

Social Justice: Reflections on Human Dignity and Equality

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Received: November 4, 2011

Accepted: November 22, 2011

Published: March 1, 2012

doi:10.5539/jpl.v5n1p9

URL: <http://dx.doi.org/10.5539/jpl.v5n1p9>

The research is financed by the University of Botswana, Gaborone.

Abstract

With regard to new democracies in developing societies, the majority of citizens is less interested in the right to freedom of speech or to assembly and more concerned with having sufficient food to eat, a roof over their heads, education and accessible health care for their children. The study aims or is triggered by a recent visit to South Africa by the president of Botswana, Lt. Gen. Seretse Khama Ian Khama. In a keynote address at the *Drivers of Change and Investing in the Future Awards* in Johannesburg, Mr Khama urged states or leaders and the courts to tolerate or rather accommodate the need of the poor and the most vulnerable. If a (new) constitution is to have credibility and command the respect of the people subject to its provisions, it must take account of these demands and reflect them. In this way, for example, the right to health care and shelter has been recognized. This study asserts that a claim of lack of financial resources by the state is not an excuse for a failure to provide adequate services such as in the cases of *Hoffman v South African Airways*, *Government of the Republic of South Africa v Grootboom* and *Soobramoney v Minister of Health, KwaZulu-Natal*. Because of the chosen research approach, the research results may lack generalisability. Therefore, researchers are encouraged to test the proposed propositions further. This situation (lack of financial resources) warrants a reflection on the right to equality and human dignity. If equality is denied to people who have no food, clothing, shelter or access to health services, it follows of necessity that equality cannot be achieved unless all people have adequate food, clothing, shelter and access to health services. People who are denied access to the basic social and economic rights are denied the opportunity to live their lives with a semblance of human dignity.

Keywords: Human dignity, Equality, Health care, Housing, Intestate succession, Rule of primogeniture, Poverty

1. Research Objective(s)

The research is actuated by the President of Botswana, Mr. Khama's keynote speech in Johannesburg. He said social justice could only be achieved if leaders genuinely put their citizen's interest before their own. He asserts that leaders should appreciate that they are in government to provide for and improve the welfare and living standards of all. That is well-said. But he is the president of a country with a stable political and economical set-up. The subject of the research therefore focuses on not so much stable African countries and South Africa, which is still tussling with the legacy of apartheid (the ever-widening gap between the rich and the poor). The research, however, is confined to South Africa, and therefore lack generalisability. The latter would much rather be the target audience for the research, because of its history of apartheid, which had left certain people impoverished.

2. The Human Being

Human dignity and equality, which are central to the human being necessitates a reflection on the latter. An essential characteristic of any civilization is respect and feeling for the dignity of the human being. What then is a human being? Whenever we say that a man is a being, we mean that he is more than a mere parcel of matter, more than an individual element in nature, such as is an atom, a blade of grass, a fly or an elephant. Man is an animal and an individual, but is unlike other animals or individuals. In my opinion, man is an individual who holds himself in hand by his intelligence (soul) and his will. All this means, in philosophical terms, that in the flesh and bones of man there lives a soul which is a spirit and which has a greater value than the entire physical universe. The soul component testifies in the following paragraph that the human person is a reflection of the image of God (*imago Dei*). On the strength hereof, the worth of the person, his liberty and rights, arise from the order of naturally sacred things (his

soul), which bear upon them the imprint of God. Everybody possesses therefore absolute dignity because of God, in which alone he can find his complete fulfillment (Note 1).

2.1 *The Divinity of the Human Being: An Offshoot for Human Dignity*

Cicero used the term “*dignitas*” to indicate human dignity. According to him, *dignitas* alludes to the manifestation of dignified conduct (Note 2). In addition to this, Augustine views *dignitas* as an important value in the promotion of virtue and rational acts (Note 3). According to the Scriptural perspective of *dignitas*, Aquinas explains: “[I]t appears that whatever is contained in the notion of *dignitas* must be attributed to God because creation is universally subject to God, and God has the governance of the whole universe in His hands [...]” (Note 4).

Human dignity lies in the honouring of God. This statement, in my view, must be accepted by all as axiomatic. It is only then, that we can abide by the veracity of the statement – that to love God’s creatures also means honouring God by means of His creation. It is only when we consider ourselves from this point of view, that we become cognizant of our divine excellence, and realize where our end and ultimate aim lies (Note 5).

Human dignity can be found in a Christian way in the sense that every man is the image of God. Insofar as man is the image of God, the Christian principle of love is applicable (Note 6).

