

DULLAH OMAR MEMORIAL LECTURE

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Distinguished Chairperson
Farida Omar and Family
My Dear Comrades and Friends

I want to express my sincerest appreciation to both the Community Law Centre and the Omar family for honouring me with the privilege to present this lecture in memory of so great an individual.

Tomorrow we will celebrate Human Rights Day – the fact of this holiday is an enormous tribute to the life's work of Comrade Dullah, whose commitment to the cause of human rights truly set him apart. It is also worth reminding ourselves that just a fortnight ago Ghana celebrated the fiftieth anniversary of her freedom. This fact too was an important part of Comrade Dullah's being since he lived all of his adult life as a committed African and pan-Africanist.

Let me confess that the Community Law Centre and I have you here under false pretences – the topic I am expected to speak on is “Budgeting for Human Rights.” I am aware, though, that all of you are familiar with the Budget – whether through the eyes of Human Rights activists, economists or just ordinary citizens whose lives are touched by the manner in which government exercises choices in respect of the Budget. You will also know that in the context of our Constitution and the Bill of Rights, the direction of the choices we make are in line with the ‘rising floor’ principle as set out in the Bill of Rights. And you will know that the Constitutional Court has on occasion been obliged to reflect on these matters and, with one exception, raised concerns but declared that the court is not the fiscal authority. So let me save the topic ‘Budgeting for Human Rights’ for some other time.

On the eve of this anniversary of Human Rights Day, I want to share with you a few observations on human rights in the context of “continuity and change”. In particular, we must question whether the very notions of “continuity” and “change” do not exist in contradiction to each other. Before 1994, the definitions appeared to be rather simple – “they” were the oppressive regime and “we” the human rights activists- the battle was contested on every possible terrain, from the barricades, to the pulpits, the courts, the factory floor, the sports field, through the armed struggle and on every available international platform, and we won. “We” were distinguished by the fact that we held the moral high ground and “they” were just simply bad. Definitions were easy and the entire world quite uncomplicated.

Then we negotiated an advantageous outcome, crafted a wonderful Constitution, won an election and became the government. Definitions, roles and tasks have been exceedingly complex since. So, how do we manage continuity and change together? What part of what we are and do is alterable, as against those elements that must remain constant?

Similar questions have arisen in the context of the African National Congress. In preparation for the National General Council held in Port Elizabeth in July 2000, We were challenged in a paper entitled “ANC – People’s Movement and Agent for Change” to consider the issues of modernising , an organisation then in its eighty-eighth year.

Examine the challenge of modernisation of the ANC both as a concept and in its practical application, in a manner that sustains and deepens the revolutionary character of the movement.

- 1. The questions thrown up by our presence in government should also feature in this: mastery of work in legislatures as part of instruments of transformation, oversight of government*

implementation of policies, mass mobilization and accountability. In this context the issue of the ANC's role in "delivery" also arises.

2. *On the part of progressive mass formations and the motive forces of the National Democratic Revolution, challenges that need to be addressed include: how to use the state creatively to pursue sectoral and general interests; networking among revolutionaries at all levels; lobbying; relations with progressive business people and the attendant problem of corruption that may arise.*

Perhaps the most fascinating aspect of this abstract is that it could not have been contemplated in an earlier period, whether in the ANC of Pixley ka Seme; of the 1949 Programme of Action; of the Morogoro or Kabwe Conferences of 1969 and 1985 respectively, or perhaps even in the RDP document produced shortly ahead of the 1994 elections. The ANC, so strong in its own traditions that have developed over the past ninety five years has to pause to consider the issues of modernisation – the questions of oversight of itself and the risks that own activists are confronted with are part of that. If the ANC becomes dependent only on its traditions, it will die and turn into stone. It has to continuously ask its members tough questions.

If these are the challenges of the present to the movement, what then of the challenges of rights, and let me add, our obligations? How do these fit in when there is no easy fallback to an "us" and "them"? Should any part of the rights and obligations be altered or modernised?

There is an exceedingly important and humbling challenge that we have to respond to in recognising that very little of what we do is permanent. History will demonstrate that the economic growth and the concomitant opportunities it generates are unlikely to be a constant feature. Similarly, the electorate has been kind to the organisation that brought it freedom by re-electing us at each general election with a larger majority – whilst this fact may be unprecedented in world

history, it is not a right to which we lay historical claim, but it has to be earned and re-earned. Well, what of the rights that we describe as realising on a rising floor – the expectation that the floor will rise continuously in all dimensions is unrealistic. So, which parts can we, in good conscience, modernise? How do we manage continuity and change in the context of rights? And, who determines this?

