

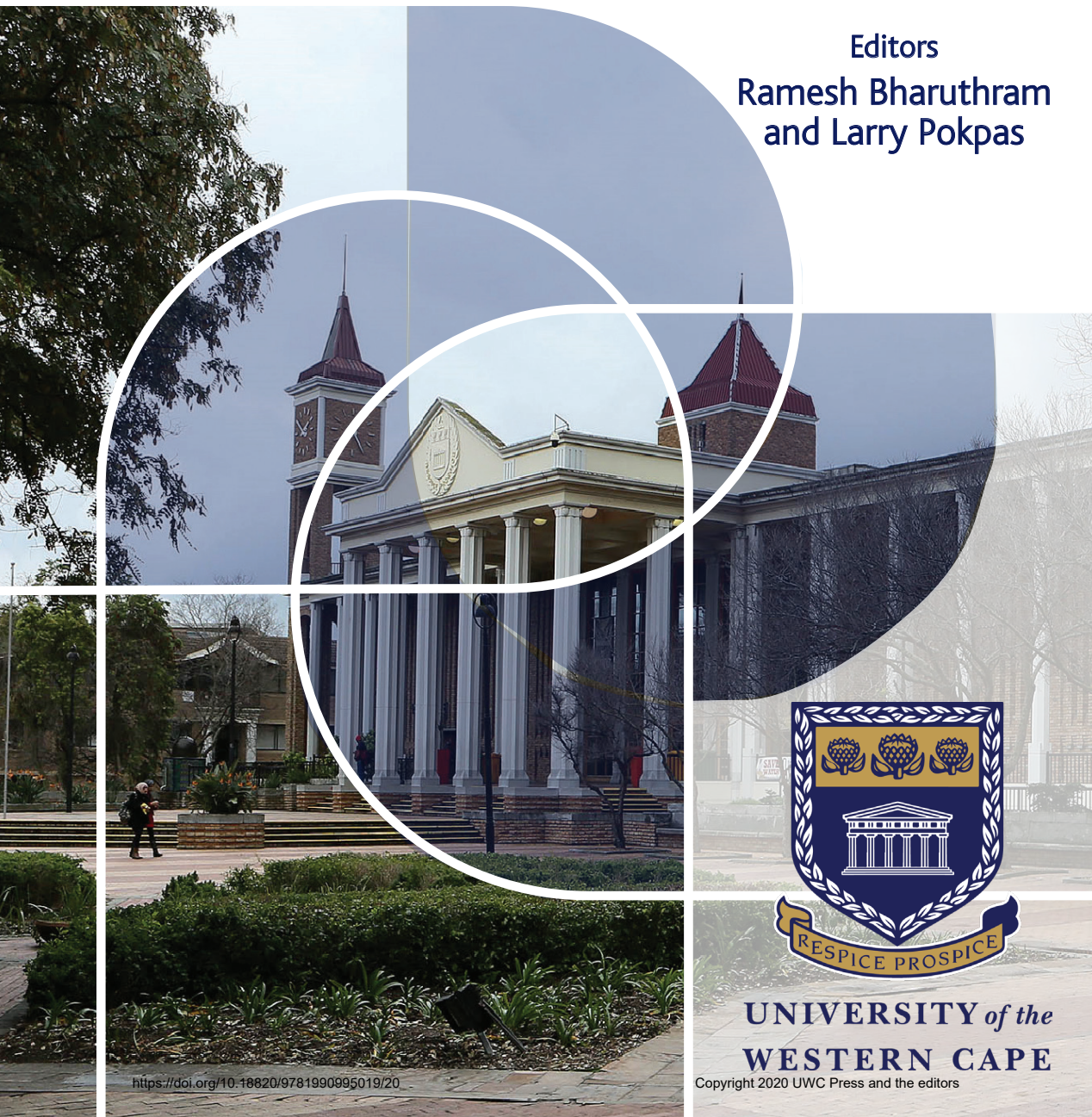
FROM **HOPE** TO **ACTION** THROUGH **KNOWLEDGE**

The Renaissance of the
University of the Western Cape

2001 – 2014

Editors

Ramesh Bharuthram
and Larry Pokpas





20

From the Community Law Centre to the Dullah Omar Institute: The path of engaged research

Professor Nico Steytler

DST/NRF SARCHI Research Chair in Multilevel Government, Law and Development

Professor Jaap de Visser

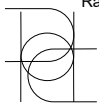
Director, Dullah Omar Institute for Constitutional Law, Governance and Human Rights

Introduction

Commencing its life as a research, advocacy and constitution-building entity in 1990, the Community Law Centre, later becoming the Dullah Omar Institute, has over the past 29 years played a significant role in the shaping of South Africa as a constitutional democracy. It is one of UWC's premier research institutes. Given the purpose of this book, this chapter seeks to analyse the dynamic relationship between the University leadership, on the one hand, and the entity, on the other. It provides a sketch of how the University executive management, under the leadership of different Vice-Chancellors, engaged with the academic and community project of the Centre/Institute. As such it is not a full history of the entity – for that many more pages are required. It is, in the often-spoken words of Brian O'Connell, trying 'to make sense' of what made the Centre/Institute tick and its relationship with the University. This historical journey is roughly divided into the tenure periods of the four Vice-Chancellors of UWC over the last 30 years.

