DIGNITY AND UBUNTU: EPITOME OF SOUTH AFRICA’S SOCIO-ECONOMIC TRANSFORMATION

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Abstract

This article presents the overarching influence of dignity and Ubuntu in promoting South Africa’s socio-economic transformation. It illustrates how these doctrines embedded strong moral theory that guided transition from apartheid. Dignity has been instrumental in developing human rights, where as Ubuntu provided moral and philosophical basis upon which claims on socio-economic rights would be predicated. The theory of Transformative Constitutionalism is used to explain how Ubuntu influenced the law in the Constitution, to inherently be responsive to the call of restoring dignity to alter social and economic injustices inherited from the past. This became pivotal in shaping public policy that sought to safeguard people’s freedoms to develop their own capabilities. The Constitutional Court has used socio-economic entitlements of access to housing, health care, social security and education to build model jurisprudence that heralded how Ubuntu permeated into constitutionally established normative framework aimed at serving our humanity better. Thus, it is asserted that all programmes that seek to advance social and economic transformation should deploy Ubuntu as it proffers strong ethical and philosophical basis whose attributes are exceptional in preserving human worth.

Keywords: Dignity, Ubuntu, Socio-Economic Rights, Transformation, Human Development.

1. Introduction

Two decades ago, South Africa’s advent of democracy culminated in the country becoming a human rights respecting state. The constitutional inclusion of socio-economic rights as justiciable entitlements highlighted how urgent it was to alter material conditions of social-economic deprivations and forge human development (Liebenberg, 2010b). This symbolized transformation of its own kind, propagated through key concepts of ‘dignity and
Ubuntu’. These principles featured with prominence at the centre of reconciliation and reconstruction agendas, which needed to urgently address social and economic challenges inherited from the past. Thus, the 27th of April 1994 stand out in history as that moment which officially ushered in a long-awaited egalitarian dispensation when first democratic elections were held. This had to facilitate bringing an end to long standing strife, discrimination and disenfranchisement of African people which made the apartheid regime hold dismal human rights record (Sarkin, 1999). This transition brought hopes especially with regards to restoration of human dignity and humanitarianism among a people, ideals fundamentally driven through the philosophy of Ubuntu.According to Fox (2001: 275), these ideals are human rights based, politically sensitive and geared towards strengthening those forces that bring harmony and social cohesion. These are also discernible in section 1(a) of the Constitution of the Republic of South Africa, 1996 (hereinafter, the Constitution), which thus provides that…

‘South Africa is founded on the values of human dignity, the achievement of equality and advancement of human rights and freedoms’.

Most importantly, the transition entrenched a progressive normative value system premised on constitutional supremacy which would be human rights sensitively obligating state to respect and protect human rights. Section 2 of the Constitution provides that…

‘the Constitution is the supreme law of the Republic; any law or conduct inconsistent with it is invalid, and all obligations imposed by it must be fulfilled’.

Proponents of human rights theory emphasized that the 1994 transition founded dignity based human rights frameworks, in accordance with the principle of Ubuntu (Mandela, 1996; Sarkin, 1999; Hongju Koh, 1999; Sunstein, 2001; Liebenberg, 2010a; Human Rights Watch, 2014). Ubuntu demands respect for human dignity regardless of any outward appearances (Buqa, 2015). It is Africa’s humanist thesis against human suffering. Hence, notions of dignity, humanitarianism and Ubuntu constitute philosophical basis upon which to create dependable social and economic transformation which safeguards human well-being. It was envisaged that an appropriate incarnation of these ideals would normalize society in social, economic and political realities, and also revive shared moral discourses fractured by apartheid. The right to dignity was lengthily canvassed in Carmichele v Minister of Safety & Security 2001 (4) SA 938 (CC): 45, where the court stressed that dignity is core to South Africa’s normative value system. That is why human rights successes are said to depend on dignity as the yardstick upon which all others rights rests (Rapatsa, 2015: 51). In Stransham-Ford v Minister of Justice and Correctional Services and Others (27401/15) [2015] ZAGPPHC 230, Fabricius J authorized ‘euthanasia’ or ‘assisted suicide’, the withdrawal of life sustaining medical treatment over a terminally ill patient, with intents to end the undignified suffering plaguing him due to stage 4 terminal cancer. The court held that this was necessary to preserve the patient’s dignity.

