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The Emerging Role of the Constitutional Value of *Ubuntu* for Informal Social Security in South Africa

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Abstract

This paper explores the significance of the African value of ubuntu within the context of social protection. The paper argues that ubuntu as a constitutional value plays a crucial role in supporting the existence of informal social security in South Africa. It concludes by reflecting the overarching potential that the traditional African value has for influencing the social protection and enhancing family solidarity in the South African context.

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I. Introduction

The object of this contribution is to discuss the salient role of the constitutional value of *ubuntu* for informal social security in South Africa. As a point of departure this paper demonstrates the link between *ubuntu* and community survival, in the African context. It also couches constitutional imperatives in terms of its foundational values, which are human dignity, the achievement of equality and the advancement of human rights and freedoms.¹ The paper acknowledges the aspiration of the Constitution, which aims to heal the divisions of the past, establish a society based on democratic values, social justice and fundamental human rights and to improve the quality of life of all citizens.²

The South African Constitution provides that, when interpreting the right to have access to social assistance,³ every court, tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.⁴

The right of access to social security and social assistance for those who are unable to support themselves and their dependants is entrenched because South Africa is a society that values human beings and attempts to ensure that people are afforded their basic needs.⁵ However, there are people who are excluded and marginalised from the formal social security system. As a result, they tend to rely on the informal social arrangements which are easy to run and less complicated.

Within the social protection context, *ubuntu* as a constitutional value plays a crucial role in supporting the existence of informal social security in Africa. It is through the characteristic sharing of *ubuntu* that informal social security exists, because people are able to pool together a sum of money, particularly in the African context, whenever a member of their community has died. *Ubuntu* seeks to instil human dignity, humanity, and social protection amongst human beings.⁶

¹ Section 1(a) the South African Constitution Act 108 of 1996.

² Preamble of the Constitution.

³ S 7 of the Constitution. In South Africa people who are excluded from the formal social security framework tend to rely on the informal safety measures in order to mitigate the adverse effects of poverty. It is within these informal social arrangements that the fundamental principle of *ubuntu* emanates, for example people in black communities will pool together sum of money or grocery to assist those members of the community who are poor. See also *stokvels* where individuals come opens societies with an idea that should a risk befall any of them or their families. They know that they are able to cope against such a risk when they are together.

⁴ Section 39 of the Constitution Act 108 of 1996. Human dignity informs constitutional interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all rights. It is not only a value but also a justifiable and enforceable human right that must be respected and protected. Equality is another foundational value that informs constitutional interpretation. Equality in respect of social assistance is implicit in the reference to everyone being entitled to have access to the rights in section 27. Those who are unable to survive without social assistance are equally desperate and equally in need of such assistance.⁴ Considering that social assistance serves the fundamental purpose of enabling all persons in need of support to enjoy a dignified existence as free and equal citizens, this sanctions the adoption of an interpretation that proceeds from an assumption in favour of every indigent person.

⁵ From a Constitutional perspective certain values, including that of prevention, restitution, solidarity, redistribution, self-sufficient and the work ethics, are to a greater or lesser extent inherent in all social protection frameworks, for further reading in this regard See Van Niekerk A *et al Law @ Work*, LexisNexis, Durban, 2008, 428.

⁶ Chivaura V G *Hunhu/Ubuntu: A sustainable approach to endogenous development, bio-cultural diversity*. Accessed at www.compasnet.org/pdf.

It should be noted that this paper is not primarily concerned with providing a detailed discussion of the present social protection framework available in South Africa, but rather aimed at providing a description of the South African social protection framework and the important role *ubuntu* plays therein.

