

Human Rights and Conflict Transformation in Africa: Some Thoughts on the Transformative Values of Human Rights

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The arguments in this article attempt to justify the view that human rights can positively influence the resolution of social conflicts. What are posited to be the strength of the human rights paradigm are the values inherent in its norms. These values, the article argues, are transformative in nature. Therefore, conflict resolution practitioners and human rights advocates operating in the arena of conflict can appropriate these values to bring about transformation of the conflict. The paper is based on the assumption that whereas the desired outcome in any response to conflict is its complete resolution, the reality is that the relationship between parties has to transform from that of violence or belligerence to that of peace. Therefore, conflict resolution is really a transformative process. The focus of the paper is on how such transformative action can be brought about by human rights values.

1 INTRODUCTION

The logic of assessing the impact of human rights on conflict resolution reside not in the uncontested mutuality of the peace and rights paradigm, but on the hypothesis that society's effort to stabilise peace will be influenced by its performance on the human rights score throughout the conflict continuum.¹ This elevates the debate from the mere acquiescence that the corpus of human rights and its neo-liberal content may have prescriptive benefits for conflict prevention and peacebuilding, to a more contextualised understanding of how that liberal content may be appropriated to engineer positive transformation of society.² Conflict

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¹ The use of the term "conflict continuum" is deliberate – not just as model for depicting conflict progression from the low intensity disagreements to violence, but also as a catch phrase for the multiplicity of interventions and responses that a conflict attracts and which influence that progression. From a juridical point of view, the continuum represents the changing phases of conflict that have normative implications for both interveners and the parties.

² Clearly, the era when the objectives, strategies, and roles of human rights advocates and conflict resolution practitioners were seen to differ, is certainly behind us. Parlevliet acknowledges that human rights protection is important for the establishment of "long-term stability and development of societies that have experienced or are experiencing violent conflict". See Parlevliet *Rethinking ConflictTransformation from a Human Rights Perspective* (2009) 5 (available at http://www.berghof-handbook.net/documents/publications/parlevliet_handbook.pdf (accessed 20-01-2012)). Osaghae, while relying on Issa Shivji's formulation of "rights as a means of struggle", argues that human rights in Nigeria have provided a platform for negotiating peace among the different ethnic and regional groups. See Osaghae "Human Rights and Ethnic Conflict Management: The Case of Nigeria" 1996 *J. Peace Research* 171. Other studies

resolution that yields to the signing of a peace agreement, and peacebuilding, where the peace agreement is sought to be implemented, are successive processes that take the society through multiple stages of transformation. Through these stages, inputs of varying nature combine to facilitate the renegotiation of interests of the warring entities, their shifting of position from violence to peace, and the establishment of conditions necessary for infrastructural rebuilding and economic growth. Looked at in totality, this transformation is geared towards improving the human condition hitherto constrained by a preponderance of factors inimical to peace. However, this goal can never be achieved unless the systems and institutions that the transformation engenders evolve through cumulative processes that espouse higher values of human endeavour. The values must however transcend differences in religion, ethnicity, race, culture, level of economic development, and even political organization to be able to engineer positive change.³ In this article, these values are characterised as “transformative” values.

Although these values occur in a variety of epistemic formulations, a major portion finds articulation in human rights. It is argued therefore, that it is not possible to divorce the core of the human agenda from conflict transformation and post-conflict peacebuilding. What may be problematic is the methodology of infusing the human rights agenda into peace work. The question “What should be the appropriate entry points for human rights in the overall processes of conflict transformation?” then finds an answer in the examination of how the transformative values could engineer a convergence of the conflict resolution agenda with the human rights project.⁴ In this regard, therefore, the human rights project could become a

demonstrate the link between conditions that may lead to conflict and the normative human rights standards. See for example, Quashigah “Protection of Human Rights in the Changing International Scene: prospects in sub-Saharan Africa” 1994 *J. Int'l. & Comp. L.* 93, and Agbakwa “A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa” 2003 *J. Afr. L.* 38-64. Note that the term “neo-liberal content” is used here to acknowledge the force of absolute universalism inherent in the western conception of rights, as opposed to the evolving perception of rights as encapsulating the cultural differences – what Makau utua refers to as the cultural fingerprint of rights. See Mutua “The Banjul Charter and the African cultural fingerprint: an evaluation of the language of duties” 1995 *Virginia J. Int'l. L.* 339.

³ All major cultural groups have values that could be characterised as human rights values. For example, human dignity or respect for human life. Different religions might celebrate human dignity or sanctity of life in different ways but the overarching ideas may not be entirely different. See An Naim “Towards an Islamic Hermeneutics for Human Rights” in Naim *et al* (eds) *Human Rights Values and Religious Values: An Uneasy Relationship* (1995) 229; “Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives” 1990 *Harvard Human Rights Law Journal* 12-52; Spickard, “Human Rights, Religious Conflict, and Globalisation: Ultimate Values in a New World Order” 1999 *IJMS: International Journal on Multicultural Societies* 2-19, available at www.unesco.org/shs/ijms/vol1/issue1/art1 (accessed 23-01-2009).

⁴ In this article, the human rights project is perceived in an all-encompassing frame that takes into account the normative elements, processes and institutions, as well as values. It could also mean the “human rights culture”, though this connotation may be problematic for those who view “culture” as an exclusionary term. As used in this article, the project envisages, as well, the paradigmatic influence of human rights law and values on societal organisation that spurs change.

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source of legitimate change, its norms providing pathways for the negotiation and re-negotiation of values necessary in the creation of a just and humane society. There is no doubt that the human rights project (norms and institutions) has such a potential. Ward *et al* have described human rights as the most ethical way of reaching across the deep divisions of country, ethnicity, gender, class, and importantly, as best tool for searching “for what are the appropriate protections and benefits for all people of the world”.⁵ Today, the human rights project has proliferated into a wide pool of ideas, responses, and mechanisms that involve a variety of players, in and out of a conflict situation. However, the relationship between human rights and transformative values in the context of conflict reduction and peacebuilding becomes succinct when one considers human beings to be “moral agents who are capable of formulating their own personal projects and seeking ways of realising them”.⁶ In this way, human rights norms become complimentary and supportive to the human agency; they help the individual experience the full benefit of livelihood that may be curtailed by the conflict, and at the same time, allow individuals to make choices.⁷ The recognition of the role of individuals in the propagation of human rights and the diffusion of its principles was articulated in the 1993 UN International Conference on Human Rights held in Vienna as follows:

“Recognising and reaffirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms and consequently, should be the principal beneficiary and should participate actively in the realization of these rights and freedoms.”⁸

Bearing in mind the role that individuals must play in the establishment of peace, and the objective normative standards for the protection of humanity that is propagated by the human rights project, this article argues that a convergence of the human rights and conflict resolution paradigms must be found in the values that help society move from a condition of

⁵ See Ward *et al* “Human Rights and the Treatment of Sex Offenders” 2007 *Sex Abuse* 195-216. For the general understanding of the benefits of human rights see Orend *Human Right: Concept and Context* (2002) ; Li *Ethics Human Rights and Culture* (2006); Gerwirth *Self-Fulfilment* (Princeton, NJ: Princeton University Press, 1998); Donnelly *Universal Human Rights in Theory and Practice* 2 ed (2003) ; Churchill *Human Rights and Global Diversity* (2006).

