

15th Dullah Omar Memorial Lecture

“The legacy of Dullah Omar, the human rights lawyer”

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A. Introduction

It is an extraordinary privilege to give this year’s Memorial Lecture. Twenty-one years ago, as the director of the Community Law Centre, I asked Auntie Farieda Omar whether the Centre could honour her late husband by instituting the Dullah Omar Memorial Lecture. She gave her full and warm support. And she has attended almost every lecture since the start. Having invited the most eminent persons associated with Dullah to deliver the lecture over the years, I was surprised and a bit embarrassed when I was asked to do the honours.

I accepted with some trepidation, but was fortified by the importance of the topic: The legacy of Dullah Omar, the human rights lawyer. Lukas Muntingh, the director of the Dullah Omar institute, has eloquently set out the purpose of the memorial lectures. I hope to do justice to this objective: to remember, to reflect, and to renew our commitment to Dullah’s legacy.

Three decades after our embrace of a constitutional democracy, based on equality and human rights, our country is at a crossroads. The very foundations of our Constitution are questioned; inequality and poverty persist; violence against women has not abated; we are drowning in state corruption; we see the impunity of perpetrators; and our sense of insecurity is deepened by the ugly face of police corruption that dominates the daily news.

It is in this context that the legacy of Dullah Omar matters. President Nelson Mandela described Dullah as “a human rights lawyer in the *truest* meaning of the word.” These are words of high praise, but what did Mandela mean by them? This we can discover by paying careful attention to Dullah’s words and deeds.

I will focus on three phases of Dullah’s work as a lawyer. First, his work as a lawyer in court during the years of struggle against apartheid, defending the rights of his clients with the limited legal means then at his disposal. Second, his work as a constitutional policy maker: from 1990 to 1994, as director of the Community Law Centre, he and the Centre envisioned and shaped a new human rights and democratic regime for South Africa. Third, his work in implementing that vision: as the first Minister of Justice in Nelson Mandela’s cabinet, Dullah was responsible for translating that vision into hard-won reality. During these three phases, certain thoughts and practices are fundamental to our understanding of what made Dullah a human rights lawyer “in the truest meaning of the word”.

B. Dullah Omar, the human rights lawyer in legal practice

Let us start with Dullah as a practicing lawyer during the struggle years. Four elements stand out.

1. The people’s rights

First, he was a lawyer of “the people”, the oppressed. From the start of his public life Dullah was a staunch supporter of the Unity Movement, a Trotskyite intellectual movement, and his

affinity lay with the Pan-African Congress, a breakaway party from the ANC, eventually becoming its official attorney. While representing the PAC's incarcerated cadres on Robben Island, he began also to represent ANC cadres on the Island. At the time, this was a big deal, so much so that Nelson Mandela expressed his appreciation as follows:

"I came to know Dullah Omar when I was on Robben Island and he visited us [as] a lawyer. He was not a member of the African National Congress at the time, but that made no difference to his commitment and his caring for us. Dullah was a lawyer of the people, a human rights lawyer in the truest meaning of the word."

In Mandela's lexicon, "the people" referred to all the people who were subjected to the repressive and brutal apartheid regime, whose inherent rights to lead a life of dignity, and not to be treated as a second-class citizen in the land of their birth, were trampled upon. Dullah chose to represent them all; the political party to which one belonged was irrelevant.

This broad universalist concern, I would argue, led Dullah to embrace the inclusive umbrella of the Freedom Charter. He was one of the founding members of the United Democratic Front (UDF), which united a broad range of civil society organisations under the banner of the Freedom Charter – calling for a non-racial, non-sexist social democracy.

When it came to organising lawyers around human rights and democracy, Dullah was at the forefront of founding the pro-Charterist National Association of Democratic Lawyers (Nadel), becoming its first vice-president. It was at Nadel's founding meeting in 1987 that I met Dullah for the first time. As a young lecturer from Durban, I was struck by his clarity of purpose about the role human rights lawyers should play in the struggle against apartheid. When I came to UWC in 1989 and joined Nadel's Western Cape branch, the focus of the debates in Dullah's advocates chambers were already about what a future democratic South Africa would look like. With some inkling of what lay ahead (he was, after all, Mandela's lawyer) Dullah noted on 1 December 1989, in a paper entitled 'Political and organisational tasks as we move into the 1990s':

[W]e need to build up the kind of culture, outlook and method of organisation which must serve post-apartheid South Africa as well. Organising on racial lines hampers this process. The South Africa of tomorrow must be built today – in action as well as words. Therefore all national and regional structures must be built on a non-racial basis.

