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Law Trust Chair in Social Justice

GENDER EXPERT ROUNDTABLE

28 August 2020

*Gender, Accountability and Corruption:
Towards a Decade of Accelerating Gender
Equality Progress through Accountability
and Combatting Corruption in the Post-
COVID-19 and SDG Agenda.*

A project of the
Law Trust Chair in Social Justice,
Faculty of Law, Stellenbosch University
in collaboration with the
Blavatnik School of Government
Oxford University

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CHAPTER 1: INTRODUCTION

1 1 Overview

Gender and social justice experts and activists from civil society and the academic community gathered under the auspices of the Law Trust Chair in Social Justice, Stellenbosch University, in collaboration with the Blavatnik School of Government, Oxford University. The broad objective of the roundtable was to reflect on progress made in advancing gender equality and to explore challenges and prospects for accelerated progress in the next decade, focussing on corruption, accountability, customary law, and opportunities presented by the United Nations Sustainable Development Goals (SDGs) and the COVID-19 recovery agenda.

As one of the projects of the Law Trust Chair in Social Justice at Stellenbosch University, the roundtable formed part of a suite of activities and projects aimed at mobilising the nation and the global community around the Musa Plan for Social Justice (Social Justice M-Plan) – a Marshall Plan-like integrated programme of action for accelerated social justice advancement to end poverty and break the back of structural inequality by 2030 in the pursuit of the SDGs and National Development Plan (NDP) objectives.¹ It also sought to contribute to better management equality outcomes in regulatory and relief responses to COVID-19 as well as the recovery programme.

The meeting was addressed by several academic experts, senior government representatives, and individuals from business and civil society are drawn from South Africa, the United Kingdom, Sweden, India, the United States of America, Kenya, Uganda, and Austria.

These groups provided nuggets of wisdom relating to analysing contemporary challenges with gender equality, women's rights and the impact of corruption and lack of accountability on these challenges. Thematic areas included work, security, gender-based violence (GBV), health (including mental health), poverty, land, public governance, and accountability through courts, traditional courts, and other avenues. The conversation also touched on the justice gap insofar as it limits the ability of

¹ The Social Justice M-Plan is named after Palesa Musa who, arrested as a child on June 16, 1976, is poor today despite having fought for freedom and continuing to work hard.

women, particularly those caught up at the intersection of race, class, gender and rural existence to vindicate their rights and pushing back against corruption.

The roundtable emerged with suggested pathways for co-creating a gender-equal future. It accelerated progress toward ending poverty, GBV, corruption, and other impediments to women's realisation of their human potential and their contribution to the economy and well-being of their families and countries.

1 2 Summary of discussions

1 2 1 Corruption, accountability and social justice in the economy

It is important to note that the South African economy, before the impact of COVID-19 was set to experience only 0.3% growth in 2020. The virus not only exacerbated the effects of this economic depression on our communities, but also exposed many of the core patterns that have underpinned our continued lack of growth.

One clear example of this aggravation is the deliberate mismanagement, by corrupt government officials, of COVID-19 stimulus packages and the subsequent denial of this mismanagement in parliament. The matter of accountability and corruption must be addressed as a societal issue that profoundly impacts the economy. Corrupt actions by government agents and private accomplices not only undermine any efforts to support vulnerable communities directly but also bring into question the ability of South Africa to attract and properly manage foreign and domestic investment.

At the heart of tackling accountability in organisational frameworks is the issue of government appointments, the subjects of which are too often shrouded in scandal and raise concerns of incompetency for the designated role. The proliferation of corruption amongst those who should be held to a higher standard of responsibility undermines every effort to rid the South African economy of exploiting its most vulnerable actors.

When dealing with the issue of corruption, we need to think very clearly at all levels and also look at inequalities from a racial, gender, spatial and class perspective, including matters pertaining to the youth and differently-abled. The financial and, ultimately, social burden of corruption falls disproportionately on the shoulders of South African women, who head 40% of households nationwide and form the majority of the global poor. Given the fact that the poor are more heavily reliant on public

services – notably education and health care – the barrier created for women prevents them from participating in the leadership of our economy meaningfully, and thereby further contributes to gender inequality and the violence and subjugation that follows as a result.

1 2 2 Gender dimensions of corruption

In general, studies have found differences in how men and women perceive and tolerate corruption. The perception is that women are less involved in bribery and less likely to condone bribe-taking and to pay bribes. (Swamy et al., 2000; Transparency International's Global Corruption Barometer). Some research also indicates that when engaging in corruption, women are significantly less aggressive in the amount they extract than their male counterparts. (Waly Wane. 2008. Informal payments and moonlighting in Tajikistan's health sector. World Bank Policy Research Working Paper Series, No. 4555). On the other hand, although women tend to condemn corrupt behaviour more than men, they report corruption less often than men.

The roundtable has been preceded by several recent studies that have brought a glimmer of hope by modelling the benefits of investing in women and advancing gender equality in business and society. Some of these studies indicate that corruption has a disparate impact on women and girls, thus undermining gender equality. (Dr Naomi Hossain and Dr Celestine Nyamu Musembi (under commission to UNDP and UNIFEM), and Jessica Hughes (UNDP) Primers in Gender and Democratic Governance: Corruption, Accountability and Gender: Understanding the Connections (2010)).

An insufficiently explored territory in this regard is the lives of women living under customary law who are left behind not only because of corruption. In addition to being hamstrung by the inertia that comes from accumulated social disadvantages as a consequence of past unjust laws, women under customary law bear the brunt of policy and consequent legislative choices that fail to use predictive data analytics to pre-assess the impact on women and other historically disadvantaged groups. It therefore lacks the differentiation necessary for responsive governance.

Evidence points to advancing women and ensuring their representation at all levels of decision-making in all areas of life as a major antidote to corruption. (Swamy et al., 2000; Dollar et al., 2001). Thus, higher levels of gender equality and women's

participation in public life are associated with better governance and lower levels of corruption in many countries. (J Rheinbay and M Chêne, Gender and Corruption Topic Guide, Transparency International, 2016).

While the various studies have delivered differing answers, the common denominator is that women tend to focus on improving services for all, particularly for those at the bottom rungs of society. Research also points to the positive contribution that enhanced public accountability can make towards combating corruption, ineptitude and indifference in public service delivery, including programmes and projects in the pursuit of the COVID-19 recovery quest, and the SDGs in the next decade.

1 2 3 Challenges regarding accountability for advancing gender equality

Where systems of accountability and enforcement of sanctions against wrongdoing are weak, either because of duty-bearers' inaccessibility or where the state has withdrawn altogether, corruption will occur with impunity.

Accountability is vital in dealing with corruption. It allows us to learn from mistakes, build on achievements and strengthen our resilience to crises and pandemics. Accountability means delivering prompt, effective, high-quality results that transform commitments into action with all citizens, including women, fully able to participate and claim their rights. This would result in a strengthened legal regime, which can prevent and combat corruption to ensure gender equality, in line with SDGs 5 and 16. A strengthened legal regime promotes and strengthens a functional criminal justice system against corruption in accordance with the rule of law (SDG 16) and aims to eliminate discrimination and respect women's rights (SDG 5).

1 2 4 Access to justice as a matter of accountability

SDG 16 promotes peaceful and inclusive societies for sustainable development, provides access to justice for all, and builds effective, accountable and inclusive institutions at all levels. Likewise, one of the pillars of our constitutional dispensation is access to justice for all. The justice gap for women is growing in the context of the COVID-19 pandemic, with an increase in the number of justice problems women face due to lockdowns and economic hardship. At the same time, the capacity to resolve

these justice problems is decreasing. Without decisive action, the progress made on women's rights and gender equality over the past decades will be undermined. Like other disadvantaged populations, women disproportionately experience certain types of justice problems, with corruption and lack of accountability creating legal problems for women and impeding their access to justice solutions.

Types of justice problems disproportionately experienced by women include the following:

Legal identity: In some low-income countries, as much as 45% of women lack legal identity (compared to 30% of men).

- **Informal employment:** In most countries in Sub-Saharan Africa, South Asia and Latin America, women are more reliant on the informal economy than men.
- **Domestic safety and security:** Women disproportionately experience family-related legal problems, such as domestic violence and family problems. Gender barriers exist for many women enforcing their rights including rights to maintenance at police stations and at courts.
- **Balancing cultural norms.**

As a result of the justice problems outlined above, additional hardships experienced may include poverty and loss of income, health and mental health troubles, relationship difficulties, and even problems with alcohol and drugs. Emotional and psychological scarring, in particular with instances of GBV, can result in a total absence of justice and accountability.

1 2 5 The compounding factor of COVID-19

This round table took place at a time when the nation, the continent and the world is confronting the COVID-19 pandemic, which has disrupted life as we know it – with women bearing the brunt of the changes. This extreme event came as nations grapple with the challenge of accelerating progress on the SDGs while confronting the unintended impact of the Fourth Industrial Revolution on women and others that have been left behind in respect of the equal enjoyment of many human rights and freedoms. Nations are also grappling with the impact of factors such as GBV, corruption, climate change, forced migration and stunted economic growth on women,

girls and gender-unassigned groups. There is also emerging consensus on the negative impact of racism and other exacerbating intersectional disadvantages on affected groups of women.

Furthermore, the round table took place at a time when the World Bank, Statistics South Africa (Stats SA) and other agencies have found South Africa to be one of the most unequal societies in the world. At the onset of the COVID-19 pandemic, Stats SA estimated poverty to be at 55.5% across all groups and at 64.2% among those classified as African. The statistics further showed women to be lagging behind men economically, with African women constrained by intersectional disadvantage being on the lowest socio-economic levels of society. Early indications from studies by the Human Sciences Research Council (HSRC) and the National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) show that the regulatory impact of and socio-economic relief provisioning for COVID-19 are widening the gender gap.

1 3 The relationship between gender, corruption, accountability and advancing equality

Gender equality is an essential element of social justice. It is about treating men and women in a manner that equalises life chances and the enjoyment of all human rights and freedoms. It is also about holding everyone accountable in accordance with their responsibilities, emphasising knowledge and transparency around people's rights and responsibilities and the law. Knowledge of the law leads to due process. Access to rights leads to accountability. Where there is accountability, there is less corruption, and because of accountability, there is transparency and access to justice.

With 70% of the world's poor being women, the gendered impacts of corruption cannot be denied.

Corruption entrenches gender inequality and vice versa, gender inequality allows for the spread of corruption. Corruption disproportionately affects women living in poverty, in rural areas, under customary law, and who are illiterate or unaware of their rights.

Corruption takes many forms:

- Deep corruption is the misappropriation of funds, examples of which are the PPE corruption in South Africa, the United Kingdom (UK) and elsewhere, and state capture in South Africa.

- Mid-level corruption occurs when work is taken on, but nothing gets done.
- Mundane levels of corruption involve things going wrong gradually when people do nothing. When, for instance, decision-makers are all of one gender (male), their focus will be on what affects them and not how their decisions negatively affect others.
- Other forms of corruption include sextortion, which manifests, for instance, as sexual favours obtained by coercion for work or to retain jobs, practices such as women accompanying important men on business trips, sexual harassment, and exploitation through the abuse of power for private gain.

Women's lower social, political and economic roles and statuses give them less access to positions of power than men. While the many forms of corruption affect both men and women, the unequal gender relations in society and the roles that are traditionally ascribed to women mean that they are more exposed to the consequences of corruption and often have more limited resources and access to justice. For example, as caretakers of the family, they are more readily exposed to petty corruption in social services such as food and water distribution, education, and health care. The latter, in particular, relates especially to reproductive health. It is also the case that the providers of these services are often male, and so women are also exposed to other forms of corruption such as using their bodies as currency if they cannot afford to pay bribes. In addition, corruption undermines the quality and capacity of public services and reduces resources available, further exacerbating social and gender disparities.

“Sexual corruption” as a form of GBV can cause psychological trauma such as depression, guilt, shame, and loss of self-esteem to the individual providing the bribe, even if this individual proposes it, directly or indirectly. According to the wording of South Africa's anti-corruption statutes, which do not require a bribe to have monetary value, “sexual corruption” should be interpreted as constituting an act of corruption. This interpretation should also recognise that the power disparity between those providing and those receiving sexual bribes tends to be much greater than that which exists between those providing and receiving bribes of monetary value.

There are examples of corruption at every level of South African society that must be exposed. Often, sexual behaviour is the currency of corruption where one party has

very limited resources or power. One example cited was related to water provisions and officials soliciting sex for favours. Other barriers to advancing gender equality include gendered access to economic opportunities in both the formal and informal sectors, and gendered access to public positions. Local government, for example, has networks of patronage and corruption which limit women's opportunities to stand and be elected for positions therein.

The educational space is also not immune to corruption. Gender inequality exists from basic to higher education with embedded power relations reinforced through unconscious behaviour. Rank, position and privilege perpetuate inequality and silently give immunity to being held accountable. Gender issues are downplayed and treated as taboo, or as a weakness. Money has a strong influence on whose voice is heard.

1 4 Reflections on analytical tools

The five faces of oppression, namely exploitation, violence, cultural imperialism, marginalisation and powerlessness, have exposed the gendered impact of regulatory responses to COVID-19, not only in South Africa, but also worldwide.

One of the analytical tools for advancing equality and fostering human solidarity, in order to ensure that no one is left behind is the 9-Dimensional Social Justice Impact Assessment Matrix (SIAM) (copyright © Social Justice Chair – Stellenbosch University, 2020), the purpose of which is to frame and direct the use of data analytics to assess the social justice impact of planned and existing policies and laws to advance equality and eradicate poverty, which is often exacerbated by corrupt practices and lack of accountability.

The SIAM design has been enriched by impact assessment tools employed in other countries, the local Framework for Regulatory Impact Assessment (RIA) in South Africa, as well as the Socio-Economic Impact Assessment System (SEIAS), which is the current tool used by the South African Government after it replaced the RIA. Gender mainstreaming instruments have also been considered, together with international multilateral instruments on advancing equality and jurisprudence and policy approaches in countries such as India and member countries of the Organisation for Economic Co-operation and Development (OECD).

The purpose of SIAM is anchored in the social justice commitment, and equality obligations in the Constitution, with emphasis placed on the preamble and section 9

read with sections 7, 36 and 237. It seeks to conform policy design to the social justice commitment and related equality duty. The SIAM, as a tool, is meant to systematise social impact-conscious policymaking; and raise the consciousness of public policymakers and other decision-makers regarding their constitutional responsibility to advance social justice and the related achievement of equality and poverty eradication.

The SIAM also seeks to ensure that all public policy- and other decision-makers, including lawmakers, remain mindful of the impact of their everyday decisions on poverty and inequality. The interpretation of the equality duty is influenced by court jurisprudence on substantive equality, particularly from the Constitutional Court. (*Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC); and *Harksen v Lane* NO 1997 11 BCLR 1489 (CC)).

Though designed with South Africa in mind, the SIAM can be employed in any other legal jurisdiction with a duty or commitment to advance equality and related social justice obligations, including the eradication of poverty and other social dimensions of the SDGs. Judicial officers and private decision makers can also employ the instrument to ensure that they contribute meaningfully to advancing social justice in their everyday decision-making.

CHAPTER 2: BACKGROUND

2 1 Introduction

The Gender Expert Roundtable took place when South Africa, the African continent and the world were confronting the novel COVID-19, which disrupted life as we know it, with women bearing the brunt. This also came as nations were grappling with the challenge of accelerating progress on SDGs, including SDG 4 on Achieving Gender Equality while confronting the impact of the Fourth Industrial Revolution on women and others that have been left behind in respect of the equal enjoyment of many human rights and freedoms.

Nations were also grappling with the impact of factors such as GBV, corruption, climate change, forced migration and stunted economic growth on women, girls and gender-unassigned groups. There is also an emerging consensus on the negative impact of racism on women, exacerbating intersectional disadvantaged for affected groups of women.

The roundtable has been preceded by several recent studies that usher in a glimmer of hope by modelling the benefits of investing in women and advancing gender equality to business and society. Some of these studies clearly indicate that corruption has a disparate impact on women and girls, thus undermining gender equality.

An insufficiently explored territory in this regard is the life of women living under customary law, left behind not only because of corruption. In addition to being hamstrung by the inertia that comes from accumulated social disadvantages because of past unjust laws, women under customary law bear the brunt of policy and consequent legislative choices that fail to use predictive data analytics to pre-assess impact on women and other historically disadvantaged groups thus lack the differentiation necessary for responsive governance.

On the other hand, evidence points to advancing women and ensuring their representation at all levels of decision-making in all areas of life is a major antidote to corruption. Research also points to the positive contribution that enhancing public accountability can make toward combating corruption, ineptitude and indifference in public service delivery, including programmes and projects in the pursuit of the COVID-19 Recovery quest and SDGs in the next decade.

