 of 2014;

4.1.1.2. subscribe to the principles set out in this Constitution; and

4.1.1.3. have successfully completed pupillage via a recognised pupillage programme.

4.1.2. Membership and leadership of the Bar shall as far as reasonably practicable reflect the demographics of South Africa, having regard to historical prejudices against black and female advocates.

4.1.3. Decisions on membership of the Association shall be made by the Membership Committee, which shall be appointed by the National Executive Committee (NEC) from time to time.

4.1.4. Decisions regarding membership of the Association shall take into account whether the applicant has any past or present disciplinary matters against her or him at a current or past society of advocates or in an employment context, including the nature of charges and the outcome.

4.1.5. Where an applicant is accepted as a member, such acceptance will only take effect once the applicant has paid the relevant initial membership fee.

4.1.6. Members admitted after one year after the establishment of this Association must have completed the qualifications for admission as a legal practitioner in terms of the Legal Practice Act.

4.2. A pupil who successfully completes pupillage at the Pius Langa School of Advocacy is entitled to membership of PABASA, upon having become an advocate admitted to practice under the Legal Practice Act 28 of 2014.

5. ESTABLISHMENT

The members of the Co-ordinating Committee, who are also the initial members of the Association and who shall be responsible for establishing the Association, are listed in annexure A hereto.

6. GOVERNING STRUCTURES

6.1. The governance of the Association is vested in the Annual General Meeting (AGM). The AGM shall:

6.1.1. Decide on all matters submitted to it for consideration. A Special General Meeting (SGM) shall decide on the matters for which the SGM was called;

6.1.2. Have all the powers vested in the National Executive Committee (NEC);

6.1.3. Have the right to vary or reverse any decision of the NEC;

6.1.4. Consider and/or decide any other matters which may be submitted to it for consideration.

6.2. The administration of the Association shall be vested in the National Executive Committee (NEC) subject to the direction and control of the AGM. The NEC shall be elected at the first AGM of the Association by its members in good standing and thereafter at the next elective AGM upon the expiry of the NEC's term of office.

6.3. A Chapter shall have the administrative functions of the NEC within its jurisdiction subject to the direction and control of the NEC, provided that no chapter shall be entitled to incur any financial liabilities on behalf of PABASA without prior approval in writing by the NEC.

7. POWERS AND FUNCTIONS OF THE AGM

7.1. The AGM, which is the highest decision making body of PABASA, shall have the powers to:

7.1.1. consider the annual report on the activities of the Association by the Chairperson and the Secretary;

7.1.2. consider the financial report presented by the Treasurer and the approval of the auditor's reports and the financial statements of the Association for the financial year;

7.1.3. consider, make and pass resolutions;

- 7.1.4. consider reports of the Pius Langa School of Advocacy (“the School”) and take strategic and policy decisions regarding strategic direction of the School
- 7.1.5. elect the NEC upon the expiry of the incumbent NEC’s term of office;
- 7.1.6. consider and make decisions on any matter which the AGM agrees to discuss;
- 7.1.7. consider whether or not to establish, re-establish or close down chapters and define the boundaries of such chapters;
- 7.1.8. consider reports on the activities of the Association from the NEC and other committees;
- 7.1.9. elect the NEC and the chairpersons of the committees upon the expiry of their terms of office;
- 7.1.10. take resolutions that have been proposed by a member and seconded, and have been circulated in writing to all members at least fourteen (14) days prior to the AGM;
- 7.1.11. take resolutions as above if proposed at the AGM and seconded by no less than ten (10) members;
- 7.1.12. take resolutions on current topical issues and which the AGM agrees to address;

7.1.13. take resolutions on motions of no confidence in any office bearer or official of the Association upon such a motion being seconded as in clauses 7.1.9 and 7.1.10 above.