2. Struggle for human rights

The second fundamental element of being a true human rights lawyer is that rights are won through struggle. For Dullah, human rights were not a gift of the government, but were won in struggle against the government. In a message of support to a Student Mass Meeting on UCT campus in October 1988, he said:

"Freedom is something that has to be fought for. Freedom is something that has to be sacrificed for. For you and for all of us in struggle, freedom is a way of life. Struggle is a way of life. We cannot divide our lives up into compartments."

And these were not idle words. Dullah did not divide his life into compartments: a legal career on the one hand and anti-apartheid activism on the other. His legal career was a commitment to the struggle for human rights. There were no half measures. And that meant sacrifice. As

we know, during the states of emergency he was twice incarcerated without trial. He survived two attempts on his life.

Why did human rights mean struggle? In Dullah's view human rights were inherent to every human being. They were an expression of human dignity, the freedom to determine how one governs one's own life, and collectively with others, the freedom to determine how a society should be governed. Struggle is inevitable because human rights imply limitations on state power.

3. It's the people's struggle; lawyers perform a supportive role

The third fundamental element is that the struggle for human rights was fought primarily through the people, the holders of human rights. Dullah knew the limitations of the apartheid courts. Some battles were won in court, but the realisation of human rights would be achieved primarily through mobilizing the strength of the people. He used the example of the legal recognition of some trade union rights in the 1980s: "Recognition was won in struggle by workers – not conferred. Legal recognition followed victories in struggle." Lawyers were not in the forefront of that struggle; at best they played a supporting role.

The organization of the people was thus vital. Leadership was essential, but Dullah stressed the necessity of accountability. He wrote in December 1989: "We must build up a style of leadership based on accountability and democratic decision-making. Leadership is answerable to the people at all times."

4. Humanity of human rights lawyer

Finally, in his total commitment to the struggle for human rights, Dullah retained his essential humanity. He cared about people, his community, his family. And as Nelson Mandela wrote, also for other people's families:

"Dullah was not just an exceptional lawyer. He and his wife, Farieda, became a pillar of strength to all our families during our incarceration, assisting us in various ways and keeping us together."

He had a soft human side – he loved people, and had a great fondness for children. I recall taking my one-year old daughter to a Nadel meeting. Dullah was happy jiggling her on his knee, while Joe Slovo spoke about the challenges of the transition.

C. Dullah Omar, the human rights lawyer as policy maker - 1990-1994

The second phase of Dullah's life as a human rights lawyer was as a policy maker – from 1990 to 1994.

1. Setting the goals

When the liberation movements were unbanned on 2 February 1990, Dullah's commitment as a human rights lawyer found expression in policy making: how could the democratic South Africa be built on human rights foundations? This he was able to do full-time when he became the first director of the Community Law Centre in July 1990. He attracted to UWC some luminary ANC constitutional lawyers – Zola Skweyiya, Bridgette Mabandla, Bulalani Ngcuka, Kader Asmal, and Albie Sachs. Collectively, they formed a significant part of the ANC's

Constitutional Committee, the body mandated to develop the ANC's policy positions for the constitutional negotiations. Prof Jakes Gerwel, the then rector of UWC, not only welcomed them to UWC, but also gave the Centre wide operational autonomy.

The task was daunting. In Dullah's first overseas trip in August 1990 (he had been denied a passport since 1981), he described to the American Bar Association in Chicago, the enormous tasks lying ahead:

- "1. In S.A. we have never had a real Constitution enjoying any status above other legislation.
2. We have no tradition of Constitutionalism i.e. a Constitution as a point of reference.
3. We never had a Bill of Rights.
4. We never had any mechanism to protect human rights.
5. We have never had an independent judiciary.
6. We never had a system which established legality or the Rule of Law.
7. We have never had a legal order enshrining equality and human values as a priority.
8. We have never experienced democracy in our land."