The roundtable further took place as the World Bank, Statistics SA and other agencies have found South Africa to be one of the world's most unequal societies. At the onset of COVID-19, Statistics SA estimated poverty to sit at 55.5% across all groups and 64.2% among those classified as Africa.

The statistics further show women to be lagging behind men economically with African women and other women hamstrung by intersectional disadvantage being at the lowest socio-economic rungs of society. Early indications from studies by the HSRC and the National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) of South Africa 2020 show that the COVID-19 regulatory impact and socio-economic relief provisioning are widening the gender gap.

2 2 Broad observations on progress in advancing gender equality and women's human rights

Our constitutional dispensation imposes a duty to advance substantive gender equality, women's human rights and women's advancement. It is not only a guaranteed right, but also a fundamental value; it is a standard that must inform all law and against which all law must be tested, including planning or decision-making and actions.

This duty includes an enabling environment for women to thrive and for gender inequality to be reduced. The African Development Bank, in 2015, made it clear that data from around the world showed that economic growth is higher, and poverty rates lower, in countries with greater gender equality.

Gender equality means that women enjoy higher levels of human capital, employment and entrepreneurship, and access to productive assets and resources, which, in turn, translate into rights and a voice as citizens. The effects are long term and intergenerational. It is not only South Africa that has this duty; every country in the world should develop laws that ensure gender equality and eliminate discriminatory attitudes conduct and prejudices.

However, there is not a single country in the world that has reached gender equality, and the effects of the COVID-19 pandemic have further derailed the fragile progress made towards the implementation of the 2030 Agenda for Sustainable Development, including SDG 5 on gender equality and SDG 16 on peace, justice and strong institutions. Prior to the onset of COVID-19, the Global Gender Gap Report 2020 by

the World Economic Forum projected that if we continue at the present rate of change, the world gender gap will only close in 99.5 years.

In the pursuit of gender equality and social justice, the global community, including South Africa, has signed various instruments and conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981, as well as the SDGs which were set in 2015 and entered into force in 2016 with targets set for 2030. The 17 SDGs create an environment for social justice in which humans can thrive. In particular, the SDGs combine development goals such as ending discrimination against women and girls (SDG 5) with “substantially reducing corruption and bribery in all their forms” (SDG target 16.5).

Recently, the government took the important step of supporting South Africa’s application for membership in the Generation Equality Action Coalitions addressing GBV and economic justice and rights. UN Women gave South Africa the responsibility to lead the Action Coalition on Economic Justice and Rights, together with Mexico, Spain, Germany, and Sweden, and to be a member of the Action Coalition on matters of GBV, led by Kenya.

CHAPTER 3: WELCOMING AND OPENING REMARKS

3 1 Overview

The Expert Roundtable on Gender started with a welcoming address by **Professor Nico Koopman**, Vice-Rector: Social Impact, Transformation and Personnel at Stellenbosch University. He reminded participants in the roundtable Discussion of the historical roots of the social justice movement in South Africa and the constitutional principles that inform human rights. “Today we specifically remember gender dignity, gender healing, gender justice, gender freedom, gender equality. And today, we emphasise there is no dignity without gender dignity, no justice without gender justice, no freedom without gender freedom, no equality without gender equality,” Professor Koopman said. **Professor Thuli Madonsela**, Law Trust Chair in Social Justice at Stellenbosch University, provided context to the discussion by referring to how the COVID-19 pandemic impacted social justice issues worldwide, specifically in South Africa. She set out the relationship between gender, corruption, accountability, and advancing equality. “As long as there is injustice somewhere, there cannot be sustainable peace anywhere. Gender equality is an element of social justice, and corruption undermines social justice. Corruption is an injustice. Corruption gives benefits to people that they do not deserve. If we look specifically at the definition of corruption, it is the abuse of entrusted power for personal gratification. Corruption hurts women more than any other group in society.”

Professor Madonsela emphasised the importance of the constitutional duty on government to protect citizens from discrimination and actively promote equality by redressing imbalances. She also explained that accountability becomes problematic when laws are made but not implemented.

It is through the social burden of society where women are hurt most by corruption, Professor Madonsela said:

“When corruption takes away public resources and we find ourselves not having a comprehensive healthcare system that can care for people, it is women who step in to do that.”

When looking at gender justice, accountability and corruption, we need to put accountability at the centre of this conversation, Professor Madonsela said.

Professor Jonathan Wolff, Alfred Landecker Professor of Values and Public Policy and Governing Body Fellow at Wolfson College, Oxford University, highlighted philosophical approaches to social justice and integrity. He explained a shift in understanding distributive justice to think not only of assets and resources but about how people relate to each other and what needs to be done to create true equality. He warned that addressing corruption, oppression, and inequality is very expensive and time-consuming.

“It takes a lot of attention; it takes a lot of energy. And in times of crisis, it will be easily forgotten. When resources are scarce, and we must make decisions fast, corruption may be overlooked, inequality will grow, gender inequality will grow, and integrity will go out of the window. We are at a particular time in history where these matters are so important and they will be neglected and get worse unless extreme efforts are taken,”

Professor Wolff said. **Dr Anna Petherick**, Departmental Lecturer in Public Policy and Researcher, Building Integrity Programme, Blavatnik School of Government, Oxford University, provided background about knowledge in the field of gender corruption and accountability. It cannot be assumed that women in power always reduce corruption, Dr Petherick cautioned. Women in positions of power sometimes cut corruption, but not always. What can be accepted as the truth is that women as a rule represent women. When women gain power, they cut corruption in sectors such as healthcare – particularly in maternal care – and children’s education, but they do not cut corruption in sectors that women are not especially affected by. In most societies, women are held to a higher ethical standard than men. Dr Petherick said that we should seek to challenge the organisational incentives that allow corruption to emerge. **Ms Mmabatho Ramagoshi**, Chief Advisor to Minister Maite Nkoana-Mashabane, Minister of Women in the Presidency, delivered the first keynote address. She examined the barriers South Africa have experienced over the past 25 years in achieving gender equality.

“As a country we have the most progressive legislations and frameworks, including the latest approved gender budgeting, planning, monitoring, evaluation and auditing framework. We have a preferential procurement policy. However, we are still regarded amongst the most unequal societies in the world,”

Ms Ramagoshi said. Corruption negatively impacts women’s empowerment and participation, especially women and girls living in rural areas. Ms Ramagoshi referred to the National Strategic Plan with six pillars developed by Government and civil society organisations (CSOs) to eradicate GBV. In the second keynote address **Ms Kate Robertson**, Co-founder, One Young World, warned against the virus of corruption:

“It stalks the corridors of power in every single corner of the world, every government, every business, every institution. We cannot make progress. So, the issues that we are addressing today are intersectional. None can be successfully or thoroughly addressed without aligning them all.”

She stressed the need for greater knowledge about the law and rights of individuals, as well as the need for greater understanding and clarity of the roles of the law and Government.

3 2 Welcoming Address: Professor Koopman (Vice-Rector: Social Impact, Transformation and Personnel)

Colleagues, I would think that there are at least five reasons why we gather for an event like this. The first reason is that we gather to *re-member* our joint vision, our communal vision. On 20 August 1983, this vision of a new South Africa was articulated in the launch of the United Democratic Front Against Apartheid here in Mitchells Plain.

That vision simply said we want one united, undivided, non-racial, non-sexist, non-classist, democratic South Africa where peace and justice reign supreme. And we want all our rights, and we want them here and we want them now. In those years you could wake a student, a youngster, or an older person at 03:00 in the morning and say what is the South Africa that you dream about, and we could echo and articulate this vision.

In 1996 the Constitution of the Republic of South Africa, specifically the Bill of Rights, articulated this vision afresh. It said we, as South Africans, view human dignity in the context of the integrity of creation as our most foundational value. And in the Constitution, we unpack the various constituent elements of dignity. We said we want the healing of the wounds of our people, justice for all, freedom for all, equality for all.

Today, we *re-member* gender dignity, gender healing, gender justice, gender freedom, and gender equality. We emphasise there is no dignity without gender dignity, no justice without gender justice, no freedom without gender freedom, no equality without gender equality. So, we are gathered to re-member the vision. You will see I use it in a hyphenated way: *re-member* to say again a member, always a member. This vision is always a member of us.

We secondly gather to criticise where this vision is forgotten and betrayed. We will practice self-criticism today as well as public criticism. We will kindly expose it. We will kindly name where we do not live up to this vision.

Colleagues, we gather to do storytelling. We share the stories of betrayal and prejudice, betrayal of this vision. We see how this betrayal is intensified in this time of COVID-19. But we will also share stories of hope. The stories we share will also bring to the fore the so-called subjugated knowledge, the marginalised knowledge that we do not always attend to. Our stories have the power to inform and transform, illuminate and inspire, to make things lighter.

Fourthly, we gather to engage in scientific and technical analysis. We say our quest for gender justice should be research-informed, data-informed. We are also in the business of theory building and we are people who believe that nothing is as practical as a good theory. We are people who believe in words. This is not for us just a talk shop. We believe the words that we use today also make worlds, form worlds, and transform worlds.

Lastly, colleagues we gather to transform our policies, our practices, even our people and ourselves. Policies are our communal agreements for how things should be done in the polis, in the city, in all walks of life. Policies are our communal accords, our contract with each other, our commitments to each other and to coming generations.

We are gathered here to deepen and strengthen our practices, practices as our communal, coherent, coordinated and chronological actions over long periods. We are gathered, I believe, for the strengthening and transformation of ourselves, our people.

We are gathered in the belief that we know gender justice reigns supreme not only where there are human rights but also where there are right humans, right citizens, inhabitants, and leaders in all walks of life.

Chairperson, you explained the origins of the Musa Plan and we believe this plan seeks justice. Here I also played with the Zulu word “musa” which means mercy, compassion. We are gathered here as people in August, it is Women’s Month in South Africa. Women’s Month is committed to compassionate justice. We seek justice and dignity with compassion. We seek equality, freedom, healing with hearts full of compassion.

We are gathered as people who are filled with passion and compassion. In welcoming you, I thank all of you who are present and want to help us on this journey together as universities, countries, and colleague Thuli with your team. They call it in correspondence the Social Justice Team at Stellenbosch University.

We thank you for the work that you are doing. We thank you for bringing us together in this way. Together we go forward. Amidst all our vulnerabilities, we believe that in this togetherness, we can grow closer to concretely embodying our communal vision of a world of justice for all, and dignity for all. It is a privilege to commune with you for at least the first part of your session thereafter I will have to be excused. But thanks for this opportunity to commune. Very welcome to each one of you. I thank you.

3 3 Opening Remarks: Professor Thuli Madonsela (Law Trust Chair in Social, Faculty of Law, Stellenbosch University and M-Plan Convenor)

Thank you to everyone who is in the room, firstly, for the privilege of addressing you and, secondly, for the opportunity for all of us to engage on the issue of social justice.

We are here to talk about gender justice and the relationship between progress on gender equality, accountability and corruption.

We were caught off guard when the coronavirus hit us as a nation. Many countries could move swiftly to lock down their people, provide measures to offset whatever would be lost through the lockdown, and have a relatively safe ride through the coronavirus, COVID-19. In our case, we moved swiftly to deal with COVID-19. However, when it came to offsetting the regulatory impact of the lockdown and regulations, things went pear-shaped, particularly in the area of gender equality.

This roundtable was organised long before the coronavirus hit us. However, now that we find ourselves in the context of COVID-19 and we see the gender impact of the regulatory responses to it, we thought we should combine our generic analysis of progress on gender equality, accountability for gender equality and corruption with examining these very same issues in the context of responses to COVID-19.

You will agree with me about the coronavirus having caught us off guard, that one of the impacts is that inequality, poverty and hunger have been exacerbated. According to preliminary views, women, particularly those in the lower classes in society, have borne the brunt of it. Who is accountable for gender equality? That is the question we are going to be answering today.

But before we deal with who is accountable, we need to look at the link between social justice and gender equality. Social justice as I understand it is simply about embracing all humanity, expressed through the equal enjoyment of all rights and freedoms as reflected in just, equitable and fair access to and distribution of all opportunities, resources, benefits, privileges and burdens in society.

You will agree with me that social justice exists when everyone is treated with equal consideration. That is what the court in South Africa taught us in *Walker v Pretoria Municipality*. That is also what the Constitutional Court said in *Van Heerden v Minister of Finance*.

There are two elements to social justice. There are two elements to treating everyone with equal consideration. The first element is that you accommodate differences or diversity. The second element is you mitigate or reduce disadvantages. Gender equality is the same, it is an element of social justice, it is about treating men and women in a manner that equalises life chances and the enjoyment of all human rights and freedoms.

I have said men and women; however, we now know that there are men, women and gender-unassigned people and social justice cover all of these – nobody should be left behind, and nobody's humanity should be undermined. Nobody's humanity should be preferred, either. The key to social justice is that nobody should have their race given a premium over other people's races. Nobody should be given a premium because of their sex, their class, their nationality or because of their heterosexuality, age, religion, and so forth.

As part of this roundtable, we decided to discuss who is accountable so that we move forward more meaningfully around holding everyone accountable in accordance

with their responsibilities. According to section 9(2) of the Constitution of South Africa, there is an equality duty for everyone; for the state, corporate South Africa, me and you, and ordinary citizens. We have a duty to advance equality, and that comes from the fact that everyone's right to equality is protected under section 9, which also includes taking positive measures to redress inequality.

If you take this with section 7(2) of the South African Constitution which imposes a duty on the government to advance and protect human rights, and equality being a human right and human dignity being a human right too, then you will agree with me that the equality duty on government and all of us is not just about not discriminating, which people often think it is. The equality duty includes stepping up to redress imbalances when such imbalances exist. In the case of the women of the world, there have always been imbalances emerging from previous unjust laws that discriminated against women based on sex.

If you take my example as a lawyer: in my profession women were not allowed to practice as lawyers until 1923, and they were said to be inferior. Their demeanour was said to be inappropriate for the courtroom. Weirdly, the courts thought they were justified in judging women, but women were not good enough to judge. It was said that the practice of law was too harsh for women, but weirdly the judging of women was not considered too harsh for women. What could be harsher than being judged by people who are not your peers, by people who cannot walk in your shoes? How would they understand why you did what you had to do – or did not do what they thought you should have done?

Who is accountable? Government. Where do we find that duty to account? It is the Constitution, as I have indicated. It is the UN SDGs that every Government, including the South African Government has signed to. It is the Beijing Platform for Action, which is 25 this year, which again most governments signed up to the Beijing Platform for Action.

I would like to refer you to the Women's *Human Rights Resource Book*, which was prepared by Advocate Joyce Maluleke from the Department of Justice. That was to help us know what instruments impose a duty to advance gender equality, women's human rights, and women's advancement. When you are complaining about, for example, gender-based violence having increased to the level where young women and children find themselves living in a warzone, it works better to hold the government and others accountable based on some instrument.

Therefore, this resource book will give you all the undertakings that were given by the government. Instead of just saying do something, you say something should be done specifically in terms of the Convention on the Elimination of all Discrimination Against Women. Government has a duty to create an enabling environment for women to thrive, for gender inequality to be reduced.

In terms of the UN SDGs, you have a duty to advance equality in terms of goal number ten and specifically to advance gender equality as a goal on its own. But everything coming together in terms of the 17 SDGs creates an environment of social justice where humans thrive. We know humans are less likely to harm other humans when they thrive.

What is the link between gender equality, corruption, social justice and accountability? Firstly, as long as there is injustice somewhere, there cannot be sustainable peace anywhere. So, gender equality is an element of social justice, and corruption undermines social justice. Corruption is an injustice. Corruption gives benefits to people that they do not deserve. If we look at specifically the definition of corruption, it is the abuse of entrusted power for personal gratification.

You will also agree with me that corruption hurts women more than any other group in society. First, because research studies show that women are less likely to be corrupt, which means of course if the playing field is not level, they are not going to be able to compete fairly. Contracts will be given to corrupt people. Jobs will be given to corrupt people. Policies may be swayed based on improper and corrupt influences.

Research shows that women tend to shy away from such things. It does not mean they do not get involved. We all know a woman who has been involved in some or other corruption, even if it is just to bribe a traffic officer.

I was in the process of explaining that women tend to be impacted more severely by corruption. Firstly, because it excludes them from opportunities, and I explained what kind of opportunities women would be excluded from. For example, business deals, policy opportunities that are influenced by state capture, jobs that may be influenced by corruption.

But it is through society's social burden where women are hurt most by corruption. When corruption takes away public resources and we do not have a comprehensive healthcare system that can care for people, it is women who step in to do that. In my job as Public Protector, I was amazed at the number of women I found in hospitals

operating as volunteers and not being paid a cent. Some of them had been doing this job for years.

