

THE LIMITS OF HUMAN DIGNITY IN SOUTH AFRICAN CONSTITUTIONALISM

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The constitutional order of the new South Africa is founded on the value of human dignity, as well as the achievement of equality and the advancement of human rights and freedoms.² In addition to recognizing human dignity as a foundational value, the Constitution of South Africa also recognizes the fundamental right to human dignity in the following terms: "Everyone has inherent dignity and the right to have their dignity respected and protected."³ Given the centrality of human dignity to South African constitutionalism, coupled with the Constitutional Court's commitment to the vindication of human rights, particularly by its original membership, it is not surprising that it has done more than any other court to recognize and promote the transformative power of the right to human dignity.

Even prior to the 1996 Constitution, the South African Constitutional Court set its course when it invalidated the death penalty under the Interim Constitution not only because capital punishment violates a person's right to life, but because it violates his or her dignity.⁴ The Court held that the death penalty "involves, by its very nature, a denial of the executed person's humanity," which is "degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state."⁵ Since then, the Court's commitment to human dignity has been unwavering. As it explained in 2000, "Human dignity . . . informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. . . . Section 10, however, makes it plain that dignity is not only a *value* fundamental to our Constitution it is a justiciable and enforceable *right* that must be respected and protected."⁶

This paper briefly reviews some of the most remarkable aspects of the Constitutional Court's dignity jurisprudence but notes that the Court has fallen short of giving dignity its full due particularly when considered in its socio-economic dimension. In recent years, the Court seems to have faltered in its commitment to vindicating dignity rights largely because it has been unable to define what dignity means in its material sense and to assert judicial authority to

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² Const. of South Africa, chapter 1, section 1 "Founding Provisions."

³ Const. of South Africa, s. 10.

⁴ *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995).

⁵ *Id.*

⁶ *Dawood and Another v Minister of Home Affairs and Others, Shalabi and Another v Minister of Home Affairs and Others, Thomas and Another v Minister of Home Affairs and Others* [2000] ZACC 8; 2000 (3) SA 936 (CC); 2000 (8) BCLR 837 (CC) at para 35.

enforce dignity rights. In the last section, this paper posits that the constitutional concept of well-being, though still embryonic, may help the Court realize the transformative promise of human dignity.

Civic Dignity

The Constitutional Court's jurisprudence demonstrates the prevalence of dignity in a number of different situations, straddling the full panoply of rights. In some of these cases, the Constitutional Court of South Africa has pushed jurisprudential boundaries, particularly in recognizing the interdependence between human dignity and the consolidation and strengthening of democracy. The Court has taken as its mandate the twin obligations of rectifying the most searing wounds from the apartheid era and of building up democratic culture.

This has been evidenced most acutely concerning democratic governance. In *August and Another v. Electoral Commission and Others*,⁷ the Constitutional Court held that the right of prisoners to vote should ordinarily not be denied and that the government has an obligation to facilitate their ability to vote. Justice Albie Sachs wrote against the ever-present backdrop of the struggle against apartheid: “The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and of personhood,” he said plainly. His elaboration on the significance of the franchise reinforces the interconnectedness of citizenship and dignity: “In a country of great disparities of wealth and power [the franchise] declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity.”⁸

Like dignity, the right to vote is the same for everyone, and it therefore equalizes people notwithstanding other distinctions. Also like dignity, since the individual right to vote is made meaningful only in aggregation with others, it defines us individually while enhancing our sense of belonging to an “interactive” community. It is the fact that each person’s dignity, and vote, are equal to every other person’s that demands that each person respect each other’s vote, and, in the aggregate, demands that each person respects the outcome of elections produced by equal voting. The principle of human dignity is therefore intertwined with the practice of democratic governance.

In *Doctors for Life*, the South African Constitutional Court went farther both in adumbrating the meaning of citizenship and in rooting it in human dignity.⁹ The court held that the right of the public to participate in the legislative process had been violated when one house of Parliament had failed to invite submissions from the public on some health legislation. Finding that democratic rights depended on more than simply the right to vote in regular elections, the court explained that “participation by the public on a continuous basis provides

⁷ Case CCT 8/99 [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999).

⁸ *August and Another v. The Electoral Commission*, Case CCT 8/99 [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999), opinion of J. Sachs at para. 17.

