DULLAH OMAR INSTITUTE
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

Speech

12th Dullah Omar Memorial Lecture

'Enhancing a human rights culture in South Africa – problems, prospects, successes.'

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Greetings to the family, university leadership, students and guests. I am honoured to be given the opportunity to speak about this great son of South Africa and the World. Comrade Dullah is one of the less-referred-to stalwarts of the liberation movement. Yet his influence on our history and still emerging democracy continues to be felt long after his passing. Comrade Dullah served his organisation the ANC and the broader Mass Democratic Movement exceptionally well.

We have had recent commentary from writers and analysts who appear to have a very sanitised view of our history. They seek to minimise the immense contributions of leaders, such as former President Mandela and his first cabinet, as 'selling out' via a negotiated settlement. These commentaries do not refer to the harsh exposure to prison, torture and assassination that was then the lived experience of our leaders, Comrade Dullah was a hero of our struggle as were many others – they were brave, principled committed and no spurious analyst can take that away from them.

I recall listening to Comrade Dullah for the first time in 1991 when he came to oversee the launch of our local ANC branch in Athlone. He talked about the Freedom Charter and the aspirations of the ANC for a free and democratic South Africa. Prominent in his address was his firm belief in the empowering role of civil society and the idea that we all had to play a role in liberating our country and ourselves and that to do this successfully, we are required to read, to debate concepts and to have some sense of the future free South Africa and its political and social character.

I recall these key points because they link so clearly to our current condition and to the manifold inadequacies of our democracy. Comrade Dullah understood that a liberation struggle had to be waged on many fronts and also that the struggle to build a newly democratic society has to include diverse structures institutions and forums. At any point of discussing engaged struggle he would refer to organs of civil society such as religious institutions, NGOs, community based organisations, such as street committees and civics, as instruments of empowerment that ensured the people are fundamentally intrinsic to changing their lives for the better. I suspect that looking at us today, he might be appalled at the manner in which we have begun to define ourselves, a people unable to independently influence to course of our lives, somewhat over dependent on the state and thus losing that character of being “masters” of our destiny.

I recall a speech he gave at the university of Fort Hare in 2000 at a conference discussing a document on transforming justice from his ministry at that time. His concluding remarks of an extensive “off the cuff” closing stated:

> “Unless we take this opportunity and regard it as our responsibility to ensure that the process of social, economic, institutional and attitudinal transformation takes place, it will not happen in the future. The reason is that, very sadly, we operate

> in an international environment which is not entirely favourable for developing countries, especially at a time when globalisation brings havoc to developing countries throughout the world and an environment which says that motion of social responsibility is wrong, that that you should leave everything to market forces that market forces will ultimately throw to the top those who deserve to be thrown to the top, and those who don't it's because they just don't have the capacity" (Iya –et al, 2000 143)

He urged the participants to do more about throwing off the shackles of colonialism and to devote their attention and work to strive for equality through the legal profession. It is useful to use these remarks as a means of assessing one of the great loves of Dullah Omar – the achievement of equality through a just and humane legal framework and legal practice.

South Africa's constitution and its bill of rights charter is the South African framework for the practical pursuit of equality. Our constitution was inspired by the aspirations of the ANC 1943 African Claims document and by the vision of 1955 Freedom Charter. It is a document that seeks to unite a nation of many languages and significant aspects of cultural religions and socio-economic diversity and of course of great wealth and great disparity.

Key to the constitution of our country are the elements that shape it. It is rooted in the values of human dignity and its inherent values of equality, freedom and justice for all. Drawn on the basis of the thirty-three principles that emerged from the negotiation process, it is international in that it incorporates the best intentions of instruments, such as the CEDAW, the Universal Declaration on human rights, the Geneva Convention and other transformative protocols.

The Bill of Rights in the Constitution and the chapter on our judicial system embodied to a great degree, the South Africa Dullah Omar would have hoped to see.

It is important to acknowledge that, despite the many doomsayers in our body politic, there have been significant changes in many sectors in South Africa. Of course, not all has gone as many of us wished, but we have moved some steps forward. As we recall the impact and contribution of Comrade Dullah, reflection on the problems, prospects and successes of installing a truly human rights embrace in our democracy is a useful starting point.

Our prospects of success at the dawn of our democracy were not entirely promising. South Africa affirmed a variety of difficult yet bold commitments. Out of a nation shaped by the cruel and powerful racism of apartheid, we committed to building a nation united in diversity. Some label our leaders then as naively inclusive and optimistic. We were emerging from one of the more successful models of legislated social engineering ever seen in modern history. Had we chosen a rejection of diversity, it is not clear what it would have given life to.

However, since this is somewhat of an evaluation of ourselves, it is perhaps true to suggest we may have strained too far in the direction of believing unity in diversity would be accepted by all. Resistance to this notion is seen in sectors such as the judiciary and higher education on a regular basis – we still have not achieved the transformed change Comrade Dullah referred to in 2000.

The same is probably true for our ambition that in South Africa we will respect and uphold the innate human dignity of every person.

Our problem of inequality remains an important signifier of the character of our society. The prospects of overcoming this are available in our education system, in our domestic setting and in the workplace. Yet, despite these opportunities, many challenges remain.

For example, we have one of the highest levels of income inequality in the world. Some earn disgracefully huge amounts, while their colleagues in the very same company earn a pittance. The founders of our democracy anticipated that we would change this inequality, but we have almost learnt to live with it.

During his service as Minister of Justice, Comrade Dullah fought for accessible courts and a truly transformed judiciary. I now know that this desire was not for change in race make-up. He sought much more - gender equality, inclusion of those living with disability, and even more than these, the practice of law that is infused with a new post-apartheid ethics, values and attitudes.

Comrade Dullah would be horrified to hear that judges breach the judicial code, fail to be transformative in their judgements and sometimes falter at being pacesetters in the battles for equality and social justice.

Comrade Dullah and the rest had faith that we could be far more adept at human rights than our record thus far. He expected that we would respect and protect women in a manner that has never been attempted before. He did not expect that the levels of abuse of women and violence against them would be at the critical stage of a national emergency as we see today.

He of course did not assume that we would fail to develop black legal firms that could take on the massive public policy legal challenges.

The Constitution assumed massive advances in housing, provision of water access and access to quality healthcare. Our prospects were bleak then, but of course, some progress has been recorded.

I think it is possibly most accurate to conclude by stating that the problems remain immense, the prospects for change are a daunting possibility, and the successes though severely challenged indicate that our freedom fighters were very wise to test our mettle with the assignment of a very ambitious human rights agenda through our Constitution. I suspect as Comrade Dullah looks upon us in this room today, in this campus of a transforming university, he is thinking “comrades you do not know what tough is, we confronted apartheid for you – what you have now is a Constitution that sets your national agenda, stop looking past yourselves to find those who must make its provisions a reality. That is the task we have left for you, so get on with it.”