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## **Conference on Customary Law and Social Justice, 25 August 2021**

**A project of the Law Trust Chair in Social Justice, Faculty  
of Law, Stellenbosch University**

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**Date:** 25 August 2021, 9:00am – 17:30pm SAST

**Venue:** Digital event taking place on Zoom: Please register at <https://bit.ly/3z21hMq>

**Theme:** “Customary Law, Culture and Social Justice: Has Transformative Constitutionalism Advanced Equality and Other Human Rights in Customary Law?”

### **I Purpose**

The purpose of the conference is to provide a platform for engaging with developments in social justice and customary law and to assess the impact of transformative constitutionalism on advancing social justice, including gender justice in the implementation of customary law while mainstreaming the Chair's quest for systematising social justice conscious law and policymaking in customary law.

### **II Key objectives**

1. Taking stock of customary law and culture reform and its impact on advancing equality and reducing poverty since the interim Constitution of 1993.
2. Reflecting on the equality impact of court jurisprudence on land, succession, marriage and other dimensions of customary law.
3. Documenting challenges and good practices.
4. Place holding for the Social Justice Impact Assessment Matrix (SIAM).

### **III Outcomes**

The outcome of the conference will be to emerge with a social justice research, teaching, and collaboration agenda to accelerate transformation in the customary law area.

### **IV Background**

This is the second conference hosted by the Law Trust Chair in Social Justice during 2021 and is executed as part of the Chair's mission to promote social justice scholarship, consciousness, and collaboration to accelerate social justice reform in academia and society. Social justice is about the equal enjoyment of all rights and freedoms regardless of human diversity reflected in the just, fair, and equitable distribution of all opportunities, benefits, privileges and burdens in a society or between societies.

*“It is important that we eschew assuming the repugnancy or delinquency of customary law and treat it as we would treat any other law. This means appreciating its redeeming features, its problem areas and colonial distortions that exacerbated women's vulnerability and other oppressive features of customary law.” Prof Thuli Madonsela*

The conference seeks to explore the following themes:

1. The Anatomy of Customary Law: Separating Customary Law from Colonial and Contemporary Distortions
2. Social Justice Dimensions of Land and Other Property Rights Through a Customary Law Lens
3. Gender Equality and Customary Marriages
4. Impact Conscious Law Making: Can A Social Justice Assessment Instrument Make a Difference
5. Human Rights Dimensions of *Ukuthwala* and Other Girls' Rights
6. Equality and Succession / Inheritance Challenges in Traditional Leadership and the Family
7. Finding Spaces to Move the Needle on GBV and Other Gender Challenges in Traditional Communities
8. Good practices on transformative constitutionalism for advancing equality under customary law

## **V Stakeholders**

Everybody with an interest in the transformation of the customary law sphere, including government officials, the judiciary, the legal profession, administrators, academia, traditional leaders, and civil society.

## **VII PROGRAMME**

**Programme Director:** Cathy Mohlahlana (News Anchor)

**Rapporteur:** Ms Sameera Mahomed (LLD Candidate, Research Intern and Lecturer, Legal Philosophy and Customary Law, Stellenbosch University)

09:00 – 9:30

### **Opening**

Housekeeping: Cathy Mohlahlana (News Anchor)

Opening Remarks: Prof Thuli Madonsela (Social Justice Chair, SU and M-Plan Convenor) (15 mins)

09:30 – 10:00

### **Keynote Address (30 mins)**

Minister Ronald Lamola, Minister for Justice and Correctional Services

10:00 – 10:10

### **Concluding Observations**

Prof Juanita Pienaar, Vice-Dean Designate, Faculty of Law, Stellenbosch University (10 mins)

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10:10 – 10:30

**Group Photograph** (Digitally – ask participants to switch on cameras)  
Tea, Coffee Break

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10:30 – 12:00            **Plenary Panel I** (1h30 mins) “The Anatomy of Customary Law: Separating Customary Law from Colonial and Contemporary Distortions”

**Keynote Address:** Inkosi Patekile Holomisa (Traditional Leader and Deputy Minister, Justice and Correctional Services) (15mins)

**Facilitator:** Cathy Mohlahlana (News Anchor)

**Panellists:** (10 mins each x 2) (20 mins)

1. Prof Anthony C Diala (Department of Private Law, University of the Western Cape (Department of Private Law, University of the Western Cape; Founding Director, Centre for Legal Integration in Africa, University of the Western Cape)
2. Prof Christa Rautenbach (Faculty of Law, North-West University) “Customary Law in Colonial Courts: Should the Separation of Indigenous and Colonial Laws be the Ultimate Goal?”

**Discussion** (55 mins)

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12:00 – 13:30            **Plenary II** (1h30 mins) “Social Justice Dimensions of Land and Other Property Rights Through a Customary Law Lens”

**Keynote Address:** Advocate Tembeka Ngcukaitobi (Senior Counsel, public speaker, author and political activist and member of the South African Law Reform Commission) (15 mins)

**Facilitator:** Cathy Mohlahlana (News Anchor)

**Panellists:** (10 mins each x 2)

1. Prof Elmien du Plessis (Faculty of Law, North-West University) “The recognition and protection to customary law rights to fishing: the Constitution, the court case and the policy making process”
2. Prof Jackie Dugard (School of Law, University of the Witwatersrand) “Transformative constitutionalism, customary law and mineral rights: how have courts adjudicated mineral rights-related contestation between customary communities and more powerful interests?”