⁹ *Doctors for Life International v. Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006) at 115.

vitality to the functioning of representative democracy” because, among other things, it “enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of.”¹⁰

Civic dignity is justified not only because South Africa’s constitutional democracy is expressly founded on the value of human dignity (among other values), but also because it serves individual and collective values: “Consistent with our constitutional commitment to human dignity and self-respect, section 118(1) (a) [of the Constitution, referring to “Public access to and involvement in provincial legislatures”] contemplates that members of the public will often be given an opportunity to participate in the making of laws that affect them.” The symbolic and real significance of democratic participation in a nation seeking to recover from the oppression of apartheid can not be overstated. Hence, the recognition of human dignity as an essential and indispensable element of civic participation, and vice versa. As has been observed, a ‘commitment to a right to . . . public participation in governmental decision-making’ is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of the story, but also from our sense that participation is necessary to preserve human dignity and self respect.”¹¹ This conception of dignity defines the very meaning of citizenship within a democracy.

Material Dignity

But the court's dignity jurisprudence has also sent it into the heart of social, economic, and cultural rights. In some of these areas, the Court's jurisprudence is very much in line with that of other nations. For instance, following the language of the Constitution,¹² the Court has recognized the dignity interests of criminal defendants and prisoners.¹³ And it has recognized the role that dignity plays in forming individual identity. South Africa has, for instance, been at the forefront of promoting the rights of sexual minorities to marriage and family: “[T]he capacity to

¹⁰ Justice Ngcobo continued: “It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.” *Id.*

¹¹ *Matatiele Municipality and Others v. President of the Republic of South Africa and Others*, Case CCT 73/05 (2006) (J. Ngcobo), para. 66.

¹² “(1) Everyone who is arrested for allegedly committing an offence has the right - ... (2) ... (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment...” Const. of South Africa, Art. 35(2)(e).

¹³ *Lee v. Minister for Correctional Services* (2012): “The wrong Mr Lee complains of is, in our law, based on being detained in conditions that infringe upon his dignity. That was the position under our pre-constitutional common law, and that has received constitutional support in section 35(2)(e) of the Constitution that provides that detained persons have the right “to conditions of detention that are consistent with human dignity.” (notes omitted).

choose to get married enhances the liberty, the autonomy and the dignity of a couple committed for life to each other,"¹⁴ the Court explained in the *Fourie* judgment.

Indeed, more broadly, the South African Constitutional Court has promoted the view that respect for human dignity makes certain forms of discrimination -- particularly but not exclusively racial discrimination -- a constitutional impossibility. As Justice Albie Sachs wrote, the new dispensation is "characterised by respect for human dignity for all human beings. In this era, prejudice and stereotyping have no place."¹⁵ For Sachs, it is the very presence of the insult to dignity that renders an inequality invidious and constitutionally impermissible: "Differential treatment in itself does not necessarily violate the dignity of those affected. It is when separation implies repudiation, connotes distaste or inferiority and perpetuates a caste-like status that it becomes constitutionally invidious."¹⁶

In the context of discrimination on the basis of sexual orientation, Justice Sachs explained the connection between equality and dignity in these terms: "At the heart of equality jurisprudence is the rescuing of people from a caste-like status and putting an end to their being treated as lesser human beings because they belong to a particular group. The indignity and subordinate status may flow from institutionally imposed exclusion from the mainstream of society or else from powerlessness within the mainstream. . . . To penalise people for being what they are is profoundly disrespectful of the human personality and violatory of equality."¹⁷ Indeed, in South Africa, dignity is not only a fundamental right; it is essential to the transformative project of South African constitutionalism: "The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied."¹⁸

Therefore, dignity applies not only to psychic harms but to material ones as well. In *Grootboom*, the question was what could be done to ensure that *some* housing was provided to plaintiffs within a reasonable time, the court noted that "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 Constitution]."¹⁹

And in the landmark decision involving the distribution of drugs to prevent mother-to-child transmission of HIV, the Court wrote that while some rights are immediately enforceable and others are not, each right nonetheless triggers a governmental obligation to progressively realize the minimum core of the right. "This minimum core," the court wrote, "might not be easy

¹⁴ *Minister of Home Affairs v. Fourie*, 2006 (3) BCLR 355 (CC), 10 (S. Afr.).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Nat'l Coal. for Gay and Lesbian Equality v. Minister of Justice*, 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC), 99, 100 (S. Afr.).

¹⁸ *Dawood and Another v Minister of Home Affairs and Others ; Shalabi and Another v Minister of Home Affairs and Others ; Thomas and Another v Minister of Home Affairs and Others* (CCT35/99) [2000] ZACC 8; 2000 (3) SA 936; 2000 (8) BCLR 837 (7 June 2000).