We know now, for example, in the context of COVID-19 that a lot of women are at the forefront. Those who are in the frontline are employed, but there are also volunteers in the frontline to combat COVID-19. And again, we have heard about corruption in the procurement of PPEs, at least in South Africa. I am not sure about other countries.

One of the likely impacts of that corrupt procurement of PPE is that some of the PPE that were procured from fly-by-night companies may be defective. Women or frontline workers may also be affected by the fact that we will not have enough PPE, again because there was overbilling, overcharging, and false billing and all of these would have been enabled by corrupt deals. Because if a deal is corrupt, there is no accountability. You cannot hold your friend accountable if they have given you part of the money back as a kickback.

I saw this happening in Reconstruction and Development Programme (RDP) housing. A settlement is faulty. They bribe an engineer to proceed, and everything falls apart later. A municipal manager steps in to say you are not going to be paid, in fact, you owe us money because you built a defective settlement, so you better raze everything to the ground and build anew. The businessperson says I will implement a political solution to this and in no time the municipal manager is removed from office for a flimsy reason such as using too much toilet paper.

That might be an exaggeration, but, honestly, the stories I have heard about how people have been removed from office are frightening. A lot of the whistleblowers that I know, in fact, of all the whistleblowers that I know, 99% are women. This confirms the research that shows that women find it more difficult to be involved in corrupt processes. If you look at state capture, most of the whistleblowers there were women. Transnet, SABC, Eskom, SAA, and Trillian, the whistleblowers, were mostly women.

So that is the link between corruption and gender justice. But what is the link between corruption and accountability? For me, it is two things: Where there is accountability, there is less corruption because where there is accountability, there is transparency. It was an American judge who said sunshine is the best of disinfectants. If we think of corruption as some virus of some sort, where there is transparency in how things are done, where there is transparency in people's rights and responsibilities, it is less possible to be corrupt.

When people go to the Home Affairs office to apply for a residential permit, business permit or an ID or to register a birth, There is less likely to be corruption if everyone knows what is expected. If you report a rape to the police, if there is a standard operating protocol that the public knows about, you are not likely to get some people arrested immediately while others only get arrested only months later – or never.

Because if there is a standard operating protocol that we all have in our hands, on walls, and on the worksite when things go wrong, we can hold people accountable based on that. The same applies to tenders. We are told, for example, in South Africa that the alleged corruption in PPEs is because there were emergency procedures. I understand emergency procurement procedures, and I can tell you that this was not the reason.

The law is clear: You are not supposed to jump over people who are on your register or suppliers when there is an emergency. If you need emergency supplies, that is when you need people who are on your system. You cannot use fly-by-nights. You cannot overcharge because in your system, it will be clear what the pricing is. You would have done standardized market testing and due diligence.

Even if it is an emergency, you surely cannot procure from a company formed two weeks ago. What guarantee do you have that the services they will provide you are not defective? What happens if they do not deliver? Where will you get your money from given that they obviously would not even have the financial means to remedy any problems?

This is what happened with RDP housing, by the way. Women like Palesa Musawho have been sitting in the RDP housing queue since 1996. The backlog has to do with people jumping the queue in corrupt ways, but there is also corruption in people being paid to deliver RDP houses but not doing so. Or they deliver defective ones, and the state then must pay more money to fix RDP houses.

I would like to talk to you about the corruption factor. I have said that it hurts women most, but it also undermines democracy and good governance. If we are talking about exceedingly high levels of gender-based violence, we must ask ourselves how much of that is linked to the high levels of poverty, inequality and hunger which reduces people to subhuman lives and erodes their humanity and human dignity.

For the purposes of today's discussion, I have some thoughts I would like to share on impactful analytical tools that we need to use when we are looking at accountability for gender equality and the impact of corruption.

The first one concerns laws. I know England is very good at law, and I am pleased that Oxford University colleagues, Dr Anna Petherick and her colleagues, will be with us to talk about what is happening in that part of the world. But one of the attractions for me in the UK system is the equality duty that is enforced through law. And that was the vision we had when here in South Africa we drafted the Equality Act, which included Chapter 5, which imposes a duty to advance equality.

Sadly, more than 20 years later, that act has not yet been implemented. And the question again about accountability is who is accountable when laws are made, and nobody implements them? What do we do? Do we just design more laws? What is the point of designing a law if it is not going to be used? That is like buying medicine and keeping it in your cupboard hoping a disease is going to go away.

So, we have an Equality Act here in South Africa. In the Equality Act one of the analytical tools is a gender audit where you audit between the ideal situation where there is equality, equal enjoyment of all rights and freedoms, and the current status. And based on that audit, you can then move forward to improve the situation. I know, for example, at Stellenbosch University, a lot of equality auditing has taken place. Not just on gender, also on race, disability, and LGBTQI issues. There is a whole programme that is taking place to reduce any imbalances.

The Gender Mainstreaming Matrix is a tool that we designed many years ago. One of those that I was involved in designing is now being used by the National School of Government in South Africa. It has 12 dimensions that evaluate everything from leadership to designing laws, considering in advance the likely gender impact of laws, policies and plans.

A SIAM is a new addition in the area of analytical tools. We designed it earlier this year, using research from the past three years. That analytical tool basically asks several questions that policymakers should answer before they sign off and say this is complying with the Constitution. I find it fascinating, for example, that state law advisors, at least here in South Africa, must sign and say this complies with the Constitution.

I would be interested if compliance with the Constitution includes compliance with the equality duty, not only anti-discrimination aspects. The equality duty includes the duty to advance equality and prevent indirect discrimination where one group is advantaged by the rule that you are passing, and another is disadvantaged.

For example, if you decide that from now on governance is migrating online to e-governance, do you think in advance about access? Between men and women, who will be more advantaged in terms of operating in the digital space? I suspect men will be more likely than women to operate in the digital space.

I remember when we were arguing at the Department of Justice that more money should be given to civil justice. The data showed in the criminal justice system, more accused people who get support from the state are men. Women are less likely to be accused of a crime, but women have a lot of civil needs for legal assistance such as maintenance and child support, domestic violence, divorce, etcetera. We argued that funding civil justice systems would be in line with advancing gender equality, and it worked.

A socio-economic impact assessment matrix is a tool that the government uses. But from an accountability point of view, I would ask if governments did in fact use these tools. Do governments ask themselves, will this comply with our applications in terms of the Universal Declaration of Human Rights, CEDAW, the Constitution, the African Charter on Human and People's Rights? Will this comply?

How do we take back the future? I hope that we will today discuss our shared understanding of what the future should look like from the point of view of corruption and accountability for gender equality. What is our shared vision? Can we agree on effective ways to go there?

One of the things that from a Social Justice Chair and the M-Plan for Social Justice, we believe that we need to adopt a systems-thinking approach. Systems thinking is like looking at gender violence, you cannot just think about the police and that the police are not doing the right thing. You have got to understand that gender-based violence thrives because of various influencing factors. It starts with finding answers to questions such as why do people kill? Why do people rape? Why do people attack women?

A lot of it has to do with the mindsets, the stigmatisation of womanhood, and the exaltation of manhood. Are we doing enough to change attitudes, to change that entitlement that was entrenched by legalised patriarchy in the past? We still have patriarchy now, but it is a social system as opposed to a legal system because the law entrenches equality, and the Constitution entrenches equality. So, if we are dealing with gender-based violence, for example, we would have to look at that.

The same thing with the economy. Why are more women not in management positions? Why do we not have enough judges who are women? Why do we not have enough women on boards, in the Johannesburg Stock Exchange and all of those? You must ask yourself what systemic issues work together to pull or keep women down. That is a systems approach.

An important aspect of that is leveraging data analytics to predict the future, something central to the Social Justice M-Plan. If you are about to pass a law, how will it impact the Gogo Dlamini in villages, townships, people's homes and so forth?

Finally, it is essential that we look at accountability. Most countries signed up for SDGs. I have seen that most countries, at least in this continent and in my country, do not have plans. If I ask somebody to show me what our SDG plan says, and where is the gender dividend or the women's rights dividend in that plan, it would be interesting to see what answer I would get.

When we started the South African report last year, we could not find a plan. We found a report, but not a plan. Without a plan, what are you reporting on? It becomes important when we are exacting accountability that there is a plan. Because accountability comes from the word accounting. Just explain, give reasons.

In his celebrated article on administrative justice, the jurist and human rights activist Etienne Mureinik talked of law as a justification. In a justification you have got to say this was my responsibility or this was my plan, and this is how I have delivered on it. When we are looking at gender justice, accountability and corruption, we need to put accountability at the centre of this conversation.

Thank you, dear colleagues. I am looking forward to this conversation, and I am thrilled that we started this conversation with a video from a young person, a girl that tells us about the vision in the Constitution and therefore our accountability framework should hang on the vision. What are we trying to achieve? Where are we? What are we doing wrong? How do we start doing things right, and how do we hold each other to account? Thank you.

3 4 Professor Jonathan Wolff (Alfred Landecker Professor of Values and Public Policy and Governing Body Fellow at Wolfson College, Oxford University) "Philosophical approaches to social justice and integrity"

I am very pleased to be representing the Blavatnik School of Government. I am delighted to be involved in this event. I visited South Africa a few years ago. I spent a month in Cape Town and hoped to visit Stellenbosch. I did not make it, so this is the closest I have got yet to visiting Stellenbosch, and I hope I will be able to do it properly before long.

The question I have been asked to talk about is philosophical approaches to social justice. Much of what I wanted to say has already been covered, so I will try to be very brief. But I want to talk a little bit about equality and theories of equality. Until fairly recently, much of the discussion on political philosophy has been about distributive justice in terms of distributing assets and resources, income and wealth, which has been very important.

But more recently, people have also been very interested in a slightly different question: How can we construct a society of equals? So, thinking in terms of not how we distribute goods so much in society, although that is important, but how people relate to each other and how they regard each other.

The idea is, how can we construct a society where no one's looking up to anyone, and no one is looking down? What would it be to live in a society where you are regarded as an equal to everyone else, and you regard everyone else as an equal. And clearly the issue of gender is central in this way.

Throughout the history of political philosophy, going back to the ancient Greeks, many philosophers have tried to construct the idea of an ideal society. So what would a perfect society be like? What would a utopian society be like? Much effort has been put into constructing models of justice that are wonderful to think about but bear less relation to the real world than we might hope.

More recently, many philosophers, and I include myself in this, have turned to a different question which is rather than thinking about how we construct an ideal society, let us think about what goes wrong in the society that we live in. What are the ways in which we can see injustices?

Because what is very interesting is that people will often agree that the situation is very unjust, even if they disagree about what ideal justice requires. So, you do not need to spend a lot of time thinking about your ideal vision, just to understand the world has gone wrong, people are disadvantaged, people are in an unequal situation, and something needs to be done about that.

Of course, this goes way back. Earlier I was reminded of a comment from Karl Marx, I think in 1843 or 1844, where he points out that you can judge the justice of a society by the relation between men and women in that society. So, it is a very old way of thinking to say let us look at what is going wrong in society in order to try to think about justice rather than constructing an ideal theory.

Of course, when we are thinking about this, and we think about gender inequality, I have been much moved by a thought echoed by many feminist scholars who say that we should not be thinking about women achieving equality with men because that is such a dismally low target. Who really wants to live the way men live today? We should be trying to think of a way in which everyone can live in a more thriving and flourishing manner rather than aspiring to the world that men occupy now.

So, this idea of starting with what is wrong though, is one I want to focus on. Here I would just recommend the work of the American philosopher Iris Marion Young in a book she published in 1990 called *Justice and the Politics of Difference*. Young argues that when we are thinking about justice, we should think about what she calls the five faces of oppression, so five ways in which things go very badly for some people. Young was very interested in activism as a feminist and as a socialist philosopher.

You may recognise her five faces of oppression: exploitation, marginalisation, violence, powerlessness and cultural imperialism. Young's view is we should identify examples, the worst cases of exploitation, marginalisation, violence, powerlessness and cultural imperialism and think about the ways and, as was pointed out, indeed the systematic and connected ways in which these faces of oppression go together and to work out what we can do together as activists and academics to try to overcome these faces of oppression.

I have also been asked to talk a little bit about philosophical approaches to integrity. Much of what I wanted to say has already been covered, so I will be very brief. I just want to distinguish three different ways in which corruption of different forms can apply.

The first we have heard about is the type of deep corruption of misappropriation of funds. We are seeing that a lot. I just heard about corruption in procurement of PPE in South Africa. I can assure you South Africa is not alone. In the UK there are court cases concerning contracts for billions of pounds – not just millions of pounds, but billions of pounds that have been spent on PPE and mis-procurement. This is probably happening everywhere around the world.

There is also a type of mid-level corruption where people take jobs, but do not do anything. This can happen of course in the area of gender protection as anywhere else. People take on a role and they are very ineffective. But what interests me particularly is when I think of this type of mundane level of corruption where no one is doing anything intentionally, but things just go wrong.

If we think about this in relation to gender, and of course earlier speakers have spoken about this as well, where you have only men sitting around the table making a decision it will not be any surprise that the decisions favour men more than they do women. Why is that? Not necessarily because they are corrupt, but because of what they notice. You notice things that affect you and you do not notice things that do not affect you. So, where you have power structures that favour one group, that will become more and more exaggerated over time.

The final thought I want to give, maybe to connect things a little bit, is that addressing corruption, addressing oppression, addressing inequality is very expensive. It is time-consuming, it takes a lot of attention, it takes a lot of energy. In times of crisis, it will be easily forgotten.

When we have to make decisions quickly, when resources are scarce, corruption may be overlooked, inequality will grow, gender inequality will grow, integrity will go out of the window. We are at a particular time in history when these matters are so important, and they will be neglected and worsen unless extreme efforts are taken.

I am here to learn much more than to teach, so I will stop at this point and hand it back to the programme director. Thank you so much for your attention.

3 5 Dr Anna Petherick (Departmental Lecturer in Public Policy and Researcher, Building Integrity Programme, Blavatnik School of Government, Oxford University) *“Empirical knowledge about gender, accountability and corruption”*

It is wonderful to join you all the way from over here in Oxford. And it is a great honour to deliver remarks alongside Professor Madonsela and my colleague Jo Wolff and to hear their insights into the theme of social justice. Unlike my colleague, Professor Wolff, I have never actually been to South Africa. I would really love to go there one day. It looks like it will happen in the near future, but it is a dream of mine.

Later today we are going to hear discussions about the relationship between various themes in the conference title and advancing gender equality. So, if you like, themes of accountability, themes of corruption and locating these connections between these themes and gender within operations in the South African economy, within how we understand customary law, human rights law, state procurement, service provision and so on.

In doing so, we are really going to understand how gender and corruption and accountability come together in real life to affect the lives and the opportunities of all people, but especially women.

I see my job right now as to provide a little bit of background about the sum total of knowledge in the field of gender corruption and accountability. I apologise if there are aspects of this that seem a little bit like a lecture, but my reasons for doing so are this: If you want to make good public policy, it really has to be evidence-based.

I thought what I would do is to really make three points that might provide helpful background to people who are less familiar with the field of gender and corruption and then make three points that I see really as additional – emerging conclusions from the field that I would love people to keep in mind throughout the day.

My first background point is that women in power sometimes on average cut corruption. It is often assumed that women are less corrupt than men, so adding women will necessarily, if you like, or always reduce corruption. But we absolutely should not assume this to be true. *Sometimes* women cut corruption, which is really the key word, *sometimes*, not always.

The idea that women always cut the corruption is closely tied to the idea that women are by nature essentially less corrupt or corruptible than men and we simply know that is not empirically true. What is true empirically is that when women gain power, in many ways similar to what my colleague Jo Wolff was saying, they often seek to use the powers they have to make the state deliver public services better in certain areas of the public services. These are areas that are especially important to women. In doing so, women in power cut corruption in these sectors in particular.

It is not that women are less corrupt when they reach positions of power, it is that women represent women. So, we see empirically that when women gain power, and this is a big study of European local governments, they cut corruption in areas, in sectors like healthcare, particularly in maternal care, in children's education, which

mothers are typically responsible for ensuring, and they do not cut corruption in sectors that women are not especially affected by.

My second background point is that the opposite causal connection between gender and corruption is also true. It is not just that women can sometimes lower corruption, it is that corruption can actually cause gender inequalities. It can cause positions of power to be out of reach to women.

One way this happens is evident in corrupt organisations structured by patriarchal patronage. The anthropologists in particular have noted that attributes that are deemed qualifying for advancement in these kinds of organisations tend to be quite masculine.