Getting going: 1990 to 1994 – the Jakes Gerwel years

After Jakes Gerwel became the helmsman of UWC in 1987, the University decisively broke loose from its apartheid moorings and hoisted the flag as a *national* institution of higher learning by defying the law in admitting



students regardless of racial classification. As the “intellectual home for the left” (Gerwel, 1987), it was in practice prefiguring a post-apartheid society and also envisioning the same. The legal foundation of the apartheid order was, however, still firmly entrenched in the Law Faculty, but Gerwel’s vision of UWC also included a transformed Faculty.

The idea of the Community Law Centre (CLC) has its roots in these times: an entity that would be comprised of a legal aid clinic, a human rights unit, a labour law unit, and a street law unit (for community education). The project, funded by the Ford Foundation in 1987, was headed by John Murphy, now a judge of the High Court of Gauteng. The status quo in the Faculty only allowed the establishment of a legal aid clinic and obstructed the formation of a human rights unit at odds with its moral universe (Murphy, 1989). Dullah Omar, the first director, politely described the origins of the Centre thus:

The Centre came to life in 1987 faced with many obstacles. The legacy of the apartheid past lived on. Resistance to ‘the new’ was evident. The forces of transformation led by the Rector Prof J Gerwel, valiantly fought on many levels to alter the general anti-educational and dismal environment into one which would facilitate the building up of a Community Law Centre (CLC, 1990: p. 3).

In 1989 Gerwel took the initiative to split the two components – the Legal Aid Clinic and the Human Rights Unit, the latter taking the name of the Community Law Centre. The constitution of the Centre, approved by the University in November 1989, set out the following aims and objectives:

1. To monitor, research and publish on human rights issues;
2. Generally, to render assistance and to give support to persons and agencies involved in human rights in the region;
3. To conduct limited litigation in human rights matters of a public interest nature;
4. To teach within the University and to organise seminars and conferences to draw attention to the human rights issues of the day; and
5. To run community education programmes including the conduct of the street law project.

The liberal legal discourse of the 1980s was that apartheid was an abomination that infringed human rights and should be fought from that angle, exploiting the contradictions in the legal system. The Centre’s focus would thus be on issues such as emergency governance, political trials and capital punishment. For a director of the Centre Gerwel had already



From the Community Law Centre to the Dullah Omar Institute

pencilled in the name of Advocate Dullah Omar, a leading advocate at the Cape Bar, human rights activist, and target of the South African government's assassination squad.

With the unbanning of the ANC and other liberation organisations on 2 February 1990, the timing for the Centre was serendipitously perfect; UWC had the institutional framework to commence the gargantuan task of building a constitutional democracy, and Dullah Omar was duly appointed as Director in 1990, with the Centre commencing activities halfway through that year. Its Board of Trustees included Archbishop Desmond Tutu, Gerwel, Adv. Steven Majiedt, a young advocate (recently appointed as judge of the Constitutional Court), and community leaders – Lucy Nyembe, the regional Secretary-General of Cosatu, and Christmas Tinto, a regional United Democratic Front (UDF) leader.

Writing to Gerwel in 1990, Omar saw the Centre's objective as broader than having a human rights focus:

It is clear to me that a major area of debate in South Africa and elsewhere over the next two years will be the constitutional framework of a post-apartheid South Africa. There is already a great deal of debate and discussion on a future constitution – both nationally and internationally. Subject to the advice and guidance which I receive from our Law Faculty and the University itself, my plan for our Centre is to participate in the debate and discussions in a way which will enable us to be involved in future constitution-making in our country (Omar, n.d.).

In executing this plan, Omar spelled out the dual mandate of the CLC (which still holds true today):

The Centre is community orientated and cannot ignore the trials and tribulations of the disadvantaged communities. At the same time the Centre is required to make a contribution at a theoretical and intellectual level which is broadly democratic (CLC, 1991: p. 1).

He then outlined an ambitious set of projects and proposed persons who should lead them.

1. Gender, family and children – their rights and future in a constitution “for a non-racial democratic non-sexist South Africa” – Brigitte Mabandla, a member of the ANC's Constitutional Committee, based in Lusaka.
2. Human rights and self-determination, workers' rights including a workers' charter in a future constitution – Prof Kader Asmal from Trinity College, Dublin.
3. Policing a democratic South Africa – Prof Clifford Shearing from the University of Toronto.



FROM **HOPE** TO **ACTION** THROUGH **KNOWLEDGE**

4. The judiciary, system of justice and the rule of law in a future democratic South Africa – Bulelani Ngcuka, a Cape Town attorney and legal activist.
5. International experience in constitution-making with special reference to minority rights, culture, language and religion – Prof Leon Trakman, Dalhousie Law School, Canada.
6. The general structure of constitution-making for a democratic South Africa, law relating to land and property – Dr Zola Skweyiya, the head of the ANC's legal department and constitutional committee, based in Lusaka.
7. Housing and local government – Dullah Omar.
8. A bill of rights – Prof Albie Sachs, from London.
9. International experience on affirmative action and its relevance to the South African situation – Dullah Omar.