¹⁹ *Republic of South Africa v. Grootboom*, 2000 (11) BCLR 1169 (CC), 23 (S. Afr.).

to define, but includes at least the minimum decencies of life consistent with human dignity. No one should be condemned to a life below the basic level of dignified human existence."²⁰

The decisions to date reflect an emphatic judicial commitment to dignity both as a fundamental and essential element of human rights and as a transformative mechanism to improve the quality of life of the people while creating a firmer foundation for democratic praxis.

The Court no doubt understands the importance of human dignity and the many ways in which poverty and deprivation can thwart it. Moreover, it recognizes the essential contribution that law, and especially constitutional law, can make to assuring and protecting human dignity. Indeed the constitutional commitment to human dignity transcends human rights and extends to fundamental values, as expressed in the first section of the Constitution.

And yet, there remains a wide chasm between the Court's strong rhetorical commitment to human dignity on the one hand and the reality of South Africa's continued entrenched and racialized poverty, deprivation, and oppression on the other. And this continues unabated in conditions that in some instances can be almost indistinguishable from those which South Africans endured under apartheid. These impasses are largely due to the practical challenges of poverty eradication, the difficulty of effective land redistribution, entrenched labor and industrial relations, the legacy of educational deprivation, and a certain level of path dependence, among other things. As the Court famously said in the landmark decision involving the availability of health care:

"We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring."²¹

In constitutional jurisprudence, this translates into an acceptance of progressive realization of rights and, ultimately an unwillingness to require anything more of policy makers than to do what is reasonable under the circumstances. This was most explicitly expressed in *Mazibuko*, the water rights case where the Court explained that the constitutional obligation to make good on an enumerated right can be achieved if "policies formulated by the state [are] reviewed and revised to ensure that the realisation of social and economic rights is progressively achieved."²² In other words, the Court explained, "That obligation requires the state to take reasonable legislative and other measures progressively to achieve the right of access to

²⁰ Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721; 2002 (10) BCLR 1033 (5 July 2002) at para.28.

²¹ Soobramoney v Minister of Health (Kwazulu-Natal) (CCT32/97) [1997] ZACC 17; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) at para. 8.

²² Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009) at para. 40.

sufficient water within available resources. It does not confer a right to claim "sufficient water" from the state immediately."²³ For the residents of Phiri, any dignity that depends on having sufficient access to water will have to wait until the state progresses to the point at which it realizes the right.

This tepid engagement with government in the context of even absolute necessities for life reflects an unfortunate retrenchment of the commitment to promote the transformational power of human dignity. This may be justified by a real-judicial-politik by which the Constitutional Court recognized that judicial power could never produce the socio-economic improvements that are truly necessary to ensure the effective preservation of human dignity for all South Africans. But it was perhaps facilitated by dignity's amorphousness-- its extensive scope which reaches all the way from the psychic to the material. Given the choice, the Constitutional Court is evidently more comfortable vindicating the former aspects of the right to human dignity than on insisting even on the minimum core necessary to assure human dignity.

Dignity and Well Being

But reasonableness and transformational constitutionalism are fundamentally at odds, and at the center of the tension lies the protection of human dignity. In numerous cases, the Constitutional Court has committed to a transformational agenda -- one that brings the nation and the people of South Africa from the oppressive and stultifying conditions of apartheid to the non-racial and non-sexist rainbow society based on the full development of the personality that is the promise of the Constitution. But if this is the purpose of the constitutional order, then it must expect more of the government (and of private parties) than policies that are "reasonable" given the political, economic, and historic weights under which it labors. And one step will be for the Court to give more attention to what dignity actually means in its material aspect and what that, in turn, actually *requires* the government to produce.

One place the Court might look is to the right to well-being that is mentioned sporadically throughout the constitution. This may seem counter-productive or at best ironic because "well-being" may be the only phrase in the constitution that is even more embracing and less well-defined than human dignity. And yet, when considered in tandem, they may help to elucidate one another.

Well-being is mentioned three times in the 1996 constitution and has precursors in several provisions, as well as the Constitutional Principles, of the 1993 Interim Constitution. As an explicitly transformational matter, well-being appeared in the 1993 constitution's epilogue which tied reconciliation and amnesty to well-being in the following terms: "The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society."²⁴ Thus, the transitional government's

²³ Mazibuko at para 56.