⁶ Ward *Ibid.* 198.

⁷ Freedden carries this argument even further. He views human rights as the “protective capsules” that bestow a defensive zone around persons to allow them realise their full potential. See Freedden *Rights* (1991) 3. James Griffith, on the other hand, underscores the importance of human rights in protecting the status of human beings as autonomous agents. He describes that status as “personhood”. See Griffith “Discrepancies between best philosophical account of human rights and the international law of human rights” 2001 *Proceedings of Aristotelian Society* 1 25.

⁸ See Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, June 1993, UN Doc. A/CONF.157/24 (Part I) 25 (1993).

violence and hopelessness to a condition of peace. Therefore, it begins by constructing a workable understanding of what transformative values mean in the context of conflict transformation. Thereafter, it identifies key values that occur within the human rights project and illustrates why they may be useful to the peace agenda. In the last part, an attempt is made, albeit briefly, to locate the role of values in a conflict continuum. The main argument advanced is that human rights values have an impact on events that shape conflict transformation right from the pre-conflict stage to post-conflict peacebuilding and the reconstruction stage.

2 HUMAN RIGHTS VALUES: PRELIMINARY THOUGHTS

2.1 The “values” approach

Envisioning human rights as a set of values, rather than a rigid repository of norms, evokes a deeper understanding of its transformative quality. Therefore, whereas the strict normative approach is conditioned to the strict observance of standards, the value approach will be versatile and flexible. In this regard, values could be viewed as representing the desirable aspirations that may be varying in importance but which, nonetheless, “serve as guiding principles in people’s lives”.⁹ According to Rokeach, a value is, “an enduring belief that a specific mode of conduct or end-state of existence is personally or sociable preferable to an opposite or converse mode of conduct or end-state of existence”.¹⁰ If internalized, values motivate behaviour, which would be consistent with a preferable sociable condition irrespective of rewards or sanctions that may be consequential to the behaviour. In Rokeach’s postulation, values instigate uniformity in behaviour and may therefore lead to shared responses and the establishment of a value system. If we view human rights as a value system then we must appreciate its enduring quality and its sociable attributes. After all, values are themselves sociable and enduring. Swartz defines values as “desirable state, objects, goals, or behaviour transcending specific situations and applied as normative standards to judge and to choose among alternatives modes of behaviour”.¹¹ In multicultural contexts, the value system must take on a democratic flavour that allows for negotiation of acceptable meanings of specific values. In conflict, such negotiation will occur within the framework of positive transformation that yields to peacefulness. A few would dispute the fact that the preferred

⁹ See Sagiv and Schwartz “Values proprieties and readiness for out-group social contact” 1995 *J. Social & Personal Psychology* 437.

¹⁰ Rokeach *The Nature of Human Values* (1973) 5.

¹¹ Swartz “Universals in the context and structure of value: Theoretical advances and empirical tests in 20 countries” in Zanna (eds) *Advances in Experimental Social Psychology* (1992) 1-65.

sociable condition for human beings is peacefulness. It follows that accepted values should motivate behaviour that supports peace.

2.2 Human rights values

In my view, human rights values occur in specific normative formations and when activated, they may constrain behaviour inconsistent with violence and armed conflict. Thus, in a conflict situation, the individual interaction with values such as equality, liberty and social justice, which are at the core of the human rights agenda, is more likely to instigate positive behaviour rather than negative ones, although this might also depend on a whole range of factors that also influence other processes of societal change. And because human rights values are embedded in ideals that underwrite acceptable modes of behaviour, their application transcends cultural boundaries and are flexible enough to accommodate changing societal life. It is the flexibility and versatility of values that enables human rights actors to intervene at all stages of a conflict and sustain their agenda even as interests shift and parties change throughout the conflict continuum. Even after relative peace is attained, the same flexibility and versatility maintains the balance necessary for stabilising peace in the long term. In Sierra Leone, for example, the rejection of the amnesty for human rights violation proposed in the Lomé Accord of 1999 could be seen as based on the recognition of the values that the emergent society and its backers needed to establish as a basis for future stability.¹²

Apart from this versatility, the value-based approach breaks the barriers that traditionally separated international norms, especially those that impose humanitarian obligations and enforce human rights standards from conflict resolution. Centred on the recognition of the role of states as the responsible authority for establishing order and guaranteeing peace, international law has always concerned itself with regulating state conduct and setting limits on the use of force.¹³ This scheme presupposes that states will have the means to contain internal as well as external violence. Clearly, this has not been the case. Lack of a multilateral enforcement mechanism and the erosion of states' public monopoly of the use of force have rendered the scheme ineffective.¹⁴ In other instances, internal uprising challenging the

¹² See Gallagher "No Justice no peace: Legalities and Realities of Amnesty in Sierra Leone" 2000-2001 *T. Jefferson L. Rev.* 149; Juma "Human Rights Approach to peace in Sierra Leone: The Analysis of the peace process and human rights enforcement in a civil war situation" 2002 *Den J. Int'l L & Pol* 325, 355; O'Flaherty "Sierra Leone peace process: The role of human rights community" 2004 *Hum. Rts. Q.* 29.

¹³ The UN Charter art 2(4) as read together with art 51.