II. Background to the concept of *ubuntu*

The closest parallel to solidarity in South Africa is *ubuntu*.⁷ *Ubuntu* is an ancient African worldview based on the primary values of intense humanness, caring, sharing, respect, compassion and associated values, ensuring a happy and quality community life in the spirit of family.⁸ Various authors emphasize that *ubuntu* is a special African form of community orientation, which they locate within the concept of a traditional African community.⁹ In this way, community and communalism has been seen as a main characteristic of African identity.¹⁰

Ubuntu is a literal translation of collective brotherhood (personhood) and collective morality.¹¹ It originally implied a sense of hospitality and the integration of strangers. This was, however, understood as something to be encouraged, as opposed to a description of an extant virtue or type of community. Similarly, *ubuntu* could be used to request solidarity, which is often a necessary precondition for survival in communities, like South African townships, that are characterized by poverty.¹² The opposite of *ubuntu* is ostracism and compulsory conformity.¹³

Ubuntu is closely associated with notions which encourage group solidarity. These notions include *simunye* ('we are united/one'), reciprocity and *hlonipa* (respect). *Simunye* – oneness – was derived from traditional religion.¹⁴ Respect meant to demonstrate generosity and provide for family members that were in need. Although traditional African life encouraged an altruistic attitude, it did not condone idleness. Everybody should contribute to the community and generosity from others, particularly relatives, should be reciprocated in the future.¹⁵

⁷ Van Niekerk, *supra*, 428.

⁸ Broodryk J *Ubuntu African Life Coping Skills; theory and practice*, paper presented at the CCEM (The Commonwealth Council for Educational Administration and Management) Conference, 12 – 17 October 2006, 2.

⁹ Creff K *Exploring Ubuntu and the African Renaissance: A conceptual Study of Servant Leadership from an African Perspective*, August 2004, at page 2. Accessed at http://www.regent.edu/acad/global/publications/sl_proceedings/2004/cerff_exploring_ubuntu.pdf.

¹⁰ Shutte A *Philosophy for Africa* (1993 Cape Town).

¹¹ President Mbeki Address on the 8th Annual Steve Biko Memorial Lecture, Cape Town, South Africa, 13 September 2007, 1-3. Accessed at www.emergingminds.org. For further reading in this regard See Biko S I *Write What I like*, Bowerdean Press, 1st edition, 1987, 87- 88.

¹² Mbigi L *Ubuntu: The African dream in management* (1997:27 Knowledge Resources Randburg).

¹³ Marx C *Ubuntu: on the dialectics of apartheid and national building* (2002) 29(1) *Politikon* 52.

¹⁴ Isizoh CD *African traditional religions: One stereotype less, African Societies* 4 (accessed at <http://www.africansocieties.org/n4eng/chidi.tp>).

¹⁵ Suderkasa N *African and Afro-American Family Structure: A Comparison* (1980) 11 *Journal of Black Studies and Research* 37, 50.

III. Understanding *ubuntuism*: An African perspective

The concept *ubuntu*, like many African concepts, is not easily definable. To define an African notion in a foreign language and from an abstract as opposed to a concrete approach is to defy the very essence of the African world-view and can also be particularly elusive. I will therefore not attempt to define the concept with precision.

In an attempt to define it, scholars have described the concept generally as a world-view of African societies and a determining factor in the formation of perceptions, which influence social conduct. It has also been described as a philosophy of life, which in its most fundamental sense represents personhood, humanity, humaneness and morality; it is a metaphor that describes group solidarity where such group solidarity is central to the survival of communities with a scarcity of resources, where the fundamental belief is that *motho ke motho ka batho ba bangwe/umuntu ngumuntu ngabantu* which, literally translated, means a person can only be a person through others.¹⁶

In other words the individual's whole existence is relative to that of the group: this is manifested in anti-individualistic conduct towards the survival of the group if the individual is to survive.

IV. The casual link between *ubuntu* and social protection

The present welfare system in South Africa is built partly on Bismarckian social insurance principles and partly on the old British tradition of means-tested benefits for non-privileged groups.¹⁷ Beveridgean social insurance programs, initially set up to cover formally employed workers in European countries, were subsequently introduced and expanded to Africa during colonial and post-colonial epochs. However, neither the Bismarckian nor the Beveridgean welfare states were developed or legitimated by explicit concepts of solidarity, even if the Bismarckian social insurance principles were integrated into the Catholic concept of solidarity.¹⁸

During the struggle against Apartheid, the existence of a well-defined adversary made the political aspects of *ubuntu* clearer, and after the introduction of majority rule, the concept of *ubuntu* attracted more attention. Now, the concept can be linked to the development of welfare policy. Several new social policy measures have been introduced, which are more redistributive, for instance, the extension of unemployment and other benefits to families.

