



The Honourable Chief Justice Raymond Zondo addressing a panel of judges on “An Independent Bar and an Independent Judiciary: Perspectives from International Council of Advocates and Barristers Jurisdictions.”

THE WORLD BAR CONFERENCE

by Andrea A Gabriel SC, Durban Bar

The loudest applause came for our own Chief Justice Raymond Zondo at the end of the World Bar Conference held in Belfast and Dublin, in Ireland, over 15-17 May 2024. The World Bar Conference attracted almost 200 barristers, advocates and judges from the global north and south and the key focus of the conference was “Independent Referral Bars: Responding to Global Challenges”.

On a virtual link, Justice Zondo discussed the peculiar challenges in South Africa, arising through information obtained at the State Capture Commission of Inquiry, as it related to cadre deployment and its ostensible use in the appointment of the judiciary. There were many questions from participants but the main focus of the Chief Justice’s response was that cadre deployment in the two instances identified took place in circumstances where the judges themselves had had no idea that their appointments were discussed by the majority political party.

That South African fascination aside, the primary message emerging from this session, and from these lofty minds, was that an independent referral bar is inextricably interlinked to an independent judiciary. Justice Zondo referred to the words of our former Chief Justice Arthur Chaskalson who remarked in a speech, words to the effect, that without an independent Bar and without the assistance of lawyers, judges would not be able to do their jobs with the impartiality and independence required of them by the Constitution. That too generated resounding applause from the participants and, as at previous conferences convened by International Council of Advocates and Barristers (ICAB), which I have attended, I left the conference feeling like I belonged to a special group of lawyers in this world. I have no

doubt that all the participants felt the same. My particular pride was to have *our* Chief Justice drive this feeling of a common role and purpose deeply into our legal psyches, from wherever we came.

I had the privilege of joining the participants at the World Bar Conference this year, because (occupational hazard?) someone had to stand in quickly for South Africa. I gladly did so because I was asked to participate in a panel that related to a matter close to my legal soul: “Law in the Era of Climate Crisis: Unearthing the Legal Challenges”. Time does not permit a full description of the enlightening presentations by the keynote speakers on the state of play in climate change litigation around the world, save to note that there has been an exponential increase around the globe of litigation brought by civil society groups who take on governments and “private” greenhouse gas emitters and who are scoring resounding victories in courts around the world. The presentations by Catherin Higham of the Grantham Research Institute and Sarah Mead who is the co-director of the Climate Litigation Network were no less than brilliant.¹

Then it was time for “the profession” to respond, which included me, Andrew Butler QC from New Zealand and Samuel Townend KC who is the chair of the Bar Council of England and Wales. The discussion was chaired by Sara Phelan SC who is the chair of the Council of the Bar of Ireland.

It was clear to me that South Africa is light years ahead in its litigation opportunities and ongoing strategies because of our supreme law and its guarantee of the right to a safe and healthy environment and to have the environment protected for present

and future generations (in section 24 of the Bill of Rights). This means that we do not have to push for jurisprudential space to overcome some of the more common problems besetting climate change litigation around the world, namely, *locus standi*, formulating a justiciable cause of action (most often in delict) and the extent to which courts elsewhere are hamstrung by conventional notions of the separation of powers doctrine.

Our constitutional provisions go a long way to overcoming most of these traditional obstacles that are thrown up in litigation in ICAB jurisdictions. I shared the words of Cameron J in *Mwelase and Others v Director-General, Department of Rural Development and Land Reform and Another* 2019 (6) SA 597 (CC), at paragraph 46, that the courts and government “are not at odds” about fulfilling the aspirations of the Constitution and that the apparent “mythical spell” had to be broken because the three branches “engage in a shared enterprise” of fulfilling the promises of the Constitution and the Bill of Rights. To my surprise, this perspective generated loud clapping (as if these were my original thoughts!).

I realised that South Africa has much to teach and this became apparent from the other sessions, which included “Navigating the Crossroads: Cancel Culture, Free Speech, and the Right to Offend” and the “Rule of Law under Fire: Existing in an Age of Conflict.” Here too, our free speech, hate speech and equality jurisprudence has grappled with problems plaguing the rest of the world (at least partially) and over which we have much to teach.

Given the limitations of my (and our non-existent) time and space, it is not possible to provide a comprehensive account of the debates and the key learning points that emerged from each of the sessions at the World Bar Conference. I will be happy to share these with colleagues who want to hear more.

Let me end by stating that I believe that we owe it to independent referral Bars around the world to share the legal pathway that we have walked in the last 30 years of our constitutional democracy. It is not an exaggeration to say that I am still besieged by requests to send judgments and learning from our jurisdiction to our colleagues around the world, particularly on the topics I have spoken about in this note and from participants at the conference.

I would urge the next leadership of the General Council of the Bar to ensure that South African participants are included in these conferences, as speakers, precisely because we have so much to share. I regret that apart from the Chief Justice, I was the only speaker from South Africa. The few junior counsel from South Africa who were in attendance (at their own expense) were visibly enthusiastic after the conference, buoyed no doubt as I was that we belonged to a wider body of independent referral practitioners facing the same challenges as our colleagues in the rest of the world, with each having unique learning and perspectives to share. I just wished that we could have had a bigger presence at the conference (and have no doubt that sponsorships will be found if necessary).

Nevertheless, I am grateful to the General Council of the Bar for having sent me to the World Bar Conference. It would be remiss of me not to show you a picture of the GCB team (some of us) all dolled up for the Ball at the Christ Church Cathedral in Dublin at the end of the conference. This is simply to show you that we as advocates do in the end, clean up reasonably well.

Notes

- 1 The conference organisers hope to upload these and other presentation on their website shortly in future. See, worldbar2024.com.