We are not discussing rights in the abstract, of course.

What do we say to the father of a young Annastacia Wiese murdered in her mother's house in Mitchells Plain – where the man charged with the crime, and the denial of the rights of the child, happens to be not the state, but rather a close friend of the family?

How do we respond to the residents of Happy Valley near Kuils River who demand housing but receive starter kits for informal dwellings from the municipality which explains that it cannot keep abreast of the demand for housing. Indeed, how do we respond in the context of the Grootboom judgment that dealt precisely with the issue of rights to emergency housing?

What exactly do we say to the widows and orphans whose right to dignity and a sustainable livelihood has been taken away from them by the rapacious greed at Fidentia Holdings that has seen their trust monies consumed?

Or how do we respond to young people who demand the dignity that accompanies the right to work, when the economy may not generate sufficient jobs for the particular skills which they may have, or not have – as the case may be?

And, how do we deal with the rights of the millions of refugees who arrive in South Africa from all over the world, to share in the gains of democracy? And

how do we evaluate these rights against those of South Africans who do not yet enjoy these rights in equal measure?

What parts of our rights are adaptable? What parts are enforceable? Is there a way of reinstating those rights taken by individuals, especially those who enjoyed the trust of victims? To what extent should we rely only on the courts? What values afford us a compass by which to steer?

The issue of human rights is an essential part of defining the foundation on which this constitutional state is based. Our Constitution, and especially our Bill of Rights, have become the subject of detailed research and represent a model used by human rights activists around the world. We have so much to be proud of. We have many judges who are the product of that same struggle for human rights and whose judgments are a manifestation of this fact. We should never take any part of the formality of our rights for granted.

But, against the backdrop of this impressive architecture for human rights, we should pause to consider what remains undone, and, more importantly, how we can bring life and strength to this unique feature of our democracy.

Professor Kader Asmal, writing on this topic, in a party political context, in 2005 wrote

The ANC remains committed to its legacy, a lasting legacy to be celebrated, but also an enduring trust to be honoured in the present. By definition, a tradition is handed down from the past. But a tradition, if it is a living tradition, is not only handed down from the past but also taken up in the present.

This is a response to the challenge of continuity and change.

As I said earlier, before 1994 the definitions were relatively easy and the task at hand not as complex as the present responsibilities. Now, we have to build a single, caring nation, one in which the values that drove us so fervently over many decades are required to be measurable in evidence. As Kader Asmal said, “a living tradition is not only handed down from the past but also taken up in the present.”

The challenge is therefore to build a human rights culture, to give life to the formal structures. Culture is complex – it is the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, and material objects acquired by people in the course of generations through striving. By definition, culture cannot be static. Culture is dependent on values, values that sometimes are even unconscious to those who hold them.

But, culture cannot be merely of the state. Sure, it helps if the state leans in the same direction, then the development of norms and mores does not have to an antagonistic contest between the state and the people. But we need to remind ourselves that the responsibility to govern merely creates a range of possibilities to intercede in support of a system of values – those contained in our Constitution and Bill of Rights and committed to the electorate through election manifestos. There is nothing pre-ordained about the outcomes of a period in government. I am a Member of Parliament – so making laws is an integral part of what I do but I want to share an observation, that you cannot legislate values, just as you cannot legislate culture.

The culture of human rights goes far beyond the ability to recite the Bill of Rights, memorise the UN Charter or be conversant with human rights case law. It is about communicating the values that underpin the culture, bringing out some of the tenets that may even be unconscious to those who hold them. It is also about working with others to develop and hone the shared objectives from shared

values. None of this can be done without drawing attention to that which deviates from the underpinning values.

President Mbeki did this forcefully in the Fourth Annual Nelson Mandela Lecture in July last year. He said

Thus everyday and during every waking hour of our time beyond sleep, the demons embedded in our society, that stalk us at every minute, seem always to beckon each one of us towards a realisable dream and nightmare. With every passing second, they advise, with rhythmic and hypnotic regularity – get rich! get rich! get rich!

And thus has it come about that many of us accept that our common natural instinct to escape from poverty is but the other side of the same coin on whose reverse side are written the words at all costs get rich!

In these circumstances personal wealth and the public communication of the message that we are people of wealth, becomes at the same time the means by which we communicate the message that we are worthy citizens of our community, the very exemplars of what defines the product of a liberated South Africa.