He then continued with what -

"We need

1. Democracy
2. Self-determination
3. Equality
4. Social and Economic Justice
5. Protection of Human Rights
6. Non-discrimination
7. A just and humane legal system
8. A Bill of Rights
9. An independent judiciary

In short [he summarized]

We need a real Constitution

We need Constitutionalism

We need to build a rights culture."

For the next four years, the Community Law Centre, working with the ANC's Constitutional Committee, was bursting with ideas of how what "We need" could be realized.

I would like to highlight four human rights matters, among a host of others, that occupied Dullah's mind

1. The link between human rights, democracy and the rule of law

First on his list of what South Africa needed was democracy. He told Chilean human rights lawyers in Santiago in November 1990:

“The struggle for human rights in South Africa is [inextricably] tied to the struggle for democracy. Like elsewhere, in South Africa there can be no human rights without democracy and no democracy without human rights. The struggle for democracy and independence is therefore the struggle for human rights.”

Dullah was recognizing the centrality of human dignity to democracy and human rights. Human rights protect all human beings’ inherent and equal right to determine their life choices. Democracy secures a community, a polity, with the right to self-determine the rules by which it chooses to live. Both must be respected and protected. Where they clash, the mediating mechanism is the rule of law (or for lawyers, constitutionalism). This entails anti-majoritarian mechanisms, the most important of which is an independent judiciary.

2. Independent judiciary

Dullah wanted an independent judiciary, but not one that is given free reign. In the early nineties there was some support for an activist judiciary that would effect transformation, in particular by implementing socio-economic rights. Dullah was not so sure. At a Nadel conference in 1993, he warned that “we must not begin with the assumption that the judiciary is always right.” He believed that the locus of power and the social and economic reform of the country should lie in the hands of Parliament, not the courts.

3. Socio-economic rights

The greatest challenge a new democratic government would face, as Dullah saw it, was the deep socio-economic inequality in the country, the product of centuries of white oppression and exploitation, with a profound dehumanizing and degrading effect.

Dullah was a socialist; it was an article of faith of his former home, the Unity Movement. Also within the broad church of the ANC, the South African Communist Party and Cosatu advocated an economic revolution to follow on the political revolution. In a talk to Cosatu on 20 February 1990, days after which he could talk openly as an ANC member, he said:

“Our experience in Africa and elsewhere teaches us that political rights without social and economic transformation do not help the working class. Mere political independence in Africa, Asia and Latin America has not brought an end to poverty and starvation. Workers remain suppressed and exploited.”

He argued that for freedom to be real, there must be an equitable redistribution of wealth, and the way to do that is socialism. He ascribed the fall of the communist regimes in Eastern Europe, to a lack of democracy: “The essence of the revolution in Eastern Europe is the struggle for democracy. Not against socialism.”

As a human rights **lawyer** he advocated for justiciable socio-economic rights. Speaking on behalf of the ANC at the Conference of the South African Human Rights Movement, he advocated the protection of socio-economic rights “such as basic workers and trade union rights, women’s rights, right to housing, education and health and also the right to peace, development and a clean environment’. In July 1991, in a paper, entitled, “In South Africa the

inclusion of social and economic rights in a bill of rights is crucial to deal with apartheid inequalities”, Dullah rubbished the liberal opposition to the justiciability of socio-economic rights. In response to the argument that socio-economic rights are unaffordable, Dullah said:

“unless the basic objective or principle [of socio-economic rights] is adopted as well as mechanisms created to move forward systematically towards the achievement of such objective over a period of time, the status quo will remain for the vast majority of the oppressed and exploited people of this country.”

He then quoted from the ANC’s draft Bill of Rights, where the now-familiar phrases of “progressive realization” and “available resources” in respect of basic social, educational, economic and welfare rights, are found. Judicial enforcement by an independent judiciary and a Constitutional Court was part of the package.

4. A human rights culture

As noted above, in 1990 Dullah summed up the needs of a new South Africa:

We need a real Constitution
We need Constitutionalism
We need to build a rights culture.

