



Advocates for Transformation Annual General Meeting Dinner

6 July 2013

Cape Town

The Duty to Transform

(Mogoeng Mogoeng - Chief Justice of the Republic of South Africa)

Advocate Ntsebeza SC, the leader of Advocates for Transformation, Justice Madlanga, colleagues in the Judiciary , Advocate Semenya SC, the Chairperson of the GCB, Deputy Chairperson Motimele, esteemed members of the AFT Executive, Professor Z Motala, distinguished guests , fellow South Africans, I greet you.

For the overwhelming majority of black South Africans the wounds and excruciating pain caused by centuries of being subjected to psychological trauma and merciless “beatings” are still fresh and sharp. The poverty, lack of real economic opportunities and the apparent resistance to change by a good number of fellow South Africans, who benefitted tremendously from the excellent educational and economic opportunities reserved exclusively for them by the apartheid system, can only serve as a constant and rude reminder to the victims of poverty and limited opportunities for career and professional advancement. A reminder of what the major cause of their suffering was and who the beneficiaries were. And when they do remember, the question they are bound to ask themselves is, “has the apartheid system really been dismantled, or has it only changed marginally or has a grouping of its key operators metamorphosed into a movement that masquerades as agents for the

enforcement of constitutional compliance when they are in fact a change resistance force ?

Given the pain, the deprivation and the dehumanization that the apartheid system was intended to cause and did in fact bring about, it is of great importance that we do everything within our power as South Africans of all races, to avert the dangers that a disguised protection of white male privilege, at the expense of opening up opportunities for women and black men, is loaded with.

One of the progressive and giant steps taken by both the Attorneys' Profession and the Advocates' Profession is the introduction of rotational leadership. This arrangement had to be made because white male South Africans who, as recent media reports have correctly shown, overwhelmingly dominate both professions and will be in the majority for many years to come, would otherwise almost always be in the leadership of these organisations.

Of concern to me is, knowing that the apartheid system did, by design, empower white male lawyers and disadvantage black and women legal practitioners, do these bodies and their individual members have a plan and the willpower to transform the professions, not cosmetically but radically . And by transformation I mean, among other things, destroying whatever hurdles might still be standing in the way of many women and black lawyers joining these professions, by consistently reminding government departments, state-funded institutions and big business of the need to create equal opportunities for all South African lawyers with a favourable disposition towards women and black male practitioners.

In cases involving areas of law which white male senior counsel are believed to be possessed of special skills which women and black lawyers

are, rightly or wrongly, believed not to have, black Attorneys and junior Advocates should in the case of state-funded institutions be prioritised for support and in the case of government departments and legislatures, black junior Advocates and women Advocates should be affirmed. That way women and black Attorneys would stay in the profession. Big business should help dispel the apartheid myth that black and women practitioners only have the brains for straightforward criminal cases and divorce matters. This goal will be achieved by entrusting them with complex matters, at least as junior counsel and by giving instructions to women and black Attorneys. Instructions and brief allocation with particular regard to race and gender must be seriously reconsidered.

You can check from the record of appearances in the Constitutional Court. More than ninety percent of appearances before that Court are white and male. Occasionally a junior would be a white woman. Attorneys, senior and junior counsel seldom appear in that court. My colleagues in other courts told me that the trend is similar in all other courts in relation to matters of importance.

It should therefore not be surprising that the attrition rate of Attorneys and Advocates who are women and black men is said to be disturbingly high. Needless to say, you need high quality work to grow and grow faster. This is neither an encouragement for spoon-feeding or any entitlement syndrome nor is it something to be apologetic about. It is an historic matter of crucial importance which cries out for urgent attention.