This is a hard-hitting description of a tendency in which personal aspirations atomise into an anti-social individualism, with a focus on wealth accumulation and conspicuous consumption. Needless to say, the “attendant problems of corruption” referred to earlier, will be a force to contend with. When this happens, it erodes the culture, and in our context it is the evolving culture of human rights that is perhaps most at risk. We need to consistently remind ourselves that nothing but bricks and mortar is likely to be permanent. But life is about far more than bricks and mortar. And the success of this early period of democracy will be measured by the durability of the system of values we are able to inculcate.

So, it is to values we must look to rebuild the culture of human rights. There are few sources that address these as poignantly as the writings of that great African

intellectual Amilcar Cabral. It is fitting that we remind ourselves this evening that Comrade Dullah so frequently drew on Cabral for inspiration and explanation. In his collection entitled *Unity and Struggle* he articulates his views so clearly. Let me share four of these with you – *reality and realism; truth; criticism and conflicts*.

On the subject of reality and realism he writes, “Do not confuse the reality you live in with the ideas in your head.” Essentially he argues that for a struggle to be prosecuted successfully, the leadership must appreciate the everyday existence of the people, and start from this point to advance the struggle with the people, drawing from the reality of their lives. He does not argue that activists be held back, but rather that activists must have “both feet planted firmly on the ground.” These words speak so directly to the challenge of building a rights culture – all across our country, but especially here in the Western Cape. Human rights are not acquired in the abstract, they are built on the capacity to transform the lived reality.

On the subject of truth, Cabral has been paraphrased into a slogan which I am sure that we can all repeat. *Claim no easy victories, tell no lies*. In the full text he writes, “We must put an end to lying, we must not be able to deceive anyone about the difficulties of struggle, about the mistakes we make, the defeats we may suffer, and we cannot believe that victory is easy. Nor can we believe evasions like, “it seems that” or “I thought that”. This is one of the great defects of some comrades.” Ours is a struggle against forgetting and for a culture of human rights. It is in this context that his words are so incredibly resonant.

In respect of criticism, Cabral advances the watchword, “Develop the spirit of criticism between militants and responsible workers. Give everyone at every level the opportunity to criticise, to give his opinion about the work and the behaviour or the action of others. Accept criticism, wherever it comes from. Always remember that criticism is not to speak ill, nor to engage in intrigues. Criticism is

and should be the act of expressing an open candid opinion in front of those concerned.” Who should lead, who should measure the honesty and who is sufficiently confident to blast the intrigues masquerading as criticism?

And on unity, he forthrightly says, “there are no real conflicts between the peoples of Africa. There are only conflicts between their elites.” Just pause and consider these words.

These messages are not new. They speak directly to leaders and activists and to their relationships – with each other, within the organisation, with the people, and perhaps most importantly with their values.

These words speak to the contradiction between continuity and change. And they strongly address the humility required to rekindle the culture of human rights.

As long ago as 2000, these issues were raised in that important document entitled, “ANC – People’s Movement and an Agent for Change.” We are reminded in that document that

Our programme is not only about the transformation of material conditions, but also about engendering new social values. Failure to build a New Person, among revolutionaries themselves, and in a more diffuse manner, in broader society, will result in a critical mass of the vanguard movement being swallowed up in the vortex of the arrogance of power and the attendant social distance and corruption, and ultimately, themselves being transformed by the very system they seek to change.

Between that point and the present, much water has flowed under the bridge. These words, are not being heard often enough, or have too often been swept aside? The struggle for a culture of human rights - which is a struggle that looks beyond the material conditions to what, in fact, should define our sense of nationhood – is non negotiable. But, by way of self-criticism, we should concede

that it appears not to be sufficiently “taken up in the present.” The struggle for human rights must be prosecuted with as much re vigour and determination as the struggle to overthrow the apartheid regime. The success of this venture depends on building the New Person. It is a struggle about values. It is a struggle against forgetting where we come from. It is a struggle that can best be advanced through unity. And, it is continuous.

Before I step off the podium, I have a confession to make. I am clearly inspired by Amilcar Cabral – when I used the copy of the book, I became aware of a terrible wrong I have committed. For on the first page is an inscription that reads: “To Dullah, from Ramesh, May 1980.” Farida, I apologise for having kept this book for so long – let me return it to you. Hopefully others will also draw inspiration from it.

Thank you.