

**UNIVERSITY OF THE WESTERN CAPE**

**FACULTY OF LAW**

**Dullah Omar Institute**

**LAUNCH OF THE DULLAH OMAR CENTRE FOR LAW, GOVERNANCE AND  
HUMAN RIGHTS**

**19 AUGUST 2015**

**THE EARLY HISTORY OF THE COMMUNITY LAW CENTRE  
AND ITS LONG TERM OUTCOMES**

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*Farida Omar, the Omar family, friends: thank you for the honour.*

This is my fourth speech on the history of the Community Law Centre. I will neither repeat myself nor summarise 25 years of CLC *Annual Reports*. I will not try to include everyone's name. Stand by for something different!

The CLC had extraordinary Directors: Dullah Omar; Nico Steytler; and Jaap de Visser. They attracted amazing staff; they gave clear intellectual leadership; and they got the staff to work like crazy. Archbishop Tutu commented, "*How do so few people do so much work?*" Let us give the CLC staff, over 25 years, a great round of applause!

I will prove that a statement by Nico Steytler and Jaap de Visser is wrong. This is not *ad hominem*; not a personal attack. They have not understood the CLC's achievement in a crucial area: the economy and socio-economic rights. In the *Mail and Guardian* of 6 September 2013 they wrote<sup>1</sup>:

"Second, the interim constitution ensured political control by the majority but said very little about the economy. Did that constitution provide an adequate basis for the socioeconomic transformation of the South African society?"

#### Economic wellbeing

The hard question remains: What has the political settlement meant for the majority of the people whose economic wellbeing has not significantly changed? The daily protests in our cities and towns look very similar to those of 20 years ago."

I will argue that the constitutional settlement driven by the ANC's Dullah Omar, at the CLC and later as an ANC Minister, may have said little about the economy, but built enough cohesion and confidence among all classes and parties that the South African economy could boom on a sustained basis. Based on Dullah Omar's Bill of Rights, the ANC's rule *doubled* the size of the real economy. This was not an automatic outcome. Argentina, a

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<sup>1</sup> Nico Steytler and Jaap de Visser, "SA's Reputation is Undeserved", *Mail and Guardian*, 6 September 2013, <http://mg.co.za/article/2013-09-06-00-sas-reputation-is-undeserved>

similar economy, went bankrupt in 2001. South Africa's wealth distribution remained massively unequal; but the size of the new economy meant a large socioeconomic transformation. The economic well-being of the majority of the people is now much better than under apartheid. Nine million people have jobs where only five million had jobs before; sixteen million receive social grants; millions have better housing, electricity, water, and sanitation; infant mortality has dropped despite HIVAIDS; and above all there is more dignity. In sum, I will show that our economic well-being has massively improved. Nico and Jaap were wrong.

When Nelson Mandela got life imprisonment in 1964, I was fourteen. At my Johannesburg high school we did a play-reading of our own choosing, Peter Weiss's *The Marat Sade*. We sang this song:<sup>2</sup>

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<sup>2</sup> Peter Weiss, *The Persecution and Assassination of Jean Paul Marat As Performed by the Inmates of the Asylum of Charenton Under the Direction of the Marquis de Sade*, (Athenaeum, New York, 1965), 57

Why do they have the gold  
Why do they have all the power  
Why do they have friends at the top  
Why do they have jobs at the top  
We've got nothing always had nothing  
nothing but holes and millions of them

**KOKOL:**

Living in holes

**POLPOCH:**

Dying in holes

**CUCURUCU:**

Holes in our bellies

**ROSSIGNOL:**

and holes in our clothes

**THE FOUR SINGERS & CHORUS:**

Marat we're poor and the poor stay poor  
Marat don't make us wait any more  
We want our rights and we don't care how  
We want our Revolution NOW

*France seized rights by revolution; South Africa did not.*

**We got rights by negotiated settlement after sustained conflict. The UWC Community Law Centre played a signal role in writing down those rights in the 1996 Constitution and in monitoring them later.**