Based on the instructions-giving and briefing patterns before the Constitutional Court, it appears that South Africans are yet to appreciate their duty to help transform the profession and by extension the Judiciary. No wonder we only hear voices critical of transformation when matters affecting the JSC and its recommendations are discussed. None

of the personalities and NGO's who speak regularly and passionately about the perceived areas of concern about the JSC processes and even litigate about them, have ever spoken with any, let alone equal passion against the conservative apartheid-style instruction-giving and briefing patterns. They seem to be more concerned about white men who are not appointed and do not seem to be concerned about the reasons for not recommending them for appointment.

Members of the organised profession ought to lead the charge on the transformation of the profession and the Judiciary. Sadly, they are conspicuous by their silence. I followed with much interest the debates about briefing patterns recently. I expected many women and black lawyers to speak out in support of Advocate Ntsebeza. To my disappointment, he was literally a lone ranger or a soloist. It is time for a brutal introspection by this and other lawyers' associations, if they are to remain relevant to the national constitutional agenda of delivering to posterity, a transformed, reconciled and united rainbow nation.

You are the transformation agents. For this reason, this body, the BLA, NADEL, SAWLA, IAWJ and other truly progressive organisations must work together to defeat the resistance to transformation that is now embarked upon with more vigour and boldness.

When black men and women of all races were appointed to higher courts for the first time, those opposed to change voiced a concern about the so-called lowering of standards. The same argument has changed tag a bit, lately. It was initially said that there was no commitment by the JSC to gender representation. Suddenly, it changed to the alleged bias against white men. Some of the advocates of gender representation even nominated and openly fought for the appointment of a white man and inexplicably jettisoned their campaign for gender representation. When

“unwanted” white males were appointed they were labelled executive-friendly.

These developments seem to suggest that war has been declared against transformation. People are clutching at straws to discredit the JSC. They seem to want the JSC they can dictate to. The same people or organisations who are accusing the JSC of being controlled by politicians are beginning to look like they want to control the JSC themselves.

I have come to challenge you and other genuinely progressive bodies to resist all efforts geared at the protection white male dominance in the professions and the Bench and the equation of the appointment of black and women practitioners to the institutionalization of mediocrity. The apparent discomfort with the progress we are making in transforming the Judiciary, as if we are about to encroach into the no go area of privileged interests, and the concomitant boldly declared struggle for “white male” appointment, even if it would result in the perpetuation of their historic over-representation, must be dealt with decisively. You must no longer allow this voice of resistance to be the only voice in the public domain. It disseminates toxic inaccuracies which have the potential to cause some reputational damage to our Judiciary nationally and abroad, as I learnt in London last week.

And for the record, many white males have been recommended for appointment by the JSC over the years. It is for them and those who know them better to say whether they are “executive toys” and incompetent as alleged. The point to be emphasized though is that a deliberate attempt is being made to delegitimize the JSC and through some scare tactics intimidate or mock the JSC into recommending without proper reflection, certain white men and at times certain women, for reasons best known to those who are campaigning for them.

This illegitimate neo-political campaign to have certain people appointed must be strongly opposed. We must all use all available avenues to expose this retrogressive campaign and the danger it poses to nation-building and reconciliation. But be warned, that engagement is not for the faint-hearted. The defence of genuine transformation, as was the case during apartheid, inevitably attracts mockery, being labelled conservative and a tool of the Executive. Be ready for untold attacks from all sorts of people projecting themselves as fiercely independent, impartial, progressive analysts or highly respected professional commentators. Be ready to be trashed by a well coordinated network of individuals and entities often pretending to be working in isolation from each other.

Remember, during apartheid whenever you were a puppet or the powers that-be thought you had the potential to be cajoled into becoming one, you were addressed as “n goeie man” or “good man”. Nowadays those who seem to have arrogated to themselves the role of being masters of our destinies would label or crown you “highly or well respected” or “progressive”. I need not tell you what the innumerable antonyms of these expressions are. Don’t be lured by these anti-transformation schemes. And don’t be selfish. Use your privileged position of influence for the benefit of the rainbow nation and posterity, but not in the furtherance of questionable sectarian interests or agendas .

I THANK YOU. MAY GOD BLESS YOU !