He succeeded in securing the appointment of Mabandla, Skweyiya, and Ngcuka. Sachs, appointed in 1991, brought his South African Constitution Studies Centre to UWC, while Asmal was appointed in 1992 as the first professor of human rights in the Law Faculty.

For this wide-ranging initiative, Omar asked for office space. Much to his chagrin all he received were two offices (which expanded to six later in 1993 when the Law Faculty moved into a new building). Working closely with the Constitutional Committee of the ANC, still under the leadership of Skweyiya, Centre staff in their political capacities engaged directly in the negotiations with the white minority government. As noted at the time, the Centre and its members were influential in the multi-party negotiations and the content of the 1993 interim Constitution, especially the bill of rights, gender equality and the structures of government, the Constitutional Court, and the reincorporation of the homelands.

The Centre also played a major role as an academic institution in initiating research, writing, convening major conferences, and opening the debate on the constitutional future of the country. A number of research projects emerged. First, under the leadership of Mabandla, the Centre paid considerable attention to the role and place of women in the new South Africa. Secondly, also under her guidance, a project on children's rights was started. Thirdly, as a bill of rights was to be central to the new dispensation, formulating its content kept the Centre busy. Breaking new ground was the entry of socio-economic rights into the debate, introduced by the former Chief Justice of India, Justice Bhagwati, who gave a lecture convened by the Centre. Fourthly, the structures of government were highly contested, the ANC favouring a unitary state and



the apartheid government federalism. The Centre contributed much in finding compromises. Fifthly, a project about transforming apartheid's authoritarian policing system to a democratic one was initiated. Quite remarkably, these focus areas still occupy the Institute's attention.

A characteristic of the research and conferences on these themes was the international dimension; the debates about South Africa were firmly located within an international discourse on the key issues, welcoming international scholars and practitioners to participate in the Centre's activities.

During these formative years, the Board of Trustees prodded the Centre on their approach and functioning, issues that endured over the years. Archbishop Tutu raised the question of whether "the political complexion of the Centre" was problematic and led to partisanship. Lucy Nyembe wanted to know "how the Centre viewed the relevance of interdisciplinary research and said that it seems as if the legal fraternity was not very much interested in it" (Community Law Centre, 1993). The Dean of Research, Prof Renfrew Christie, asked his perennial question: although he welcomed the published papers, more should be published in accredited scholarly journals. Omar responded that the Centre's work was not sectarian and sought interdisciplinarity through working with other centres at the University.

By and large the Centre operated independently. In the concluding remark in the first annual report, Omar noted that "[t]he free hand given by the University to the Centre to plan and execute its own programme has helped to enable the Centre to develop into one of which the University and the Community can be proud." The 'free hand' was not, however, one of detachment; Gerwel took a close interest in the Centre, attending the Board of Trustees' meetings regularly, and supporting the Centre's broad mandate which included community-based 'non-academic' activities. Gerwel instigated and facilitated the establishment of the Centre, set it on course, and kept a distant but encouraging eye on its development.

Contributing to the final Constitution of 1996 and the ensuing policies and laws – 1994 to 2001

Given the high office held by the staff members in the ANC, it was no surprise that Omar, Skweyiya, Mabandla and Ngcuka were elected to the first democratic South African Parliament in April 1994. As was Prof Asmal. President Nelson Mandela appointed Omar as Minister



FROM HOPE TO ACTION THROUGH KNOWLEDGE

of Justice, Skweyiya as Minister of State Administration and Asmal as Minister of Water Affairs and Forestry. As an anecdotal aside, when Asmal heard about their appointments over the radio while sitting in his office, he came across the passage to Omar's office to tell the news with these words: "Two Slammies in cabinet!" In that same year Albie Sachs was appointed as a judge in the first Constitutional Court. On leaving the Centre, both Omar and Mabandla expressed their interest in continuing their association with the Centre and were subsequently elected to the Board of Trustees. Mabandla kept this position for the next 13 years.

With the departure of the core staff members, Nico Steytler was appointed as Acting Director. As the previous head of the Department of Public Law, he and John Murphy drafted the Constitution of the Centre in 1989 and worked closely with the Centre from its inception. The task was not only to re-staff the Centre but also define its future role. Before 1994 the Centre focused on the making of a constitution for a new democratic South Africa. But this process was incomplete. The new Constitution had to be interpreted and implemented. Moreover, the final Constitution had to be written in the next two years. The focus of the Centre was then, as in the past, to play a meaningful role in shaping the new constitutional order, which would be done through "critical and innovative research on the interim Constitution and through a contribution to the drafting of the final Constitution" (CLC, 1994: p. 5). The Centre would continue policy research in the areas of expertise – constitutional law and human rights, gender studies and children's rights. The research was to be policy-orientated, "dealing with issues of practical and immediate importance" (CLC, 1994: pp. 5-6). Research assistance would thus be given to any state institution in the areas of its expertise.

A team of researchers was soon assembled: Julia Sloth-Nielsen driving the Children's Rights Project, and Sandy Liebenberg the Women's Rights Project. The latter project later split into two separate projects – Gender Studies and Socio-economic Rights Projects, Liebenberg managing the latter and Helene Combrinck the former. Steytler was responsible for the Democracy and Human Rights Project, the focus of which narrowed over time to Local Government and Intergovernmental Relations. The projects were supported by, among others, Charlotte McLain, Karrisha Pillay, Johann Mettler, Jaap de Visser and Sibonile Khoza.