8. THE AGM AND QUORUM

8.1 The AGM shall be convened on no less than sixty (60) days' written notice given to all members.

8.2 All reports and other documents which require the consideration of the AGM must be submitted to the Secretary and circulated to all members no less than 30 days before the date of the scheduled AGM, provided that such reports and documents may, on good cause shown, be properly submitted and circulated within 30 days but not less than 7 days of the AGM.

8.3 The quorum for the AGM shall be 30% of members in good standing. In the event of there being an insufficient number of members in good standing to form a quorum, the AGM shall stand adjourned and shall be reconvened within a period of eight (8) calendar weeks. At such adjourned meeting the members in good standing present shall form a quorum. Thirty (30) days' written notice of such adjourned meeting shall be given to all members.

9. SPECIAL GENERAL MEETING

A Special General Meeting may be called by the NEC on fourteen (14) days' notice to all members to address any urgent matter that cannot wait for the AGM. The procedures for the conduct of an AGM shall apply with necessary changes.

10. THE NEC

10.1. The NEC shall be democratically elected, but in every election the need for the leadership to reflect the racial, gender and other relevant demographics of South Africa shall, to the extent possible, be taken into account.

10.2. The NEC shall consist of the following portfolios:

10.2.1. Chairperson;

10.2.2. Deputy Chairperson;

10.2.3. Secretary;

10.2.4. Deputy Secretary;

10.2.5. Finance;

10.2.6. Briefing Patterns and Stakeholder engagement

10.2.7. Gender;

10.2.8. Legal Education

10.2.9. a representative of each Chapter (a Chapter shall consist of at least 5 members); and

10.2.10 such other additional members as the AGM deems necessary and expedient.

- 10.3. The NEC shall have the power to co-opt up to two (2) additional members of the Association.
- 10.4. Three of the five positions referred to in clauses 10.2.1 to 10.2.5 shall be held by women.
- 10.5. Five of the nine positions referred to in clauses 10.2.1 to 10.2.9 shall be held by women.
- 10.6. No person who is also a member of any other Bar within South Africa may serve on the NEC.
- 10.7. The term of office of the NEC shall be two years.

11. MEETINGS OF THE NEC

- 11.1. The headquarters of the Association shall be in Johannesburg or such a place as the NEC shall, from time to time, decide.
- 11.2. Meetings shall take place monthly and shall be at such times and places as the Chairperson, in consultation with the Secretary, shall decide. The Chairperson may call additional meetings from time to time as he/she considers necessary.
- 11.3. A quorum for a meeting shall be a majority of the number of members of the NEC for the time being.

11.4. Save where otherwise provided in this Constitution, decisions of the NEC shall be taken by a majority of votes of the members present in a meeting.

12. POWERS AND DUTIES OF THE NEC

The administration of the Association shall be vested in the NEC subject to the direction and control of the AGM. The NEC shall have the power:

12.1. To administer training and admission procedures for new members;

12.2. To employ staff;

12.3. To hear and decide disciplinary cases against members;

12.4. To conduct and run the financial affairs of the Association;

12.5. To refer matters to the Legal Practice Council in terms of the Rules governing legal practitioners in terms of the Legal Practice Act;

12.6. To collect subscription and other dues from members.

12.7. To co-ordinate the activities of the Association, and to promote the interests of the Association and its members generally;

- 12.8. To decide what employment posts should be created, maintained or terminated for the effective running of the Association;
- 12.9. To engage and dismiss any employees of the Association, to fix their remuneration and other conditions of employment and to define their duties;
- 12.10. To nominate and elect persons to represent the Association on any body constituted in terms of any law or any other body on which it is desired that the Association shall be represented. All such nominations shall be subject to ratification by the AGM;
- 12.11. To institute and defend legal proceedings by or against the Association, or any of its members;
- 12.12. To acquire or dispose of either by purchase, lease, sale or otherwise any movable or immovable property;
- 12.13. To open, operate and close banking accounts on behalf of the Association and generally to control the funds and finances of the Association;
- 12.14. To borrow, raise, invest monies and funds and to allocate funds to the chapters and to sanction all expenditure on behalf of the Association;
- 12.15. To conclude any agreements it deems necessary;
- 12.16. To review any decision of any chapter and to confirm, amend or reverse such decision;
- 12.17. To decide all matters of procedure on which this Constitution is

silent.