**Discussion** (55 mins)

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13:30 – 14:00            **Lunch Break**

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### **Afternoon Session**

14:00 – 15:00            **Plenary III** (1h) Good practices on transformative constitutionalism advancing equality under customary law

**Keynote Address:** Judge Mumbi Ngugi (Judge of the Appeal Court of Kenya) (10mins)

**Facilitator:** Dr Mshai Mwangola (Performance Scholar/Oratorist; Founding Director: The Orature Collective; Chair, Board of Trustees, Uraia Trust; Adjunct Faculty, African Leadership Centre)

**Panellists:** (10 mins each) x 2

1. Abubakar Zein Abubakar (Co-Founding Director, Orature Collective – KENYA)
2. Kennedy Kanyali Mwikya (Legal Equality Program Officer, Equality Now, Africa Office)  
“Global or country perspective on how constitutions, post-colonies have dealt with dual legal systems / legal plurality”

**Discussion** (30 mins)

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15:00 – 16:30            **Plenary IV** (1h30 mins)  
**Parallel sessions based on 4 themes**

### **1. Gender Equality and Customary Marriages**

**Keynote Address:** Ms Charlene May (Women's Legal Centre) “Registration and recognition of marriage and the gender burden on women under the Recognition of Customary Marriages Act” (10 mins)

**Facilitator:** Dr Lize Mills (Senior Lecturer, Private Law, Stellenbosch University)

**Panellists** (35 mins) (5 x 7 mins)

1. Adv Nthabiseng Sepanya Mogale (Commission for Gender Equality (CGE))
2. Ms Mandi Mudarikwa (Women’s Legal Centre) “Separate and unequal: The experiences of exclusion of same-sex couples in the Recognition of Customary Marriages Act”
3. Sibusiso N Ngubane (LLM candidate, University of the Western Cape) “The conundrum of aligning *ukuzila* custom with the constitutional values of gender equality for widows in customary marriage”
4. Keneilwe Radebe (Lecturer, University of Pretoria) “The insurmountable challenge in proving the existence of a customary marriage: *Tsambo v Sengadi* (244/19) [2020] ZASCA 46 (30 April 2020)”

**Discussion** (50 mins)

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### **2. Impact Conscious Law Making: Can a Social Justice Assessment Instrument Make a Difference**

**Keynote Address:** Prof Thuli Madonsela (Social Justice Chair, Stellenbosch University and M-Plan Convenor) (10 mins)

**Facilitator:** Dr Pali Lehohla (Former Statistician-General and Research Resident Advisor, 22 On Sloane)

**Panellists:** (4 x 10 mins)

1. Prof Khumbulani Mpofo (Research Chair in Manufacturing and Skills Development, Tshwane University of Technology) “Plan A”
2. Prof Kanshu Rajaratnam (Director, School of Data Science and Computational Thinking)
3. Ms Nolwandle Made (Project Officer, Law Trust Chair in Social Justice, Stellenbosch University)  
“Update on SCOPRA projects”

**Discussion** (40 mins)

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### 3. Human Rights Dimensions of *Ukuthwala* and Other Girls' Rights Including Finding Spaces to Move the Needle on GBV and Other Gender Challenges in Traditional Communities

**Keynote Address:** Adv Joyce Maluleke (Advocate of the High Court of South Africa) (15 mins)

**Facilitator:** Ms Karyn Maughan (Legal Journalist)

**Panellists** (21 mins) (3 x 7 mins)

1. Dr Nyasha Karimakwenda (Post-Doctoral Research Fellow, Faculty of Law, University of Cape Town) "Problematizing Policy and Formal Legal Perceptions of *Ukuthwala* and Violence Through Women's Voices"
2. Siziwe Jongizulu (Programme Analyst: Monitoring and Evaluation-Gender Dynamics, United Nations Population Fund)
3. Ms Pretty Mubaiwa (PhD Candidate, Public Law, University of Cape Town and Canon Collins Education and Legal Aid Trust Scholar) "The practice of lobola and customary law: Challenges of the current dual legal systems in protecting women from violence arising from harmful cultural practices"

**Discussion** (54 mins)

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### 4. Equality and Succession/Inheritance Challenges in Traditional Leadership and the Family

**Keynote Address:** Judge TN Ndita (Western Cape High Court, Cape Town) (15 mins)

**Facilitator:** TBC

**Panellists** (21 mins) (3 x 7 mins)

1. Commissioner Busisiwe Deyi (Commission for Gender Equality)
2. Dr Muneer Abduroaf (Senior Law Lecturer, University of the Western Cape, Attorney and Sworn Translator of the High Court and CLR Rights Commissioner appointed by the President of RSA) "An analysis of the impact of the South African Constitution on the recognition of Islamic marriages for purposes of succession law"
3. Ms Lethabo Tloubatla (Marketing Manager, UNISA)

Discussion (54 mins)

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16:30 – 16:45: Tea and Coffee break (15mins)

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16:45 – 17:15: **Final plenary session:** (30 mins) (5 min Feedback from each break-away session)

**Facilitator:** Prof Thuli Madonsela

17:15 – 17:30: **Final words:** Prof Thuli Madonsela (15 mins)