With a new South Africa to be shaped on the foundation of constitutionalism, and the Centre being called upon by the new government to participate fully in this project, there was an extraordinary



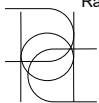
From the Community Law Centre to the Dullah Omar Institute

excitement, an atmosphere of breathlessness, in trying to meet the myriad of challenges and take up the opportunities thrust upon the Centre.

The Centre engaged fully in the constitution-making process of the Constitutional Assembly (CA) from 1995 to 1996. Liebenberg was appointed as one of the technical advisors to Theme Committee 4 of the Constitutional Assembly, dealing with the Bill of Rights, where she was instrumental in the inclusion of socio-economic rights. Steytler, in turn, was one of the technical advisors to Theme Committee 2 concerned with the structures of government at national and provincial government level. Apart from the formal connection to the CA, the Centre also made numerous submissions on various aspects of the draft Constitution: children's rights, the electoral system, the judiciary, gender equality and the public protector.

Once the framework for a constitutional democracy was in place, the policy and legislative details had to follow. In assisting state institutions, a wide array of institutions and topics were covered. First, the Centre made numerous submissions and drafts of legislation for various Portfolio Committees. Steytler was asked to draft bail legislation. Mettler was seconded to the Portfolio Committee on Local Government to assist in drafting the White Paper on Local Government and a suit of new laws giving effect thereto.

Secondly, the Centre worked closely with independent state institutions. Staff members were appointed to a number of Project Committees of the South African Law Commission: Juvenile Justice (Sloth-Nielsen); Child Care and Protection (Sloth-Nielsen); Sexual Offences (Combrink), and Simplification of Criminal Procedure (Steytler). For the South African Human Rights Commission, the Centre provided guidance on how the Commission should give effect to its constitutional mandate of monitoring the implementation of socio-economic rights and the drafting of the equality legislation. Other institutions included the National Prosecuting Authority (drafting the national prosecution policy), the Electoral Commission (guide for local elections), the Municipal Demarcation Board, and the Commission for Gender Equality. National government departments included: Department of Provincial and Local Government, Social Development, Police, Health, and Justice. The Centre also worked with provincial and local governments. Steytler served as one of the technical advisors for the drafting of a provincial constitution for the Western Cape.



FROM HOPE TO ACTION THROUGH KNOWLEDGE

A striking feature of its engaged research was the attempt to bring the new South Africa in line with the international human rights regime. The first step was the signing and ratification of international human rights treaties, while the second was compliance with treaty obligations, and the third the domesticating of such treaties in law. Key treaties were the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

In this endeavour, as with others, the Centre worked with and for civil society to reach its objectives. The Centre had extensive engagement with non-government organisations (NGOs) and community-based organisations (CBOs), both to hear from and impart knowledge about the new constitutional dispensation, which was, after all, aimed at improving the lives of the poor and the disadvantaged. In the case of international human rights treaties, the Centre campaigned with civil society for their signing, ratification, implementation and domestication.

Throughout this period the Centre produced numerous publications with two separate audiences in mind: civil society and a lay readership, on the one hand, and a specialist and academic audience, on the other. For the lay audience regular journals appeared including: *ESR Review* (1998) on economic and social rights, *Local Government Law Bulletin* (1999), *Article 40* (1999), on juvenile justice, and *Gender News* (1999). A major achievement was the publication of *Socio-Economic Rights in South Africa: A Resource Book* (2000), edited by Liebenberg and Pillay, a plain-language guide for NGOs and CBOs on improving awareness of socio-economic rights and the different strategies that can be used to protect and provide these rights. Other lay publications, such as *Making Law: A Guide for Municipal Councils* (2000), appeared in five languages.

Despite the frenetic work in grounding its work in practice, staff members still produced a number of peer-reviewed articles, chapters in books, and books. The Centre was also one of the three founding institutions of the accredited journal *Law, Democracy and Development* (Butterworths) in 1997. The growing international standing of its researchers was reflected in the many publications in international journals and papers delivered at international conferences.

To give practical effect to its expertise, the Centre, as provided in its constitution, engaged in limited litigation, but only as an *amicus curiae*, a friend of the court. In 1994 Sloth-Nielsen gave expert evidence on the



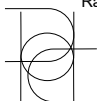
unconstitutionality of whipping as a punishment for juveniles, confirmed by the Constitutional Court in the *Williams* judgment (1995). The Centre also made submissions to the Constitutional Court in the *First Certification* judgment, defending the inclusion of socio-economic rights in the Bill of Rights. In 2000 the Socio-Economic Rights Project as an *amicus curiae* addressed the Constitutional Court on the justiciability of socio-economic rights in the celebrated *Grootboom* case, represented by Adv. Geoff Budlender from the Legal Resources Centre and a subsequent member of the Institute's Advisory Board. The Court expressly referred to the "detailed, helpful and creative approach" of this *amicus curiae* intervention.