13. EXECUTIVE COMMITTEE (EXCO)

13.1. The Chairperson, Deputy Chairperson, Secretary, Deputy Secretary and Treasurer of the Association shall constitute the EXCO and shall attend to the duties and functions of the NEC in between NEC meetings, subject to its notifying the NEC of its actions as soon as possible and to ratification by the NEC.

13.2. Special NEC meetings may be called by the EXCO on at least seven (7) days written notice.

14. QUORUM OF THE NEC

The quorum for meetings of the NEC shall be a majority of its members. In the event of there being an insufficient number of NEC members to form a quorum the meeting shall stand adjourned and shall be reconvened within a period of at least two (2) calendar weeks. At such adjourned meeting the NEC members present shall form a quorum. At least one (1) calendar week's written notice of such adjourned meeting shall be given to all NEC members.

15. COMMITTEES

The NEC shall from time to time and by resolution establish committees to carry out certain functions of the NEC, including a Silk Committee, Disciplinary Committee, External Stakeholder Liaison Committee and Human Resources Committee.

16. ELECTION OF NEC

- 16.1. The following procedure will apply in respect of each election of the NEC:
- 16.1.1. By nomination of a candidate, which nomination shall be duly seconded;
 - 16.1.2. Ballot papers, in the event of a secret ballot, shall be prepared with names of all candidates for the position.
 - 16.1.3. Each AGM delegate present shall have one (1) vote for each post, which may either be cast by ballot or show of hands, whichever method the AGM may decide.
 - 16.1.4. After the votes are cast, the scrutineers shall determine whether any candidate shall be declared duly elected. The candidate with the majority of votes shall be declared duly elected. If not, further rounds of voting or secret balloting, as the case may be, shall be held but in each round, in the case of secret balloting, the names of those candidates who received the least votes and whose votes when combined with each other do not exceed the number of votes obtained by the leading candidate, shall be eliminated from the following round of the ballot.
 - 16.1.5. The results of each round of balloting shall be disclosed to the AGM before the following round is commenced.
- 16.2. Office-bearers shall be elected in the order set out in clauses 10.2.1 to 10.2.9 above.

16.3. The newly elected NEC shall take office from the closure of the AGM at which they are elected.

17. DUTIES OF THE NEC MEMBERS

17.1. Chairperson

The Chairperson shall attend all AGM and NEC meetings and preside at such meetings but shall have no vote at the AGM and a deliberative vote only at NEC meetings.

17.2. Deputy Chairperson

The Deputy Chairperson shall assist the Chairperson in performing his/her duties and shall perform such duties of the Chairperson as are delegated to him/her/them. The Deputy Chairperson shall assume the duties of the Chairperson in the Chairperson's absence.

17.3. Acting Chairperson

In the event of both the chairperson and the Deputy Chairperson being unable either temporarily or permanently to perform their duties the NEC shall appoint a member of the NEC to act as Chairperson who shall hold office until the Chairperson or the Deputy Chairperson is able to assume his/her duties or until the next election as the case may be.

17.4. Treasurer

17.4.1. The Treasurer shall:

- 17.4.1.1. Keep proper books of account;
- 17.4.1.2. Ensure that the books of accounts are audited annually;
- 17.4.1.3. Have the right to inspect all records relating to the finances and books of account of the Association; including the chapters' books of account;
- 17.4.1.4. Submit statements of income and expenditure of the Association's national accounts to each quarterly meeting of the NEC and in respect of each annual period to the AGM.

17.5. Secretary

17.5.1. The Secretary shall be responsible for the proper administration and co-ordination of the Association, including the duties to:

- 17.5.1.1. Supervise the work of the officials of the Association;
- 17.5.1.2. Perform such other duties as the NEC may direct;
- 17.5.1.3. Report fully to each AGM and NEC meeting on all aspects of the Association's activities;
- 17.5.1.4. Ensure that a register of members is maintained.