¹⁴ See Koh "Why do nations obey international law" 1997 *Yale L. J.* 2599; Fitzmaurice "The foundation of the authority of international law and the problem of enforcement" 1956 *Modern L. Rev.* 1; Reisman "Enforcement

legitimacy of state have brought into question the ability of the state to dictate the terms of use of force, and thereby temper the regime of international law.¹⁵ So although states are still powerful, dominant, and pervasive in many respects, their status as objects of international law is regularly challenged. Thus, there is still a gap between the hegemony of a state as recognised by international law and its actual ability to eliminate violence and create internal peace. This gap can, to a large extent, be explained by the distinctiveness and variance of normative practice between the domestic and international realms. The values espoused in human rights often instigate some sort of convergence in the international and domestic normative approach to violence, thus bridging the gap between the two realms. For example, human rights norms establish a regime of rights for actors in any conflict situation, irrespective of the nature of their grievances and the geographical span of their activities. Also, issues at the heart of many conflicts in Africa, such as the claim to self-determination, which transcend the two realms and cannot be ignored by a conflict resolution project, have human rights ramifications.¹⁶ Secondly, some human rights values are so fundamental that they constitute *jus cogens* and therefore cannot be derogated from.¹⁷ The idea is that states have little room to wiggle out of the responsibility to observe and protect such rights. Thus, when situations of incongruity arise and international law or humanitarian law cannot be applied, human rights law will often rise to fill the gap. As Meron has noted, “human rights law, or at a minimum, its non-derogable core, continues to apply in times of armed conflict, gaps in protection under the law of war can be filled in some circumstances”.¹⁸ This illustrates one way in which human rights values facilitates the convergence of the conflict resolution paradigm and law in conflict situations.

3 TRANSFORMATIVE CONTENT OF SOME HUMAN RIGHTS VALUES

So what are these values and what are their transformative contents? The argument I am making is that societies in transition can develop capacity to generate values that transform

of International judgments” 1969 *Am. J. Int’l L.* 1; Leander “Globalisation and the state monopoly on the legitimate use of force” 2004 *Politologiske Skrifter*, available at http://static.sdu.dk/mediafiles/Files/Om_SDU/Institutter/Statskundskab/Skriftserie/04ANL7%20pdf.pdf (accessed 24-08-2012).

¹⁵ See generally Brown *The International Dimensions of Internal Conflict* (1996); Meron “International criminalization of internal atrocities” 1995 *Am. J. Int’l L.* 554.

¹⁶ See McCorquodale “Self-determination: a human rights approach” 1994 *Int’l & Comp L. Q.* 857.

¹⁷ See Biachi “Human Rights and the magic of *Jus Cogens*” 2008 *EJIL* 491. See also, Charlesworth and Chinkin “The gender of *Jus Cogens*” 1993 *Hum. Rts. Q.* 63, 66 (discussing the symbolic importance of *jus cogens*); Parker “*Jus cogens*: compelling the law of human rights” 1988-1989 *Hastings Int’l. L. Rev.* 411 (arguing that fundamental rights and freedoms should also constitute *jus cogens*).

¹⁸ Meron “Humanization of humanitarian law” 2000 *Am. J. Int’l L.* 239, 267.

the overall conflict situation into a peaceful one, and thereafter sustain the peace. The whole idea of identifying these values and seeking their transformative content rests on the belief that societies will attain positive change based on their potential to imbibe transformative values. Furthermore, as we have already mentioned, most of these values reside in human rights. Therefore, it is within the concept of transformative values that the human rights approach to conflict prevention, reduction, and post-conflict peacebuilding could find expression. Some of the values characterised here as transformative, give the human rights approach the necessary normative content, in addition to defining the underlying dynamics of the constructive change processes that we have come to associate with peace or peacefulness. A point to note is that the human rights field is vast and therefore not all elements remotely beneficial to conflict transformation goals can possibly be canvassed in this short paper. However, the key aspects that have gained ascendancy in the human rights discourse in recent years are hereby discussed.

3.1 **Respect for human dignity**

In the human rights discourse, there is recognition that respect for human dignity is indeed the foundation for peace in society.¹⁹ The preamble to the Universal Declaration of Human Rights (UDHR) emphasizes that “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”²⁰. Thus, the all-encompassing notion of “human dignity” acquires an inherent quality as the common denominator of all values to which humanity aspires.²¹ Rhoda Howard defines human dignity as “the particular cultural understandings of the inner moral worth of the human person and his or her proper relations with society”.²² In her view, human dignity is not a claim an individual can make against society, but rather something granted at birth or incorporated into community and earned by the individual upon his or her compliance with society values, customs, and norms. Recognition of human dignity sits at the core of every beneficial and enriching relationship and furthers the interest of peace. However, as dignity travels the ideological thoroughfare, its substance acquires more normative recognition and clarity within the domestic legal systems. The right to dignity is

¹⁹ Donnelly *Universal Human Rights in Theory and Practice* (1989) 17, 24.

²⁰ Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), UN Doc. No A/810, at 71 (1948).

²¹ See generally Kretzmer and Klein (eds) *The Concept of Human Dignity in Human Rights Discourse* (2002); Clapham “The ‘Drittwirkung’ of the Convention” in Ronald, St. J. MacDonald *et al* (eds) *The European System for the Protection of Human Rights* (1993) 163; Schachter “Human Dignity as a Normative Concept” 1983 *Am. J. of Int’l L.* 848.

²² Howard “Dignity, Community and Human Rights” in An-Naim (ed) *Human Rights in Cross-Cultural Perspectives* (1992) 81.

contemporaneous with the right to life; the two “share a common core of fundamental standards which are applicable at all times, in all circumstances, and to all parties, and which no derogation is permitted”.²³ Moreover, the enjoyment of all other fundamental rights, including the values discussed here, are contingent upon life.

Today, the idea of human dignity finds articulation in many constitutions. Primarily it is used in reference to the condition of “humanness” that recognises the “human worth” or “inherent human worth”.²⁴ The 1996 Constitution of the Republic of South Africa, for example, makes numerous references to human dignity. In section 1, it states that the Republic is founded on the values of “human dignity, the achievement of equality, and the advancement of human rights and freedoms”. In section 7, reference is made to the democratic values of human dignity. Section 10 states that everyone has an inherent right to have their dignity respected and protected. Section 36 refers to an open and democratic society based on human dignity; and section 39 refers to the promotion of values that underlie an open and democratic society based on human dignity. The Constitutional Court has held human dignity to be the fundamental statement of human value, but also, an enforceable right.²⁵ Although this work, like Schachter, asserts that human dignity may be realized in other ways than by asserting a claim to rights, the idea that rights inure not as a grant by any authority and that they are of entitlement to every person, affirms the view that respect for human dignity is perhaps the preferred starting point for asserting claims for rights and cultivating awareness of a sense of justice relevant to society in transition.²⁶ Moreover, experience has taught us that if human

²³ See *Prosecutor v Delalić*, Appeal Judgment No IT-96-21-A (20-02-2001) para 149.