Human dignity is also applicable because of the second part of the central law on love: “You must love your neighbour as yourself” (Note 7). This means that you must not do to another that which you do not want done to yourself” (Note 8). Therefore, man must always respect the rights and demands of other people. In view of the claim of human dignity in terms of certain Biblical texts, a doctrine of human rights can be based on the fact that Christian love “does not behave indecently,” (Note 9) “does not look for its own interests,” (Note 10) and “does not rejoice over unrighteousness” (Note 11). These Scriptural directives can be placed under the category of a single thought, namely “do not harm your neighbor” (Note 12).

The achievement of the greatest good in the civil society is only possible by glorifying God and respecting man, in this way promoting his dignity. Man must therefore be treated as a moral entity (Note 13).

Owing to the innate nature of the human soul, God serves as an ontological framework for the individual rights of man. The description of the unique value of humans in Psalm 8:5 is striking: “For thou hast made him but little lower than God, and crownest him with glory and honor.” (Note 14).

By virtue of this dignity, man possesses fundamental individual rights, which may not be encroached upon, even by the state: “The state, for example, cannot absorb the inalienable rights proper to persons, nor can it be considered as more than its individual members in such a way that persons can be sacrificed for the sake of society” (Note 15). It implies that not a single right of individual citizens may be sacrificed for the sake of the public good (Note 16).

It is in accordance with this transition that the rights of the human being take political and social form in the community (Note 17). In the natural order itself the human being transcends the state, to the extent that man has a destiny superior to time (Note 18).

The entire human being is a part of the state, but not by virtue of all that is in it nor of all that pertains to it. There are in it things, which transcend the state and which raise the entire man to a position above civil society. “I am part of the state by reason of certain relationships to common life which call my whole being into play; but by reason of other relationships [...] to things more important than common life, there are in me gifts, rights and values which exist neither by the state nor for the state and which are outside the sphere of the state” (Note 19). Man transcends the state by reason of something higher than the political community which concerns the supra-temporal fulfillment of the human being as a person (Note 20).

Because of this supreme motif of the human being, the state cannot impose itself upon the former. The state knows this well, that is why, whenever it goes beyond its natural limits, it strives to violate the human being. The state becomes iniquitous and tyrannical if it tries to violate the rights of the human being in order to become the master of man’s soul (Note 21).

3. Human Rights

The divinity and thus the legitimacy for human dignity result in the claim for human rights by the individual (the poor, women and children).

The question of human rights offers us an outstanding example of the situations I attempted to outline. The problem of human rights involves the whole structure of moral and metaphysical convictions held by each one of us. Man possesses “inalienable” rights, but nevertheless he is deprived of the possibility of justly claiming to exercise certain of them by such inhumanities as occur in the social structure of each age (Note 22).

The issues of equality in terms of the rights of women and children and intestate succession and the South African Constitution's handling of these matters serve as preamble to our discussion on human dignity.

3.1 Equality

As for South Africa's long history of oppression and discrimination against certain groups in society, equality is viewed as one of the core values of the 1996 Constitution (*Constitution of the Republic of South Africa, Act 108 of 1996*). Equality is formulated in the *Constitution of 1996* as a command for equal treatment and prohibition of unfair discrimination (Note 23).

According to the *Constitution of 1996*, equality includes the full and equal enjoyment of rights and freedoms and is envisaged by the endorsement in section 9(2) (of the *Constitution of 1996*) of "legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination."

In terms of section 9(3) of the Constitution both sex and gender can be employed as grounds for discrimination. Sexual discrimination is based on biological differences between men and women. An employer may insist on sexual favors as a prerequisite for job promotion. In the light of these contentions, it can be asserted that gender discrimination involves a situation in which a negative result flows from a person's gender and is based on societies' belief that it is always the responsibility of the man to be the breadwinner and the responsibility of the woman for domestic work.

In *Fraser v Children's Court, Pretoria North and Others* (Note 24), Mahomed J had the following to say: "There can be no doubt that the guarantee of equality lies at the very heart of the Constitution [and] there is a [...] need [for] equality between men and women and people of all races [...]" (Note 25). It is evident from this study that the achievement of equality is not only one of the founding values of the Constitution, but section 9 of the *Constitution of 1996* also guarantees the achievement of substantive equality to ensure that the opportunity to enjoy the benefits of an egalitarian and non-sexist society is available to all, including those who have been subjected to unfair discrimination in the past.

