

# LAW MATTERS

By Franny Rabkin

## A STRONG, UNITED, INDEPENDENT AND TRANSFORMED BAR

It's a Friday today. And as I write this column, today's Mail & Guardian sits next to me, in which I reported the creation of a new bar—an unapologetically black bar, said its founders.

The new bar has been made possible by the coming into effect of the landmark Legal Practice Act, which presents an opportunity to make a significant break with the past.

When I was interviewing the founders of the Pan-African Bar Association of South Africa, I kept trying to ask what, for me, is the biggest question: Does the new bar mean the old bar has failed? They were quick to steer the conversation away. We are not fighting with anyone, they kept repeating.

I get their diplomacy. But luckily for me I don't have to be so diplomatic.

The more I navigate the intersection between law and politics, the more I value the role that an independent advocates profession plays in building democracy. For one thing, the legal profession feeds the judiciary, one of the three arms of state, a state in which each of the arms is supposed—under the Constitution—to keep the others in check. Also, the courts are democracy's way to resolve disputes. When people have confidence in our courts, it makes society stronger, it makes people less likely to ignore the law or seek justice elsewhere.

So a strong, united, independent and transformed bar is something I think is worth fighting for. A transformed bar is a goal worth fighting for in and of itself. But also, there can be no independence, no real unity and no strength without transformation. An untransformed profession lacks legitimacy, rendering it weak and open to being easily undermined.

This is why I have, as a journalist, for years followed the profession's attempts to wrestle with itself; to face its past and to shed it. And the truth is—despite the best efforts and extremely hard work of many dedicated people—progress has been disappointing.

Racism and sexism make no logical sense, yet even the most brilliant legal minds sometimes can't seem to shed their prejudice or face their privilege.

And as the years went by and little changed, the dreams of many young advocates had to shrink to more realistic proportions. Or simply shrivelled and died.

The why and the how to fix it are harder questions. It may be, as the founders of PABASA argue, that change from the inside is futile and that something new must be built. It may also be—as others have argued—that there are no quick fix solutions; that the advocates profession does not exist in isolation—it is closely linked with attorneys, universities (indeed the education system as a whole) and clients, all of which have their own transformation challenges. It may be both.

I spent my early childhood in Mozambique. We moved there just after the revolution against Portuguese colonial rule. Post-colonial Mozambique was very different to post-apartheid South Africa. In Mozambique, there was no rainbow nation—there was one African nation. For the nation to live, the tribe must die, said Samora Machel.

To the white people, the Mozambicans said: you are welcome to stay, but if you want to stay, you must join us. You must queue, here, side by side with us, for water and bread. You must live here, side by side, with us. Land was nationalised.

Many white people left—some returning to Portugal, more fleeing to South Africa where they could continue to enjoy benefiting from racism. But those who stayed, who threw in their lot—and their land—with the revolution were welcomed with open arms.

Whether the revolution would have succeeded will always be a question. It never had much of a chance, with only a few years before the apartheid regime came to destroy it. But one thing was achieved and very quickly: there were all sorts of other problems, but there was little racism.

As lawyers, we are comforted by slow, incremental change. It's what we know. But sometimes we need to embrace revolution too.

Whether or not you choose to embrace this particular bar, the Legal Practice Act has opened some space to reconsider, to be creative, to be open, about how to build a profession that not only makes a good living for its practitioners, black and white, but that also builds the kind of intellectual excellence, the forensic skill, the integrity and the ethics that will in turn build a truly non-racial, united and strong profession. And ultimately a strong, united and non-racial South Africa. **A**