With regard to teaching and training, the same dual approach was followed; while the Centre presented four LLM modules and graduated a number of students, it also hosted numerous workshops, training seminars and formal courses for stakeholders, government officials and practitioners. Standing out was the work of the Children's Rights Project in preparing practitioners for the new system of juvenile justice, which it had a dominant hand in shaping, and the Local Government Project's seminars for preparing practitioners for the introduction of a new local government system. On the academic front, the Centre also became a partner, along with the Universities of Ghana and Makerere, in the Master's Programme on Human Rights and Democracy, presented by the Centre of Human Rights of the University of Pretoria, a partnership that still endures. The Centre both lectured in Pretoria and received between five and six students to supervise their dissertations, a number of whom stayed on to do a doctorate in the Centre.

During this period in which Prof Cecil Abrahams was the Rector, the Centre operated very much on its own, as it was almost entirely self-funded. By 1995 there was at least an agreement with the Law Faculty that between a quarter and a half of the salary of the director would be paid by the University in exchange for teaching LLM courses. The only contact with the University administration was the Department of Finance, a source of much frustration because of the slow and poor service received.

New directions – 2001 to 2012

In celebrating the Centre's 10th Anniversary in 2000 a shift in emphasis occurred. As the Annual Report of that year recorded, "[i]t was no longer enough simply to draft sound policies and laws, although these are



FROM HOPE TO ACTION THROUGH KNOWLEDGE

obviously indispensable. Increasingly, the Centre's work is focused on the effective implementation and functioning of laws and institutions that are critical of human rights and democracy" (CLC, 2009: p. 3). A path more critical of government was set for the new millennium.

At this very juncture, Prof Brian O'Connell entered in 2001 as the Rector and Vice-Chancellor of UWC; he fully supported and encouraged the Centre along this path. There was a meeting of minds and objectives. Writing on the 20th anniversary of the Centre in 2010, he said that the Centre "epitomises everything that the institution [UWC] values. It produces new knowledge of the highest standard and that knowledge relates directly to the development of a keener sense of what it means to be human and how humans ought to relate to one another. Congratulations to CLC and long may it continue to serve UWC well and through it our very notion of humanity" (CLC, 2009: p. 1). It was on this very notion of humanity, personified by O'Connell himself, that he engaged the Centre on a regular basis.

When Dullah Omar sadly passed away in 2004, the Centre instituted an annual memorial lecture to pay tribute to his rich legacy on human rights and democracy. From the first lecture in November 2004, delivered by Bulelani Ngcuka, the former Deputy Director of the Centre, O'Connell, in opening the event, would engage the Centre and the audience on what it means to be human and respect others' humanity. At successive lectures he would raise, for example, the attack on ordinary people's humanity by the lawlessness of minibus taxies. When opening the Centre's conferences, he would remind us how humanity has evolved from expressing needs to aspirations, of what it meant to be human, asking where the Centre mattered in a society not yet fulfilling its constitutional destiny. He coaxed, he inspired.

A further Centre initiative which involved the Rector closely was litigating before the Constitutional Court and other courts as an *amicus curiae*. Driving the initiative was the Socio-economic Rights project, intent on securing the justiciability of socio-economic rights. Having to sign the court documents, the Rector was to be convinced of the correctness of the cause. When the Centre came to O'Connell on a number of occasions for his signature, he was fully supportive. He did, however, once ask wistfully: "Must you always be against the government?"



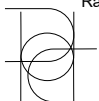
From the Community Law Centre to the Dullah Omar Institute

In 2001 the Centre approached O'Connell for his blessing in the case where the Treatment Action Campaign challenged the reasonableness of the Minister of Health's (and the President's) policy on HIV/AIDS. Against the background of the President questioning the link between HIV and AIDS, the Minister of Health adopted a policy in terms of which the use of the anti-retroviral drug Nevirapine, which reduces the transfer of HIV from mother to a new-born child, was restricted to only two test-sites in each province. O'Connell had no hesitation in signing the legal documentation, knowing full well that that the court case confronted official government policy directly. Not only did he trust our judgment, but was convinced of the correctness of the course of action. The Constitutional Court was of a similar view. Although the Court did not adopt our argument on a core minimum content of socio-economic rights, it found the government policy unreasonable and set it aside.

The critical and questioning tone also permeated the Centre's engagement with Parliament and national departments. Campaigns, in cooperation with NGOs and CBOs, were launched to get legislation adopted (for example, the Child Justice Bill, the Sexual Offences Bill), and the ratification of international treaties (for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR)), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and later the Optional Protocol thereto). It is safe to say that South Africa's decision to ratify the ICESCR (2015) and the Convention against Torture (2019) were fundamentally influenced by the Centre's sustained and collaborative advocacy.

In 2008 the Centre embarked on a dedicated parliamentary programme, in terms of which the Centre not only brought people to Parliament, but also campaigned on the importance of international human rights standards. The numerous engagements with Parliament's portfolio committees entailed not only grand policy, but the scrutiny of the nitty-gritty of legislative details.

With its commitment to the observance of international human rights instruments to which South Africa was a party, the Centre submitted shadow country reports to South Africa's official compliance reports. For example, on South Africa's compliance with the Treaty against Torture a critical shadow report was lodged on the continuation of corporal punishment in schools and the detention of children. In 2007 the Centre made submissions to the UN Human Rights Committee on areas of concern regarding South Africa's realisation of human rights.