While the first two required the attention of lawyers, the third shifted the focus to civil society. It expanded the role of civil society from struggling for the recognition of rights, to building a rights culture within civil society, by embedding the norms of democracy and accountability, non-racialism and non-sexism, tolerance and solidarity in its own practices. Dullah encouraged the formation of civil society organisations in all sectors of society. Speaking in October 1990 at the Conference of the South African Human Rights Movement, Dullah stressed that civil society organisations “must be independent from government and political parties – and even transcend political divides.” This principle also applied to academia, a component of civil society. When I asked Dullah to write the foreword to a book I edited on the Freedom Charter, he welcomed the publication. He wrote that the value of the book lay in, first, demystifying the document, and, second, subjecting it to “critical assessment”. He was not looking for *ja-broers*.

5. The drafting of the interim Constitution

Given the need for “a real constitution” and constitutionalism, Dullah and his colleagues at the Centre went purposively about their tasks. Focused research was done on the structures of government, the position of women and children, the electoral system, traditional authorities, and local government.

Local government was a passion of Dullah. In dividing up the responsibilities, Dullah allocated Housing and Local Government to himself. Already in September 1990 Dullah wrote in a memorandum on local government:

Local government has played a key role in the implementation of government apartheid policies over the decades. In a post-apartheid South Africa it will play a key role, either to entrench the inequalities and disparities as well as apartheid itself or to facilitate the process of eradicating apartheid, racism, inequalities at every level.

Clearly a system of local government should be devised which will play the latter role.

For the new system, he said “[i]deally maximum local autonomy is desirable” because “maximum local autonomy would ensure democracy, equality and structured non-discrimination.” And then Dullah posed, for the first time in South Africa, the following ‘revolutionary’ question:

“Finally the question arises whether it is not necessary to make provision in the Constitution for broad outlines relating to our vision of local government.”

This vision of democratic local autonomy found its way into the interim Constitution of 1993 and subsequently the 1996 Constitution. Unbeknown to us until two months ago when I uncovered the document in Dullah’s papers that Farieda donated to the Institute, his vision has underpinned years of work done by myself and my colleagues, pursuing the ideal of local autonomy at home, elsewhere on the continent, and further afield.

Many of the other research products of the Community Law Centre made their way into the interim Constitution. On available documentation we only have glimpses of the role that Dullah played.

In his own handwriting he articulated a general right to equality and anti-discrimination, and very significantly, entrenching affirmative action. This formulation was sent on a CLC letterhead to Comrade Vallie Moosa on the ANC Negotiations Commission, as “a compromise” to the regime’s narrow formulation of an equality clause. Dullah ends the letter with the question: “Do you think we can sell this?” The non-discriminatory clause and the entrenchment of affirmative action were indeed sold to “the regime” and became, in substance, Constitutional Principle 5, and thus reproduced in the 1996 Constitution.

D. Dullah Omar, the human rights lawyer as Minister of Justice – 1994-1999

1. Dullah becoming Minister of Justice

The first democratic election on 27 April 1994 would herald in the next phase of Dullah’s life as a human rights lawyer.

Aside from Albie Sachs, all of the Centre’s members were on the ANC ballot paper as candidates for Parliament. I was thrown into the office next to Dullah to be the caretaker director of the Centre during the period before the election. They were all elected to Parliament. After an excruciating wait of 14 days, Nelson Mandela’s cabinet of national unity was about to be announced. Kader Asmal, sitting in his office across the passage from the Centre’s offices, must have received a tip-off, for he rushed excitedly into my office with the news: He is minister of Provincial Affairs and Constitutional Development and Dullah the Minister of Justice. We burst into Dullah’s office and Kader in his indomitable style broke the news with the words: “Two Slammies in cabinet!” And two plum portfolios to boot: they were going to reshape the entire constitutional edifice of South Africa. Kader’s joy was, however, short-lived; trade-offs meant that he was ‘demoted’ shortly afterwards to the portfolio of Water and Forestry (which he proceeded to revolutionise).

For a human rights lawyer, the Justice portfolio was of the greatest significance; the apartheid judicial system had to be fundamentally transformed. The international image of apartheid South Africa’s Minister of Justice was captured in the 1988 movie *A Fish called Wanda*, starring John Cleese and Kevin Kline. Kline plays the role of a brutal psychopath who, when escaping justice in England, becomes the Minister of Justice in South Africa. Now, for the first

time, we had a real minister of justice, who, in the words of Nelson Mandela, had distinguished himself as “a true leader, progressive in thinking, realizing the importance of education, justice and a free society.”