Another way in which corruption perpetuates gender inequalities is far more direct and more obvious. As Professor Madonsela was stating earlier, corruption often has a greater impact on women than on men. Of course, it is hard to know this for sure. If you study corruption, your main challenge is that everyone who really knows about what is going on is trying to hide it from you. This is certainly true in some sectors.

Of course, there are certain kinds of corruption, this is my third background point, that are innately gendered. Here the main one will be sexual corruption. Now, this is when the currency of a bribe is not monetary or something of monetary value, it is really an exchange of sexual behaviours of some sort. This frequently occurs because the power inequalities are extreme. These are power inequalities that are intimately linked to gender.

When we look at the sectors in which this emerges, we see that it emerges particularly in the aid sector, in immigration, in education. This is often when the person who is delivering the sexual behaviour or providing it, has very little power and often has no recourse to monetary resources at all.

These are my background points, but I wanted to say that even though they add up to something that initially sounds quite depressing, There is actually quite a lot of optimism embedded within them. That is that we can think of these points as really opening up opportunities in policy making for, if you like, collateral gains.

Efforts to improve gender equality in a substantive sense may in fact also lower certain kinds of corruption by affecting the processes that facilitate them. Meanwhile, efforts to cut corruption can silently remove impediments to women's empowerment; this is one of the things my research shows.

So, that is half of what I wanted to say. But I also wanted to give you those three emerging conclusions to reflect on throughout the day. These are, first of all, that accountability always has a social context. It often operates through the prism of gender stereotypes.

The second point is that intersectional considerations are really paramount. And, yes, if you speak to someone like me who approaches statistics about gender and corruption, what we have to work with are numbers about men and women, and often this is reflected in reports that get written about gender and corruption.

But whenever we really look at the processes underneath those grand patterns, when we try to understand the deep causes, as Professor Madonsela was saying, we often see patterns emerging that are not just about men and women. They are about the intersection of gender with particular racial or ethnic groups, certain age groups, certain income brackets or classes.

My third emerging point is that wherever policy proposals are put on the table, and I hope today that we come up with some really good recommendations for the policy brief, substantive outcomes should be the goal.

I will briefly say a little bit more about each of those. My point about accountability having a social context is to say that we know, for example, that gender stereotypes really affect how men and women behave for example in experiments. You can do an experiment and you can have some of the people who are participating take part in a challenge that they are not expecting, and the challenge is, will you behave slightly corruptible in exchange for a bribe?

If you ensure that the participants in your experiment do not think that anyone can check up on them, you find that men and women behave equally corruptly. But if you open up the possibility of some sort of auditing or observation, even a low level of it, suddenly you find in most societies that women start behaving less corruptly.

We know this is because women are held to a higher ethical standard in most societies than men are. When we look at grand patterns, and a famous one is often that the more women you have in a legislature, the lower the levels of corruption. Well, people have done that and they said, let us compare democracies and autocracies and you see that the pattern is actually only there in democracies. It is not there in autocracies where the processes of accountability are not really there or not there to the same extent.

You can compare within democracies and see that the pattern exists only for countries with a free press. Or that the pattern exists only for countries that do not have high levels of historical corruption and the voters are ready to hold people to account in those democracies. In democracies that do have high levels of historical corruption, you do not see the pattern.

Accountability always operates through the prism of gender stereotypes. This is a challenge for policy-making and countering corruption because what can we do to deliver accountability, but to do so in a way that we will not sanction women socially more than we sanction men?

My second point for you to consider today is the importance of intersectionality. This is something that within academia, within my field of gender and corruption there is not nearly enough attention on. Stereotypes about corruptibility are not only gendered, they are associated with other kinds of groupings in society.

I mentioned how the impacts of corruption tend to fall harder on women than on men overall. But actually, when we look at each example of this that we know about, it is not all women. It is women of childbearing age who experience corruption in maternal care.

It is poor women, as has been studied in Johannesburg, that experience sexual corruption in the water sector, sometimes threats to turn off their water or to hike their bills if they do not provide some sort of sexual favours. We also see that women in family dynasties in which men have a lot of power in business or in politics still often get jobs in organisations that are structurally very gendered and have a lot of corruption.

Now, these organisations tend to be reasonably open to men without those kinds of family connections who can demonstrate certain kinds of behaviours that buy them into the group, and these are often very masculine behaviours that with a little bit of sunshine on them would be quite shameful. But that operates as a kind of social glue, a demonstration that they are trustworthy, that those within the group already have something over them. But note that women do get descriptively represented in these contexts.

My third and final point, and this is probably the most important one of all, was that substantive change is substantive policy making. If we want to address gender equality, we should be careful about aiming for headcounts for men and women. Just

as within the world of corruption and anti-corruption, we should be really careful about aiming for corruption busts. We must not be satisfied with superficial change.

An example of headcounts would be gender quotas for political parties. And yet we know in Tanzania which has had gender quotas for a very long time, that the women who are benefiting from them are not women who are outside of these political dynasties. They are only those women who are within dynasties that are structured really in a very patriarchal way. These women do not really have incentives to cut corruption. They are doing the bidding of the party through which the power structures are not being challenged in any way.

So, what might substantive efforts look like? And here is an example that I hope there will be more discussion about later on today. In procurement, for example, companies are often awarded points and sometimes points can go for gender equality provisions. Now, instead of having, if you like, a percentage of women on the board of the company, which might get you more points in the procurement competition, these points could instead go to equal pay provisions for men and women or for parental leave policies for both men as well as women.

This is very similar to how, as I said before, we should think about corruption. We should not be aiming for the big busts. We should instead really seek to challenge the organisational incentives that allowed corruption to emerge. In other words, we should really be aiming for integrity and building an institution in a far more long, far in the future kind of long-winded kind of way. And that is really why at Oxford we have a building integrity programme and not an anti-corruption programme.

Those were the main points that I wanted to make today. I just wanted to reiterate that I am very honoured and excited to be part of today's events.

3 6 Keynote address: Ms Mmabatho Ramagoshi (Chief Advisor to Minister Maite Nkoana-Mashabane, Minister of Women in the Presidency)

Good morning, Professor Thuli Madonsela, and checking into all protocols that have already been observed, ladies and gentlemen.

I am here passing the message from the Minister who would have loved to be with us today; however, this webinar clashes with the Women's Parliament that is taking place as we speak. Professor Madonsela, she has asked me to pass her greetings to

you and to wish everyone happy Women's Month and that we must all commit to have gender equality in our lifetime.

We have been invited to share our input on an extremely critical topic on gender accountability and corruption towards a decade of accelerated gender equality progress through accountability and combating corruption in the post-COVID-19 and SDGs.

As you are all aware, the theme of Women's Month 2020 is Generation Equality, Realising Women's Right for an Equal Future. This theme is linked to the UN Women campaign on Generation Equality. As a country, South Africa has applied to be a member of the Action Coalition addressing gender-based violence and economic justice and rights. After a long process, the UN Women gave South Africa the responsibility to co-lead the Action Coalition on Economic Justice and Rights, together with Mexico, Spain, Germany and Sweden. And to be a member of the Action Coalition on Gender-based Violence that is led by Kenya.

When we speak about a decade of accelerated gender equality, we speak of ten years. Ladies and gentlemen, we do not have ten years anymore. We are already getting into the ninth month of the first year of the decade. Therefore, we all have to run and ensure that in the nine years remaining, we hold everyone accountable for gender equality and women's empowerment. This is a non-negotiable target.

The global community, including South Africa, has signed different instruments and conventions, like the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) already in 1979, which came to force in 1981, and the SDGs in 2015 which target that must be achieved by 2030 to reach Planet 50-50 by 2030. As a country, we are ahead in planning for this Generation Equality by 2030 as envisaged in our NDP that was written in 2012 that also targets 2030.

Therefore, as we speak of gender accountability and corruption, we must be asking ourselves that in the 31 years of CEDAW and the 25 years since the adoption of the Beijing Declaration and its Platform for Action, what have been barriers in achieving gender equality and what were consequences for leaders who failed to implement this and what will be different this time?

What will catapult us all with the global community to reach 50-50 by 2020 in the nine years remaining? I am looking to this Gender Expert Roundtable to come up with radical interventions. As Professor Madonsela has been the champion in this area, that the roundtable will propose programmes that will catapult government, the private

sector and everyone to ensure that we do not do things that we have done before that have not given us any results.

As you all know, this Generation Equality movement talks about leaving no one behind. And what a beautiful example we have seen today of Zoey. Because as a young person she showed the Generation Equality movement that young people and old people must work together because we all are bringing different skills and knowledge that talk to each generation.

I am speaking on behalf of the Minister responsible for Women, Youth and Persons with Disability in the Presidency. The mandate of our Department is to ensure that issues that talks to these sectors are mainstreamed in all programmes and projects of government, as well as the private sector.

The Department is also given the mandate to monitor the implementation of policies and legislations that seeks to redress the imbalances of the past for everyone, men and women, to enjoy the rights that are enshrined in the Constitution, and to lobby and form partnerships with everyone in the quest for a just and equal society.

As we speak of Generation Equality, we are aware that as we are discussing today, no single country in the world has reached gender equality. The Global Gender Gap Report of 2020 by the World Economic Forum projects that if we do things the way we are doing, the overall gender gap will close in 100 years.

Chair, we do not have 100 years, and we cannot implement the same strategies that have failed women before. That is why the partnership with society, the private sector, institutions of higher learning and research institutions, including what the Law Trust Chair in Social Justice is doing, are very critical in implementing evidence-based interventions.

When we talk of accountability, we need to know that we are talking about people accounting for services delivered by policymakers, policy providers to their clients being the citizens. And the citizens that we are talking to are women and men in their diversity, young people in their diversity and persons with disabilities who, as we speak have not benefited a lot, especially those that are in the rural areas. Therefore, gender accountability implies that every country must develop laws that ensure gender equality and eliminate discriminatory attitudes, conduct, prejudices and practices.

As Professor Madonsela has already indicated, as a country we have the most progressive legislations and frameworks, including the latest approved gender budgeting, planning, monitoring, evaluation and auditing framework. We have a

preferential procurement policy. However, we are still regarded amongst the most unequal societies in the world.

As a Department, we are continuously inundated with letters of unfair treatment of women in business who struggle to access government incentive schemes even after following the process. The question that we always ask is why are government officials finding it so easy to ignore policies in place for gender equality? It comes back to the theme of this roundtable, lack of gender accountability and consequence management.

Now, in South Africa, besides all the legislation, women also are exposed to the worst form of gender-based violence. The president has even declared it a second pandemic. Gender-based violence in this country occurs in our homes, workplaces, and higher learning institutions. Public transport is not safe for women. Places of worship are also not safe for women. And now the COVID pandemic has exacerbated the problem because some of the survivors of gender-based violence found themselves locked in homes with the perpetrators, whereas before lockdown they could get away from them.

South Africa has adopted a National Strategic Plan to address gender-based violence and femicide. This was developed by government and CSOs. It has taken a lot of time because they were consulting CSOs, traditional leadership, and the private sector in all provinces to ensure that we have a plan that will eradicate gender-based violence in ten years. I know it is an ambitious plan and we hope that with everybody on board, we will free ourselves as women to walk in this country without looking over our shoulders fearfully.

The National Strategic Plan has six pillars, and the first pillar talks about the theme of this roundtable. It talks about accountability, it talks about coordination, and it talks about leadership. We have been involved with different programmes that were not coordinated, they were in silos, and in the end, you find that we do not achieve the final outcome because there has not been leadership.

Therefore, pillar one of the National Strategic Plan is focussed on the accountability of everyone – government, the private sector, and CSOs. Because gender-based violence happens everywhere, it is not only at the government level. The government often responds after gender-based violence has happened.

Pillar number two speaks about prevention and rebuilding social cohesion. This is a pillar we previously neglected. Our focus has been ensuring that women are safe.

And for women to be safe meant, we had to ensure when gender-based violence happened, the guilty person could be charged and taken to court. However, we have to put more emphasis on prevention. Because if we prevent gender-based violence from happening, women will not need to go to court in the first place.

Another thing that has come out in the dialogues before the development of the plan, was the realisation that South Africa is a wounded country. We are divided between race, class, gender and we need to have a cohesive society to address gender-based violence.

The third pillar speaks about justice, safety and protection. And this is where the government must ensure that when women, young people, men, anybody who reports abuse, know that there will be justice in the end, that their cases will be taken on without being told to go home or without being told to pay anything. Because it is the responsibility of those officers who have been given the responsibility to protect South Africans to give that service, from the police to the court to the prison.

The fourth pillar speaks about response, care, support and healing. The issue of healing is coming up repeatedly in most of our dialogues these days, that as a nation, we came from a brutal past and so far we have ignored to look at healing from our brutal past.

We find that young people who come from abusive relationships continue with the abuse. We have seen the ages of perpetrators going lower and lower. It is no longer only adults who are being abusive. We need to also invest in healing. Partnership with psychologists, social workers, traditional leadership and also faith-based communities is critical for South Africa now to start healing from the wounds of the past.

Pillar five of the National Strategic Plan speaks about economic power, that we cannot as a country talk about women's empowerment if we do not put money in the hands of women. We have seen that in the 26 years of democracy, even though women are more than 51% of the population, we have very few women who have benefited from all these government incentive schemes, all the preferential procurement policies.

We want to ensure that in this decade, access to land and financial services. We want all women, even those who might not have the collateral required by financial services, to start benefiting from the programmes and policies the government has implemented.

The president last week, as he was announcing Level 2 of lockdown, also moved from 30% of preferential public procurement to 40% for women. As women, we are saying 40% actually is not enough because women want 50-50. There should be consequences if that 40% does not get into the hands of women. The private sector needs to address other barriers in the workplace that make women not get positions and promotions. They should implement sexual harassment policies and policies from the International Labour Organisation to ensure that workplaces are free for women to thrive.

The last pillar of the NSP speaks about research, information and management. The partnership that we are looking forward to, especially working with the Law Trust Chair, is around coming up with evidence-based interventions. Evidence-based interventions, research, and having information at our fingertips that will inform us which community is more abusive and what programmes are in place in that community to ensure that they work. What interventions at a community level, at local level, in the church, in the police seek to deal with gender-based violence so that we can eradicate gender-based violence in our lifetime.

We have invited different people to participate in the different pillars. Especially at the provincial and local government level, because the working teams can only make a difference if we work at the local level. So, we are very happy that we are getting involved and looking for a partnership to work with you going forward.

Corruption is an enemy that has reared its ugly head everywhere in this country. If we use the common definition that we know that corruption is about the abuse of public power for private benefit, it is interesting that the power we are talking about in this country starts from levels as low as a security guard.

We get reports of women who go to Home Affairs to apply for an ID and because of long queues, a security guard will say, give me R50, I will take you to the front of the queue. It is the same experience for women going to a hospital or clinic. In rural areas they wake up early in the morning so that they are in front of the queue. And for them to even see the Dr is a challenge. By the afternoon they are told we are going to cut the line, so if you want to see the Dr, pay.

So, corruption affects women and men, but as we know, women, and Professor Madonsela, you have already said that women bear the brunt more than men. Because more often than not most of them will pay the bribe just to get an ID. Because for them that ID is going to save the family. That ID will give them access to social

grants. That ID will ensure that they have food on the table. Because they are taking responsibility for children whose fathers are not paying maintenance. And we have seen Stats South Africa saying most children in this country have absent fathers.

Corruption also has a negative impact on women's empowerment and participation, especially on women and girls living in rural areas. In most of these communities, by now they should have water in their villages, but due to corruption they still have to go and fetch water far from home. As a result, they work longer hours compared to women in urban settings. Due to lack of this basic resource, water, they cannot even get into farming which requires access to water.

We have heard of corruption where women must have sex for jobs or sex for marks. And this affects young women and girls more than men.

With regards to corruption that is linked to procurement, I saw an interesting article by UNODC that was asking a question, are women more or less corrupt than men? I hope we will be able to discuss it today to have facts that will empower nations to make decisions informed by research. It will mean that in the decision-making processes countries must target those people that are less prone to corruption.

In the article, it is reported that in their previous surveys, many respondents picked men as more corrupt with variations from country to country. However, their recent research shows that opportunity and exposure matters. It indicates that if the opportunity arises women would be just as corrupt as men. On the other hand, crime statistics show women are more risk averse and this applies to corruption offences too.

Some studies also suggested that companies with a greater number of women in decision-making positions perform better in terms of ethics, corruption levels and even perform better financially. This suggests that increasing the share of women in leadership positions, especially in the male-dominated workplaces, will disrupt corruption. Maybe in the Discussion, we will hear if there is research that shows what has been discussed.

As the Department of Women, Youth and Persons with Disability, when the president announced the lockdown and also announced the fund that was going to put in place to procure the PPEs, what the department did was to have a call to develop a database of women-owned businesses and cooperatives to ensure that they, especially those that have been doing this work, benefit from the money put aside for COVID.