²⁴ In *National Coalition for Gay & Lesbian Equality v Minister of Justice* 1999 1 SA 6 (CC) para 60-61, the court observed that the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals. See also, Ackerman “Equality and Non-Discrimination: Some Analytical Thoughts” 2006 *SAHRJ* 597-612; Liebenberg “The Value of Human Dignity in Interpreting Socio-economic Rights” 2005 *S. A. J. Hum. Rts.* 1; Chaskalson “Human Dignity as a Foundational Value of our Constitutional Order” 2000 *S. A. J. Hum. Rts.* 193.

²⁵ For example, in *Dawood v Minister of Home Affairs* 2000 3 SA 936 (CC) para 35, the court had this to say, 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, it 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. In many cases however, breach occasioned may be of a more specific right, such as the right to bodily integrity, the right to equality, or the right not to be subjected to slavery, servitude, or forced labour.

²⁶ See *S v Makwanyane* 1995 3 SA 391 (CC) para 144. The Constitutional Court, in this judgement, discussed the values of human dignity to the right to life, and held both to be the most important of all human rights, and the source of all other personal rights in the Bill of Rights. Human dignity is also seen to be the foundation for other rights. In *August v Electoral Commission* 1999 3 SA 1 (CC), Sachs J. extended the foundational importance of human dignity to democratic governance by stating that the vote of every citizen was the “badge of dignity and personhood” and which has significance in the promotion of nationhood and exercise of

beings are to live a life that guarantees them “dignity”, then they must have certain rights, the list of which could be read in the Bill of Rights enactment in any modern constitution. These rights are inherent in our nature and without them, we cannot live as human beings; they are the force behind human existence.

Through the recognition of human dignity, the human rights agenda has become a major instrument for change. Already, the transformative nature of the values enshrined in the human dignity parlance, have seen societies transform laws in a significant way. In the case of South Africa, respect for human dignity has transformed the way in which punishment is emitted. The Constitutional Court in *S v Makwanyane*²⁷ declared the law that hitherto sanctioned capital punishment unconstitutional. Justice O’Regan summed up the right to dignity as “a founding value of the new Constitution”.²⁸ According to the judges of the Court, upholding the right to dignity was consistent with aspirations of the South African society.²⁹ Thus, one might argue that in the context of South Africa, human dignity is transformative because it enables society to shed its racial inequities of the past and embrace a new beginning. Apart from capital punishment, human dignity informs a whole range of processes that are aimed at healing and reconciliation in post-conflict societies. The whole idea of truth and reconciliation, which is based on the notion that victims as well as perpetrators share a common future in a nation that is stable and not torn apart by the differences of the past, hinges on the recognition of dignity. When truth is told and parties reconcile, then the dignity of the parties is restored; this is important for the maintenance of peace and for societal growth.

democracy (para 17). See also, Dworkin *Freedom’s Law: The Moral Reading of the American Constitution* (1996) 111.

²⁷ *Makwanyane*, *supra* note 25.

²⁸ *Ibid.* 507 B. Justice O’Regan observed that because human dignity speaks to the intrinsic worth of human beings, it is the “foundation of many of the other rights that are specifically entrenched in... Bill of Rights.” *Ibid.*

²⁹ Several judgements in *Makwanyane* carried the notion of transformation. Justice Langa, for instance, observed that whereas the value of life and respect of dignity in the past had been “demeaned”, placing emphasis on these rights is important to affirm the ethos of a new dispensation (480 D, E). Justice Mokgoro saw the abolition of the death penalty as a revival of the right to dignity in South Africa, a commitment that could be achieved in the redefinition of the African concept of *Ubuntu* (502 F). While relating the transformative nature of dignity to the South African situation, Justice O’Regan stated:

“Respect for dignity of all human beings is particularly important in South Africa. For apartheid was denial of common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans.” Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new constitution (page 507 D). (Emphasis is mine).

3.2 Socio-economic well-being

Disruptive conflicts affect the socio-economic well-being of society. Therefore, their resolution must necessarily involve the restoration of livelihoods and the promotion of relationships that do not conflict with economic aspirations. In the post-conflict stage, when the state is transitioning to democracy and the market economy, many of their citizens are obviously left worse off economically.³⁰ They are stranded and deprived, unable to find meaningful livelihood in the new environment, despite the silence of guns. When people are unable to find work, or completely lack economic security, they cannot lead meaningful lives. In such situations, the people will be preoccupied with survival and do not have an opportunity “to do what they want” – to exercise their human rights. From an economic point of view, it is this element of “choice” that differentiates between the state of well-being and that of utter deprivation. The connection between the state of well-being and peace has long been affirmed in the works of scholars such as Edward Azar who identified deprivation as one of the causes of protracted social conflicts,³¹ and John Burton who adopted Abraham Maslow’s hierarchy of needs hypothesis to conflict theory.³² Basically, these scholars make a critical evaluation of the human response to well-being as opposed to conditions of depravity, and draw the conclusion that in conditions of depravity such response is likely to be violent or anti-peace. From this analysis, an argument could be made that the objective of satisfying the individual claim to well-being is in itself transformative.

The idea of “well-being” also envisions a broader prerogative on society to deliver to its members conditions of fulfilment commensurate with their claim to “dignity”. Well-being infers that society has provided support not only to those who have fallen below the poverty line, but also directly provided resources such as health, education and transport that are required by all citizens to enable them to participate in the labour force and in their own communities. It is not just material provisions, but a range of cognisable claims that could include a clean environment, space for cultural recognition and identity, and of course peace and stability. Obviously, the fulfilment of needs should be given priority, and that may have been the premise upon which the economic and social rights were promulgated. In human

³⁰ See Haddad “Economic Dimensions of Human Rights in Transition Economies” in Jones & Kriesler (eds) *Globalisation, Human Rights and Civil Society* (1998) 143-160.

³¹ See Azar *The Management of Protracted Social Conflict: Theory and Cases* (1990) 155.

³² See Burton *Conflict Resolution and Prevention* (1990) 242. See also Coate and Rosato “Human Needs in World Society” in Coate & Rosato (eds) *The Power of Human Needs in World Society* (1988) 1-20; Max-Neef *Human Scale Development: Conception, Application and Further Reflection* (1991) 17.

rights therefore, we find an emphatic statement of the rights associated with these aspirations.