**Human rights are for all, rich and poor alike. This subverts the rights of the poor. Anatole France wrote that *“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”*<sup>3</sup>**

**The South African Communist Party wanted a two-stage revolution. There was no revolution at all. The first stage became a negotiated settlement; the other disappeared. There was certainly no socialist revolution.**

**Instead of revolution, the UWC Community Law Centre tried to protect those who live in holes and die in holes, those who have holes in their bellies and holes in their clothes<sup>4</sup>. It asserted the rights of women, children and prisoners. The CLC’s Bill of Rights, as enacted by ANC Minister Dullah Omar, became the basis of wide-spread socio-economic progress. The CLC’s real achievement was the Bill of Rights which made it possible for the economy to double under ANC rule.**

***From 1990 world history marched on.***

**The Berlin Wall fell; the Soviets splintered; the Cold War ended; and Germany was reunited. America became the superpower. The lumbering European Union expanded. Women took office: Mrs Meir, Mrs Mao, and Mrs Ghandi; Mrs Thatcher, Mrs Merkel and perhaps Mrs Clinton; but no Mrs Saud. The internet changed everything. Religious and oil wars wracked the Middle East. Latin America got a pope. The Indian population increased by a half, from 868 million in 1990 to 1.282 billion in 2015<sup>5</sup>. The African people almost doubled, from 629 million in 1990 to 1.1 billion in 2015.<sup>6</sup> There were many more humans wanting rights. “The poor are**

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<sup>3</sup> Anatole France, [Le Lys Rouge](#), (Quatorzième edition, Paris, Calmann-Lévy, 1894), 118

<sup>4</sup> Peter Weiss, *The Persecution and Assassination of Jean Paul Marat As Performed by the Inmates of the Asylum of Charenton Under the Direction of the Marquis de Sade*, (Athenaeum, New York, 1965), 57

<sup>5</sup> <http://populationpyramid.net/india/1990/> ; <http://populationpyramid.net/india/2015/>

<sup>6</sup> <http://populationpyramid.net/africa/1990/> ; <http://populationpyramid.net/africa/2015/>

always with us”.<sup>7</sup>

China rose spectacularly. Hundreds of millions of people escaped poverty. In 1990, 61% of the Chinese people were extremely poor. In 2015, only 4% of the Chinese people were in extreme poverty.<sup>8</sup> This had no precedent. It was a triumph for all of humankind, but it was based on forced labour and repression of speech. We know that China has a forced labour system, because 25 million workers were “endorsed out” of the cities in the crash of 2008, and the rural commissar complained that he did not know what to do with them. Endorsing people out of the cities is an old Apartheid pass law habit. Free American capital decided it really liked unfree cheap Chinese labour, so Apple became the wealthiest corporation in history.

*Apartheid began and ended with the Cold War.*

Apartheid was a Western Cold War construct, which was dismantled only when it was no longer needed by the West. In the West, under Apartheid, forced labourers, racistly-defined by skin-colour, produced the Western Cold War minerals, uranium, gold and diamonds, at ultra-cheap prices. We know this was forced labour, because the Apartheid Labour Officers’ stamps in the pass books read “mines and farms only”. I saw them as a teenager in the Black Sash Advice Offices. In the East, the Soviet forced labour system, known as the GULAG, produced the Eastern Cold War minerals, uranium, gold and diamonds, at ultra-cheap prices. In 1990 the GULAG was dismantled, and in 1990 the Western forced labour system called Apartheid was also dismantled.

*What was to replace Apartheid?*

The skin-colour racist distribution of ownership, work and power, *by law*, disappeared. Millionaires with black skins appeared. They got rich on behalf of “their” people. In Apartheid’s place came a mixed economy, with an old-fashioned class struggle between owners and workers. The reserve army of the unemployed was huge. A third of the workforce had no jobs.