We are unfortunately shocked at the report of the massive corruption and that the money that was supposed to address these challenges has exposed the impact of this particular saga of the inequalities of gender and corruption. We know that most women work in the informal sector in domestic work, and they are the ones that have lost jobs in numbers. During lockdown, they would not go to work as they had to stay home with their children.

The corruption that has been reported has robbed them of getting money to look after their families. So as a department we are waiting for the Presidential Task Team report and the SIU report to do the analysis to see where this money went and how much of this money got into the women's hands. And also supporting the president in ensuring that whoever has been found to have taken money that was supposed to have made a difference in the health of this country, that they will recover the money, but also that they face the might of the law.

We thank you very much for inviting us to be part of this roundtable and wish you all the best. Malibongwe.

3 7 Keynote address: Kate Robertson (Co-founder, One Young World)

It absolutely is an honour to be here. I am here less as an expert and more as an observer and observer of the young leaders that we have in our care in the One Young World movement which is 1 200 young leaders from 196 countries.

I am going to skip some of my opening remarks because they have been well covered. I would like to jump to the first observations that I would have in this regard, and that is to say that amongst these young leaders, and they really are young leaders, they are not youths, they are leaders, with a reasonable understanding or grasp of gender equality. I say I think. I ought to be saying with certainty. I am not certain. If there is some kind of understanding of gender equality, and indeed inequality, I am even less certain that the concept of social justice is well and/or correctly embedded amongst them.

Every year at the global summit we hear from hundreds, if not thousands, of young women about their fights for equality all over the world, and it seems to me that the young men who are there support them in this fight. But real change is so slow, I really do wonder if it is coming at all. It is not fair. It is not fair and it cannot be fair when the rights of 50% are less than the other 50%. And this is worldwide. You have heard it

from the previous speakers, so let us know about that. But what do you do about it? One Young World is about these young leaders, but it is about not talking so much as getting on with it and making change happen. It is about action delivered.

Now, protest only goes so far. We know that in our history in South Africa. But it is true all over the world. Street demonstrations are effective in sufficient numbers, but things can be put down. From Minsk in the last two weeks, from Alexei Navalny protesting previously on the streets of Russian cities, from vigilantes killing in Kenosha, Wisconsin, to Marikana, Soweto in 76, to Sharpeville, protesting is not enough. It may shine a light on injustice, on the absence of social justice, but that flare of illumination is a split second in our long human history.

But we have examples, and I want to start pulling these together as quickly as possible with your time. You have the example of Justice Bader Ginsburg in Washington DC, our own advocate, Professor Thuli Madonsela, as Public Protector in South Africa, to look at them and to see exactly what we need in order to deliver gender equality and its doppelganger, social justice. Because without gender equality There is not going to be social justice. We have proved that this morning.

It is the teaching and knowledge of the law and with it an understanding of the role of government that are absent. This is why the system does not work. Teaching of what is the law that protects you and me begins with tertiary education. 6.7% of the world's peoples according to the Harvard study of 2010 have tertiary education. Change cannot come from 6.7%. It is confined.

So, I look at these comments. Ruth Bader Ginsburg saying the Constitution of the United States of America enshrined our Bill of Rights. The law was there, but not being applied to or availed by women, the law was there. Look at what Professor Madonsela achieved with state capture. The protection of the Constitution, her knowledge of the Constitution protected a country and brought down a corrupt regime. Both of these women were lawyers, unique.

Systems do not work for women every day. The young women with whom we work all over the world are hugely inspired by the example of the fiery young US politician Alexandria Ocasio-Cortez known simply to them as AOC. The Netflix documentary about her first election is a wonderful and inspiring moment. As she walks towards the amazing capitol building in Washington she says, my dad brought me here to see this when I was a child and he pointed to the building and he said, that is our house. The people own the law and lawmakers.

The big step here is to ask what actually goes wrong. What impacts women disproportionately even where there actually are laws? And this may be an oversimplification, but sometimes we have to have simplification to get clarity about what needs to be done about necessary action. If I do not know exactly what my rights are, if I do not know what they are, the chances of my knowing what the laws are that protect them are close to zero. If I cannot access those rights, we have walked our societies all over the world into a war. This is women being walked into a war where there is no or very little knowledge of law.

Professor Madonsela called it correctly this morning that the virus is spreading. The one that is destroying more than COVID-19 ever will, the virus of corruption, it stalks the corridors of power in every single corner of the world, every government, every business, every institution. We cannot make progress. So, the issues that we are addressing today are intersectional. None can be successfully or thoroughly addressed without aligning them all and there is a red thread that runs across the surface of what we are discussing, the thread that we need to tug on and put in our needles, and this is the law.

My concern with this here is to say, how will we make basic knowledge of human rights... I mean, can I list our 30 universal human rights? No. And, hell, if I cannot, who can? We should know them the way in my day we used to know the ten commandments. We should know which laws are there to protect me. Is this an impossible thing? When I was a child growing up in the darkness of the apartheid era, I know that every child, black or white or anything else in South Africa, knew what the evil pass laws were. We knew those laws were there. We should know all our laws.

The same thing applies to the role of government and I am reminded when we had the global summit for One Young World in South Africa in 2013 of my friend Dr Mamphela Ramphele saying to me, Kate, in our rural areas the people do not know that the fact that their standpipe and their water source is broken is the responsibility of local, provincial and national government. They do not know what the government is supposed to do for them.

I do not think that is confined to rural South Africa. Certainly, I see it all over the world and I see our young leaders fighting this. Governments have a duty to us. Do we know how that duty is supposed to be applied? Professor Thuli Madonsela did, but as I said, a unicorn in this case.

I am reminded too of Malala Yousafzai's point when she went to Nigeria at the start of this horrendous scandal of the abduction of the girls in the northeastern part of the country. And she said to Jonathan Goodluck, himself, of course, convicted today of corruption, she said to him, I do not understand, you are the father of the nation, these are your children, are you not supposed to help them? Yes, the first duty of the government is to take care of us.

A big hopeful point on the corruption point, and as I say, corruption, South Africans should not hang their heads. As Professor Wolff was saying, you are far from alone. Corruption happens in every single country in the world.

But the genius of Bill Browder's Magnitsky Act, and I would like to bring this to the attention of you as experts in South Africa, the genius of saying you have ill-gotten gains, now, in order for us to get those from you or to stop your corrupt ways, I as the state have to prove that you are corrupt.

And Bill Browder's point is, no, what should happen there, when a government, government, yes, when a government sees that somebody is floating around on R56 million spent on their homestead when their salary is not even 1% of that, the government should not have to prove those are ill-gotten gains. The government should freeze, not spend, freeze, seize and freeze the cash and assets of such a person, and it is for that person then to prove that those gains are not ill-gotten.

We see now the Magnitsky Act being applied here in the UK and it is being applied to the Gupta family of whom we all know a lot sadly today, applied in many, many countries. But I thought it was a genius use of the law.

Now, when it comes to the duty of government, when I look here in the UK at 28 years for justice for the families of the Hillsborough survivors, I look at the burning of the Grenfell Tower where the people who died and suffered the most were the working poor and many of them people of colour here in the heart of London in 2017, it is clear to me that a knowledge of the laws that were supposed to protect those people in an instant action of you are breaking the law could have prevented those deaths.

Was the knowledge of the law there? No, probably not. An understanding of social justice, still absent. And here you have in the UK companies who are, and councils and organisations directly responsible for what happened to that building, saying they will only testify at the inquiry if they are granted immunity. I mean, what the hell is going on here? I would urge you to, amazingly from advisor Ramagoshi, I thought it was a

really an uplifting moment in this discussion, to look at the law and to look at our understanding of the role of government.

So, as President Barack Obama said, over human history the arc of change bends towards justice, towards social justice. Slowly maybe. Is there time enough to get to the 2030 goals? Hear me out. As Professor Madonsela said, you have to realise that women's rights have suddenly appeared in the last century. We did not have the right to vote the whole way through.

We have to think there is time, and it would be one of the biggest contributions to goal number five, to social justice, if our schools, not our tertiary education, started to teach rights and laws even at the most basic level. Teach the damn things and they should be as essential as maths, language, or history. In fact, I would argue it should even come before history.

Just two examples before I finish. Our young leaders worldwide are taking on the making and understanding of law to address gender equality. I would like to refer you to our ambassador in the States, Amanda Nguyen, who has created the law for sexual assault survivors. It is a Bill of Rights. It was publicly signed into law in Missouri in July this year, signed as a Nebraska Bill into law on August the 7th. 1.8 million survivors of sexual violence, sexual assault and violence in Missouri and 628 000 survivors in Nebraska have their civil rights protected under the law for the first time in 2020.

Her organisation now has introduced the model of that legislation in, I am just looking here to do it quickly for you, in 13 states. So, the right to informative rape kit procedures and notification; the right to survivors' advocacy; the right to terminate all legal ties with the assailant, vital; the right to retention of all rights regardless of whether assault is reported to law enforcement. Again, that is operating somewhat at the top end to bring in a law. But if you do not know that the law's there to protect you, how will you access it?

Here in the UK, our ambassador, Jemima Lovett, has created the Domestic Violence Act over the last few years, which is stalled now with the change of party leadership in the UK, but post-COVID-19 will actually have its day and it will pass in the UK. Here come young women under the age of 30, accessing, using legal knowledge and legal training to get these laws passed. But if you take Advocate Madonsela's example and you say, had she not had her knowledge of the Constitution to stand as Public Protector between the peoples of the nation and corruption, no result. No result.

I look to these things to say if we could say in nine years' time in South Africa, or anywhere else, that the policy instituted across the country, the basic teaching of human rights laws and the basic teaching of access to the law, basic teaching of the role of government, this would be one of the biggest achievements for the SDGs in the world. This would be policy putting into action so that we could move on from our current plight of frankly a system that worldwide is not working for women or working for social justice. I yield back to you, Bassie.

3 8 Concluding observations: Professor Nicola Smit (Dean of Law, Stellenbosch University)

I would really like to thank and congratulate my colleague, Professor Madonsela, and her co-host, Dr Anna Petherick, and the rest of the social justice team for arranging this gender roundtable here at the end of the month of August.

I understand that around the world, there are 19 countries that are currently led by women and throughout this pandemic, most of them had in common a relative success in fighting the virus. And big thinking, empathy, good communication skills have all been identified as instrumental in these successes.

This Gender Expert Roundtable started off with some very thoughtful presentations. Professor Jonathan Wolff emphasised the continuing questions of how people relate to one another and how they regard each other. And he referred to Young's five faces of oppression, including violence, exploitation and marginalisation, and he indicated that this might be very helpful to keep in mind when we think about the relationships between women and men.

Dr Anna Petherick also reminded us that women are just as corruptible as men, but women in power often seek to deliver better public services where it matters most to women. She also confirmed that corruption perpetuates gender inequalities and power imbalances and that the intersection of gender and race, culture, religion and so forth statistically is often the greatest challenge to address.

Ms Ramagoshi warned that time is running out and she called for radical interventions to ensure results, specifically with public-private partnerships in mind. She referred to the National Strategic Plan with six pillars developed by government and CSOs and the eradication of GBV in the next years to come. And importantly, she

also stated that rebuilding social cohesion should receive much more attention so that evidence-based interventions can be more preventive rather than reactive.

Then of course, Kate Robertson very passionately provided examples of change makers. And she emphasised the need for greater knowledge about the law and rights of individuals, as well as the need for greater understanding and clarity of the roles of the law and government. And all of this against the background of the importance of education which none of us of course will deny or second-guess.

Madam programme director and delegates, from a South African perspective I would like to remind us of our Constitutional Court's judgment already back in 2004 in the case of the Minister of Finance versus Van Heerden. And there the Constitutional Court said that democratic values and fundamental human rights in our Constitution are foundational. However, the court continued, it is just as crucial as the commitment to strive for a society based on social justice and the achievement of equality goes to the bedrock of our constitutional architecture.

So, the achievement of equality is not only guaranteed as a right, but it is also a core and fundamental value in South Africa and it is a standard that must inform all law and against which all law must be tested. And to that I will also add all planning, decision-making and actions. Whether it is pandemic-related or not, these must all be informed by this standard, namely the achievement of equality.

As all of us know in the case of gender the catchphrase that the personal is the political has often been used in the past to call for change and to challenge the fundamental, structural and underpinnings of sexism in all areas of business, politics and our everyday lives. And then, amid the COVID-19 pandemic, I have really been struck by the gender stereotypes and expectations regarding childcare, for example, that has again come to the fore.

It is very clear since the start of the pandemic, a variety of lockdown measures have been adopted and implemented, and this includes stimulus packages, strengthening of the healthcare systems, introduction of new social relief packages, support to small- and medium-sized enterprises. But we know that less than 22% of business ownership rests in the hands of women in South Africa, for example.

This roundtable will highlight the impact of these measures, both support measures and opportunities, and how gender is being accounted for in approach, scope and content. We do this against a background where the vast majority of care workers and under-recognised workers are female, where female households earn less income

and where the vast majority of decisionmakers are men. So, it is extremely important to make women visible and to enable equal participation in and hopefully equal outcomes of all of these relevant processes.

I will conclude by saying There is a saying that once the game is over, the king and the pawn go back in the same box. Gender justice is part and parcel of social justice. And since gender needs to be considered, I would submit at the very least in relation to one's experience, behaviour, culture as well as systems, which would include laws, directives and education and policies, the focus of this roundtable certainly fits perfectly with the research in social impact agenda of the faculty and Stellenbosch University.

Like with many other social challenges, we need to think globally and act locally to move forward. And the excellent speakers that are participating today make it possible for us to deepen and strengthen our thoughts and practices, as Professor Koopman coined it this morning. And I truly wish you well for the rest of the deliberations today. Thank you, madam chair.

CHAPTER 4: PLENARY I – THE RELATIONSHIP BETWEEN GENDER, CORRUPTION, ACCOUNTABILITY AND ADVANCING EQUALITY

4 1 Keynote address: Elizabeth Andersen (World Justice Project, Executive Director), *The Rule of Law, Corruption, and Justice for Women*

Thank you very much. It is a great pleasure to be with you all today. I have arisen long before the sun here in Washington, DC, and it is really a pleasure to do so at a time when I feel very keenly about the challenges to the rule of law in my own country.

I am taking sustenance and support and strength and insight from participating in conversations in a global network of those who care about rule of law and justice and equality. And so, this is very helpful to me at a personal level and I am delighted to be a part of a conversation that is so important, so important to our efforts to realise the promise of the SDGs.

The issues that we are addressing today at the intersection of gender, corruption, the rule of law, accountability, equality are fundamental to achieving the SDGs. If we cannot make progress on gender equality, on the persistent scourge of corruption, on the rule of law, we cannot hope for progress in all the rest of the goals. So this is a very important conversation and I commend you all for convening it.

I am going to share some slides if I can manage the technology effectively. In my brief remarks today I would like to share data collected by my organisation, the World Justice Project (WJP), that underscores the challenges we face in securing justice for women and hopefully can help focus our efforts in addressing these challenges.

SDG 16 promises peace, justice and strong institutions, calling on all of us to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. With this goal in our sights, WJP has over the past several years undertaken work to measure the justice gap. Just how far do we have to go to achieve equal access to justice for all?

In my talk today I will share this research with you, highlight the particular vulnerabilities of women who fall in the justice gap, underscore the particular challenges posed by persistent corruption and suggest some ways in which a gendered approach to combating corruption, promoting accountable institutions and strengthening access to justice can make a difference toward the SDGs.

Turning first then to the justice gap. SDG 16 promises equal access to justice for all. But as the availability of data on people's experience of justice grows, it is becoming increasingly clear that the world is not on track to meet this goal. The data presented in WJP's justice gap report demonstrate that many people face justice problems and too few get the justice they need. This justice gap undermines human development, reinforces the poverty trap and imposes high societal costs.

We are seeing these costs in real time today as the effects of the COVID-19 pandemic are visited disproportionately on those who fall in the justice gap. Closing this gap is vital to realising the broader development agenda and its vision of a just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met. The justice gap can be understood as the number of people who have at least one unmet justice need. These are people who are ultimately not getting the justice they need for both everyday problems and severe injustices.

WJP's estimates of this gap are reflected in this slide and include 4.5 billion people who are excluded from the opportunities the law provides, which includes those who lack identity documents, land or housing tenure and formal work arrangements, all of which are required to protect their assets and access economic opportunities or public services to which they have a right.

It also includes 1.5 billion people who cannot obtain justice for civil, administrative or criminal justice problems. These are victims of crime, people with civil and administrative justice needs who may live in contexts with functioning institutions and justice systems, but who face obstacles in resolving their everyday justice issues. And then another 253 million people live in extreme conditions of injustice, including stateless people, victims of modern slavery and people who live in fragile states.