A perfect demonstration is found in article 25(1) of the UDHR, which provides:

“Everyone has a right to *standard of living* adequate for health and *well being* of himself and his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”³³

The right to “adequate” standard of living articulated here is absolutely critical, not only because it places a threshold on the provisions to citizens, but because it is basic to the realisation of all other rights. Peter Bailey argues that other rights are somewhat derivative of the right to adequate standard of living.³⁴ He gives the example of the right to social security or employment as merely elaborating on the right to standard of living. Without the latter, other rights could have little meaning. The normative postulations of rights associated with well-being are carried by other equally significant human rights instruments, such as the International Covenant on Economic Social and Cultural Rights (ICESCR)³⁵ and the African Charter.³⁶ However, their limitation lies in the difficulty of realising the rights through judicial processes – what has been termed as the justiciability question.³⁷ In the African Charter, the justiciability question does not arise in relation to access to its mechanism, namely the Commission. However, the difficulty has been on getting governments to abide by the decisions and recommendations of the Commission.³⁸ Yet, despite these difficulties, all

³³ The drafters preferred to use the term “adequate” and not “sufficient”. Other rights contained in this instrument include the right to own property (art 17), right to social security (art 22), right to employment (art 23), and right to education (art 26). These rights are further elaborated in the ICESCR.

³⁴ Bailey “The Right to Adequate Standard of living: New Issues for Australian Law” in Jones & Kriesler (eds) *Globalisation, Human Rights and Civil Society* (St Leonards: Prospect Media, 1998) 19-45.

³⁵ GA Res 2200 UN GAOR 21st Session Supp 16 49 UN Doc. A/6316 (entered into force on 03-01-1976). The Covenant is the most authoritative statement of social and economic rights. In 2008, the UN adopted an Optional Protocol to ICESCR, which establishes a body responsible for dealing with individual complaints of violations of rights contained in the Covenant. See Chenwi “Correcting the history of asymmetry between rights: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights” 2009 *Afr. Hum. Rts. J.* 23.

³⁶ The African Charter equally guarantees the rights to work under equitable conditions, rights to health, education, and even family (art 22). See Odinkalu “Implementing economic and social and economic rights under the African Charter on Peoples and Human Rights” in Evans & Murray (eds) *The African Charter on Human and Peoples Rights: The System in Practice 1986-2000* (Cambridge University Press, 2002) 137-177.

³⁷ Coomans define justiciability as the “extent to which an alleged violation of an economic or social subjective right involved in a particular case is suitable for judicial or quasi-judicial review at domestic level”. See Coomans “Some introductory remarks on the justiciability of economic social rights in a comparative constitutional context” in Coomans (ed) *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (2006) 1, 4. See also, Sajo “Socioeconomic rights and the international economic order” 2002 *Int’l L. & Politics* 221-261; Pieterse “Coming to terms with judicial enforcement of socio-economic rights” 2004 *S. A. J. Hum. Rts.* 383-417.

³⁸ See for example, *Social Economic Rights Action Centre (SERAC) v Nigeria* 2001 AHRLR 60 where the Commission found Nigeria to be in violation of the rights to health, clean environment, housing, food, as well as life, but the government has not been, in the least, bothered by its continued reluctance to honour the judgement

discourses suggest just how central the rights associated with socio-economic well-being are to human existence.

Another factor worth mentioning relates to the political question. In most African countries, political power is always seen as a source of economic security. Frederick Forsyth sums up this view as follows:

“In Africa as elsewhere political power means success and propriety, not only for the man who holds it but for the family, his birth place and even his whole region of origin. As a result, there are many who will go to any length to get it and having got it, will surpass themselves in order to keep it.”³⁹

Masked beneath contests for political power is the motivation for wealth, which is seen as accessible only through political means. When such contests are pursued through ethnic lines, they have the tendency to intensify latent hostilities. Ensuring socio-economic well-being thus becomes a transforming agent when people realise that state institutions can be moulded in such a way that they guarantee well-being and equitable distribution of resources without claim to political power.

The irony in all these is that socio-economic values receive the least attention in constitutional arrangements on the continent.⁴⁰ Except for South Africa, very few states recognise the rights associated with socio-economic well-being.⁴¹ This anomaly is a product of the de-emphasis that socio-economic rights have suffered the world over. Whereas civil and political rights are so boldly engraved in constitutions, socio-economic rights are merely stated as policy pronouncements.⁴² Also, socio-economic rights are generally considered to be dependent

or the recommendations made by the Commission. See a discussion of this case in Ibe “Beyond justiciability: realising the promise of socio-economic rights in Nigeria” 2007 *Afr. Hum. Rts. J.* 225-248.

³⁹ Forsyth *The Making of an African Legend: The Biafra Story* (1977) 25.

⁴⁰ See for example, Oloka-Onyango “Poverty, human rights and the quest for sustainable human development in structurally adjusted Uganda” 2000 *Netherlands Hum. Rts. Q.* 23.

⁴¹ See the wide range of decisions from the South African Constitutional Court, including *Soobramoney v Minister of Health KwaZulu-Natal* 1998 1 SA 765 (CC), *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC), *Minister of Health v Treatment Action Campaign* 2002 5 SA 721 (CC), and *Khosa v Minister of Social Development* 2004 6 BCLR 569 (CC). See also Liebenberg “Protection of Economic and Social Rights” in Eide *et al* (eds) *Economic, Social and Cultural Rights* (2001) 55; Chirwa *Minister of Health v Treatment Action Campaign* 2003 9 E. A. J. *Peace & Hum. Rts.* 174.

⁴² See e.g. the 1993 Constitution of the Kingdom of Lesotho, Chapter III, sections 25-36. See also the Constitutions of Ethiopia (1996), Cameroon (1972-1996), Uganda (1995), Malawi (1994), Liberia (1984), and Sierra Leone (1991). There are interesting ways in which the transformative effect of the values enshrined in the socio-economic rights regime have influenced constitutional interpretation of the content of rights. For example, Issa Shivji, in analysing the case of *Tellis v Bombay Municipal* [1987 LRC (Const. 351)], has illustrated how the Supreme Court of India has interpreted the right to life to include the right to livelihood. See Shivji “Constructing a new rights regime: Promises, problems and prospects” 1999 *Socio Legal Studies* 253 264-5. See also Young “The minimum core of economic and social rights: A concept in search of content” 2008 *Yale J. Int'l L.* 113.

upon the state's ability to provide. Even in cases where the rights are entrenched in the constitution, states are required to put in place mechanisms for "progressive realisation of the rights", depending on available resources.⁴³ In *Government of the Republic of South Africa v Grootboom*, the Constitutional Court outlined the state's obligation to be that of taking "reasonable legislative and other measures to achieve progressive realisation of the right and to act within available resources".⁴⁴ This approach by the South African courts, though flexible and even contestable at times, has a strong influence on how the rights regime affects socio-economic programmes and responses across the continent. Already, these ideas have provided a framework for extending rights of squatters in other African countries. In Kenya for example, the High Court, heavily influenced by the *Grootboom* decision, have handed down a conservatory order in March 2011, barring the Nairobi City Council from evicting squatters in a portion of its land.⁴⁵ The judge, in making the order, observed that:

"Eviction should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all reasonable measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be is available."⁴⁶

The court also urged the government to put in place a comprehensive policy, in view of the new constitution, to deal with such situations so as to ensure that rights are not violated. In the past, evictions in Nairobi have been at the whims of the City Council. This judgment will definitely change the way in which the council treats its poor. For our purposes, however, it is useful to envision these rights and the constitutional obligations that they create as underwriting important values that transform society.