17.6. Deputy Secretary

The Deputy Secretary shall assist the General Secretary in performing his/her duties and perform such duties of the Secretary as are delegated to him/her. The Deputy Secretary shall assume the duties of the Secretary in the Secretary's absence.

17.7. Other Portfolios

The NEC members responsible for all other portfolios will take responsibility for ensuring that the Association implements the programme of activities and projects aimed at addressing the related issues.

18. VACANCIES

18.1. A member of the NEC shall vacate his/her seat in any of the following circumstances:

18.1.1. On resignation, suspension or expulsion from membership of the Association;

18.1.2. On ceasing to be eligible to be a member of the Association;

18.1.3 On absenting himself/herself from three (3) consecutive meetings without sending an apology acceptable to the NEC;

18.1.4 In the case of a co-opted member, if the NEC should so decide.

18.2. Vacancies on the NEC shall be filled by appointment of a new member by the NEC from amongst themselves on a temporary basis and shall be properly filled at the next AGM.

18.3. A member elected to fill a vacancy shall hold office for the unexpired portion of the period of office of his/her predecessor.

19. RULES OF PROCEDURE AT ASSOCIATION MEETINGS:

The normal rules of meeting procedures shall apply to all Association meetings.

20. MINUTES

Copies of minutes of the AGM, NEC, EXCO, Chapter meetings and Committee meetings shall be submitted for approval at the following meeting and shall be sent to each member of the AGM, NEC, EXCO or Chapter, as the case may be, as soon as possible.

21. REMOVAL FROM OFFICE OF NEC MEMBERS

Besides any other provision in the Constitution for the removal of NEC members such persons may be removed from office on the written request of at least twenty five percent (25%) of the members in good standing in the constituency in which the NEC member has been elected or appointed. The responsible NEC for the constituency shall arrange for a ballot of all the members in good standing within the constituency to determine whether they desire to have the executive member or official concerned removed from office. A majority vote in favour of the removal shall effect the removal.

22. OFFICIALS/EMPLOYEES:

22.1. Employment

22.1.1. Officials shall be employed by the structure they serve subject to ratification by the NEC. A competitive recruitment process shall be followed unless a proper motivation is provided by the person proposing a headhunting process.

22.1.2. Every newly appointed official of the Association shall serve a three (3) months probation period before that official's appointment is confirmed. The secretariat shall perform such assessment subject to any conflict of interest.

23. STATUS

All officials who attend Association meetings in terms of this Constitution shall have speaking but no voting rights.

24. FINANCES

24.1. The NEC shall conduct and run the financial affairs of the Association.

24.2. The Association shall have the powers and functions to collect subscriptions and other fees from members.

24.3. The treasurer shall open a bank account on behalf of the Association and he/she and another member of the NEC shall be the authorized persons to conduct any transactions thereon.

24.4. The Association shall have the power to acquire property and invest for the interest of the Association.

25. ARBITRATION AND DISPUTE RESOLUTION CENTRE

25.1. There is hereby established a centre for arbitration and dispute resolution which will be registered as a company;

25.2. The company which is to be registered shall be jointly owned in equal shares by the founding members of the society;

25.3. Any founding members may dispose of their interest in the company to new members;

25.4. All the proceeds generated by the company shall be used for the benefit of the society and not to individual member-shareholders in their personal capacity;

25.5. The functions of the centre shall include:

25.5.1. Mediation

25.5.2. Arbitration

25.5.3. Conciliation

25.5.4. Dispute resolution

25.6. The activities of the centre shall be controlled by a committee which shall be appointed by the general membership, to hold office for a period not exceeding two years, which can be renewed for a further period of two years.