What happens to a human rights lawyer who overnight becomes a minister of state? In the case of Dullah, the work he had always done simply expanded. Dullah’s legacy from his years as Minister of Justice is profound. Let me highlight two important elements: building a judicial system on the foundation of human rights, and holding violators of human rights to account.

2. A human rights mission

His immediate task was to establish the institutions that would secure a legal system founded on human rights.

He was responsible for the legislation establishing the Constitutional Court, the Judicial Service Commission, the office of the Public Protector, the Human Rights Commission, and the Commission on Gender Equality.

He developed for the Department of Justice a general policy statement and a plan of action, called ‘Justice Vision 2000’. For this, he relied heavily on two UWC law professors: Medard Rwelamira and Lovell Fernandez, who were appointed to the Department’s Policy Unit. Justice Vision 2000 firmly committed the Department to promote and advance human rights and freedoms, and to uphold the Constitution and the Rule of Law.

Within this framework, in the words of Nelson Mandela, Dullah “set about with customary resolve to transform the justice system, making it fundamentally people friendly.”

He was also deeply involved in the Constitutional Assembly drafting the 1996 Constitution. Two weeks before its adoption, when a few matters still had to be resolved, Dullah expressed his vision of what the Constitution had to do:

“Firstly, it must finally establish democratic majority rule. Secondly, it must provide for the protection of legitimate rights – not privileges, but rights – of all South Africans, including language, cultural and religious rights. Thirdly, it must end the humiliation of the majority and restore their dignity. Those who hanker after the “good old baasskap days” and persist in their racist attitudes and arrogance must know that those days are forever over now. Fourthly, a constitutional framework which must empower all South Africans to participate in a process which will affect the social and economic transformation of our country to end poverty, homelessness, ignorance and deprivation.”

Referring particularly to the Bill of Rights, which he regarded as “one of the most enlightened documents in the world”, he was adamant that “we will never accept a Bill of Rights which is designed to entrench the privileges of the haves against the have-nots. The Bill of Rights can never be a tool in the hands of the rich and powerful to create islands of affluence or privilege.” He said further: “It must be an instrument of liberation. It must be an instrument of empowerment.” At that stage the property clause was not yet settled. For Dullah a clause that would legitimize the illegitimate land dispossession and deprivation during apartheid years was “completely inconceivable”. Acknowledging that a property clause was inevitable, he said:

“Whilst ... a property clause, if there must be one, needs to protect the legitimate property rights of all South Africans, it must also enable a democratically elected government to pursue a programme of land reform and redistribution, and provide restoration or restitution in respect of property illegitimately taken away by the apartheid regime.”

Prominent in the Bill of Rights was a range of socio-economic rights – to education, health, housing, water, and the environment. The Community Law Centre, now with a new cohort of researchers, played an important role in the formulation of these rights. Sandy Liebenberg, then a senior researcher at the Centre, served as a technical advisor on the Constitutional Assembly’s Committee on the Bill of Rights where she championed their inclusion and gave shape to their formulation.

3. Holding violators of human rights accountable

In respecting, protecting, promoting and fulfilling human rights, a vital element is holding to account the violators of those rights. Dullah would not tolerate impunity.

3.1 Truth and Reconciliation process

As a human rights lawyer during apartheid, Dullah was adamant that the perpetrators of gross human rights violations should account for their deeds. The apartheid government, sensing an ANC government on the horizon, sought a general immunity from prosecution for their operatives guilty of human rights violations. The ANC rejected this as wholly illegitimate. How could a human rights culture – based on the notions of transparency and accountability - be established if there was impunity? How could this impasse between the apartheid government and the ANC, which had the potential of scuppering negotiations, be overcome?

The solution came from - where else? - UWC. Kader Asmal in his inaugural lecture as the Professor of Human Rights in 1991 put the notion of transitional justice on the map. His argument was simple: amnesty, but not amnesia. The ANC Constitutional Committee developed the idea further: there must be public accountability, not impunity. They argued that “accountability for gross abuses should remain a fixed goal for any government that seeks to promote future respect for human rights.” Thus arrived the innovative notion of a “conditional amnesty”, which became the founding principle for the Truth and Reconciliation process.