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<sup>7</sup> Deuteronomy 15.11; Matthew 26.11; Mark 14.7

<sup>8</sup> United Nations, *The Millennium Development Goals Report 2015*, (United Nations, New York, July 2015), 14

When mineworkers took up arms against the state they were shot and killed. *Plus ça change, plus c'est la même chose*: it changes but it stays the same.

But, based on the Community Law Centre's and ANC Minister Dullah Omar's Bill of Rights, a very wide social democratic "safety net" was erected. America's food stamps only reached 15% of Americans or forty-six million people<sup>9</sup>, whereas South Africa had sixteen million people on social grants<sup>10</sup>, or 29% of the population. This was real change. A shopkeeper in Elliott, on the dry end of the old Transkei, told fieldworkers that "the black people have money for the first time ever".<sup>11</sup> Relative prosperity replaced Apartheid.

*A rising tide floats all ships equally.*

Our economic miracle since 1990 is not the result solely of the settlement and Dullah Omar's Bill of Rights. Led by China, the world economy boomed. South Africa followed suit. Both Mrs Thatcher and a director of the Anglo-American Corporation were rumoured to have said in the 1980s that the ANC could not run a bathtub; but, under ANC leadership, South Africa had its longest sustained run of economic growth ever, in the 99 months to November 2007.<sup>12</sup> Inflation was 20.9% under Apartheid in 1986 and 4.7% under the ANC in 2015.<sup>13</sup> It was the Apartheid government which could not run a bathtub.

*There was "a good story to tell".*

If socio-economic rights depended on a growing economy, the tripartite

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<sup>9</sup> <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf>

<sup>10</sup> <http://www.sassa.gov.za/index.php/knowledge-centre/statistical-reports?download=266:statistical-report-8-of-2014>

<sup>11</sup> Oral anecdote from Ben Cousins

<sup>12</sup> J C Venter, "Business Cycles in South Africa During the Period 1999 to 2007", *Quarterly Bulletin* 253, Pretoria: South African Reserve Bank (September 2009): 61–69.

<sup>13</sup> Statistics South Africa as reported in <http://tradingeconomics.com/south-africa/inflation-cpi>



alliance really did have “a good story to tell”<sup>14</sup> by 2014. Under the ANC, the real South African economy doubled in size. Whether it was because of Dullah Omar’s Bill of Rights or because of the rise of China, or both, quarterly real gross domestic product in South Africa moved from R1 600 billion in 1993 to R3 050 billion in 2015.<sup>15</sup> Quarterly real gross national product doubled from R1500 billion in 1993 to R3000 billion in 2015.<sup>16</sup> In constant US dollars, real GDP per capita increased by a third, or \$1500 each, from \$4600 in 1993 to \$6100 in 2014.<sup>17</sup> In purchasing power parity, real GDP per capita increased by thirty percent or \$2900 each, between 1993 and 2013.<sup>18</sup>

Capital never had it so good. The FTSE/JSE All-Share index was thirteen times higher in April 2015 than in September 1998.<sup>19</sup> Labour never had it so good. Persons in jobs increased from five million in 1993 to nine million in 2015.<sup>20</sup>

There were many jests about electricity black-outs. Racist “jokes” blamed black people for power cuts. Some of the millions of people who had had no electricity under Apartheid “joked” that the rich now had a taste of their own medicine. In fact, fewer than half the people had household electricity under Apartheid whereas, by 2011, 87% of households had electric lighting<sup>21</sup>. ANC rule increased electricity production by two thirds, or 100 TWh, from 160 TWh in 1990 to 260 TWh in 2011.<sup>22</sup> This was a black-in, not a black-out. Power indeed went to the people at last.

