

Course

Social Justice and the Law

13 – 14 May 2021

17 – 18 May 2021

27 – 28 May 2021



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INTRODUCTION:

The Social Justice and the Law short course is designed to empower participants with socio-legal knowledge on the meaning, significance, theories, constitutional obligations, and everyday application of the concept of social justice. The purpose is to equip participants with conceptual knowledge, values, skills and praxis that optimally positions them to make sound decisions and/or provide competent advice to decision-makers in government, business and civil society on legal and socio-economic questions and social justice litigation. The course also aims to arm participants with insights and the necessary tools to understand their legal obligations regarding social justice and related equality duty and defend their social justice transformation agenda against pushbacks, including those that leverage administrative law.

Social justice lawyering is increasingly demanded of all lawyers be they in government, business or civil society. Other decision-makers, particularly at executive level, are increasingly equally expected to understand and account for social justice responsibilities in terms of global and domestic human rights instruments, particularly the Constitution of the Republic of South Africa, 1996. The social justice pressures on decision-makers find expression in anti-discrimination and administrative law litigation mostly in areas such as employment, procurement and regulation as well as employee and civil society demands for transformation, which often result in civic protest. International investors and agencies also often need assistance to navigate the domestic social justice and related equality frameworks to ensure alignment and minimise conflict, including litigation. At the core of the social justice demands in the contemporary operational and accountability ecosystem, is the demand for social justice impact conscious decision-making and leadership.

The course seeks to fill the knowledge gap regarding what is expected from decision-makers regarding social justice and related equality and socio-economic inclusion obligations while equipping course participants with the knowledge and tools to act as change leaders to advance social justice in their operational contexts. It also seeks to help those teaching social justice with a consolidated knowledge resource tool kit on disparate social justice issues, theories, analytical tools and available jurisprudence.

Target Group:

Lawyers, state functionaries at all levels, academics, judicial officers, students, civil society activists and international agency employees. International students are also welcome.

Course Objectives:

To equip course participants with enhanced competencies to:

1. **Understand the meaning** and the theories behind constitutional obligations and international law compliance requirements regarding the advancement of social justice.
2. **Appreciate the relationship between social justice**, equality, equity, anti-discrimination and related equality and socio-economic inclusion concepts and competently engage in related social transformation dialogues.
3. **Lead transformation programmes** in compliance with the constitutional commitment to social justice and related equality duty and defend such programme in litigation.
4. Recognise that litigation seeking to push back against transformation initiatives seeking to advance equality and related social justice outcomes is increasingly grounded in administrative justice, and be able to maintain the centrality of transformative constitutionalism to advance equality in such matters.
5. **Employ analytical frameworks**, including data analytics, to discern social context dynamics with impact on social justice, including unconscious bias and fortify their organisations for better social justice outcomes.
6. **Command adequate understanding of the SDGs** and leverage the opportunities they offer, including the use of disaggregated data, to catalyse social justice progress in their context.

Course Outcomes:

By the end of the course, the participants should be able to:

1. **Demonstrate knowledge** of the concept of social justice, its relationship to concepts such as equality, equity, non-discrimination, socio-economic rights, redistributive justice and other jurisprudential dimensions of social justice.
2. **Apply** social justice principles and jurisprudence to analyse laws, policies, programmes and problems.
3. **Demonstrate skills** gained to conduct research, identify and apply relevant social justice research and analytical tools to everyday decision-making and justice challenges.
4. Show ability to **identify everyday social justice** challenges and lead the solutions generation process in a manner that is congruent with constitutional social justice and related equality and human rights and socio-economic inclusion obligations.
5. **Demonstrate basic competence** in the use of disaggregated data to employ data analytics to predict the likely impact of planned policies, laws or regulations to avoid negative disparate impact on historically disadvantaged or socio-economically diverse groups.

Course Structure and Key Contents:

The course comprises six units (modules) which will be delivered as a blended learning online course combining contact and non-contact sessions executed in the following three phases:

- 1. Preparatory phase:** Participants to be given a case study to resolve before attending the course to gauge their existing knowledge of the law and policy imperatives regarding social justice to assess current levels of knowledge and skills.
- 2. Contact sessions:** Contact sessions with course presenter(s) that include short individual and group exercises activities.
- 3. Summative assessment:** At the end of the course participants to submit an assignment that demonstrates application of social justice and the law learning outcomes.