3.3 Freedom and equality

The ideas of freedom and equality have inspired societies since humanity discovered the agency of government as a mode of social organisation. With the evolution of human rights, such ideas have found normative expression in a multiple of international, regional, and domestic instruments. These norms have now become central to the study of peace because of the connection of the idea of rights to political individualism, the intersection of which

⁴³ See e.g. the South African Constitution, s 26(2) and 27(2). See also, Brand "Socio Economic Rights and the Courts in South Africa: Justiciability on a sliding scale" in Coomans (ed) *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (2006) 207-236.

⁴⁴ *Grootboom*, *supra* note 40 para 38.

⁴⁵ See *Susan Waithera Kariuki v The Town Clerk, Nairobi City Council*, H.C. (Nairobi) Petition No 66 of 2010, (2011) eKLR (available at http://kenyalaw.org/Downloads_FreeCases/80847.pdf).

⁴⁶ *Ibid.*

provides a useful point of departure in the understanding of how norms affect vertical as well as horizontal relationships in society. In the classical liberal thinking, society is made up of independent, rational human beings capable of setting their own political agenda.⁴⁷ This thinking arose in opposition to the medieval status notions that assigned human value within a rigid hierarchy based on birth. By and large, liberals sought to secure human freedom against state tyranny by positing the radical notion that each person, qua human, had these irrevocable and equal entitlements to life, liberty, security, dignity, property and so on.

Through the American and French revolutions, the idea of inalienable human worth called individual rights was entrenched, checking organized power in the form of government. Therefore, the legitimacy of a political entity (state) and the purpose of its existence are seen to derive from the need to protect the “interests” or “rights” of their citizens – an idea somewhat based on the social contract theory.⁴⁸ These “interests” or “rights” which may comprise the right to security, liberty, or property, are the pillars that sustain the state, and their protection becomes a prerequisite for peace.⁴⁹ Although this conception of rights and their implication for peace may appear to be of recent development, the idea that human liberty could profoundly affect societal cohesion and political democracy was never lost to early philosophers. John Stuart Mills for example, argued that the advance of civilization depended on the protection of individual liberty.⁵⁰ From those early days, the transformative quality of freedom has been, without question, the most radical. In Africa, the cry for freedom resonates with struggles against colonialism, apartheid, and more recently, against the oppressive and hegemonic one-party oligarchies in places such as Zambia, Kenya, Zimbabwe, and Madagascar. The transformative relevance of freedom can thus be discerned in a negative as well as positive sense. In conditions where the majority are denied freedoms,

⁴⁷ See Lukes *Individualism* (1973) 79.

⁴⁸ The basis of the social contract theory is that no man can be subjected to the political power of another without his consent. According to Thomas Hobbes, law and government had become necessary as means of promoting law and personal security, because before then, human beings were in a state of war, “every man against every man”. Thus, only a government with powers over us can provide peace among us. Hobbes used this theory to justify authoritarian government. See Hobbes *Leviathan* (1651) Pt 1 Chapter 13 Gert (ed) *Man and Citizen* (1991) (English ed 89). Locke, on the other hand, used the theory to construct a natural rights doctrine, where individuals had certain inherent rights which were not dependent on the government, but on reason. See Dunn *The Political Thought of John Locke* (1969) 58-76.

⁴⁹ However, international human rights norms guarantee individual rights and freedoms, which in essence imply a limitation on state behaviour. Thus, governments should neither violate human rights of their citizens nor permit others to do so. However, envisioning the state as the protector of rights has always been problematic. From the middle ages to date, the struggle for freedom has always pitted the individual against government. That is why civil and political rights are sometimes called the first generation rights.

⁵⁰ See generally Mills *On Liberty* (1869). See also, Berlin *Two Concepts of Liberty* (Inaugural Lecture, Oxford University, 31-10-1958).

conflict may arise. However, if freedom is guaranteed, then these values could foster national unity and fortify the rule of law.

Equality has horizontal ramifications as well. Guarded as a tenet of inter-personal relation and an instrument for the achievement of gender equality, the rules that enforce equality have an intrusive character that often put them in conflict with norms that safeguard traditional lifestyles of communal societies. In the majority of African states, where customary law is recognised alongside “western” or “modern” law, strict application of rules of equality as embodied in the Bill of Rights do often evoke some tension.⁵¹ Yet, affirmation of constitutional rights of equality is slowly becoming the norm rather the exception.⁵² Notably however, in a context where plurality of law is maintained through the balancing of cultural interests, the affirmation of rights of equality creates new pathways for engineering cultural harmony – that which is dependent on the recognition of the supremacy of the constitution and the interpretive role of the courts. In the whole, the transformative effect, which the right engenders, becomes even more transparent.

3.4 **Respect for culture**

Culture refers to the whole complexity of material, intellectual, and emotional features that reflect the distinctiveness of a social group. These features may incorporate distinctive value systems, religion, traditions, and beliefs that characterise the behaviour and entire make-up of social beings in the group. Therefore, culture encapsulates what strictly makes a human being. In other words, it is the expression of culture, which defines individuals and gives them an ideological shape, that the external world uses to characterize their behaviour, measure their propensity, and even stereotype their ability to cope with the demands of new forms of socialization. Essentially, in culture, we acknowledge that an individual functions

⁵¹ See e.g. Ntlama “Equality Misplaced in the Development of Customary Law of Succession: Lessons from *Shilubana v Nwamitwa* 2009 2 SA 66 (CC)” 2009 *Stellenbosch L. Rev.* 333; Juma “Socio-legal contests to customary authority: A human rights perspective on the changing character of indigenous norms in Kenya” 2006 *Lesotho L. J.* 219; Ndima “The African Law of the 21st Century in South Africa” 2003 *Comp. & Int’l L. J. S. Afr.* 323; Cobbah *African Values and Human Rights Debate: An African Perspective* (1987) 9 *Hum. Rts. Q.* 309.