3.2 Rights of Women and Children

With its aim of the achievement of equality, the *South African Constitution* bolstered the need to protect the rights of women and it also stresses the importance of protecting children from discrimination (Note 26).

With regards to the protection of children, the question arises in *Bhe v Magistrate, Khayelitsha* (Note 27) as to whether the differential entitlements of children born within a marriage and those born extra-maritally, constitute unfair discrimination. South Africa is a party to a number of international multilateral agreements designed to strengthen the protection of children. According to article 2 of *The Convention on the Rights of the Child*, signatories are required to ensure that the rights set forth in the Convention shall be enjoyed by all children regardless of "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

The gist of article 2 of *The Convention on the Rights of the Child*, gave rise to the constitutional challenge to the official customary law of succession and the rule of primogeniture, which precludes daughters and younger sons from inheriting from their parents and extra-marital children from inheriting from their fathers. These exclusions constitute unfair discrimination on the basis of gender and birth and are part of a scheme underpinned by male domination (Note 28).

In South Africa, children whose parents were not married at the time they were conceived or born were discriminated against. The stigma attached to extra-marital children was social and religious and was exceedingly harmful. The legal consequences of extra-marital birth at common law are also harmful and humiliating, as can be seen from the derogatory phrase of the Dutch principle that "*een wijf maakt geen bastaard*." (Note 29). The implications are that the extra-marital child was not recognized as having any legal relationship with his or her father, but only with his or her mother. The child therefore took the mother's name, inherited only from his or her mother, and the father of the child had no parental obligations or rights *vis-à-vis* the child. Extra-marital children did, and still do, suffer from social stigma and impairment of dignity and equality. When section 9(3) of the *Constitution of 1996* prohibits unfair discrimination on the ground of "birth," it should be interpreted to include a prohibition of differentiation between children on the grounds of whether the children's parents were married at the time of conception or birth. It seems that this adverse conception of the extra-marital child has been adopted by the rule of primogeniture in customary law. The rule of primogeniture dictates that only a male who is related to the deceased qualifies as an intestate heir. Extra-marital children are not entitled to succeed to their father's estate in customary law. They qualify for succession in their mother's family, but subject to the principle of primogeniture. The eldest male extra-marital child qualifies for succession only after all male intra-marital children and other close male

members of the family (Note 30).

The primogeniture rule prevents all female children and significantly curtails the rights of male extra-marital children from inheriting. In denying female and extra-marital children the ability and the opportunity to inherit from their deceased fathers, the application of the rule of primogeniture is a violation of section 9(3) of the *Constitution of 1996* (Note 31).

3.2.1 Intestate Succession

The same treatment that extra-marital children are subjected to, is likewise meted out to women. Women do not participate in the intestate succession of deceased estates. For example, in a monogamous family, the eldest son of the family head is his heir. If the deceased is not survived by any male descendants, his father succeeds him. If his father also does not survive him, an heir is sought among the father's male descendants related to him through the male line (Note 32). The exclusion of women from inheritance on the grounds of gender, is certainly a violation of section 9(3) of the *Constitution of 1996*. It is evident that the principle of primogeniture also violates the right of women to human dignity and equality as guaranteed in section 10 of the Constitution, because, it implies that women are not fit or competent to own and administer property. The rule of primogeniture also relegates women to a status of perpetual minority, placing them automatically under the control of male heirs, simply by virtue of their sex and gender. Their dignity is further impaired by the fact that as women, they are excluded from intestate succession and denied the right, which other members of the population have, to be holders of and to control property (Note 33).

The primogeniture rule as applied to the customary law of succession cannot be reconciled with the current notions of equality and human dignity as contained in the *Bill of Rights*. The rule violates the equality rights of women and is an affront to their dignity. In denying extra-marital children the right to inherit from their deceased father, it also unfairly discriminates against them (on the basis of equality) and infringes their right to dignity as well. The result is that the limitation the rule imposes on the rights of those subject to it is not reasonable and justifiable in an open and democratic society founded on the values of equality and human dignity.

4. *Constitution of South Africa 1996 as Standard Bearer in the Fight for Social Justice*

The *Constitution of 1996* has as its central objective the creation of a democratic society founded on the values of human dignity and the achievement of equality. At the core of the creation of a democratic society lies the need to address the inequalities of the past and to work towards the attainment of social justice for everyone.

Inequality is still the biggest challenge facing development and transformation in post-apartheid South Africa. Poverty, discrimination and inequality are the three key consequences of apartheid's economic growth strategy and policies of social control.