When viewed in the aggregate, these figures amount to 5.1 billion people globally, approximately two-thirds of the world's population who face at least one of these justice issues, with many confronted by multiple injustices. This aggregate estimate is motivating and attention-getting.

But WJP's justice gap assessment aims to go beyond that high-level figure and to serve as a first step in diving into the details of this challenge to understand the multifaceted and overlapping forms of injustice that people face. And so, in that vein we are eager to collaborate in conversations like this workshop today to dig into particular dimensions of the justice gap as it affects different demographics, women, for example, and to work together to identify and pursue effective solutions.

As part of the justice gap analysis, WJP undertook the first ever global legal needs survey to try to get a handle on how people experience and address everyday legal problems, that 1.5 billion who cannot solve such problems. That research is captured in a study published last year, *Global Insights on Access to Justice*, and has served as a basis for further work done by the open government partnership, IDLO, the UN and the World Bank on which my remarks draw.

The WJP report can be found on our website, as can an interactive data site on which you can probe the data by country. Each country has a country profile reflecting the paths to justice experienced by people. You can see here a picture of the interactive data site. I do not want you to get distracted from my remarks, but I would encourage you to probe it.

It is quite interesting to look into each country's profile and see the different dimensions of this justice challenge, the kinds of problems that people face. How prevalent are they? How do people understand these problems and their options? To whom do they turn for assistance? What process do they pursue? How long does it take and what consequences do the problems have in their lives?

You can see here a snapshot of the path to justice reflected in the data for South Africa in this report. The data for South Africa largely paralleled what we found globally in the rest of the world with maybe two major exceptions. One, it is quicker to solve a justice problem in South Africa. Only 2.6 months on average. So that is good news. On a less positive note, the negative consequences suffered as a result of legal problems in South Africa are somewhat higher than the global average. In South Africa, that number was 54% of those with a legal problem and who experienced a resultant hardship from it, particularly health problems resulting from that legal problem.

To summarise quickly, here you see the global data, the average global data of justice problems. First, justice problems are ubiquitous and frequent. We all have them. Approximately half of the people surveyed experienced at least one legal problem in the past two years. The prevalence and severity of different kinds of problems varies by country, but the most common problems are those relating to consumer issues, housing, money and debt.

These can include a wide range of issues such as landlord disputes over rent and repairs, problems with neighbours, homelessness, disputes over poor or incomplete professional services, problems with a utility bill, insurance issues, threats from debt

collectors, extortion from a gang or criminal organisation is a wide diversity of issues encompassed here.

Most people do not turn to lawyers and courts to solve their justice problems. This is an important finding here and a wake-up call for the justice system. Less than a third of people globally who experience a legal problem sought any form of advice to help them better understand or resolve their problem.

Those who did seek assistance preferred to turn to family members or friends. This also suggests some avenues for solutions and where we have to be empowering people with information and insights. Even fewer people took their problem, just 17% took their problem to an authority or third party to mediate or adjudicate their problem, reflecting very significant trust issues.

People face a variety of obstacles to meeting their justice needs, beginning with their ability to even recognise their problems as legal. Fewer than one in three, just 29% understood their problem to be legal in nature as opposed to just bad luck. That again reflects this need for understanding rights and what the law can do for people.

As mentioned previously, less than a third of those surveyed obtained advice from a person or organisation that could help them. One in six, just 16% reported that it was difficult or nearly impossible to find the money required to resolve their problem. And about the same proportion, 17% reported that their justice problem persists, but they have given up on any action to try to solve it. Another 39% reported their problem is still ongoing.

A final finding, an important one, is that justice problems negatively impact people's lives. 43% of those surveyed reported that their legal problem adversely impacted their lives. More than one in four people, 29% reported that they experienced physical or stress-related health problems as a result of their legal problems. So justice is a health issue.

More than one in five people reported they lost their job or had to relocate because of their justice problem. You can see in this slide the distribution of that hardship by type of problem with family problems presenting the greatest hardship and that is an important point as we think about gender.

Let me turn then to the impact of this justice gap on women. Unfortunately the news here is not good. The justice gap is gendered. It reflects and compounds women's inequality. In many countries women are disproportionately represented amongst those who suffer key dimensions of injustice and exclusion. Lack of legal identity, that

big piece of the justice gap, is a problem that disproportionately affects women. In some low-income countries as many as 45% of women lack legal identity, rendering them extremely vulnerable.

Globally more men work in the informal sector than do women, but in a majority of countries, and in most countries in Sub-Saharan Africa, South Asia and Latin America more women than men work in the informal sector where they also face vulnerabilities.

With respect to unmet civil legal needs, men and women fare similarly globally, but certain types of problems, especially family problems, education, social service-related problems, are more prevalent among women. As I mentioned before, notably family problems which women experience quite disproportionately cause the most hardship, particularly health consequences.

Women also often face social, cultural, legal and practical barriers to accessing legal services and formal dispute resolution mechanisms. As with other disadvantaged populations, women often suffer overlapping justice problems, creating a cascading or cumulative effect that traps them in injustice. This is this intersectionality that others have referenced as well today.

This brings me to corruption, which is a significant driver of this cumulative or cascading effect of injustice on women. Women who lack legal identity or are employed informally are particularly vulnerable to bribery, harassment and sextortion. Studies indicate that women are targeted for bribes when they seek access to healthcare, social services or education for their families.

Laws on the books in dozens of countries provide different rules for women than men on a myriad of issues, ranging from taking a job, opening a business and signing a contract to owning land, applying for a passport or travelling outside of the home. In each of these cases, this disparate treatment of women in the law opens them up to victimisation by corruption, as well as discrimination.

A UNDP study of grassroots women's experience of corruption in 11 communities across eight countries highlights how corruption is woven into the challenge that women have accessing justice. Survey respondents report being solicited for bribes to access basic services, such as health, education, water, sanitation and electricity. Also though they faced it beyond these social services, in efforts to operate a business, seek employment, gain documentation and in their interactions with law enforcement.

The police were particularly frequently cited in this study as abusing their authority. Such corruption is itself a source of justice problems for women. It also undermines trust in institutions necessary for effective resolution of disputes. It is no wonder that the vast majority of people, men and women, do not turn to formal legal systems to solve their justice problems. The corruption issues that you are tackling here today are thus central to solving the justice gap generally and for women in particular.

Unfortunately the global trends on corruption are also heading in the wrong direction. This is data drawn from WJP's most recent rule of law index which evaluates the rule of law across eight factors, including corruption. We found the rule of law declining in more countries than not, driven in particular by three factors; constraints on government powers, fundamental rights and, significantly, corruption.

These trends are persistent over the past year and the past five years, reflecting global challenges around corruption and the African continent. I invite you to explore this data in further detail as well on our website.

Let me conclude then on a hopefully more upbeat and constructive note with some ideas about strategies for advancing justice for women and how we can together address this nexus of rule of law challenges, the justice gap, corruption and its particular toll on women. A critical first step is what you are already doing with this workshop today: seeking evidenced-based solutions that reflect an understanding of the intersectionality of these challenges.

Secondly, I would urge focus on preventive approaches, tackling the root causes of women's vulnerabilities. Some major issues are at the heart of this challenge, and this should be low-hanging fruit for us in the next nine years to achieve the SDGs. We need to address issues of legal identity, the biggest tranche of injustice in the justice gap. We need to work on addressing economic rights, moving women from informality to formality in their employment and ensuring their land rights. And we need to address the discriminatory legal regimes that put women at a disadvantage and make them vulnerable to injustice and corruption.

Thirdly, good laws and legal entitlements will only be as good as women's knowledge and ability to use them. Others have talked quite compellingly about the importance of legal empowerment and information. These approaches should meet women where they are. This means collaborating with the institutions women can easily access and trust to provide quality legal information advice and representation. South Africa has been a leader in the development of community-based paralegal

services, and this should be expanded and the experience shared widely with other jurisdictions looking to follow your lead.

Fourth, let me lend my support to your efforts to engender anti-corruption efforts. This is an underdeveloped area and the work that you are pursuing to better understand how corruption affects women and what works in addressing this vulnerability will be a boon to the global anti-corruption and justice for all movement. Certainly, advancing gender equality is part of the solution as we have heard others say this morning.

Let me draw your attention also to recent work of the UNODC and its judicial integrity forum that is very helpfully analysing linkages between gender and corruption and identifying best practices to be pursued in connection with implementation of the UN Convention Against Corruption. Next year's UN special general assembly session on corruption is a key opportunity for us to advance this agenda as well.

Finally, much is yet to learn about the justice gap, its various dimensions, its relationship to corruption and how this affects women. Thus, a critical piece of the strategy should be continued data collection and analysis of problems and solutions. This year the UN's statistical commission took an important step in adopting a new official statistical measure of progress on SDG 16.3, access to justice, urging UN member states to gather survey data of people's legal needs to understand the problem and devise locally appropriate strategies for addressing it.

I was so pleased to hear the advisor to the minister outline this as a high priority. Because again here the Government of South Africa has been a leader in gathering legal needs surveys and using that data to drive effective policy. We are all looking to the leadership of your government in the months and years to come to continue developing an evidence-based approach to closing the justice gap for women and all citizens. Thank you very much.

4 2 Professor Cathi Albertyn (Professor of Law and South African Research Chair in Equality, Law and Social Justice in the School of Law, Wits), The relationship between gender, corruption, accountability and advancing equality

Thank you very much to the organisers for, both the Law Trust Chair and the Oxford School for providing this opportunity to have this really important conversation.

Of course coming halfway through the day and after so many wonderful keynote presentations I feel that what I have to say is in many ways just going to repeat and endorse and maybe add some detail to what is already been said around the relationship between these issues. Hopefully I can move quite quickly through this presentation and certainly not take more than ten minutes.

I work in gender equality, I do not work in corruption and it has been wonderful to actually start reading about corruption, to understand and interrogate the links between corruption which we experience so deeply in society and gender inequality which we experience equally deeply in society.

I thought that the definition of corruption that people work with, which is that it is the misuse of entrusted power for private gain is a very useful working definition because it takes us out or it takes us lawyers out of worrying about legal definitions.

A definition like that really unbundled itself out into a range of legal definitions and processes for dealing with corruption and inequality, but also non-legal definitions and processes, accountability systems that might operate outside of formal legal systems that in South Africa and in other countries are very, very important to look at in terms of dealing with corruption and I am going to come back to that.

But also, because an open definition really allows us to think about the gender dimensions of the scourge of corruption and to place an effective gendered lens and to see that actually corruption ranges from everything, from sex for public sector jobs to the really high-level state capture that we have been experiencing in this country.

And of course, in South Africa, often when we talk about gender, we just talk about women. And even today we have just spoken about women. That is really important, but I think the relationship between men and women needs to be kept into the equation.

So just as much as we talk about the gendered implications of corruption, how it manifests itself on women, and I am going to commit that same sin and talk about women, I think we also need to continually think about how it manifests on men. Because it is not necessarily the case that women are the greatest victims of corruption. I think some of the heinous forms might have been vested in women, but men, too, obviously experience it in their sectors and in the context of their opportunities.

So that notion of gender, of the kind of relational lens on inequality, seems to be very important to keep and not to just equate gender with women. And of course, the

point that is already been made earlier today, the intersectional lens in every country, particularly in South Africa. I think it is important that we look at customary law and traditional communities in terms of corruption today, for example.

If we think of the gendered effects of corruption, and quite a lot has been said this morning about what that means, I think the first thing I would say is we just need much more research in South Africa. We have heard many wonderful examples and anecdotal evidence even this morning. I am not sure how much of that is really documented and I think it is important to do the work of understanding how all of this manifests itself.

I also think we need to separate, what I am going to try and separate, the direct effects from the indirect effects. When we think about how corruption directly affects women, think about the categories where this happens and the more indirect effects.

If we think about the direct effects it is quite useful to think about how you would categorise those rather than just list examples. I have come up with five, I do not think they are at all a complete list, but just how I was thinking about how we might think about the different ways in which corruption manifests itself for women and for men.

The most obvious one that is most serious for women is really the use of gendered power on women's bodies, which other countries talk about the term sextortion, which has become a term of art in places like Tanzania. As we have already heard in multiple ways, from sexual favours for opportunities and jobs, coercive practices to retain jobs and the kind of practices you find in public and private sector companies of women having to accompany important men on business trips in order to retain their jobs.

There is a huge area there, some of which just plays itself out into sexual harassment and sexual exploitation, but I think we should also call it what it is and it is very often the abuse of power for private gain and a form of corruption. I think that in and of itself is a very important area.

The second area that we have also spoken about is how women and men's gendered roles expose them to different kinds of corruption. And we have already heard today about how the fact that women are typically the people who seek healthcare and education and social grants will mean that, for themselves and of course for their children, will mean that they are exposed to particular forms of corruption, bribes, sex, all of those things in order to obtain those social goods.

We heard earlier on about water provision and water officials using sex for favours. When I was doing this I thought, are there examples in South Africa of where this

occurs and then the more you think about it, the more you hear, you release that it is happening at every level and it really does need to be exposed.

I think the third area that we could think about is the gendered barriers that exist for women enforcing their rights. Women typically need to enforce rights to maintenance, to domestic violence orders. They typically need to report gender-based violence at police stations, attend courts, etcetera. And what forms of corruption are operating within those systems that are preventing women from actually exercising their rights?

A fourth area we could think about would be gendered access to economic opportunities such as market and credit. And how forms of corruption, gendered forms of corruption are affecting both formal and informal how women can access those.

A fifth category we could think about is gendered access to public positions. If we think about the area of local government and we know that local government is full of networks of patronage and corruption because getting a position in local government of course sets you and your patronage network up for life. Are those corruption networks that stop women being able to stand and be nominated for positions in local government, for example?

So, how is corruption affecting women's access to public positions? Not just in terms of having to pay to get into a position, but also in terms of the kinds of networks that exist and the rules that exist to exclude them. I think it is useful to think about those analytical groups and how corruption plays out in gendered ways; that is just five ideas.

Then I think we need to separate that from what I would call indirect effects which is really where corruption has indirect effects on women. People have spoken today about how corruption deepens poverty because it takes away the revenue and the resources that are possible to deal with poverty. Of course, we know that the majority of the poor are not only women but also black and often rural women. And therefore the effect is gendered in that sense.

In the same way, as corruption erodes public services, that also would have very indirectly gendered effects. So overall, we would be able to show that corruption not just deepens inequality in our county, which we know very well, but it deepens gendered inequality and poverty. So, there is no question that tackling and undoing corruption is likely to benefit women and advance gender equality. I say it is likely because we will not necessarily know unless we tackle it in the right way and unless we think about how to deal with it in the right way.

One of the ways of thinking about the multiple ways of dealing with it is to think about the multiple ways in which we understand gender equality. Because if we are thinking about advancing gender equality, what kind of equality are we thinking about advancing? Are we just thinking about advancing a formal legal equality or are we thinking about advancing something more substantive? And that is a well-known example for this group, about the differences between formal and substantive.

I think the South African Constitution, as we have all argued and we all know, commits itself to something which we call substantive equality, something that we call real, meaningful equality in the lives of women and men. There are different forms of substantive equality that we can think about. In South Africa, we have often thought about inclusive forms of substantive equality.

So let us protect women, let us extend rights to women, let us make sure that women have equal rights, that they have equal opportunities, that they have equal access to healthcare, that they are protected in the law and that there are legal systems. Those are incredibly important and there have been many examples of how we must do that and we must continue to do that. But in and of itself, obviously that is not enough. And often those kinds of strategies can often protect women in their positions as women, but not necessarily transform their social and economic realities.

I think the real challenge for us is to think about how dealing with corruption is an opportunity to think about that elusive thing called transformative substantive equality and how it enables us not only to secure equal legal rights, but to begin to address as other speakers have mentioned those very systemic barriers and processes and institutions that really prevent women's full participation in society and really prevent their substantive freedom.

So it is not just about rights, it is not just about accountability which is I think the other point that I want to make. Accountability is incredibly important, but we should not just think about accountability in legal terms or how we must find ways of dealing with corruption once it occurs. Or we have to find ways of dealing with gender-based violence once it occurs, a point raised earlier. We have to think about dealing with the root causes. So how is it, as Edward Kieswetter from South African Revenue Service (SARS) said earlier on, we need to stop corruption from happening in the first place. We need to stop inequality from happening in the first place.

How is it that we think about those kinds of transformative interventions? I think a lot of that lies outside of the law. As was said earlier on, it lies in social attitudes, it lies

in the way that we relate to each other. Corruption is a behaviour that people have learnt in different places. They have learnt it from apartheid, they have learnt it from democracy, they have learnt it from exile, they have learnt it from other countries.