⁵² *Ephrahim v Pastory* 1990 LRC 759 (Tanz.) (Tanzanian High Court relying on CEDAW and African Charter to uphold equality rights); *Dow v Attorney General* 1991 LRC 574 (Bots.) (Botswana High Court affirming a woman’s right not to be discriminated against on the basis of sex); *Longwe v Intercontinental Hotels* 1993 LRC 221 (Zamb.) (Zambian High Court accepting the challenge on the hotel’s policy of denying entry to women unless they had male escorts); *Gumede v President of S. Afr.* 2009 3 SA 152 (CC) (Constitutional Court affirming the order granted by the High Court declaring a code of Zulu customary law that denies women access to and ownership of property to be unconstitutional); *Bhe v Khayelitsha* 2005 1 BCLR 1 (CC) (Constitutional Court holding that the customary practice of male primogeniture violated women’s rights to dignity and equality, as guaranteed in the constitution).

within an intricate web of identities and social linkages of which race, class, religion, gender, and ethnicity are just a part. But this notwithstanding, these same factors (race, class, religion, gender) neither lend themselves to easy estimation nor cancel themselves out in the daunting process of determining the appropriateness of culture as an agent of positive societal change. However, such determination may be contingent upon descending the nexus between culture and human rights. The question then would be: should individuals have the right to embrace cultural traditions or reject them as they please, without necessarily disturbing their entitlements under the human rights regime? To find an answer to this question, one might invoke the metaphor of “existence” to explain the relationship between legal rights and “humanness” as seen through the lenses of human rights.⁵³ The argument, in a nutshell, is that in a multicultural society, the regime of rights must conform to the higher needs of human existence, which in African context should be defined to include the rights to cultural identity and culture generally. Moreover, these rights should be available to individuals as well as cultural groups.⁵⁴ It is only in this context that culture may become transformative rather than the dormant repository of extant norms.

The discussion above affirms the importance of culture in the realm of societal organisation. The interplay between cultures also reveals the possibility of contests that may be inimical to harmony and peacefulness. Often, on a plane of competing cultures, the minority culture is bound to be enmuscled and its integrity abused. Recognising as we do that “our tribal separateness are here to stay” and that “they are not about to dissolve into a new larger order”,⁵⁵ the domain for improving economic conditions and expanding the political space for minority cultures ought not to be restricted by the majority. An interesting interplay between the claim to cultural rights and prohibition against discrimination emerges in national contexts where both have a constitutional blessing. In *MEC for Education for KwaZulu-Natal v Pillay*,⁵⁶ for example, the South African Constitutional Court negotiated this balance using a proportionality formula, which allowed for the application of the “reasonable accommodation” approach to determine the appropriateness of discrimination engendered by a rule prohibiting the cultural practice of wearing nose studs in school. Allowing and recognising cultural expressions is an integral part of democracy in any multicultural society.

⁵³ See Juma “Dignified Existence: Reflections on Aspects of Culture and Cultural Rights Debate in Africa” 2008 *Speculum Juris* 1-22.

⁵⁴ The right to “cultural identity”, according to Taylor, can only be derived through interactions with members of a similar group. See Taylor *Multiculturalism, Examining the Politics of Recognition* (1992) 64.

⁵⁵ See Isaacs *Idols of the Tribe: Group Identity and Political Change* (1975) 216.

⁵⁶ *MEC for Education for KwaZulu-Natal v Pillay* 2008 2 BCLR 99 (CC); 2008 1 SA 474 (CC).

Similarly, such recognition and accommodation in a conflict environment may invoke positive reactions from actors and facilitate peace.

Secondly, it has become quite clear that culture will play a big role in the resolution of political as well as social, economic, and environmental conflicts in the years to come. Already, the commercial world is abuzz with cultural correctness in business practice.⁵⁷ As far as conflict resolution goes, analysts including John Paul Lederach of the Joan B. Kroc Institute for International Peace Studies of the University of Notre Dame, acknowledges that among the factors that influence conflict transformation is culture.⁵⁸ This is because conflict dynamics often depend on how individuals and groups perceive their status. However, such perception is likely to be influenced by their cultural worldview. This is what UNESCO has said:

“We understand better not just that culture can be a mechanism for, or an obstacle to, development, but that it is intrinsic to sustainable human development itself because it is our cultural value which determines our goals and our sense of fulfilment.”⁵⁹

Thus, understanding culture and cultural rights puts the mediator at a position where she can influence decisions of parties, or simply forge a common ground. In this way, culture could become a transformative agent. However, for the culture to be engaged in this way, infers a profound task because cultural expressions in Africa are diversified and the infractions mired by other sociological economic and even political factors perpetuate incongruity at all levels of society. Furthermore, since most experts and third party interveners are either from the developed world or are so funded, the slow and agonizing task of understanding culture has been less than a priority. The third party intervener must thus be aware of their own bias and assumptions, which often draws from their own cultures.⁶⁰ “Successful intervention”, Ellen Lutz *et al* has argued, “depends on knowing and respecting the culture of the people the

⁵⁷ See for example, Jameson “Reconceptualising Cultural identity and its role in intercultural business communication” 2007 *Journal of Business Communication* 199-235; Jensen and Kristiansen “Sub-cultures and entrepreneurship: The value of social capital in Tanzanian business” 2004 *Journal of Entrepreneurship* 1-27; Li and Karakowsky “Cultural malleability in East Asian context: an illustration of the relationship between government policy, national culture and firm behaviour” 2002 *Administration & Society* 176-201.

⁵⁸ See Lederach *Building Peace: Sustainable Reconciliation in Divided Societies* (1997) 93-97.

⁵⁹ See preface to UNESCO “Recognising culture: A Series of briefing papers on culture and development” (available at http://www.unesco.org/culture/development/briefings/html_eng/foreword.shtml) (accessed 25-06-2007).