Many other statistics demonstrate that ANC policy under Dullah Omar’s Bill of Rights was a triumph. Air passengers were 5 million in 1990 and 17 million in 2010; container port traffic was 1.5 million TEU in 2001 and 4.5

<sup>14</sup> S A, *Twenty Year Review 1994 to 2014*, [http://www.thepresidencydpme.gov.za/news/./20\\_Year\\_Review.pdf](http://www.thepresidencydpme.gov.za/news/./20_Year_Review.pdf)

<sup>15</sup> Statistics South Africa, as reported in <http://tradingeconomics.com/south-africa/gdp-comstant-prices>

<sup>16</sup> S A Reserve Bank, as reported in <http://tradingeconomics.com/south-africa/gross-national-product>

<sup>17</sup> The World Bank, as reported in <http://tradingeconomics.com/south-africa/gdp-per-capita>

<sup>18</sup> The World Bank, as reported in <http://tradingeconomics.com/south-africa/gdp-per-capita-ppp>

<sup>19</sup> FTSE/JSE as reported in <http://tradingeconomics.com/south-africa/stock-market>

<sup>20</sup> Statistics South Africa, as reported in <http://tradingeconomics.com/south-africa/employed-persons>

<sup>21</sup> <http://mobi.statssa.gov.za/census2011/Electricity.html>

<sup>22</sup> The World Bank, as reported in <http://tradingeconomics.com/south-africa/electricity-production>

million TEU in 2013; access to sanitation increased from 50% in 1993 to 80% in 2012; access to potable water went from 60% to 96% (and some of that water was free to the poorest thanks to the Community Law Centre's Kader Asmal); an additional thirteen million people were housed; South Africa is now in the top ten world-wide measured by the percentage of women in the parliament; malaria death rates dropped from 459 per hundred thousand, in the year 2000, to 72 in 2012; people living on less than \$2.50 a day went from 42% in 2000 to 29% in 2011; infant mortality decreased by a third, from 54 per thousand in 1998 to 38 per thousand in 2010; 88% of households own cell phones, (a higher percentage than in Britain); and registered motor vehicles doubled between 1990 and 2012 to 9 million. South Africa is massively better off under the ANC 1996 Constitution and Dullah Omar's Bill of Rights than it was under Apartheid.<sup>23</sup>

*However, our country has the highest incidence of HIVAIDS and TB on earth.*

As a result, one fifth of our children are orphans. The CLC is rightly proud that as friends of the court we briefed Geoffrey Budlender to act in the Treatment Action Campaign's Nevirapine case. Nonetheless, we left it too late. We should have tackled HIVAIDS earlier.

Neither the CLC nor the new South Africa is perfect: far from it. Only my wife and daughters are perfect.

*What was the CLC like in the early days?*

Dullah Omar was the Trotskyite who came in from the cold. He was a Unity Movement stalwart for half his life, not a Congress supporter, but he acted as a lawyer, first for the PAC and then the ANC. Later he became a UDF leader; he was repeatedly detained; and his life came under threat. In 1989 he became a spokesperson for Nelson Mandela. Given Mandela's drive for inclusivity, it was no doubt significant that Dullah had

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<sup>23</sup> Data in this paragraph are from Statistics South Africa sources and from South Africa, *Twenty Year Review 1994 to 2014*, at <http://www.thepresidencydpme.gov.za/news/.../20%20Year%20Review.pdf>

considerable respect in the Muslim community.

In 1990 Dullah needed a legitimate base from which to lead the writing of the Bill of Rights for the ANC. Jakes Gerwel facilitated a move to UWC. A small pre-existing UWC Community Law Centre was revamped for Dullah.

I call it Dullah Omar's Bill of Rights, not only because he was President Mandela's ANC Minister of Justice when it became law; but also because I watched him for four years, leading the writing of the Bill from the UWC CLC.

Rector Gerwel employed me as UWC's first Dean of Research, to help make UWC a research institution, which is what it is today. I moved into UWC's new C Block and Dullah shared the suite. I wrote to my staff, warning them to be stringent about security, always locking up and setting alarms, because Dullah's life was threatened. The terrible assassination of Chris Hani springs to mind. This was a time of real danger.