The International Bill of Rights (the Universal Declaration of Human Rights, 1948–(UDHR), the International Covenant of Civil and Political Rights, 1976 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, 1976(ICESCR), also founded overarching framework in defence of human dignity. The basis for the universality of human rights theory also derives from its quest for securing dignity of all persons (Du Plessis, 2010). This can be discerned from every sphere of public dialogue or commotion, where invoking human rights is always predicated on dignity (Bagaric and Allan, 2006).

Central to shaping moral discourses, concepts of Ubuntu and humanitarianism espouses amongst human race; care, love, compassion and interdependence, biased particularly in favour of vulnerable groups. It entails that we ought to multiply our efforts to enable under-privileged groups to lead normal lives. They underpin the need to create enabling circumstances for humanity to thrive with ease. These are attitudinal theories
of life, whose successes largely depend on how humans interact and reach out to each other. Expressing Ubuntu and humanitarianism is not supposed to be circumstantial. It is anticipated of everyone to uphold and live by these values at all times.

2. Rationale and methodology

The object of this article is to stress that South Africa’s (and Africa’s) expression of human rights would be without any force if it does not recognize the philosophical and ethical strengths offered by Ubuntu. It stresses that Ubuntu has the power to enhance dignity, evidenced from the fact that it was used to entrench justiciability of socio-economic rights. It also illustrates that the interaction between dignity as the yardstick of rights narratives and Ubuntu as a community interactive ethic play an essential role in giving meaning and philosophical basis to foundational constitutional values. It reveals why South Africa’s human rights scholars and humanitarians cannot deliberate on human rights without giving regard to dignity and Ubuntu. By focusing on dignity and Ubuntu, we do not claim that other rights and values are not capable of expressing solid commitment to socio-economic development. Rather, we see this as an opportunity to recapture the crucial role played by Ubuntu in enabling the Constitutional Court to, in practical terms, give impactful meaning to socio-economic rights. Although written from a South African perspective, it also borrows from international discourses that conceptualized human rights theory, and dignity as virtue. The article adopts a descriptive approach and is qualitative in nature. It argues that these values are key to the teachings of second generation rights, also known as socio-economic rights. Content analysis strategy was used to analyze data from written texts, including laws, policies and scholarly journal articles.

3. Meaning of dignity and Ubuntu

The absence of universally accepted definition of dignity explains the daunting task of defining the concept. Shultziner (2003), a linguist, stated that dignity is eclectic and ambiguous, and lacks precise definition. But because dignity is traded as a hallmark of human rights, a common understanding on what it means is indispensable. Its meaning can be discerned by describing it. Dignity signifies human worth, an idea that no one should be stripped of self-worth, subjected to abuse, degradation, torture, harassment and/or neglect of any kind threatening one’s dignity. It is concerned with respecting and protecting personhood. This justifies an exceptional position of man in nature’s creation, whose entitlements feeds off the outrage of the humiliated at the violation of one’s dignity (Habernas, 2010). It is about worthiness or excellence attributed to humans by virtue of being humans. It is an intuitive humanist imperative (de Grunchy, 2011).

Ubuntu/Bothois embraced as a philosophy of life, common amongst African nations (although continuous changes in patterns of life have affected and disintegrated a lot of values in Africa). When translated, it means ‘humanness’, that ‘mothokemothokabatho’, which literally means, ‘a person is a person through others persons’. It is traditionally based on the conception that ‘I am a person because you are; that I cannot separate my humanity from acknowledging your humanity’ (Sachs, 2012), which Tshoose (2009) describes as a way through which Ubuntu encourages group solidarity. It is regarded as a social value upon which humanitarianism derives its strength (Nussbaum, 2003), which evolves on the resolve of providing humanitarian needs, where well-being of humans, free from strife and conflict is a priority. Ubuntu articulates social interdependence and a profound community-based interactive ethic where our humanity is shaped by our interactions as co-dependent beings (Letseka, 2011). Kamwangamalu (1999) posit Ubuntuas a pan-African concept which
represents the core values of African ontologies which includes respect for humans, human
dignity, the need for humility, interdependence and communalism, and augment social
solidarity. At large, the essence of Ubuntu lies in the recognition that it is impossible to build
a healthy community at peace with itself unless every member of the community has their
human dignity respected and protected (Murithi, 2007).