If equality is denied to people who have no food, clothing or shelter, it must follow that equality cannot be achieved unless all people have adequate food, clothing or shelter. No process for the achievement of equality can ever be complete unless the effort to fulfill the right to food, clothing, shelter and other socio-economic rights are integrated within it. (Note 34).

With special reference to the human dignity and the right to equality, discrimination can be prevented by the assurance that all of us are to recognize the inherent dignity of all human beings regardless of their social standing and physical condition. It is only then that the recognition and awareness of the humanity and dignity of all human beings is fundamental and essential to the achievement of the equality of all (Note 35).

This study also looks at the ways in which equality is linked to and shaped by the social and economic rights in the *Constitution of 1996* since the *Grootboom* and the *Soobramoney* cases and examines the enhancement of social justice through their application to socio-economic rights (Note 36). These two different sets of cases – dealing with health and housing - are to be considered in this study.

4.1 Health Care

In terms of the social-economic context, with regard to health care, the Constitutional Court states in *Hoffman v South African Airways* (Note 37): "Society has responded to [the] plight [of individuals with HIV] with intense prejudice. They have been subjected to systemic disadvantage and discrimination. They have been stigmatized and marginalized. As the [Hoffman] case demonstrates, they have been denied employment because of their HIV positive status without regard to their ability to perform the duties of the position from which they have been excluded. Society's response to them has forced many of them not to reveal their HIV status for fear of prejudice. This in turn has deprived them of the help they would have otherwise received. People who are living with HIV/AIDS are one of the most vulnerable groups in our society [...]. In view of the prevailing prejudice against HIV

positive people, any discrimination against them can, to my mind, be interpreted as a fresh instance of stigmatization and [...] an assault on their dignity.” (Note 38).

For people living with HIV/AIDS, access to affordable ARV therapy is central to the enjoyment of the fundamental rights of human dignity and equality. Government, however, has made ARV’s available only for the wealthy (Note 39). This is a flagrant disregard of the human dignity and the right to equality of the poor. Section 27(1)(a) of the Constitution guarantees to everyone the right to have access to health care services. Under section 27(2), the state is required to have a “coherent [...] programme directed towards the progressive realization of the right of access to health care services for individuals with HIV. The failure to undertake any measures whatsoever to reduce the costs of ARV treatment has kept it unavailable to many people living with HIV/AIDS who could otherwise have access thereto through the private sector. Without that treatment many of these individuals will die. Under these circumstances, it is not difficult to conclude that the state has failed its obligations under section 27. The failure to undertake reasonable available measures to reduce the cost of life-saving treatment is an extreme constitutional violation (Note 40). Reducing the price of ARV’s lowers the bar of accessing these drugs. However, many South Africans living with HIV/AIDS would still not be able to afford this treatment. It could be argued that this relief would merely place a constitutional imprimatur on perpetuated inequality. A significant number of individuals would benefit from this life-saving treatment if government issued compulsory licences. Government has a duty with respect to these people to “unlock [...] the system.” (Note 41). It must create the conditions for access to health care. Government cannot use its hesitancy to pay for these drugs for everyone as an excuse for not using a power in its arsenal that can make these drugs available to many people.

Another case involving the right of access to health care, is *Soobramoney v Minister of Health, KwaZulu-Natal* (Note 42). The case involves access to renal dialysis at state expense in the public sector. After his unsuccessful application to the Durban High Court, the applicant appealed directly to the Constitutional Court, challenging the denial of access on the basis that “no one may be refused emergency medical treatment” (Note 43). The Constitutional Court, relying on Section 27(2) of the Constitution, stated that the denial of access to renal dialysis was reasonable. The *Soobramoney*-case recognizes the fact that the right of access to health care services does not impose an obligation on the state to provide everything to everyone and that “there will be times when... [managing limited resources] requires... [the state] to adopt a holistic approach to the larger needs of society rather than to focus on the specific needs of particular individuals within society.” (Note 44). This *dictum* implies that due to limited resources, the government is constitutionally permitted to deny the rights of access to health care. This will lead to an underestimation of man and an infringement of his/her individual rights.

Briefly then. Public hospitals and medical services in the public sector have to offer basic affordable medical care to people with HIV. This should be justified in moral terms and not be motivated by economic condemnation (as in the judgment in the *Soobramoney*-case). Judges should not only ensure that measures chosen by government to fulfill its constitutional obligations are justified, but also that the state does not merely plead lack of resources, but gives conclusive evidence of lack of resources if health care needs are not met due to financial constraints. The courts should be convinced that policy decisions are reasonable and were taken in good faith (Note 45).