26. HOLDING OF CHAMBERS

26.1. Members shall hold chambers in designated buildings, or as otherwise permitted by the NEC.

26.2. Members may practice in premises other than the designated chambers subject to the following; inter alia:

26.2.1. Any physical condition that makes it more convenient to practice from such premises.

26.2.2. Any family circumstances that make it more convenient to practice from such premises.

26.2.3. Any other circumstances that have been disclosed to the NEC.

27. NATIONAL SUBSCRIPTIONS AND OTHER DUES

27.1. Members shall pay national subscription fees which shall be decided by the NEC annually;

27.2. Members of less than two years standing shall be exempt from paying national subscription fees, unless they elect to do so;

27.3. There shall be a junior fund in which all members who have been in practice for 5 years and above shall contribute. The minimum amounts to be contributed shall

be decided by the NEC which shall be guided, inter alia, by the seniority of the contributing members;

27.4. The NEC shall have the power to levy a special payment by members for any item not provided for, but is essential for the proper functioning of the Association.

27.5. The inability or failure of any member of the Association to pay national subscription fees when they fall due shall be dealt with on a case by case basis by the Treasurer in her/his discretion, subject to the oversight and control of the NEC.

28. POLICIES

28.1. Members subscribe to and are bound by the following policies to be adopted by the Association of Advocates, which list may be amended by the NEC from time to time:

28.1.1. Conferment of Silk;

28.1.2. Admission and Membership;

28.1.3. Maternity and paternity leave;

28.1.4. Sexual harassment and anti-discrimination;

28.1.5. Code of conduct for Members;

28.1.6. Access to Justice and Community Service;

28.1.7. Continuing professional training;

28.1.8. Access to briefs and work opportunities.

29. THE PIUS LANGA SCHOOL OF ADVOCACY

29.1. There shall be a National School for the Advancement of Advocacy, called the Pius Langa School of Advocacy (“the School”).

29.2. The School will engage in all forms of advocacy and legal training, including but not limited to the training of pupil advocates.

29.3. The School will be operated via PABASA School of Advocacy (Pty) Ltd.

29.4. The School shall be run by a Board, appointed by the PABASA NEC, which shall have at least three members and a majority of whom shall be members of the PABASA NEC.

29.5. The members of the Board who are members of the PABASA NEC shall, for the duration of their terms of office, be the members and directors of the PABASA School of Advocacy (Pty) Ltd.

30. INTERPRETATION OF THE CONSTITUTION

The responsibility for the interpretation of the terms of this Constitution or any matter arising in connection therewith shall be vested in the AGM and its decision shall be final and binding.

31. AMENDMENTS:

- 31.1. Any of the provision of this Constitution may be repealed, amended or added to in any manner by a Resolution of the AGM, provided that at least two (2) calendar weeks' notice shall first have been given to each member.
 - 31.2. Amendments shall be effective upon a resolution being passed by the AGM.
 - 31.3. The notice period may be waived if two-thirds (67%) of delegates present and entitled to vote at an AGM so approve.
32. DISSOLUTION:
- 32.1. The Association may be dissolved at any time by the resolution of two-thirds majority of the AGM if for any reason the Association is unable to continue functioning, provided that no such resolution shall be effective unless a ballot of members of the Association shall has been conducted and more than 67% of the members in good standing and participating in the ballot approve.
 - 32.2. If the Association has been so dissolved, the following procedures shall apply:
 - 32.2.1. The available members of the Association's last appointed NEC shall appoint a liquidator to carry out the dissolution. The liquidator shall not be a member of the Association and shall be paid such fees as may be agreed upon between him/her and the said available members;

32.2.2. After payment of all debts, the remaining funds, if any, shall be disposed of by a decision of a ballot of the members of the Association who were in good standing as at the date of dissolution.

33. GENERAL

33.1. Any matter not contained or dealt with in this Constitution shall be provisionally determined and dealt with by the NEC pending ratification and rectification by the AGM at the next Annual General Meeting.

33.2. The NEC shall have the right to regulate its own proceedings and to put into operation rules for its effective and proper functioning, provided that those rules are not inconsistent with any provision of this Constitution.

As amended on 30 October 2021.