Course Outline:

Unit 1: Introduction to Social Justice Jurisprudence:

Meaning and evolution of the concept of social justice, related jurisprudence and theoretical frameworks; and relationship with concepts such as socialism, equality, equity, affirmative action, redistributive justice, discrimination; poverty, socio-economic rights, critical race theory, feminism and feminist legal theory, diversity management, gender mainstreaming, social context awareness, unconscious bias, decolonisation and Ubuntu.

Unit 2: Constitutional and International Human Rights Obligations and Accountability for Social Justice:

Analysis of social justice obligations in international human rights law focussing on the United Nations Conventions on Race, Women and Disability with attention paid to selected soft law frameworks such as the global Sustainable Development Goals (SDGs); comparative constitutional provisions; selected regional human rights instruments; equality legislation and case law.

Unit 3: Social Justice Analytical Frameworks and Typical Identity and Intersectional Identity Issues:

Equality impact assessment models; gender mainstreaming frameworks; disability equality frameworks; socio-economic impact assessment frameworks and the Social Justice Impact Assessment Matrix (SIAM).

Unit 4: Difference, Disadvantage and Bias in Policy Design and Law Reform:

Analysis of poverty and inequality implications of law and policy reform in education; The economy, including employment; health; property rights; Fourth Industrial Revolution; language; anti-discrimination and equality advancing laws and Sustainable development interventions. Also includes an introduction to the application of predictive data analytics to design equality resonant policies, laws, and litigation approaches to advance equal enjoyment of human rights and freedoms.

Unit 5: Difference and Disadvantage in Access to Justice:

Analysis of race, gender, nationality, age, disability, intersectional identities and related barriers to access to justice focussing on women's rights under customary law; Race and gender disparities in the criminal justice system, The relationship between administrative justice and social justice; and Equality dynamics of the common law.

Unit 6: Applied transformative constitutionalism in policy design, law reform and litigation:

Application of social justice principles, legal reasoning and social impact analytical skills to design/review policies, legislation, programmes and litigation strategies. This summative assessment exercise will be differentiated according to each participant's dominant area of work and everyday social justice context.

Prescribed Reading:

Universal Declaration on Human Rights (adopted 10 December 1948) UNGA Res 217 (III).

Convention on All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

Convention on All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

African Charter on Human and People's Rights (adopted 27 June 1981 entered into force 21 October 1986) 1520 UNTS 217.

Constitution of the Republic of South Africa, 1996.

J Fedler and I Olckers *Ideological Virgins & Other Myths: Six Principles for legal revisioning* (2001)

S Gutto, *Equality and Non-Discrimination in South Africa* (2001).

C Heyns et al (eds) *Discrimination and the Law in South Africa* (1994).

T Madonsela "Law and the Economy Through A Social Justice Lens" in R Parsons (ed) *Recession, Recovery and Reform* (2020).

MJ Maluleke and T Madonsela *Women and the Law in South Africa* (2004).

T Madonsela "Wendel Holmes Memorial Lecture: Social Justice Transcending Inequalities" (2020) 26 *Global Governance* 1-20.

T Madonsela et al (eds) *Law, Social Justice Perspectives and SDGs: Report of The Social Justice Summit and International Conference* (2020).

J Klaaren "Human Rights & South African Constitutionalism: An Interdisciplinary Perspective on Debates over the past Twenty Years" (2014) 38 *Journal Ufahamu: A Journal of African Studies* 137-153.

M Minow *In Brown's Wake: Legacies of America's Landmark* (2010)

D Rhode *Justice and Gender* (1989)

- *Minister of Finance and Others v Van Heerden* (CCT 63/03) [2004] ZACC 3; 2004 (6) SA 121 (CC).

- *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* (CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC).

- *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others In re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* (CCT1/00) [2000] ZACC 12; 2000 (10) BCLR 1079; 2001 (1) SA 545 (CC) (25 August 2000)

- *Harksen v Lane NO and Others* (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 (7 October 1997).
Griggs v Duke Power Company 401 U.S. 424 (1971).

- *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391 (CC).

- *Daniels v Scribante* (CCT50/16) [2017] ZACC 13; 2017 (4) SA 341 (CC).

Assessment:

The course comprises six units (modules) which will be delivered as a blended learning online course combining contact and non-contact sessions executed in the following three phases:

1. Pre-course Attendance Assignment (Writing 20%, Presentation 10%)


2. Daily Individual and Group Tasks for formative assessment and ensure group members are collaborating (Individual 15%, Group 15%)

3. Final Assessment presented on Last day of Course (Writing 25% Presentation 15%)

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 Social Justice M-Plan