To recapitulate. In the *Soobramoney*- (and the *Hoffman*-) case(s) the appellant relied on the right not to be refused emergency medical treatment (Note 46). This socio-economic right has been infringed by the state’s focus on economic considerations: “Proof of lack of financial resources lies at the heart of [this] [decision].” (Note 47). It is sad that both the High Court and the Constitutional Court buttressed the state’s opinion (lack of resources) on the *Soobramoney*-case (Note 48).

According to the *Promotion of Equality and Prevention of Unfair Discrimination Act 4/2000*, unfair practices include “unfairly denying or refusing any person access to health care facilities or failing to make health care facilities accessible to any person.” (Note 49). This Act, which has wide-ranging powers of enforcement, provides declaratory orders and orders for payment of any damages in respect of impairment of dignity and equality. *Soobramoney* was refused access to health care facilities and died as a result of that. This refusal was unreasonable and an infringement of *Soobramoney*’s human dignity and his right to equality. The Act can therefore, on the one hand, enforce payment for damages to the beneficiaries of *Soobramoney* for being subject to emotional and psychological suffering. On the other hand, in terms of its declaratory powers, the Act can make it possible for the court to change the state’s decision or to substitute their conclusion with its own. Courts can tell the government what policy it ought to implement (Note 50).

4.2 Housing

The issue of housing is being discussed under the *Grootboom*-case. The facts of the case are that a group of people lived under intolerable conditions in an informal settlement outside Cape Town. Many of them had applied for

subsidized low-cost housing from the municipality and some of them had been on a waiting list for up to seven years. Faced with such conditions, the respondents moved to vacant privately owned land and put up their shacks and shelters there. They were evicted from their new premises under questionable circumstances and their building materials were destroyed. There can be no doubt that their human dignity and equality, the fundamental values of our society, are denied those who have no food, clothing or shelter (Note 51) and access to medical care (*Soobramoney*-case).

Adequate housing is required to live a life of dignity within one's community. This implies: to lead a life without shame, to be able to visit and entertain one's friends (Note 52). Adequate housing requires the state to ensure that people have "effective protection from the elements and basic services, such as toilets and running water." (Note 53). In this way, the court can show that it has the interests of the most vulnerable at heart and that it is prepared to demand that the government fulfill their basic needs (Note 54).

There is a need for a remarkable commitment of enforcing the social and economic rights guaranteed in the Constitution. A moving away from the mere rationality of state actions (claims of budget restraints) to a standard of reasonableness will be desirable under *Grootboom*. De Vos alleges (in the context of reasonableness) that the state has a duty to take positive action to meet the needs of those living in extreme poverty, homelessness or intolerable housing conditions. The Court must, when it interprets the rights in the *Bill of Rights*, have regard for the present state of social and economic deprivation and inequality as well as the fact that the Constitution places a positive duty on the state to take action to begin to address the needs of those who live in a state of destitution (Note 55).

The equality concept in *Grootboom* opens up possibilities for using both Section 9(3) and Sections 26 and 27 to hold the state accountable for any failures to address the needs of the socially and economically most vulnerable sections of our society (Note 56). The court investigated the state's existing housing policy and found that the state had failed to make reasonable provision within its available resources for destitute people (Note 57). The state is in breach of its obligations with respect to socio-economic rights and sets therefore the basic framework for future claims against the state regarding its positive constitutional duties. The Constitutional Court held that Section 26(2): "[Requires] the state to devise and implement within its available resources a comprehensive and co-ordinated program progressively to realize the right of access to adequate housing," and that such a program "must include measures [...] to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations." (Note 58). To the extent that the state's existing housing program failed to make provision for such people, it was found to be unconstitutional. The *Grootboom*-case sets down principles relevant to the enforcement of socio-economic rights. It recognizes that although the state has an obligation to create the conditions for access to adequate housing for people at all economic levels of our society, the needs of the poor require special attention (Note 59). If the needs of the poor, for example, lack of food, clothing, shelter or medical care has been addressed (by the courts and the state) then equality and human dignity is achieved for them. They will therefore have the opportunity to live their lives with a semblance of human dignity.

5. Conclusion

The cases, *Grootboom*, *Soobramoney*, *Hoffman* and *Bhe* place the concept of human dignity within a paradigm of social and economic inequality that exists in South Africa, affirming that people who are denied access to the basic social and economic rights are denied the opportunity to live their lives with a semblance of human dignity. People cannot live with human dignity where structural inequality prevails and where the state fails to address such structural inequality. Nor can it be achieved where the state fails to address the special needs of the most vulnerable sections in society (Note 60). These most vulnerable sections, as indicated in this study, are the poor and the individual (women and children).