FROM HOPE TO ACTION THROUGH KNOWLEDGE

The critical stance did not prevent the Centre from working with government, assisting on the drafting of policies and legislation, and increasingly on the monitoring of the legislation so drafted and adopted. The Centre assisted in the drafting of the Intergovernmental Relations Framework Act of 2005. On the adoption of the Child Justice Act of 2008, the Centre drafted regulations for its implementation and monitored their application. Also, Centre researchers served on various state committees and institutions. Steytler was appointed to the Municipal Demarcation Board (2004 to 2014).

The impact of policy papers, presentations and campaigns is not readily apparent. It took years of hard work to achieve results. The concern about children in trouble with the law, first expressed in 1992, only found fruition in 2008 when the Child Justice Act was eventually adopted by Parliament. Much of this can be attributed to the Centre, which coordinated the Child Justice Alliance, a network of over 400 NGOs and institutions concerned with children. Another example was the Sexual Offences Act, which took many iterations and much prompting before it was adopted as well in 2008.

Building on its domestic expertise, the Centre was increasingly drawn into work elsewhere in Africa, bringing the South African experience further afield. The joining in 2005 of Lukas Muntingh and the Civil Society Prison Reform Initiative (CSPRI), also dealing with criminal justice in general, intensified this focus. Most often the activities were at the request of international agencies and NGOs, such as Unicef, UNDP, the World Health Organisation (WHO), International Labour Organisation (ILO), the Special Rapporteur on Extreme Poverty, the UN Office on Drugs and Crime Prevention, Save the Children, and the Forum of Federations. All contracts required the Rector's signature, which O'Connell smilingly gave with words of encouragement. The work covered the Centre's spectrum of expertise and a wide array of countries: Burundi, Botswana, Cameroon, Democratic Republic of Congo, Ethiopia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Nigeria, Rwanda, South Sudan, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

Through this work the Centre also became involved on an institutional level in continent-wide bodies. After years of participating in the proceedings of the African Commission on Human and Peoples' Rights proceedings in The Gambia, the Centre was granted observer status and later signed a cooperation agreement with the Commission in terms of which the



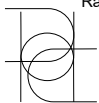
From the Community Law Centre to the Dullah Omar Institute

Centre would provide research support (only the second such agreement with a university). In the area of children's rights, Julia Sloth-Nielsen and Benyam Mezmur were elected in 2007 to the Committee of Experts of the African Charter on the Rights and Welfare of the Child, with Mezmur becoming the chair of that committee in 2012.

Mezmur's election to the UN Committee on the Rights of the Child in 2012 and his subsequent election as Chairperson of said Committee in 2016 were the highlight in the Centre's growing stature on the world stage. Lilian Chenwi participated in the drafting of the Optional Protocol on the ICESCR. Steytler was elected as the president of the International Association of Centres for Federal Studies (2010-2016).

In this period the academic component of the Centre expanded to include a strong doctoral programme. Through the appointment of doctoral scholars the necessary funding was provided to give financial support to an increasing number students from elsewhere in Africa. Some of the graduates proceeded to high academic office: Danwood Chirwa (Dean of UCT Law Faculty); Christopher Mbazira (Dean of the Makerere University Law Faculty); Yonatan Fessha (Professor of Law, UWC); John Mutakha Kangu (Dean of Moi University's Faculty of Law); and Zemelak Ayele (Director of Centre of Federal and Governance Studies, Addis Ababa University). Later specific funding was raised for such doctoral bursaries. To ensure a steady throughput rate, the Centre and the Law Faculty initiated doctoral colloquia in 2011 at which students presented chapters and proposals to a critical audience. Also, a fully-fledged master's course on Multilevel Government was presented from 2009. An annual module on decentralisation was also given to doctoral students of the Centre for Federal and Governance Studies at the University of Addis Ababa.

Financially an important shift took place; to keep the Centre financially sustainable it was increasingly becoming reliant on competing in the open market for contracts from government and international organisations. In 2010 nearly half of the income came from such tenders. This created the inevitable tension between the financial sustainability of the Centre (contract research also setting the research agenda) and the academic enterprise (publications and teaching). The one-year contracts and the often impossible burden of doing research, advocacy and raising funds simultaneously often led to top researchers leaving for more secure positions in academia or government. Sloth-Nielsen and Jackie Gallinetti took up full-time positions in the Law Faculty at UWC, Liebenberg was appointed as the Human Rights professor at Stellenbosch University,

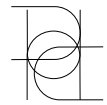
FROM **HOPE** TO **ACTION** THROUGH **KNOWLEDGE**

Chenwi an associate professor at the University of the Witwatersrand (Wits), and Sibonile Khoza a director in the Western Cape Government. Even when they left, some continued working with the Centre as research fellows, such as Sloth-Nielsen, Gallinetti and Yonatan Fessha. The most celebrated research fellow was, of course, Kader Asmal, who after 14 years in Parliament, 10 of which as a cabinet member, returned to UWC in 2008 as an Extraordinary Professor and Research Fellow of the Centre to continue his work as a public intellectual.