The eventual deal between the ANC and the government was captured in the interim Constitution’s Postamble, titled “National Unity and Reconciliation”. Dullah described the Postamble in July 1994 as “a commitment to break with the past, to heal the wounds of the past, to forgive but not to forget, and to build a future based on respect for human rights.”

The responsibility of drafting the legislation fell on the shoulders of Dullah and his Department. In this regard, the crucial role of our UWC colleagues, Medard Rwelamira and Lovell Fernandez, are proudly acknowledged. But Dullah played a dominant role. The Promotion of National Unity and Reconciliation Act of 1995 represented a fundamental shift from the previous focus on amnesty for human rights violators to a victim-oriented truth and reconciliation process. Only one part of the process dealt with amnesty, conditioned on full disclosure and reconciliation. The major focus was on healing through truth and reparations. President Mandela admirably observed that it was “under [Dullah’s] custodianship that the

Truth and Reconciliation Commission came about.” Dullah himself viewed it as “one of his greatest achievements.”

3.2 Holding violators of human rights internationally accountable – the International Criminal Court

At the very time that South Africa was grappling with the problem of impunity for gross violations of human rights, the United Nations in 1994 commenced the drafting of an international treaty – the Rome Statute – to establish an International Criminal Court with universal jurisdiction over perpetrators of the crime of genocide; crimes against humanity; war crimes; and the crime of aggression. South Africa, having just dealt with these issues domestically and having founded its foreign policy on human rights, immediately assumed a significant role in the drafting process. Again, it became the responsibility of Dullah and his Department. Medard Rwelamira became the head of South Africa’s delegation at the drafting conference, and we see the South African influence clearly. The goal of the ICC is “to put an end to *impunity* for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”.

Once the treaty was signed in 1998, it fell to Dullah to initiate the processes for its parliamentary ratification in 2000 (South Africa was the first African country to do so) and to introduce legislation domesticating the treaty in 2002.

3.3 Holding the violators of human rights accountable – corruption

Back home, Dullah had to face a new form of human rights violations: corruption. Already by 1998, the Department of Justice acknowledged: “Corruption has become one of the most prominent problems facing the country.” Dullah oversaw new legislation on organized crime and corruption. Also, importantly, when the National Prosecuting Authority was established in 1998, it was given an investigative arm, the Scorpions, with a specific mandate to combat organized crime, corruption, and human rights violations. (The Scorpions were too effective for their own good and were disbanded by the Zuma-faction ten years later).

Dullah Omar led by example. If the current ‘lifestyle audit’ of cabinet ministers had been carried out on Dullah, it would have found him living in 31 Mabel Street, Rylands Estate, where he and Auntie Farieda had lived for decades. He refused a ministerial home. His ministerial lifestyle was no different from the struggle days. Nelson Mandela aptly described Dullah thus: “a humbler, more committed, more dedicated person you could not wish to find”.

4 What is the legacy of Dullah Omar, the human rights lawyer in “the truest meaning of the word”?

Let me now try to draw together the rich legacy of Dullah Omar – the human rights lawyer “in the truest meaning of the word”.

First, a true human rights lawyer seeks to protect the inherent dignity and the humanity of all persons. The task is to ensure the universal application and enforcement of human rights, the very quality Nelson Mandela so admired in Dullah. A true human rights lawyer cannot be partisan in the application of human rights norms.

Second, human rights are not a gift from the state, but are the result of struggle against power holders, against authoritarian rule, or against the failure to rule effectively and justly. This is a struggle that continues despite the best transformative constitution. A true human rights lawyer is part of that struggle.

Third, the struggle for human rights is not primarily fought through the courts; it is fought through political mobilization, civic involvement, and civil society. A true human rights lawyer sees the limitations of the law and works with organized civil society. Courts play a necessary role, but it is politics and not the courts that transform society.

Fourth, a true human rights lawyer knows that the struggle for human rights is intrinsically and inextricably interwoven with democracy. There has to be a balance between democracy and rights, and this balance is mediated through the rule of law – constitutionalism. At its core lies an independent and impartial judiciary, which should adjudicate with restraint, not assuming the functions of either Parliament or the executive, but demanding of them justification for their actions.