²⁴ Interim Const. of South Africa, Epilogue, "National Unity and Reconciliation." See *The Citizen 1978 (Pty) Ltd and Others v McBride* (CCT 23/10) [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) (8 April 2011).

command to produce reconciliation even if at the expense of justice was said to be justified in the name of the well-being of all South African citizens.

Moreover, in 1993 and in 1996, well-being is made an explicit goal of provincial governments. As the Constitutional Court observed in the Certification Case: "There are to be exclusive and concurrent provincial powers in respect of provincial planning and development, the rendering of services, and dealing with 'socio-economic and cultural needs and the general well-being of the inhabitants of the province.'"²⁵ Thus, the drafters of the interim constitution sought to have the well-being of South Africans constitutionally protected, and defined and guaranteed at the provincial level. The Court in the Certification Case found that the principle was satisfied by the new text's allocation of provincial authority over planning and provincial cultural matters, and by Schedule 4's inclusion of health services, education, population development, regional planning and development, tourism, and welfare services. This incipient effort to define well-being announces its constitutional significance and begins to give it shape.

Well-being is also included in the oaths of office, as drafted in 1993 and re-adopted in 1996, requiring office-holders to devote themselves "to the well-being of the Republic and to all of its people."²⁶

The two other references to well-being in the 1996 constitution -- which also have precursors in the Interim Constitution -- relate to specific individual rights. Well-being is found in section 24's protection for the environment ("Everyone has the right (a) to an environment that is not harmful to their health or well-being...")²⁷ and in section 28's protection for children ("Every child has the right -- (f) not to be required or permitted to perform work or provide services that - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development...").²⁸

Notably, these were, when they were adopted, two of the most innovative provisions in the Constitution and they remain so to this day: few constitutions that protect environmental rights do so as broadly or emphatically as this and still fewer constitutions protect the rights of children at all. Although the text of these clauses evolved between 1993 and 1996, the term "well-being" was in the original versions of each of these clauses as well. The present well-being clauses indicate a holistic understanding of human development, one that places the individual in the context of his or her physical environment and in relation to others who can detract from or augment each other person's well-being.

Despite the evident enforceability of these provisions, there has been little case law to date on the former and scarcely more on the latter. Like dignity, well-being seems important and comprehensive, familiar to all, but ill-defined. Like dignity, it is often referred in lists identifying

²⁵ Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996), Citing CP XXI.6.(b).

²⁶ Const. of South Africa, schd. 2.

²⁷ Const. of South Africa, s. 24.

²⁸ Const. of South Africa, s. 28. See e.g. *Le Roux and Others v Dey* (CCT 45/10) [2011] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC) ; BCLR 446 (CC) (8 March 2011).

successive important values, including equality, freedom from bodily degradation, and a certain level of material comfort. And like dignity, well-being seems to live in multiple dimensions: it has material aspects²⁹ as well as physical,³⁰ psychic,³¹ cultural ones.

But there are differences, too. Dignity, recognized at the foundation of international law,³² is understood to be an inherent quality of being human. That is, all individuals have dignity by virtue of being human; well-being, on the other hand, is something to be nurtured and aspired to. The law's bearing on dignity reflects a complex dance involving both protection of what is and fostering of what should be, with aspects that are simultaneously internal and outward-looking, individual and collective. One principal dimension of dignity is subjective and nurtures each individual's sense of self and ability to define the course of his or her own life, while another is objective, reflecting social standards below which no individual ought to go. In fact, in its Kantian aspect, dignity entails a strong anti-objectivist bias.

Well-being, on the other hand, may be more amenable to objective definition. While it is experienced subjectively -- one has an individual sense of well-being -- its protection in law suggest that it may be more at home in an objective or normative framework. Understood this way, it is something that can be viewed from the outside. Perhaps more than human dignity, well-being may be defined and measured by others.³³

It may also be more likely than dignity to be understood collectively or communally, with evident implications for the allocation of the nation's resources. (Note that assessing the well-being of an individual as a communal being is not the same thing as assessing the well-being of the community; it is the former that is relevant for present purposes, though the Presidential oath presumes the significance of the latter as well). In one case, about the availability of benefits to foreigners, the Constitutional Court in *Khosa v. Minister of Development* indicated: "Sharing responsibility for the problems and consequences of poverty equally as a community represents the extent to which wealthier members of the community view the minimal well-being of the poor as connected with their personal well-being and the well-being of the community as a whole. In other words, decisions about the allocation of public benefits represent the extent to

²⁹ See *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province, and Others*, 2007 (6) SA 4 (CC); 2007 (10) BCLR 1059 (CC): "What is immediately apparent from s 24 is the explicit recognition of the obligation to promote justifiable 'economic and social development'. Economic and social development is essential to the well-being of human beings."