4. Theoretical framework

South Africa’s experience attests that sustaining a consensus that dignity and Ubuntu
are values that are inherently predicated on achieving well-being, substantive justice and
human development is vital. From the outset, it became ostensibly clear that the post-1994
dispensations had to achieve restoration of human dignity, and the notion of Ubuntu would
be instrumental in that pursuit. This meant that appropriate choice in terms of systems of
governance mattered immensely. Further that South Africa had to embrace an appropriately
conceptualized normative value system in constitutional law terms. Amongst central
imperatives, such a system had to possess strengths of conveying connotations that would
inherently preserve human worth. It mainly had to augment the pursuit of essential pillars of
dignity, which is inclusive of ensuring that people had access to clean water, sufficient food,
shelter, health care, education, personal security, healthy environment and job opportunities,
(Diczfalusy, 1997), all of which are geared towards securing people’s well-being. These
factors are indispensable in determining quality of life and happiness, which is often
inherently dependent of sound and stable socio-economic development.

It is for this reason that dignity and Ubuntu are given special positions in the
Constitution because happiness and quality life defines prospects of the governed in any
democratic setting. But entrenched human entitlements in the form of rights through the Bill
of Rights alone would not have been enough. Based on its historic power, Ubuntu had to
infuse into the mainstream legal discourse, to buttress efforts of restoring and giving new
meaning to dignity in expressive terms. Thus, through the Constitutional Court jurisprudence,
dignity and Ubuntu expressed the desire to give rise to a national feeling of social and
economic justice. Subsequently, the system subscribed to constitutionalism, with its
foundational values being constitutional supremacy, and principles of democracy, separation
of powers, the rule of law and checks and balances. It entailed that government derived its
authority from the Constitution, and government actions could only be executed within the
confines of stipulated rules (Burns, 2003; Currie and De Waal, 2005). All government
actions, especially those affecting people’s rights and interests, needed to be justified, which
means that functionaries exercising government administrative actions need to refrain from
acting arbitrarily. The constitutional supremacy ensured that constitutionalism founded a
rights-based administration with clear goals of transforming society from a deeply divided
past.

Upon accepting constitutionalism as the basis upon which the new system was
founded, then came the need to formulate theoretical connotations to provide transformative
direction in legal, political, philosophical and constitutional law perspectives. Given that the
Constitution carried the duty to transform the country, Karl Klare (1998) coined what he
termed ‘Transformative Constitutionalism (TC)’ expressing core normative ethos and socio-
economic objectives that were being pursued. Klare’s theoretical connotations are crucial in
locating the place and role of dignity and Ubuntu in the whole project of socio-economic
transformation. Especially because these developments were adventurous attempts to respond
and heal past atrocities that violated dignity, and in the extreme, excluded majority of people
from asserting and benefiting their dignity(Habermas, 2010: 464). Hence, it is crucial to
continuously engage this area to ascertain the capacity of legal norms to alter social affairs.
Klare theorised TC as a ‘long-term project of constitutional enactment, interpretation and enforcement committed to transforming a country’s political, legal and social institutions, and power relations in a democratic, participatory and egalitarian direction’. This theory added impetus to judicial activism resulting in extensive jurisprudence on socio-economic rights matters. It also enhanced extensive academic discourses on social, economic, constitutional and political developments, and campaigns for social justice and substantive equality. And in accordance with Ronald Dworkin’s (2001) interpretation theory, TC offers wide opportunities for us to put the Constitution in its best light by encouraging interpretations that resonate ideals of the country’s socio-economic transformation agenda (Van Marle, 2009), which is largely premised on redressing past injustices and guiding the nation to a better future (Langa, 2006). It implored state to devise and implement measures to redress the legacy of apartheid, whilst also addressing modern forms of subordination that hinders realization of dignity to vulnerable groups (Liebenberg, 2010a).