So how do we unlearn all of that? How do we forget what it is that we have learnt? How do we unlearn the fact that women are the objects of male violence rather than subjects in their own rights? That is not a question of reform in many ways. For me, that is a question of a fairly fundamental rupture in our society, in the ethics and values that govern our society.

I think that the Constitution, as Professor Madonsela had said, provides a vision for that. Laws, very importantly, provide pathways for that and systems of enforcement are critical. But, there is something beyond our reach that we need to grasp. There is something around what it means to fundamentally change our society, to fundamentally change how women relate to men and how people think it is okay to abuse their entrusted power for personal gain.

It is what other people have said, it is about how do we get to the systemic underpinnings? It is an easy question, but the answer is very difficult. We have to hold it in the centre of what we are doing always so that as we are thinking about, as we are sort of picking the low-hanging fruit, we are also going for that much more elusive set of objectives. Thank you very much.

4 3 Dr Choice Makheta (Senior Director of the Division for Student Affairs, SU), *Advancing equality and accountability in education from students to executive leadership*

Thank you very much and thank you for the invitation to be part of this panel. I will discuss advancing equality and accountability in education, from student to executive leadership. I believe that the education space provides an opportunity for transformation, an intentional transformation, the actions which values inclusive participation of a diverse student body and staff to achieve equality and accountability.

Acknowledging the current realities of South Africa's education system is important. For instance, we need to acknowledge that inequality exists from basic to higher education and COVID-19 has exposed that glaringly. We need to remain conscious of the embedded power relations playing out and prevailing and how these reinforce through unconscious behaviour. We need to be aware how rank, position and privilege

play out, perpetuating inequality and silently giving immunity and arrogance not to be held accountable. How gender issues are downplayed and treated as taboo, a weakness or women's issues, sort of a silencing tactic.

Money has a strong influence as to whose voice is heard. How do we change this for the benefit of our students? Why should our students be punished for their poverty and socio-economic circumstances? Does poverty make anyone less than? Why should poverty write off our students, and how can we change that? Once we acknowledge all the ills within the education system and our communities, we will only be able to come up with action steps we need to take.

From admission to graduation and beyond, access to success is crucial for our students' journey and for their greatness. A commitment to restoring and maintaining human dignity is required on this journey. Advancing equality requires us to deal with issues of access and we talk about universal access and restoring human dignity right through. This is a commitment to meet each student where they are, value them just as they are with an understanding of the inequalities in the education system of South Africa at all levels central to our minds.

For us to bring change, everyone in the education system needs to make more effort to provide students with the tools they need. Human dignity should be at the heart of everything that we do, restoring pride, confidence and affirming each student. It is important to teach our students to treat one another as equals and demonstrate mutual respect, to embrace diversity and learn to function well within it. Human dignity requires us to respond to issues of access, universal access. And some of these issues are mental health, gender-based violence, food insecurity, access to suitable accommodation and resources to study, as well as registration and tuition fees.

For access with success, tracking systems become very important. Tracking systems are a necessary investment to ensure that we can share the journey with the student and remain connected, alert and ready to respond when students need support to ensure success in every area of their life.

A few principles to keep in our minds: Every student counts. Students are diverse and complex human beings and need to be supported. Students know what they want. They come with knowledge and experiences and therefore should be given the space to contribute and define their journey's future.

This brings us to the kind of support system that we provide. We must be able to give a student-centred support system that is affirming. From the time a student enters

the institution, there has to be a commitment to provide differentiated but equal support, meeting every student where they are. We need to acknowledge our responsibility as leaders in the sector to be responsive to the needs of our students. Being true to the brand is crucial, committing to working with the students, bridging the gap to ensure equal access and success.

Being conscious of our students' diversity, first-generation students, differently abled students with disabilities, gender diversity and an example and a community that needs support, the LGBTQI+ communities, students from poor socio-economic backgrounds and highly privileged students. Each student requires different tools to manoeuvre each year of study as circumstances change, like now. Each generation of students has different needs; therefore, the support system needs to evolve and remain relevant.

For institutions' executive leadership teams and students to remain accountable on this journey, institutional culture, values and practices need to be reflected on. There must be organisational ownership and commitment.

Transform and shape institutional culture to be inclusive, to value equality and demonstrate it, to create a developmental environment appreciative of gender diversity and equality. It is crucial to disrupt the cycle of exclusion and inequality, getting rid of feelings of entitlement, of superiority and assigning inferiority to others.

How do we engage? Continuous engagement and accountability, for me it is very important. Executive leadership teams at educational institutions need to be accessible and ready to account. A platform for Discussion is important for feedback.

Interactions and engagements with students are very powerful and therefore require intentionality. Students do not just learn from what they are told, but also from what they experience. Values of the institution need to be lived and these should be binding on all parties, from students to executive leadership teams.

Students need to be given the space to participate and contribute to the education sector's agenda. They need to be affirmed and acknowledged as co-creators and change agents within the system. They need to be recognised as equals and empowered to be accountable to themselves and to others.

Student experience should be transformative. How do we connect with the agency of students as part of preparing them to be graduates, leaders in the world and responsible citizens? The education system is the environment within which they need to explore, express their views and shape their agency and activism.

Accountability needs to be internalised as a value, not just an administrative activity. It requires a high level of integrity and compassion. It requires a commitment to be responsive, follow through, and provide regular feedback with an openness to critique.

When leading with integrity, education institutions deliver on the brand promise and are ready to account. Students deserve value for money and have the right to be heard and contribute to the development of the institution as co-creators. Executive leaders need to learn to listen and to reflect deeply, to show commitment to the relationship, a relationship which requires leaders to model what they say.

When leading with compassion, education institutions demonstrate that they care deeply about the lives and daily experiences of students and are ready to change and make a difference. The impact of how students are treated at times can be detrimental to their lives, therefore we need to be conscious of our actions as leaders, our unconscious biases and preconceptions.

In conclusion, COVID-19 challenges all of us to change, deal with inequalities in our system, and improve equality and accountability. From students right through to executive leadership teams, we should own up on our part of the working relationship. Thank you very much.

4 4 Dr Monica Kirya (Senior Program Advisor at the U4 Ant-Corruption Resource Centre), *Stopping the abuse of public power to obtain sexual favours: policy, legislative and administrative challenges.*

Warm greetings to all of you from Bergen, Norway, to all of you in your esteemed capacities. I am really pleased to be part of this event and I want to thank you very much for inviting me to make a few remarks on this very important topic. I have prepared a few slides too, which I will share with you in a minute if I too can overcome my challenges with technology. There we go. I hope you can see them now. Yes?

Okay, so while sexual harassment and abuse by those in positions of authority has always occurred, it has only recently been discussed as a corruption problem. You might know that the term sextortion was first applied to this type of corruption in 2012 by the International Association of Women Judges. I am going to discuss the manifestations and give a few examples of how this type of corruption occurs, how prevalent it is, and then I will talk about the challenges we face in addressing it.

What distinguishes sextortion from other types of sexually abusive conduct is that it has both a corruption component and a sexual component. The sexual component is the implicit or explicit demand to engage in any kind of unwanted sexual activity, ranging from sexual intercourse to exposing private body parts. The corruption component is that the person who demands the sexual favour must occupy a position of authority which he or she abuses for their own gain.

There are, therefore, three distinct features that need to be present for it to be sextortion involving both a sexual and a corruption component. There must be abuse of authority, a quid-pro-quo or something-for-something exchange, and there must be psychological coercion rather than physical force.

This graphic which was developed by the International Association of Women Judges gives us some examples of the different instances where sextortion can take place. And, of course, these are not the only examples. We have examples here involving different types of public officers and there are of course many, many more who can demand sex in order to perform their public duties. This is wrong and it must stop. We will shortly consider how we can stop it or at least mitigate it.

But just how common is sextortion? Some recent regional and country studies tell us just how common it is. In 2015 a report from Reuters in Tanzania found that nine out of ten women in the public sector had been sexually harassed while looking for a job, a promotion or seeking a service. That is quite a staggering number.

In 2020, Transparency International Zimbabwe did a survey and established that 57.7% of women surveyed said they had been forced to offer sexual favours in exchange for jobs, medical care and even when seeking placements for their children in schools. About 45% of women surveyed in Zimbabwe said they had received requests for sexual favours to access a service and 15% had used sex to get employment.

Women in business were also found to have faced sexual harassment when seeking government tenders. Women in the informal sector experience sextortion as the main form of non-monetary bribes demanded by various officials.

For the first time in 2019, Transparency International's global corruption barometer included questions on sextortion, and their findings were that up to 20% of people surveyed in Latin America and the Middle East had experienced sextortion or knew someone who had.

These are very sobering figures that show us just how widespread sextortion is, yet they are probably just the tip of the iceberg. Moreover, even though most studies and surveys focus on women, sextortion probably also affects gender nonconforming and transgender people, as well as men, and when it happens to them, it is much less likely to be reported.

From the data, we can tell that certain factors make individuals vulnerable to sextortion. Factors such as being an undocumented migrant, having a disability, being poor and uneducated, many of the previous speakers have already alluded to some of these issues and the circumstances under which public officials sexually exploit disadvantaged women.

Of course, sextortion has severe consequences for both women and for society. It undermines their dignity, it lessens the opportunities available to women, it undercuts confidence in the state and in public institutions, as many of the esteemed public speakers have already pointed out. Sextortion in workplaces leads to decreased job satisfaction, lower organisational commitment, and withdrawal from work. It leads to physical and mental ill health and can even lead to posttraumatic stress disorder.

So how do we address it? We need to stop it. On that we all agreed. But we face certain challenges in stopping it. The first challenge we face is in the way we define and conceptualise this problem. I have used the term sextortion, but this term is not only used to describe instances where women exchange sex to obtain public services.

It is not always understood as corruption or even as a form of sexual violence. First of all, in the public health literature, we have terms such as survival sex and transactional sex, all of which obscure the abusive circumstances in which these acts normally occur.

Then next problem we are facing defining and conceptualising it is that Interpol and many jurisdictions, including South Africa, use the term in relation to sexual blackmail in which sexual images or images are used to extort money from victims. This is also known as revenge porn. It takes place mostly digitally and online and is quite different from the scenarios the International Association of Women Judges envisaged when they first used the term sextortion.

So, we really need to sort out this issue of the term. We cannot use it in these two different ways. As some of the previous speakers have said, we really do not have enough data and we need more. Without data it would be hard to craft appropriate

solutions. We need to know where it happens and when. We need to know the mechanisms that are allowing it to happen.

What about the way bureaucracies and public institutions work makes it possible for women to be exploited in this way? What can we learn from existing statistics to help us understand more about the phenomenon of sextortion? What is its impact? And how does it differ from sector to sector? We need not just quantitative data, we need qualitative data so that we can be able to craft appropriate policies and laws to address the problem.

Which brings us to the next challenge that we face, which is legislating against it. As I said previously, sextortion has the sexual component and the corruption component. Should we have it in anti-corruption legislation? Should we have it in gender-based violence legislation? Many people, especially the International Association of Women Judges, Transparency International argue it should be specifically included in anti-corruption legislation, because it is a form of corruption.

As I said before, when we legislate, how are we going to define it if we are currently using the term to describe different phenomena, including the online sextortion or revenge porn and the other one where women are being exploited when they need public services?

This is problematic because those engaging in online sextortion are not necessarily in positions of entrusted authority. They are often networks of organised criminals operating in the shadows and on the dark web. And without this element of authority and public trust we cannot call a crime a corruption-related crime. So we really need to sort this out.

So what are some countries doing to address this problem? Some countries already include it in their sexual and gender-based legislation. An example is Bosnia and Herzegovina which have an offence of sexual intercourse by abuse of position in their GBV law. The Philippines also covers an offence called rape by means of grave abuse of authority. In addition, the Tanzania Sexual Offences Act also applies to a person who takes advantage of his official position to commit rape.

These are just a few examples of countries that have it in their GBV legislation. We also have some countries that have amended their anti-corruption laws to include this kind of phenomenon. India is an example. In 2018, India expanded the meaning of bribery to include not just the exchange of money or material goods, but also

advantages that are not pecuniary or estimable in money. This was indirectly meant to cover sexual favours. They did not say it explicitly.

One of the problems that has arisen is that the amendment potentially criminalises both the bribe taker and the bribe giver as the bribery law says both the bribe taker and giver can be liable for the offence. We should not criminalise women and a few of the previous speakers have already talked about this.

The extenuating circumstance is the coercion involved in sextortion, but coercion can be difficult to ascertain. For instance, where a police officer demands sex from a sex worker in exchange for not arresting her, it can be difficult to say that she was coerced into the sexual act. Or if a licencing officer demands sex to grant a permit that depends on fulfilling certain conditions and a woman has not met the conditions but gives in to the sexual demands to get her permit, would we be able to establish coercion then?

So what can be done in these kinds of instances where coercion is difficult to establish? Courts should consider the unequal power relationship between bribe taker and bribe giver and establish coercion by the nature of the hierarchy between the people involved in the transaction.

Another problem with India's law, which we need to consider as we think about legislative solutions, is that they allow only a seven-day reporting window. Ostensibly to prevent accomplices and co-conspirators from taking advantage of the law to accuse public officials of crimes in which they too had participated. Seven days, that was really too short. It ignored the shame, the stigma and other challenges that stop victims from reporting these types of crimes.

So India's experience is a cautionary tale to all of us as we consider passing laws to stop sexual corruption. We should not criminalise women. We should protect women who report against retaliation. We should think carefully about whether to include time limits, and if so, how long they should be. Moreover, we should think about the procedural and evidentiary requirements that would be required in such cases.

For instance, many countries already have special procedures for dealing with gender-based violence that are supposed to make it easier for women to make reports and get help. That is not just access to justice, but also counselling, health services such as pregnancy prevention and so on. We need to make these kinds of special GBV mechanisms available to victims of sextortion as well.

Lastly, sextortion happens because bureaucracies and many public institutions are inherently patriarchal and perpetuate gender discrimination. Previous speakers have already mentioned this. Feminists have long pointed this out, and I recommend the book, *The Feminist Case Against Bureaucracy*, which talks about how bureaucracies limit women's opportunities and discriminate against them.

Bureaucracies are hierarchical, opaque, and can be so difficult to navigate. This enables unscrupulous officials to sexually exploit women, especially those with limited knowledge, limited literacy, and limited understanding of how governments work.

To tackle this problem, we need to reconfigure our public institutions. We need to rethink how our public offices are designed. We need to make them much more women friendly. We should simplify procedures. Procedures should not just be in English in many countries or in whatever the official language is. They should be translated into as many local languages as possible so that women can understand exactly what is required of them.

We should design the physical spaces of our public institutions to make it difficult for public officials to demand sex from women. And, of course, we need to have many, many more women in public positions. We need more women in the police force. We need more women bureaucrats. We need more women in every kind of public institution, and this is on a global scale. We need women who can be trained to help their fellow women to navigate some of these often complex officialdoms.

We need all public officials to be trained not just on gender awareness, but also on just and fair administrative decision-making so that they can stop this kind of behaviour and have a compassionate approach, as Dr Makhetha just talked about, the importance of compassion in dealing with the people who approach institutions.

Lastly, let us continue to empower women to know their rights, understand how government works, and how public institutions work, so that they can be less vulnerable to those who exploit them.

Thank you.

CHAPTER 5: PLENARY II

5 1 Keynote address: Busisiwe Mavuso (CEO, Business Leadership South Africa), *Corruption, accountability and social justice in the economy*

Thank you very much to Professor Thuli Madonsela for the invitation. This is a very critical topic that we are discussing today.

Ladies and gentlemen, I have been requested to talk on corruption, accountability and social justice. To kick off, my view is that on the corruption front, let us just acknowledge that the economic depression we are experiencing as a country is rooted in corruption, state capture and political patronage.

COVID-19 aside, this economy was already depressed when we started the year with a projected economic growth of 0.3%. That being a fact, the last thing we want to hear the president of the country disputing in parliament, as he did yesterday, is that the R500 billion stimulus package funds have not been stolen. When corruption is as rampant as it is in South Africa today, the last thing we want to do is to be defensive about the situation because corruption in this country is real and it is growing.

In a country with poverty levels of 55%, the effect of corruption is very harmful. Because in the first instance, goods and services that are paid for with scarce public resources are not delivered, and if they are delivered, they are of inferior quality or inferior quantity. The result, as we are seeing clearly now, is worse public services. But that is only the immediate consequence. We know from careful academic work that corruption also increases inequality. It invariably involves redirecting resources intended for the poor to powerful corrupt actors.