This paper stresses with indignation, that a lack of financial resources does not excuse a failure to provide adequate medical services and housing. Social and economic rights, namely the right to health and the right to housing provides an indispensable guide for human rights activists, constitutional law practitioners and of course the judges who are increasingly being called on to enforce these rights (Note 61).

Acknowledgement

The author wishes to express his gratitude towards Mr O.T. Masala for his invaluable support in the writing of this article.

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Notes

- Note 1. Maritain (1945) 6.
- Note 2. Cicero, *Pro Lege Agraria* 2.2.3. "...sed dignitate impetratus esse videatur."
- Note 3. Augustine, *De Civitate Dei*, Bk 3, chapter 1. "In the 'true city' (of God) citizenship is an everlasting dignity.
- Note 4. Thomas Aquinas, *Summa Theologiae* 1, q. 22, a.33.
- Note 5. Rosmini (1988) 60-1.
- Note 6. Swartz (2009) 62.
- Note 7. Deuteronomy 5: 6.
- Note 8. Swartz (2009) 62.
- Note 9. 1 Corinthians 13: 5.
- Note 10. 1 Corinthians 13: 5.
- Note 11. 1 Corinthians 13: 5.
- Note 12. Rosmini (1988) xiii.
- Note 13. Swartz (2009) 63.
- Note 14. The Holy Bible. American Standard Version.

- Note 15. Rosmini (1996) 37.
- Note 16. Rosmini (1996) 37.
- Note 17. Maritain (1945) 40.
- Note 18. Maritain (1945) 42.
- Note 19. Maritain (1945) 12.
- Note 20. Maritain (1945) 13.
- Note 21. Maritain (1945) 44.
- Note 22. Maritain (1945) 15.
- Note 23. Bekker (2006) 165.
- Note 24. 1997 (2) SA 261 (CC); 1997 (2) BCLR 153 (CC).
- Note 25. *Fraser v Children's Court*, par. 20.
- Note 26. *Bhe v Magistrate Khayalitsha*, par. 51, 53.
- Note 27. 2005 (1) SA 580 (CC).
- Note 28. *Bhe v Magistrate, Khayalitsha*, par. 88.
- Note 29. *Green v Fitzgerald and Others* 1914 AD, par. 99.
- Note 30. *Bhe v Magistrate, Khayalitsha*, par. 79.
- Note 31. *Bhe v Magistrate, Khayalitsha*, par. 93.
- Note 32. *Bhe v Magistrate, Khayalitsha*, par. 77.
- Note 33. *Bhe v Magistrate, Khayalitsha*, par. 92.
- Note 34. Jagwanth & Kalula (2001) 5-6.
- Note 35. Yaacoob (2001) 6-7.
- Note 36. Ngcukaitobi (2002) 590-1.
- Note 37. 2001 (1) SA 1 (CC).
- Note 38. *Hoffman v South African Airways*, par. 28.
- Note 39. Bollyky (2002) 549.
- Note 40. Bollyky (2002) 566.
- Note 41. Bollyky (2002) 567.
- Note 42. 1998 (1) SA 765 (CC).
- Note 43. Section 27(3) of the *Constitution of South Africa, Act 108 of 1996*.
- Note 44. *Soobramoney v Minister of Health, KwaZulu-Natal*, par. 31.
- Note 45. *Soobramoney v Minister of Health, KwaZulu-Natal*, par. 31.
- Note 46. Section 11 of the *Constitution of South Africa, Act 108 of 1996*.
- Note 47. Van Wyk (2003) 397.
- Note 48. Van Wyk (2003) 398.
- Note 49. *Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*, section 5(1).
- Note 50. Van Wyk (2003) 407.
- Note 51. *Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC)*, par. 3.
- Note 52. Bilchitz (2002) 492.
- Note 53. Bilchitz (2002) 500.
- Note 54. Bilchitz (2002) 501.
- Note 55. De Vos (2001) 55-6.
- Note 56. De Vos (2001) 69.

Note 57. Van Wyk (2003) 401.

Note 58. *Government of the Republic of South Africa v Grootboom*, par. 99.

Note 59. Berger (2008) 48.

Note 60. De Vos (2001) 64.

Note 61. Justice Richard J. Goldstone. Foreword. In Gauri & Brinks (2008) viii.