Thus what *ubuntu* depicts is the cooperation between individuals, cultures and nations. An *ubuntu* style of government means a 'human' style of government based on collective solidarity and communality rather than individualism and particularity.¹⁹ The concept of *ubuntu* has relevance in the broader field of social security, and such a notion

¹⁶ Mokgoro Y *Ubuntu*, paper delivered at the first Colloquium Constitution and Law held at Potchefstroom on 31 October 1997, 2.

¹⁷ Olivier MP and Kalula ER *Social Protection in SADC: Developing an Integrated and Inclusive Framework*, CICLASS (Centre for International and Comparative Labour and Social Security Law), RAU, July 2004, 1-2.

¹⁸ Olivier, *supra*, 1-5.

¹⁹ Bhengu M J *Ubuntu: The Essence of Democracy*, Novalis Press, Cape Town, South Africa, 1996, 24.

of humanness may be the basis for the provisioning of social security. Therefore the first point to be made is that social protection must be rooted in principles of justice and equality. This is the fundamental *ubuntu* principle regarding social protection because *ubuntu* stresses the fact that the capacity, indeed, the fundamental human need, is to make life meaningful for everybody.²⁰

The most telling examples of the concept of *ubuntu* can be distilled from two types of informal social security systems distinguishable in Africa, namely, traditional support systems and selforganised mutual support systems. Traditional support systems operate on the basis of solidarity and generalised reciprocity and revolve around kinship and family ties.²¹ Kinship and family ties bind people together and enable them to develop a sense of belonging and togetherness. The values and beliefs underpinning family and kinship ties enable members to provide mutual support in the event that they are exposed to life cycle crises. As Midgley observes, the family has always been regarded as an important social security institution providing assistance to those not able to support themselves.

For instance, cooperative community farming (*letsema* in Southern Sotho) has for many years been a joint effort for families in subsistence economies. Four or more families would come together and agree on a duty roster that would allow them to cultivate each of their fields on specific days to make them ready for the planting season.

The affected family's obligation would only be to provide food for the working teams. A *letsema* was therefore not only a cooperative community effort but also recognition of the fact that it would be difficult and slow for individual families to complete the cultivation on time if each were to go it alone. The maxim 'divided we fall, but united we stand' is most appropriate as a description of the fundamental principle underlying *letsema*.²²

Similarly, the following examples of informal social security also display some key characteristics of *ubuntu*:

A *stokvel* is a very popular example of informal social security. This where, for instance, a group of five friends make monthly contributions to a *stokvel* or pool. Each member will have a turn (every fifth month) to use the total of the pool, enabling them to buy goods such as furniture and school clothes.²³

A burial society is a more sophisticated form of social insurance. Members will contribute money and services to a society and, when a contingency (death of a family member) occurs, be entitled to claim money and services from the society. Some burial societies even have assets such as tents, tables and chairs which a member can use free of charge during funerals.²⁴

Another example of informal social security is that of SEWU (The Self Employed Women's Union). SEWU is a "trade union" organising informal women workers in

²⁰ Bhengu, *supra* 44.

²¹ Olivier MP *et al* *Formulating an Integrated Social Security Response - Perspectives on Developing Links Between Informal and Formal Social Security in the SADC Region*, paper presented at the EGDI-WIDER Conference on Unlocking Human Potential Linking the Informal and Formal Sectors, Helsinki, 17 – 18 September 2004,4-5.

²² Letseka M *African Philosophy and Educational Discourse* in Higgs *et al.* (eds) *African Voices in Education* (2000 Juta & Co Ltd Cape Town).

²³ Dekker A H *The role of Informal Social Security in an Inter-generational Society*, International Social Security Association, May 2009, 9.