³⁰ *Lee v Minister of Correctional Services* (CCT 20/12) [2012] ZACC 30; 2013 (2) BCLR 129 (CC); 2013 (2) SA 144 (CC); 2013 (1) SACR 213 (CC) (11 December 2012).

³¹ See e.g. *Hichange Investments (Pty) Ltd v Cape Products Company (Pty) Ltd t/a Pelts Products & Others* 2004 JDR 0040 (E); *Tergniet and Toekoms Action Group and Others v Outeniqua Kreosootpale (Pty) Ltd and Others* (10083/2008) [2009] ZAWCHC 6 (23 January 2009).

³² See Preambles, United Nations Charter (1945), Universal Declaration of Human Rights (1948), International Convention on Civil and Political Rights (1966), and International Convention of Economic, Social and Cultural Rights (1966).

³³ At least Gallup and Healthways believe it can be measured, as evidenced by their "well-being index," available at <http://info.healthways.com/wellbeingindex>.

which poor people are treated as equal members of society."³⁴ The Court here cited *Brown v. Board of Education*, the only major landmark American decision that situates individuals within the concentric circles of their communities: "To use the terminology from *Plessy v. Ferguson* and *Brown v. Board of Education*," the *Khosa* Court said, "the exclusion of foreigners from state welfare programmes not only operates to stamp them with a "badge of inferiority", but marginalises them by sending a message of second-class status in the communities in which they reside."³⁵ Well-being is inimical to poverty, deprivation, and exclusion, without the need for proof of subjective or actual lack of well-being.

Indeed, it is no accident that the two constitutional provisions that expressly refer to well-being as a right view people not atomistically but situated within broader social contexts. In section 24, every person's right to well-being is within the context of his or her environment in a way that suggests that not only individual rights are relevant but collective rights as well since individuals tend to experience their environment collectively. And the protection of children's well-being may be appropriate, too, because children are more likely than adults to be viewed as within familial and social communities rather than as self-directed individuals; moreover, the adults around them are more likely to think they can define well-being for children than for other adults whose autonomy they are more likely to respect. Indeed, most of the South African judgments elucidating well-being arise in the context of children's education. And it may be more than coincidental that the principal decision cited by the *Khosa* Court on the issue of well-being was *Brown*, which prohibited discrimination in primary education.

Conclusion

Notwithstanding the differences between dignity and well-being, the concept of well-being may help to give content and substance to the value and right of human dignity, especially in the context of socio-economic rights. In particular, the concept of well-being -- both inside and outside its invocation in sections 24 and 28 -- may help the Court promote a transformative agenda for its dignity jurisprudence, by insisting not only on the subjective and psychic aspects of dignity, but on their social, material, and objective aspects as well. Given the official obligation of the President and Deputy-President to promote the well-being of South Africa's people,³⁶ and the constitutional obligation of "all spheres of government and all organs of state within each sphere" to "secure the well-being of the people of the Republic,"³⁷ the significance of well-being in the constitutional scheme and in particular to its transformative agenda, is absolutely clear. The only questions that remain are interpretive.³⁸

³⁴ *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* (CCT 13/03, CCT 12/03) [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) (4 March 2004) at para. 74.

³⁵ *Id.*

³⁶ Constitution of South Africa (1996), Sch. 2.

³⁷ Constitution of South Africa (1996), sec. 41.

³⁸ Among the many questions that will need to be addressed as the Constitutional and other courts focus increasingly on the demands of the constitutional obligation to promote well-being are: 1) what impact do the statutory references to well-being have on its constitutional meaning (see e.g. National Environmental Management Act); 2) who is responsible for assuring well-being and does the obligation extend to private entities under principles of

horizontal? 3) even if objective definitions or standards for well-being exist, are there variations within various communities, i.e. is well-being for women different from well-being for men? Do different racial, ethnic, tribal or other communities have different needs or understandings for well-being? How does well-being vary by age? 4) what is the precise relationship between well-being and material comfort? And 5) what is the distance between the minimum core needed to satisfy well-being and its actual experience? As a purely interpretive matter, the Court needs to ascertain the place of well-being in the constitutional scheme. It is a right in certain limited contexts (environment, children) but it is elsewhere a value, an aspiration, and a commitment that may inform other enumerated constitutional rights.