Yet, despite the odds, the Centre managed to maintain a high level of academic publications in accredited journals, chapters in books, monographs and edited volumes. Also, some researchers received recognition of their academic standing; the National Research Foundation accorded Liebenberg (2003) and Steytler (2004) a B-rating, signifying considerable international recognition, while Sloth-Nielsen (2003) and De Visser (2009) received a C-rating (the latter two becoming B-rated in due course). Despite the fact that all but the Director were on one-year employment contracts, the University slowly recognised the value of the researchers and, where appropriate, accorded them professorial status (Jaap de Visser as Associate Professor in 2007, Lukas Muntingh, Associate Professor in 2012).

When De Visser was given a full professorship in 2011, the University chipped in with a full salary as well. This crucial change in approach towards the Centre came with the appointment of Prof Ramesh Bharuthram as Deputy Vice-Chancellor (DVC) Academic, who steered UWC towards becoming a research-led institution. This shift was significant for the Centre, because, although already research-oriented, it received further support and encouragement from the University. The Centre received a second fully funded post, referred to above. The DVC assisted where he could through quick decisive decisions on funding matters. Most importantly, he initiated the process by which the NRF awarded to UWC and the Centre the South African Research Chair in Multilevel Government, Law and Development, and the elevation of the Centre to an institute (see below).

When the SARChI Chair was awarded to Steytler in 2012, commencing in 2013, it brought to an end his 18-year directorship. Jaap De Visser, already established as a senior member of the Centre, applied for the post and was appointed as the new director on a five-year contract. As Steytler predicted, the new incumbent, with a linkage to the Centre dating from 1998, “brings a vital renewal of energy, innovation and enthusiasm that will



not only ensure the continuation of the Centre under a difficult financial climate, but will also take the Centre to greater heights in its quest to realise its mission” (CLC, 2012: p. 4).

Becoming the Dullah Omar Institute – 2013 to the present

In 2013 a comprehensive review of the Faculty of Law was undertaken. The Review Panel, comprised of external and internal experts such as Prof Reddy (UKZN), Prof Hugh Corder (UCT) and Prof Julian May (UWC), recommended that “[t]he CLC seriously considers changing its status from being a Centre to becoming an Institute”. The University Research Policy considers a research unit of the University eligible for the status of Institute if a number of criteria are met. For example, the unit must conduct interdisciplinary and collaborative research that aligns with University and national priorities, house academics with an international reputation, conduct postgraduate supervision, maintain high levels of external grant income and research productivity, etc. The Panel also hinted that the Centre should think about whether its current name should be retained or not.

The Centre set out to implement this recommendation as it believed firmly that it qualified for the Institute status. Its consistent focus on rule of law, human rights and democracy, its influence on law, policy and institutions in South Africa and elsewhere on the continent, and its impressive record of research outputs and postgraduate throughput, all served to satisfy the University’s criteria.

In June 2014 its Board of Trustees, then chaired by Prof Renfrew Christie, endorsed a comprehensive application to the University for Institute status (De Visser, 2014). Furthermore, it resolved to amend the Centre’s Constitution, which had remained unchanged since 1989, to enable the change in status. A key aspect of the amendment to the Constitution was a name change. The Board resolved to change the name of the Community Law Centre to the Dullah Omar Institute for Constitutional Law, Governance and Human Rights.

The name change was primarily informed by two factors. First, the current name, while perfectly embodying the spirit of the Centre’s effort to make law serve the community, also at times led people to the wrong assumption that the Centre provided legal representation to the indigent. Secondly, the name change represented an opportunity to unequivocally

**FROM HOPE TO ACTION THROUGH KNOWLEDGE**

attach the Centre's mission to the values that Adv. Dullah Omar stood for, and which had resonated through O'Connell's leadership of the University. The momentum towards attaining institute status and the upcoming 25th Anniversary presented a perfect opportunity to honour the Centre's founding Director. Mrs Fareda Omar and other members of the Omar family graciously allowed the Centre to make Adv. Dullah Omar's name part of the organisation's DNA.

Towards the end of 2014 the University Senate and Council resolved to approve the Centre's application and adopt its revised Constitution. This Senate meeting at which the application was presented to the University's professoriate was one of the last ones to be chaired by O'Connell as the end of his term approached. On 19 August 2015 Mrs Omar, in the presence of the Minister of Justice and Correctional Services, Mr Michael Masutha, unveiled the new name and logo on the steps of the Dullah Omar Institute (DOI) (Figure 12.1).

By this time Prof Tyrone Pretorius had assumed office as the new Rector and Vice-Chancellor and it was clear that the newly baptised Institute would continue to be supported and inspired by the University Executive. The Institute's anchoring in the University further intensified, as evidenced by the Rector attending DOI Board meetings, for the first time since Gerwel's times, and positively engaging in charting the Institute's strategic direction and administration. O'Connell's stewardship, also *vis-à-vis* the Institute, was secured in Pretorius taking over the baton. In the same vein as O'Connell had sustained Dullah Omar's legacy of responsibility and empathy, Pretorius used every opportunity to instil those very same values in the DOI. For example, in the wake of the Fees Must Fall Movement, he called on the DOI to engage with social justice challenges on campus. He urged the Institute to do whatever it could to preserve and follow through on its rich legacy and he never ceased to affirm that UWC is the home of the Dullah Omar Institute.

Encouraged by the Rector's commitment, the Institute remained steadfast in the past five years in pursuing research-led engagement with law and public policy. A number of trends defined these years.