⁶⁰ For example, the North American negotiation model is built on the assumption that, “communication should be direct and forthright with confrontation seen as a sign of strength in negotiation; there should be full and open disclosure of relevant facts and feelings and individual rights and interests are paramount, and the process should be short term, tasks focussed and future oriented”. See Kruk (ed) *Mediation and Conflict Resolution in Social Work and Human Services* (1997) 13. This model is culture bound on values espoused in North America and may not necessarily be compatible with African cultures.

conflict resolver is working with, and whenever possible, supporting and enhancing endogenous conflict-resolution processes”.⁶¹

However, culture may in certain instances hinder the utility of human rights values in conflict transformation.⁶² This is because individuals acting in contexts of social groups may reject certain values as being inimical to their culture. Yet, as Avruch argues, culture is learned and reproduced and does not possess the agency to act.⁶³ What culture does is to provide the individual with “cognitive and affective frameworks” through which the individual can then “perceive, interpret and then act”. A good portion of these frameworks affect how individuals perceive the behaviour and motives of others, frame the existential aspect of the world including the nature of social conflicts, and how they perceive the duties and responsibilities that arise from the concept of rights.⁶⁴ Thus, it is individuals who make the choice of whether to accept or reject any values external to their socialisation. A mediator who understands this perspective may be better placed to negotiate peace in a multicultural environment, because he/she will know that cultures are not impermeable. Instead, they could be used as vehicles for facilitating change.

4 TRANSFORMATIVE VALUES IN A CONFLICT CONTINUUM

But how do human rights values meet the goals of conflict transformation? Elsewhere, I have attempted to show that the interaction between human rights and actors in a conflict situation cannot be linear.⁶⁵ I have argued that conflict is a dynamic phenomenon whose progression may be influenced by a myriad of factors. Therefore, the interaction of parties and principles of human rights can only be mapped by unravelling the shifts and changes that occur throughout the continuum.⁶⁶ Thus, the incidence of human rights at the pre-conflict or prevention stages may be utterly different from the human rights discourse that peace agreements engender as parties try to come to some agreement about the future of their relationships. The way in which human rights values affect conflict transformation is similarly varied and is indeed multidimensional. Parlevliet characterises human rights values

⁶¹ See Lutz, Babbit and Hannum “Human rights and conflict resolution from the practitioners perspective” 2003 *Fletcher Forum of World Affairs* 173, 183.

⁶² See Ptyana “The challenge of culture for human rights in Africa: The African Charter in a comparative context” in Evans & Murray (eds) *The African Charter on Human and Peoples Rights: The System in Practice 1986-2000* (2002) 219; Cobbah, *supra* note 50 309.

⁶³ See Aruch “Culture, relativism and human rights” in Merus and Helsing (eds) *Human Rights and Conflict: Exploring Links between Rights Law and Peacebuilding* (2006) 100.

⁶⁴ *Ibid.* 101.

⁶⁵ See Juma “The Role of Human Rights in Post-Conflict Situations in Africa” 2008 *Malawi L. J.* 279.

⁶⁶ *Ibid.* 290.

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as occurring in four dimensions: the rules dimension, institutional and structural dimension, relationship dimension, and process dimension.⁶⁷ There are two facets to this characterisation that may be noteworthy. The first is that the standards for realisation of rights and infusion of its values need not be absolute. She argues that these can be negotiated in the context of “specific political, cultural, and historical conditions”⁶⁸. Secondly, that the values inherent in human rights have a multidimensional quality that could find expression in a myriad of situations, no matter the society or conditions of incongruity existing within it. Thus, human rights become available to peace practitioners in all aspects of their work, be it in fashioning a framework for negotiating peace at the height of violence, or in the hard work of establishing the rule of law in the post-conflict peace-building phase. Envisioning human rights values as functioning in a holistic frame, Parlevliet is able to show how human rights could be useful in “structures and institutions”, “relationships” and “processes” of conflict transformation. Using her preferred iceberg model, she demonstrates how human rights violations could be both a cause and also consequence of violent conflict.

From Parlevliet’s characterisation of human rights values, one can immediately see how human rights approaches to conflict transformation may be distinctively different at every stage of the conflict. In the pre-conflict stage, where the prevention agenda is often the most suited, issues of socio-economic well being are crucial, just as liberty and equality. Conflict and peace practitioners may need human rights advocates to call for a more economically sensitive form of governance. Peace practitioners must also support the moves towards obtaining full justiciability of socio-economic rights so that disputes concerning allocation of resources and public welfare concerns are mediated by the courts before they escalate into full-blown violence. Here, human rights actors may be justified in seeking enforcement of normative standards so that rulers may be called to order or that their transgressions are punished. A proper governance order should be established to guard society against extreme situations that may lead to violence. Take for example Zimbabwe, where there is a potential for an even greater escalation, and the government has sought to justify its violations of human rights by a twisted discourse of liberation, racism, and anti-imperialism.⁶⁹ Here the invocation of human rights standards could have obvious benefits.

⁶⁷ See Parlevliet *supra* note 2.

⁶⁸ *Ibid.*

⁶⁹ See Hendricks “Zimbabwe: Beyond Democratic impasse” 2005 *Africa Security Review* 119, 120. See also, Maclean “Mugabe at war: the political economy conflict in Zimbabwe” 2002 *Third World Quarterly* 513 (arguing that state authoritarianism is a symptom of the political economy of conflict in African states, has a

During escalation, when resolution of conflict is sought, sensitivity to dignity, culture, equality, and general interests and rights of actors may be tools that facilitate negotiations.⁷⁰ For example, conflict interveners are aware that to achieve positive results they must treat all parties to a conflict equally and be sensitive to their cultural practices. As already demonstrated, these two aspects of an intervener's approach recognise some of the most important values of human rights. At the post-conflict peacebuilding stage, a whole range of human rights values come into play as they facilitate the establishment of various human rights accountability mechanisms, such as truth and reconciliation commissions and human rights tribunals, building of human rights institutions, and the establishment of the rule of law. All these ensure that the society may not drift into war. These approaches are stated here in very general terms. A more in-depth analysis of the interactions that occur at each stage of the conflict and how human rights values may be appropriated to deliver and ensure peace must begin from here.

5 CONCLUSION

The purpose of this article was merely to draw attention to the fact that human rights are of tremendous benefit to conflict transformers. And it is not just about shared values and goals as argued by Lutz *et al.*⁷¹ Human rights values bring to the table values that are core to human existence – the very basis of aspirations and quest of humanity that a peace agenda should be anchored on. These values are equally transformative because they help restore the fractured fabric of society by intimating goals that are consistent with the people's aspirations, such as economic welfare and development, restoration of human dignity, freedom and liberty and, of course, peacefulness. Thus, conflict transformers at every stage of conflict may draw on these values to pre-empt the eruption of violence, or mediate an already escalating conflict or establish institutions that ensure a lasting peace after cessation of violence.

broader ramification that points to Africa's "marginalised position in the world economy and the nature and conditions of governance that have evolved on the continent as a result"). *Ibid.* 516.

⁷⁰ See generally, Lutz *et al supra* note 82 173.

⁷¹ *Ibid.*