Klare tasked TC with core functions of helping the nation cure historic human rights violations that severely trampled on the dignity of persons (Ndangwa, 2004), caused by unjust legal system that inhibited discursive human rights developments (Sarkin, 1998). To achieve the goal of transformation, TC ought to restore dignity by aiding to eliminate poverty and inequalities, and thereafter inculcate a culture of respect towards the Bill of Rights. It similarly encouraged state to promote and faithfully observe international human rights norms and standards (Mandela, 1996).

Capable of being deduced from TC are two key aspects of transformation. First, it is that function of giving new meaning and form to political governance system, and secondly, the process of changing the nature of relationship between state and its citizens. These it achieved by embedding new legal norms grounded in law, which is also attributed to willingness by the leadership to recognize and domesticate established human rights international norms and standards as propounded upon by Risse and Sikkink’s (1999) in their socialization of norms. This process became inevitable because South Africa needed to reintegrate into the global world following decades of isolation and sanctions owing to apartheid, in which case established norms had to be afforded space to help reimagine domestic law reforms. In the process, the Constitution adapted to monism and dualism theories. Section 231(2) & (4), is evident of dualist approach when it states that international agreements only become law in the country upon such enactment into law through national legislation, while reiterating the Supremacy of the Constitution in section 2. Monism is deducible in sections 231, 232 & 233 that recognizes that certain customary international laws transcend national laws without approval of the National Assembly. It is for these reasons that South Africa’s human rights discourses adapt to socio-economic transformation ideals that enables judiciary to serve as their prime custodians. Thus, TC compartmentalized human rights jurisprudence in line with international Bill of Rights. These constitutional developments ensured that Ubuntu permeates the law, enabling restoration of human dignity.

An extensive look at TC reveals an indisputable fact that TC engaged in rigorous legal and political processes that largely focused on what state ought to do for its citizens based on the nature of the relationship arising thereon. But to realistically achieve comprehensive socio-economic transformation, it might be necessary to move beyond promises made through the law. It means socio-economic transformation should not only be limited to state action. This indicts the need to employ a theory with supportive philosophical basis concerning what constitutes well-being, welfare and quality of life, and how these could be achieved. Perhaps, invoking Capabilities Approach (CA) could assist to fill this gap.

CA was first conceived by Amartya Sen during the nineteen-eighties, and has thenceforth been expanded by Martha Nussbaum. Sen (1992) described capabilities as a set of vectors of functionings, reflecting the person’s freedom to lead one type of life or another…
to choose from possible livings. It has since been relied upon to evaluate well-being, essentially being used to address socio-economic problems like poverty and malnourishment affecting previously disadvantaged groups in particular. A consistently ever-present feature in works of Sen’s CA is the promotion of human well-being and human development (Clark, 2005). Nussbaum’s version of CA became a unique version of human rights (Nussbaum, 2007), aimed at guiding states’ formulation of social policy on socio-economic challenges. Nussbaum created a list of central capabilities in accordance with the rights language, with the view to reinforcing the power of rights language to afford people basic amenities they need to be capable of functioning in all human ways imaginable. This resulted in states being stimulated to entrench the justiciability of socio-economic rights whose realization is fundamentally interlinked with securing well-being. Because of its close relations with the idea of human rights (Sen, 2005; Nussbaum, 2011), and given South Africa’s past of vast socio-economic disparities, CA promises to provide a greater interface between legally orientated transformative processes and socio-economic issues. Nussbaum’s approach created a robust connection between people’s basic needs for subsistence and constitutional principles founded on dignity and Ubuntu. Her concrete goal being that, material conditions should be altered to enable people exercise their freedom of choice in terms of how to improve their socio-economic conditions.