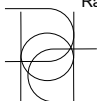
From the Community Law Centre to the Dullah Omar Institute



Figure 20.1 Mrs Fareda Omar unveiling the plaque, in the presence of the Minister of Justice and Correctional Services, Mr Michael Masutha, at the launch ceremony of the Dullah Omar Institute on 19 August 2015.

First, the Institute increasingly heeded the call, mentioned earlier, of one of its founding Board members, Ms Lucy Nyembe, for greater interdisciplinarity. Statistical, political and public management analysis is increasingly woven into the Institute's research, and its staff and student members are no longer exclusively lawyers.

Secondly, no longer modest in size, the Institute now houses close to 40 staff and student members. In line with Omar's and O'Connell's emphasis on internationalisation, its composition is now decidedly international, and staff and students hail from more than twelve different countries. More importantly, many of its programmes and activities take place outside of South Africa, with the Institute having a consistent presence in countries such as Ethiopia, Kenya, Malawi, Mozambique, Uganda, Zambia and Zimbabwe.

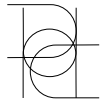


Thirdly, the academic output remains high. Over the past five years the Institute produced an annual average of three books, 15 chapters in books and 16 accredited journal articles. Its members also consistently ensured postgraduate supervision with between one and four doctoral degrees conferred annually on students supervised in the Institute. The vast majority of these doctorates were converted into books.

Fourthly, its influence continues to be felt in many different ways. The dark years of the Zuma presidency signalled a serious threat of South Africa slipping on its commitment to human rights and the rule of law. The Institute stepped up its advocacy and joined (and sometimes led parts of) a chorus of civil society institutions, calling government to account for governance and human rights failures. Furthermore, members of the Institute deliver more than 70 presentations annually, making critical research-led contributions in the pursuit of social justice at a myriad of national and international fora. The Institute leads, or participates, in many local and international civil society alliances and campaigns on matters such as civil society engagement in legislatures, sexual offences courts, special housing needs and the decriminalisation of petty offenses. Innovative research, such as the statistical analysis of the distribution of police resources, impacted on the subsequent trajectory of litigation and policy change.

Conclusion: a mutually supportive relationship between the Institute and the university leadership

The relationship between the University leadership, on the one hand, and the Centre/Institute, on the other, was dynamic, depending much, however, on the person of the rector, going through cycles of engagement and distance. The Centre's inception was the product of the visionary leadership of Jakes Gerwel, who foresaw the need for an organisation which had to meet the constitutional and legal challenges of the day through both practical engagement and academic excellence. While keeping an interested eye on the Centre, giving it a 'free hand' meant that the staff could give full effect to their mission and enthusiasm. Community work was not frowned upon as deviating for the academic enterprise, but as enriching the latter and advancing the University's mission of being an engaged institution of higher learning.



From the Community Law Centre to the Dullah Omar Institute

The Centre's mission and enthusiasm carried the Centre through the years of the Abrahams rectorate. The distance and disconnect between the Rector and the Centre did not hamper the pursuit of the Centre's goals, as it could rely on other institutions and persons in the University hierarchy, notably the Dean of Research, Renfrew Christie as chairperson of the Board of Trustees, and a succession of law deans.

The value of an engaged rector then emerged in stark contrast with the preceding years. Brian O'Connell not only steered the anchor University to which the Centre was so rewardingly connected, but he also continuously inspired the leadership, staff and students at the Centre to combine academic rigour, empathy and discipline to improve the lives of fellow human beings. As a meeting of minds and objectives, it becomes a mutually supportive relationship. As before, the Centre retained its 'free hand', but then joined with that of O'Connell's, gaining much needed financial and institutional support.

The same relationship emerged with Tyrone Pretorius, who enjoined the then renamed Institute to assert its role as flagbearer of evidence-led human rights advocacy, not only in society but also on the campus where it is located. Assured of the University's commitment to its cause and sustainability, the Institute will thus continue to influence people and organisations towards social justice, through engaged research.



References

- Community Law Centre. (1993). *Board of Trustees Minutes of Meeting*. 23 March 1993. Bellville: University of Western Cape.
- Community Law Centre. (1990). *Annual Report*. Bellville: University of Western Cape.
- Community Law Centre. (1991). *Annual Report*. Bellville: University of Western Cape.
- Community Law Centre. (1994). *Annual Report*. Bellville: University of Western Cape.
- Community Law Centre. (2001). *Annual Report*. Bellville: University of Western Cape.
- Community Law Centre. (2012). *Annual Report*. Bellville: University of Western Cape.
- De Visser, J. (2014). Application in terms of section 3 of the University of the Western Cape's Research Policy for the Establishment of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights to replace the Community Law Centre. Bellville: University of Western Cape.
- Gerwel, J. 1 (987). Prof Jakes Gerwel, Inaugural Address at his installation as the Rector and Vice Chancellor of the University of the Western Cape. Bellville: University of Western Cape. 5 June 1987.
- Murphy, J.R. (1989) *Memorandum to Community Law Centre Working Group*. Bellville: University of Western Cape. 11 September 1989.
- Omar, D. (no date) Letter addressed to Prof G.J. Gerwel. Bellville: University of Western Cape.