We shared offices, until there was money for the present CLC building. The offices were too small, so I had a close view of his activities. As ANC people returned from prison, banning or exile, I had the extraordinary privilege of watching almost all the members of the ANC's Constitutional Committee disappear into Dullah's office, closely supervised by his excellent secretary, Sunita Dullah. Bulelani Ngcuka was an early addition. He and Dullah trusted each other from struggle days and were always together. Bulelani was central to the writing of the ANC's Bill of Rights

I ran a UWC committee, with Goolam Aboobaker and Alan Taylor, to recommend qualified exiles for employment at UWC. We hired people who ended up in Cabinet, or, like Albie Sachs, in Concourt. We squeezed Bulelani Ngcuka, Kader Asmal, Brigitte Mabandla and Zola Skweyiya into one small office, at tiny desks. This worked for some; but not for Kader: he quickly found an office in the law faculty.

Dullah and Kader asked me to comment on the existing draft of the Bill of

Rights. I wrote all over it. Kader read my comments, and was kind enough to tell me I had “a good eye”. This may have been a test: I was put on the CLC Board of Trustees, and lasted 24 years.

*“Success is claimed by all; failure is an orphan”<sup>24</sup>*. Thousands wrote the Bill of Rights. I made little difference, but am pleased that I wrote on the second draft. Dullah Omar’s CLC Bill of Rights was the rock-solid foundation for the ANC’s economic miracle. Without it both rich and poor would have been much worse off, materially and spiritually.

*Dullah emphasised the rights of women, children, and prisoners.*

All three categories were central to the struggle; they paid dearly for democracy. Dullah had endless meetings with people like Gadija Khan on women’s rights; she was later head of all the magistrates in the Western Cape.

Dullah took me to several constitutional law conferences. One was extraordinary. Bulelani hired a medium jet liner and flew everybody to the constitutional conference on the law of property, landing at the previously top-secret Air Force Base Hoedspruit. We walked through the amazed fighter pilots of the old SA Air Force, each with their perfectly flat ironing-board fighter-pilot’s muscled stomach.

Aninka Claassens fiercely tackled the entire conference about the meaning for rural women of the property clause; and its implications for land re-distribution. She went particularly hard at the views of Arthur Chaskalson, later CJ. She still writes on that topic.<sup>25</sup> Our land laws are not the ANC’s finest achievement, especially with regard to the condition of women and the claims by male traditional leaders.<sup>26</sup> The negotiated

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<sup>24</sup> Tacitus, “Inquissima haec bellorum condicio est: prospera omnes sibi indicant, aduersa uni imputantur” Agricola 27:1

<sup>25</sup> Aninka Claassens (2014) Denying Ownership and Equal Citizenship: Continuities in the State's Use of Law and ‘Custom’, 1913–2013, *Journal of Southern African Studies*, 40:4, 761-779, DOI: 10.1080/03057070.2014.931061;

<sup>26</sup> Aninka Claassens and Sindiso Mnisi, “Rural Women Redefining Land Rights In The Context of Living Customary Law”, (2009) 25 *SAJHR*, 491-516

settlement made embarrassing compromises with the male aristocrats. They would have had their heads chopped off in the French revolution.

### *Conclusion*

I have shown that since 1990, South Africa has relatively improved the socio-economic condition of its people, partly because of Dullah Omar's Bill of Rights.

The CLC has now moved its focus to include Africa beyond South Africa's borders. This has attracted some startlingly good doctoral candidates and wonderful staff from other countries. There have been triumphs. For example, Julia Sloth-Nielsen has helped to write child law for a dozen states; and Benyam Mezmur was elected chairperson of a United Nations Committee in Geneva. While mentioning Geneva, we should recall Nico Steytler's Swiss honorary doctorate. "*A prophet is not without honour, except in his own country.*"<sup>27</sup> It is a great puzzle why Nico Steytler is not honoured much more in South Africa, for his services to this land.

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<sup>27</sup> *Mark:13.57*