Fifth, a true human rights lawyer is concerned about deep social and economic inequality, the deprivation of life's necessities – water, food, a house, health care, education, social welfare, land, safety and security – and gender inequality. A true human rights lawyer is concerned, not only with countering authoritarian conduct, but, increasingly, with empowering people against the failure of the state to provide the basic necessities of life, the fulfilment of socio-economic rights.

Sixth, a true human rights lawyer says no to impunity. The task is holding those responsible for human rights violations accountable, thus ensuring their observance in the future. A true human rights lawyer says yes to the rule of law.

Lastly, a true human rights lawyer reflects humanity and humility, pursuing a cause, not their own glory. Their task is to serve the people, not as an outsider bestowing largess, but sharing the humanity of the people being served.

5 Dullah Omar's legacy today

Let me conclude with the question: what is the relevance of Dullah's legacy today? We may celebrate the life and work of a great human rights lawyer, admire his courage, activities and vision that shaped the institutions of a democratic South Africa. But there is more. As Lukas reminds us: the memorial lectures dedicated to Dullah Omar are there to remember, to reflect, and to renew our shared commitment to the values he embodied.

Our beloved country is in trouble. Inequality and poverty persist. The state at all levels of government, instead of transforming society, routinely feeds off itself in rampant corruption. Instead of holding the perpetrators of corruption and violence accountable, impunity rages.

In this context, the legacy of Dullah Omar is a call to action, a call for us to be true human rights lawyers. What can be done? Let's start at home.

The Institute that carries Dullah's name has its work cut out. Primarily a think tank, as before, the Institute must tackle the big questions that confront us today. How can social inequality be addressed through socio-economic rights? How can the rights of children, the worst affected by this inequality, be protected? How can we address the failures of municipalities

to do the work that Dullah envisaged for them? How can impunity be replaced by the rule of law?

These issues require bold, fundamental, and innovative research.

The University of the Western Cape must continue to invest in the Institute and similar institutions on campus that protect the promise of the Constitution. We need to follow the example of Jakes Gerwel and not allow bureaucratic red tape to smother initiative.

When we turn our eyes to our city, we see the deep chasm of inequality. Spatial apartheid is as evident as before; poverty is as racialized as before. The basic necessities of life are spread inequitably. How could it be otherwise, when the voters of Khayalitsha have no say in how the city makes its decisions on resource distribution? Why can a city of local unity not be established through adopting an executive council system, as provided by law, where the council comprises of political parties according to their voting strength?

Looking at our government today, Dullah would be deeply distressed at the state of impunity that prevails. The impunity of some apartheid operatives who avoided the TRC process. The impunity of those identified by the Zondo Commission as responsible for state capture. And the impunity of those responsible for rampant corruption. After the murder of Babita Deokaran, there has been no prosecution of those who paid the triggermen to silence her for exposing corruption – the fleecing of Tembisa hospital of R2 billion.. Since the disbandment of the Scorpions in 2009, there has been no credible agency with the capacity to investigate and prosecute ongoing corruption.

On the international front a similar impunity prevails. When al Bashir, the Sudanese President subject to an ICC warrant of arrest for genocide, landed on South African soil, the government looked the other way. Moreover, immediate steps were taken to withdraw from the Rome Statute, the very statute that Dullah helped bringing to fruition.

Dullah would have been proud when South Africa brought a case of genocide against Israel before the International Court of Justice. Yet there was no word of reproach when Russia invaded the Ukraine (nor even when the ICC issued a warrant of arrest for Putin for abducting children). Where is Dullah's universalistic approach to human rights that requires that all those whose rights are violated are worthy of protection?

Dullah would be dismayed to see the desultory progress made to reduce inequality and poverty. He would be deeply disappointed to see how his ideal of local autonomy is abused by some local councillors for self-enrichment.

It is still within the power of the state to redeem itself. The Constitution is not an obstacle to this quest; to the contrary, it exhorts the state to do so, to fulfil the vision that Dullah had for the Constitution. But if government and political parties fail us, what remains? It is Dullah's cherished organized civil society - the independent voice and actions of organized civil society - that will have to step up again.

A final word. Dullah has left us a legacy of what it means to be a human rights lawyer "in the truest meaning of the word". In facing the immense challenges of today, we can do no better than trying, each in our own way, to be that human rights lawyer.

I thank you for your attention.