5. The Constitution and its socio-economic transformation ideals

The problem of socio-economic deprivations that bedevilled the country for decades prompted the drafting of the Constitution to be a conscious exercise, taking the past into account to an extent of including provisions and enforcement mechanisms that would be sensitive to conditions of indigent people and their well-being. This eventually ushered in a distinct paradigm shift that enumerated robust state responsibilities regarding human rights. It was essential to ensure that the Constitution is meaningfully responsive and addresses welfare problems faced in ordinary political life (Sunstein, 2001: 3).

Chapter 2 containing the Bill of Rights was entrenched, creating a system of vertical and horizontal relations between the state and private persons (De Vos, 2002: 243), wherein each bears own entitlements and obligations. Because of the urgent need to resolve socio-economic inequalities, section 27 enshrined socio-economic rights. Such a brave inclusion of second generations rights, going as far as making them justiciable, is what wedescribe as a strategy to embed the Constitution’s transformative socio-economic disposition, which is based on alleviating and/or eliminating human suffering. The essence of the Constitution’s transformative disposition is to pro-actively serve humanity and prevent humanitarian crises. The state is also obligated to respect, protect, promote and fulfil all these rights in the Bill of Rights, with emphasis being on dignity of persons, the right to equality and enjoyment of fundamental freedoms. Therefore, claims on socio-economic rights may be enforced through substantive judicial processes, effectively signifying that courts are empowered to hold the state to account for socio-economic rights in line with humanitarian objectives. Notable socio-economic rights include the right to education, health care, housing, food, water and right to social assistance aspects which feature largely on Nussbaum capabilities list.

As indicated, the Constitutional Court has been influential in building a rich jurisprudence on socio-economic rights which it achieved by employing dignity as a value and as a right. In Dawood v Minister of Home Affairs 2000 (3) SA 936 (CC): 35, the Court held that ‘the significance of human dignity is a value that informs the interpretation of all other rights’. Different approaches were used to adjudicate disputes arising out of socio-economic rights. These include methods such as reasonableness approachand minimum core
approach. Amongst the widely celebrated jurisprudence canvassing socio-economic rights, issues of access to education, housing, social security, water and health stand out.

First on the list is the right to access to (basic) education, which Sen and Nussbaum also recognizes as crucial basic capability, a necessity to human development. Nelson Mandela stressed the importance of education as “the great engine of personal development”. Its constitutional entrenchment meant that the state would be required to ensure support for every person of schooling age especially in instances where such persons lack the means to fund their education. The sad reality is that, against the constitutional wishes of guaranteeing everyone accesses to education, the right is still not being fully enjoyed by all. This is discernible from the case of Section27 and Others v Minister of Education and Another (24565/2012) [2012] ZAGPPHC 114 in which the government failed to deliver textbooks to affected schools and learners notwithstanding the High Court ordering same. Kollapen J lamented the department’s failure as deprivation of basic capability in breach of persuasive constitutional obligation regarding the right to basic education. This diminished children’s prospects of a better future as productive adults (Dieter-Beiter, 2006), because education is indispensable for future enjoyment of other rights (Brand and Heyns, 2005) including protection of dignity. Children’s future capability of freedom to choose what to do and what to be also fell out of place, inadvertently constraining intrinsic chances to attain good life.

Access to social security (state’s provision of cash or in kind benefits to indigent people) features among key socio-economic rights. Section 27(1)(c) thus provides that… ‘everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance’. Social assistance is dispensed in the form of social grants, means-tested cash transfers, that include child support grant, old age grant, disability grant, foster care grant, care in dependency grant and war veterans grant. This right was canvassed in Khosa & Others v Minister of Social Development 2004 (6) SA 505 (CC): 111, and Saleta Mahlaule & Another v Minister of Social Development CCT13/3 (2004) where it was held that state’s provision of social assistance avert destitution and therefore helps to protect people’s dignity and equality, expressing the compassionate plea of Ubuntu. State is required to put in place measures that enable the reach by ‘everyone’ who needs such state interventions.