²⁴ Dekker, *ibid.*

South Africa. SEWU mainly attracts women street vendors and home-based workers. SEWU does collective organisation of these women, which gives them strength to negotiate for better living and working conditions. It also assists women to gain skills training. SEWU developed in Durban, KwaZulu Natal and they are currently operating throughout South Africa.²⁹

V. The value of *ubuntu* as Constitutional bedrock

The preamble of the Constitution refers to a society based on democratic values, social justice, and fundamental human rights.²⁵ These democratic values include, *inter alia*, freedom, equality, and human dignity,²⁶ the advancement of human rights and freedoms, non-racialism and non-sexism.

These fundamental principles are not only the ideals to which the South African society has committed itself, but also they form the material guidelines that must regulate all the activities of the state. Similarly, they play a crucial role as far as both the interpretation and limitation of the fundamental rights are concerned.

The courts, as the guardians and enforcers of the values underlying the Constitution, must uphold and protect the Constitution and the human rights in it. The Constitutional Court has often reiterated that the meaning of the rights contained in the Bill of Rights must be determined and understood against the background of past human rights abuses, and that the Constitution endeavours to bring about reconciliation and reconstruction.²⁷

The important role played by constitutional values in giving meaning to the socio-economic rights embedded in the Constitution has been commented upon by the Constitutional Court in the seminal judgment of *The Government of the Republic of South Africa v Grootboom* 2000 (11) *BCLR* 1169 (CC) (paragraph 23):

"There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in the Bill of Rights. The realisation of these rights is also critical to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential."

²⁵ Preamble of the Constitution.

²⁶ S 7 (1) of the Constitution.

²⁷ *S v Mhlungu* 1995 (3) SA 867 (CC); 1995 (7) *BCLR* 793 (CC) par 7, 111): "The introduction of fundamental rights and constitutionalism in South Africa represented more than merely entrenching and extending existing common law rights, such as might happen if Britain adopted a bill of rights. The Constitution introduces democracy and equality for the first time in South Africa. It acknowledges a past of intense suffering and injustice, and promises a future of reconciliation and reconstruction...To treat it with the dispassionate attention one might give a tax law would be to violate its spirit as set out in unmistakably plain language. It would be as repugnant to the spirit, design and purpose of the Constitution as a purely technical, positivist and value-free approach to the post-Nazi constitution in Germany" (at par 111)).

The South African courts have consistently held, also in the area of employment, that there is close correlation between the right to equality and the protection of a person's dignity (*Larbi-Odam v Member of the Executive Council for Education (North-West Province) and the Minister of Education* 1997 BCLR 1655 (CC); *Hoffmann v SA Airways* 2000 (21) ILJ 2357 (CC); *Walters v Transitional Local Council of Port Elizabeth & another* 2001 BCLR 98 (LC).). At the heart of the prohibition of unfair discrimination is the recognition that under the Constitution all human beings, regardless of position in society, must be accorded equal dignity – *Hoffmann v SA Airways* 2000 (21) ILJ 2357 (CC). In *Hoffmann* the Court found the policy of South African Airways in denying employment to the applicant due to his HIV status to be an unconstitutional infringement of his human dignity. This caused the Court to afford the most comprehensive remedy to the applicant, namely that of reinstatement (see paragraph 52):

"Where a person has been wrongfully denied employment, the fullest redress obtainable is reinstatement. Reinstatement serves an important constitutional objective. It redresses the wrong suffered, and thus eliminates the effect of the unfair discrimination. It sends a message that under our Constitution discrimination will not be tolerated and thus ensures future compliance. In the end, it vindicates the Constitution and enhances our faith in it. It restores the human dignity of the person who has been discriminated against, achieves equality of employment opportunities and removes the barriers that have operated in the past in favour of certain groups, and in the process advances human rights and freedoms for all. All these are founding values in our Constitution."

The Constitutional Court has adopted the approach that the range of constitutional values contained in the Constitution does not constitute a *numerus clausus*, and that other values can also be elevated to this status. *Ubuntu* or group solidarity has been recognised by the Constitutional Court as such a constitutional value. In *S v Makwanyane* 1995 3 SA 391 (CC), 1995 6 BCLR 665 (CC) *ubuntu* was described as follows (paragraph 224):

"The concept is of some relevance to the values we need to uphold. It is a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all."

Against this background, it is clear that the Constitution is underpinned by a number of express and implied values and norms. There are many interpretations of the African value of *ubuntu*. Mokgoro,²⁸ for instance, describes *ubuntu* as a metaphor for group solidarity where the group is dependent on limited resources:

“People are willing to pool community resources to help an individual in need. This is captured in some of the African aphorisms such as “a botho ba gago bo nne botho setshabeng” which, literally translated, means, “let your welfare be the welfare of the nation”.

The White Paper on Social Welfare (1997) describes the importance of *ubuntu* as follows:

“The principle of caring for each other’s well-being will be promoted, and a spirit of mutual support fostered. Each individual’s humanity is ideally expressed through his or her relationship with others and theirs in turn through recognition of the individual’s humanity. *Ubuntu* means that people are people through other people. It also acknowledges both the rights and the responsibilities of every citizen in promoting individual and societal well-being”.

The values underpinning *ubuntu* such as human dignity and social justice have been recognized and upheld by South African courts of law.²⁹

Increasingly South African courts, and the Constitutional Court in particular, have given impetus to the applicability and relevance of *ubuntu* through a number of court judgments. One case on point is *S v Makwanyane*. In *S v Makwanyane*³⁰ *ubuntu* was described as follows:

“The concept is of some relevance to the values we need to uphold. It is a culture that places some emphasis on communality and on the interdependence of the members of a community. It recognizes a person’s status as a human being, entitled to unconditional respects, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all”.

From later judgments, it is clear that the Constitution makes it particularly imperative for courts to develop the entrenched fundamental rights in terms of a cohesive set of

²⁸ Mokgoro Y *Ubuntu and the Law in South Africa* (1997) 51 Konrad Adenauer Stiftung.

²⁹ Olivier M P *Constitutional perspectives on the enforcement of socio-economic rights: Recent South African experiences*, paper presented to the New Zealand Association for Comparative Law in Wellington on 7 February 2002, 124-125.

³⁰ 1995 3 SA 391 (CC), 1995 6 BCLR 665 (CC), par 224.

values, ideal to an open and democratic society.³¹ In the South African constitutional context, *ubuntu* has been recognised as a value which is so fundamentally ingrained in the fabric of society that, according to the Constitutional Court of South Africa, it has to be elevated to the status of a constitutional value, *albeit* an unwritten one. The crucial importance of the Court's approach to the broad area of social protection and, in particular social security, is self-evident, in particular when viewed from the perspective of one of the fundamental elements of social security, namely solidarity. This concept has also been alluded to in the White Paper for Social Welfare as a value permeating the social security context.³²

VI. Conclusion

We have seen that the concept of *ubuntu* shares important characteristics with the concept of solidarity, both the modern social democratic and the Christian democratic variants of the European ideas of solidarity.

First, all concepts of solidarity and *ubuntu* imply a demarcation against unfettered individualism and economic liberalism. Second, today, these concepts tend to emphasize that human beings are interdependent. All ideas of solidarity imply that the government shall have the responsibility for social protection against the hazards of life for its people, although the extent of that responsibility may vary. It is submitted that the term *ubuntu* provides our courts with a constitutional value and a 'local flavour' intrinsically linked to our troubled past and the consequent and ongoing bridge-building process of our nation. With this in mind our courts can develop the concept in a specific way relating to a uniquely African value-system and not just blindly follow international trends in this regard.³³

³¹ Botha C *Statutory Interpretation: An Introduction for Students*, 4th edition, Juta & Co Ltd, 2005, 53.

³² Olivier M P and Mpedi L G *Extending Social protection to families in the African context: Complementary role of formal and informal social security*, 4th International Research Conference on Social Security, 5-7 May 2003, 20 – 21.

³³ Bekker T *The re-emergence of ubuntu: A critical analysis*, (2006) 21 SAPR/PL.