Also on the list is the right to adequate housing. This was expansively dealt with in a landmark case of The Government of the Republic of South Africa v Groothoom 2000 (11) BCLR 1169 (CC): 14, 15 & 23. This case canvassed Ubuntu premised empathy that people living under squalid conditions are effectively deprived of their dignity, and often experience humanitarian threats on a daily basis. It was held that the state ought to provide adequate housing to people in desperate need. This is perceived as giving real meaning and substance to foundational values advancing transformative agenda of socio-economic rights jurisprudence (Liebenberg, 2010a). Yacoob J emphasized that to report progress on the right of access to housing, imperatives on the right to dignity should be given attention. The unfortunate tale is that Mrs Groothoom died eight years later, yet homeless, penniless and with compromised dignity.

The right to health care is also central to socio-economic rights. Deprivation of good health adversely impact on a variety of other human capabilities (Dixon and Nussbaum, 2011). Hence, the right to health care also occupy prime position on the list of socio-economic rights. This was illustrated in Soobramoney v Minister of Health (KwaZulu-Natal) 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696, in which the Constitutional Court dealt with the right to receive emergency medical services, the right to access health care services and the right to life. Although the relief sought was not fulfilled, the court adopted ‘reasonableness approach’ and emphasized that the state must provide emergency medical
treatment to patients exposed to sudden medical catastrophe depending on availability of resources. In *Treatment Action Campaign v Minister of Health* 2002 (4) BCLR 356 (T), the Constitutional Court ordered the state to provide *niverapine* to patients in order to prevent mother-to-child-transmission of Human Immunodeficiency Virus.

The right of access to sufficient water (section 27(1)(a)) was dealt with in *Mazibuko & Others v the City of Johannesburg & Others* (CCT 39/09) [2009] ZACC 28; 2010 (4) DA 1 (CC). The Court reasoned in accordance with reasonableness approach. It was held that the City is obliged to take reasonable measures progressively to ensure achievement of the right to water. It expressed how sensitive state ought to be towards indigent people (Heleba, 2011: 25), recognizing the use of human rights as a means to advance social and economic transformation (Bond and Dugard, 2008).

This jurisprudence illustrates how courts have been actively involved in shaping socio-economic rights. It demonstrates that there was a strong connection between socio-economic rights and questions relating to what people are able to do and to be. Thus, the inclusion of these rights as justiciable predicated the foundations upon which issues of human development and realization of capabilities would materialize.

6. Conclusion

This article intended to demonstrate that dignity as a right and as a virtue is predicated on both philosophical and ethical connotations of the principle of Ubuntu. Constitutional protection of dignity ensures that no one is devalued or treated in a degrading or humiliating manner (Chaskalson, 2002: 137). This was revealed to be the central injunction of the right to dignity, which is to affirm the intrinsic worth of humans and their interdependent interactive characteristic. The article reveals that Ubuntu manifests in many ways, with its intuitive strength being tolerance and the ability to be expressed by individuals themselves or collectively by a community. This power is what delivered to the nation, a unique transition from apartheid to democracy. Albie Sachs (2012) recalled that in spite of years of suffering, being dehumanized, humiliated, tortured and subjected to injustices, majority of African masses in South Africa never lost their sense of Ubuntu. They believed and still do, that co-existence and interdependence is possible, all to preserve human dignity. Dignity and Ubuntu gave impetus to ideals of Transformative Constitutionalism, to facilitate the process of burying wounds of the past, and build a better future for all. This founded strong normative framework meant to uproot socio-economic and humanitarian challenges afflicting indigent people in particular. The Constitutional Court is commended for its historic role of embracing Ubuntu to enforce and give meaning to socio-economic rights, particularly because many people still face difficulties when it comes to asserting and enforcing these entitlements.

Thus, we believe that every state’s attempts to advance socio-economic transformation and human development should deploy Ubuntu and dignity at the forefront. Similar pro-active approaches should be adopted by Non-Governmental Organizations and other stakeholders that are sympathetic to the course of bettering people’s humanitarian needs. Ubuntu posits that nothing is impossible when the nation shares common goals and compassion for humanity.

References