Corruption makes countries poorer, and that is a fact. It becomes a vicious cycle, because when countries are poor, they are entangled in poverty and they find it difficult to escape poverty. Because of the corruption, they have lower domestic investment and far lower international investment rates, both of which result in low growth levels which we have in South Africa today.

It was actually depressing to read the New York Times headline last week. The headline was saying South Africa's big coronavirus aid effort was tainted with corruption. On the important corruption index published by the Transparency International organisation, it shows that we have trended weaker over the past two

decades. In the last decade we have consistently rated below 50 as a country and this is a line where the mostly corrupt and the mostly not corrupt countries are sitting.

Being in an environment where globally liquidity and funding is largely constrained because of the economic crisis means, as a country, we are going to be competing for capital with other emerging markets and corruption is certainly not what we want to be known for as a country.

When we received the R70 billion loan from the International Monetary Fund (IMF), the concern by local and international interest was that we hope they are not going to steal it. Investors tend to avoid corrupt countries because they cannot be sure of the stability of the environment and their rights over the long term. But they also fear the public perceptions of being caught up in corruption and the legal consequences that might arise at home as a result of corruption.

When we have corruption as rampant as it is in South Africa, especially during this crisis, it points to a failure to meet the needs of our most vulnerable, which are women. And we all know that it is women who have borne the biggest brunt of COVID-19.

Women make up 70% of all health workers. So, when we steal the COVID-19 relief fund, which should go to PPE for instance, it is women who are mainly affected. Statistics tell us that out of the 3 million jobs lost in South Africa in the last few months, 2 million of those who lost their jobs have been women. And this is in a country where women head 40% of households.

I must say that the announcement of the appointment of the multidisciplinary centre which will focus on COVID-19-related corruption is an important and appropriate step. But unfortunately, it seems as if for every step forward that we make as a country, we seem to take another step backwards.

What I mean by that is that it is interesting that you announce such an important intervention that is meant to deal with corruption and in the same vein or on the same breath, we appoint Gumede, for instance, which is very disgraceful, to say the least.

This probably allows me to segue into the issue of accountability. If the South African economy is to rise from the debris of the pandemic, investors and society at large need to feel that there are costs for flouting the rules. Unfortunately, in our case, we have way too many people who have been deeply implicated in corruption scandals still serving as cabinet members or in senior positions.

This is not just pointing at the public sector. We know that as the private sector, we still have much work to do to ensure that we are not as involved, as corrupt as we are.

Because remember, with every corruption scandal there is a corruptor and there is a corruptee. So let us agree that as the private sector, we have also been complicit in the corruption that we have seen at industrial-scale levels as a country.

Going back to the issue. Appointing someone who is being implicated in a multimillion-rand tender scandal and who has been axed as a mayor after a disciplinary investigation found her to be guilty, shouts that we are failing to follow through on our promise to deal decisively with this crass opportunism and corruption and we are failing to hold people accountable.

There must be consequences for lack of ethics all around, and we must see those consequences being effected, especially in government. Because the state capital ought to behave rather differently because it has more responsibility. And its responsibility is much more if more than 50% of your citizens are sitting at the bottom of the pyramid in terms of the structure of your economy, making you the most unequal society in the world.

This probably segues me into the social justice piece that I actually want to address. To me, one of the critical things that this crisis has exposed is just how fractured our democracy is and just how unequal we are as a society. At the beginning of this lockdown, I do not know if some of you would have seen this, there was this interesting text that was doing the rounds and some Indian doctor posted it and I thought that it resonated in the South African context.

He was speaking about this in the context of India, but it was very true as well in terms of where we find ourselves from a South African perspective, and I am addressing the issue of social justice. He spoke about how the ways to ward off the virus seem to be accessible only to the affluent. He was talking about the fact that we are told to constantly wash our hands, which assumes that you have the privilege of running water. And we know in the South African context, for instance, that many of our people do not have the privilege of running water.

He spoke about the fact that we are told that we need to constantly sanitise our hands, which assumes that you have the money to buy the sanitiser in the first place. We know very well that in our context and in our environment, we are sitting with 30% unemployment in terms of the narrow definition and 40% in terms of the expanded definition. We have more people that are unemployed than those that are employed in all the provinces, except Gauteng and the Western Cape. And in terms of the economic structure that I have just spoken to, we have more than 55% poverty levels.

We also know that many of our people are employed in the informal sector, which means that they do not have stable incomes and they do not have a guarantee in terms of a flow of income, especially if you are going to shut down the country. So given that context, let us agree that buying a hand sanitiser for most of the South African citizens is a luxury and a privilege. Because many of our people are still stuck in trying to satisfy their basic and security needs when you look at Maslow's hierarchy of needs.

Us being told to stay at home assumes that you can afford to stay at home. I have already spoken to the point that a lot of our people are employed in the informal sector, which means that if you stay at home, you do not have an income.

In addition, we were told that we need to social distance. And the reason why social distancing in this country was very ineffective, especially in the informal settlements and in the townships, was precisely because social distancing assumes that you live in a house big enough to actually social distance or that you have the means to stay at home and not going out into the public, so that you can observe social distancing.

But the reality is that the same way that I grew up by the way, if you live in a three-roomed house, shack or RDP house, you have no choice but to wake up and go outside. Because in the house, let us agree that there just is not enough space for all of you to be in the house at the same time. Once the sun has come out you have no choice but to go outside so that those who need to clean the house can do so and those who need to bath can do so and so forth and so forth.

So, the ways to ward off the virus were only accessible to the affluent. The many ways in which we could ward off the virus were actually a privilege for the majority of the citizens of this country. And, ladies and gentlemen, I am talking about the notion of social justice and the fact that the COVID-19 crisis really demonstrated just how fractured and unequal our society is.

Countries that are going to quickly bounce back from this economic crisis that COVID-19 has presented are those that have a diamond structure, meaning those that have a strong middle class. In our case, we only have a 40% middle class and the majority of the citizens of our country are sitting at the bottom of the pyramid, which is more than 50%. Because we know that it is the middle class that carries economies, not the rich.

When I look at this issue, I worry that the biggest ticking time bomb we have in this country is that of inequality. Interestingly, I recently had a conversation with a

colleague reflecting on these issues and we spoke about the issue of social injustice in this country. And he said, we find ourselves in a very dangerous situation as a country where we have way too many people who have nothing to lose.

He said, I remember when that was me many years ago, growing up as a young person in this country. Because we did not have anything to lose as young people at that time, we would go out against R1 rifles, facing the South African police and the SANDF only carrying sticks and stones. But precisely because we had nothing to lose, we went out there anyway, knowing very well that you could either die or be shot and paralysed, or you would actually end up in hospital. But because the situation was such that it did not matter anyway what happened to us, we went out there, nevertheless.

Today, we find ourselves in a similar situation in the country precisely because we have failed to level the playing field. We have failed to look at how we usher in this notion of social justice. We have way too many people with nothing to lose, which means that if people do not have anything to lose, they tend to become radical. They do not think before they act. They are not as moderated as we would like them to be, that is why they would kill you for a cell phone.

The biggest problem around this type of domestic inequality is that it undermines social stability. And unfortunately for us, as someone once said, as long as the poor will not eat, then the rich will not sleep. Actually, this is no longer about the poor and rich in this country. If you look at it closely enough it is about the haves and the have-nots. So as long as the have-nots will not eat, then unfortunately, we as the haves will not sleep.

For this reason, as business, we need to be more intentional and deliberate about contributing towards this notion of social justice. Actually, if you look at it, advancing social justice is self-serving for us as a business. Because you are investing in your future, and you are investing in your sustainability. If we can get to a situation in this country where we can achieve the diamond economic structure that I am talking about where you have 80% of the population which is sitting in the middle class, it means you have more people with disposable income who can now afford to buy your goods and services.

Because they can afford to buy your goods and services, your demand increases. And because demand increases, you need to produce more as a business. And because you need to produce more, you can hire more people. And because you need

to hire more people, unemployment decreases. And because unemployment decreases, you have more people contributing to Pay As You Earn. And because you have got more people contributing to Pay As You Earn, tax revenues increase. And because tax revenues increase, more is available in the fiscus for us to do the things we need to do.

I think you get the drift, colleagues. I am talking about Economics 101. The point I am making is that business in this country has a special responsibility, and it is manifestly within our interest to ensure that we advance this notion of social justice.

As I draw to a close, Madam Facilitator, I do not know how many of you saw the Commission of Employment Equity report that was released recently. It was very disappointing to me because it continues to show the gender representation in top positions in the private sector sitting at 24%. They did a 20-year comparative study, and it was very disheartening to see that 20 years ago as a country we were sitting at 13%. Which means that year-on-year for the past 20 years, we only added 0.6% women into the top positions of the private sector.

I looked at it and I thought that it does not make sense. Because the stats that we get from universities will tell us that there are more women entering universities and allow me to say more black African women entering universities. There are more of us graduating and there are more of us being absorbed into corporate South Africa. Therefore, there still exists an artificial glass ceiling as far as the environment within corporate South Africa is concerned.

It does not make sense for me, because we know that the laws of economics tell us that if we tapped the entire pool of human resources and talent, our collective performance would improve. It cannot be wise to sideline most of your population. Because let us agree that women in this country and worldwide are actually the majority. So, it does not make sense to want to sideline the majority of your population.

It also does not make sense because from a leadership perspective, this pandemic has been an enormous test of leadership where urgent and decisive action was required from heads of states in particular. I am not sure how many of you noticed that the countries that have responded phenomenally well to the COVID-19 crisis are those countries that women have led; New Zealand, Denmark, Finland, Taiwan, Germany and Norway.

So, it brings us to the conclusion that our feminine skills of inclusion, relational intelligence, deep listening, empathy, and intuition have been what is required to successfully deal with this crisis. This that has been dismissed as soft skills, has just turned out to be the new hard. Let us maybe agree that there is something to be said about gender and crisis leadership.

Colleagues, I am still talking about this notion of social justice and, Madam Facilitator, I am drawing to a close and making the point that it mainly affects women. I am also trying to raise the point that as a business this issue should keep us awake at night. And in case my business colleagues in the room are wondering why social justice is our problem, well, the answer is very simple.

Because ours as a country is in an incomplete transition, that is why as a business we need to be interested in the notion of social justice. Remember, what we achieved in 1994 was democracy. Democracy is a political system, it is not justice, neither is it equality. And many made the fundamental mistake in 1994 to think that it is, but let us agree that it is not.

My business colleagues in the room, let us get this straight, South Africa's social injustice is business's crisis as much as it is government's. It is our crisis because as a grouping that has levers to economic power we have a special responsibility to work firmly towards this agenda. And let us agree that some things are bigger than self-interest, and those are issues of national interest and these need to be elevated above all and it cannot just be left to government to deal with.

Because unfortunately for us, if government fails then South Africa fails, and if South Africa fails, then business fails. As the adage goes, show me a failed state and I will show you a failed nation. So if we allow ourselves to fail as business, because we do not want to get involved because we think that this is the problem of government, then unfortunately the failure of South Africa is the failure of our broader nation.

Madam Facilitator, thank you very much, and ladies and gentlemen, thank you very much.

Basetsana Kumalo: Thank you so very much, Busi, for that fantastic input. In fact, I do hope that the chief advisor to the Minister Ms Mmabatho Ramagoshi is in the room because your presentation highlights the absolute importance of the relationship between Government and business and all other civil society actors in terms of

combating corruption. Because, as you have already said, this is a theme consistent in the earlier part of the day, that corruption redirects resources meant for the poor.

We also cannot avoid the fact that corruption is an inter-relational crime. It necessitates that there is a corruptor and a corrupted and therefore you must look at the activities of business and you must look at the activities of government in terms of fostering corruption. For there to be reduction in corruption, it means that those two parties must work hand-in-hand in order, as you have already said, for there to be an intentional notion of addressing the issue of social justice that is perpetuated by corruption. Thank you so very much.

5 2 Dr Vuyo Mahlati (President of African Farmers Association of South Africa (AFASA)), *Accountability, corruption and women's rights regarding land*

This topic is very important and sensitive, particularly at this time. I am grateful to add a voice, having listened to earlier presentations and also to the keynote for our panel. As I address the sector of agriculture, which is obviously linked to land, it becomes important to address the issue of accountability and corruption as a societal issue. Because having dealt across sectors, this is one sector that has exposed me to the pulse of the nation that is felt on the farm.

We just came out of a meeting of the National Planning Commission, and we were reflecting on the work that we have done for the past five years. While we were very worried in terms of the depressed economy, and in particular the fiscus being at its lowest when we need such investment and the issues of corruption, it became very clear that we tend to focus the attention on rands and cents. Actually, our problem is the moral fibre, the value system of society, the divisions which are getting increasingly entrenched across our society as far as race, gender and class and the whole area of social cohesion, which is deeming our country unstable.

I am raising these issues because we think that we are dealing with the business sector as far as the economy, but if we do not appreciate the fact that the starting point is to get the soul of our society right, the numbers follow. We thought that amid our divisive society, unequal, poverty stricken, where dog eats dog and even the poorest is looking at how do I survive out of this, if somebody can screw me, how do I screw another person, then whatever we build is not going to work. What it does is making the rich, richer and the poor, poorer.

So, I deal in the space of agriculture and from a gender perspective it is one of the areas that we have struggled particularly in terms of ensuring that we have a more focused and targeted approach as far as ensuring that we reach people in the right way. Because sometimes you think, I have been in this struggle for women for so many years and others before me have been there for many years, what are we missing? Why are we talking every day, marching, but we are not seeing progress?

I do believe that the issue now is to begin to be clear in terms of who handles what issue, and what is the strategy intervention that addresses that. Let me give you some examples. For instance, when we deal with the agricultural sector we deal with women as farm workers, we deal with women as farm dwellers. We are dealing with a lot of evictions, for instance, currently concerning people who were born decades ago, who have been on farms for generations and are now being removed, with nowhere to go. We deal with the victimisation of the labourers. Not just their parents, but the children. When you listen to the stories when they say I wanted to continue to be a social worker, I left because I wanted to do something else, but mama's boss just refused and said you have to work on the farm.

So, the issues of social justice are at different levels and they are across class. They are even with us middle-class women who are actually not empowered from the land perspective and access to finance. So when we are dealing with this we go further to look at the entrepreneurs.

The whole corruption of land acquisition, there is a big issue of collusion. Talking about land that is owned by government, we have seen cases in terms of the state with the SIU being involved. And these, by the way, involve everybody in the public sector and the private sector, it is not just government officials.

We tracked the sale of private land where we would see farmers, in particular some white farmers would try to first sell to each other. The price at which they were selling to each other was one amount, but when they are selling to the state, it increases because there is an assumption that the state will be willing to pay more. But also, there will be collusion between the real estate agents and across the board in the value chain that basically ensure this whole corruption exercise, making it difficult in terms of who benefits.

For the report I chaired the Presidential Land Reform Panel, we used case studies of women because we struggled with some data. We could see around 23% of the land being redistributed was to women. We listened to cases of women where they

would follow the rules of identifying private land, go to the government official to say I have this, can you help? And then when they get to that point it is taken away from the woman and given to somebody else at a different price.

So, basically when we are dealing with the issue of corruption, when we are dealing with the issue of accountability which means that we need to think very clearly at each and every level and also look at the whole area of asset ownership. We also need to look at levels of inequality from a racial perspective, from a gender perspective, from a spatial perspective, from a class perspective, including issues of youth and disability. And for each and every one of these, we need to be clear in terms of what the idea is.

The sadness for me, with a lot of these cases, and especially as a person involved in development planning, is that at the heart of corruption and accountability is a total disregard for planning and regulatory frameworks. What that does, is that people try to go around them. And as they do, that is where we have problems. Because you find that in a number of cases there are pointers that actually direct people in terms of how to address this in a way that is transparent and reaches people and is inclusive, but it is directly trying to undermine such processes that get us into corrupt situations.

So without wasting time I want to propose the following. A shift in the way we look at corruption, to rather look at it as a societal ill that involves all of us. We might not be involved in the direct looting of a PPE COVID-19 procurement tender, but the point is we are participants. And in a sense all of us are affected by the image and it is important that we become part and parcel of building the right value system at different levels.

The other issue is to affirm the institutions that are there that are supposed to do the work and make sure that we hold them accountable. We do not just come to them when things are wrong, we must hold them accountable upfront. Because we sit with a situation here, we talk about land reform and agriculture, but access to finance is a serious problem for women and Africans in general, black people in general, and I am including Coloured and Indian people.

Part of that is because when we look at the portfolio, for instance such as the Land Bank, over 70% of the portfolio assists white farmers. Consider the Development Finance Institution, what is it supposed to do? And then we go further to private banks and recognise that access is so difficult. In some situations, it goes beyond 90%, which is for white farmers.

So, when you are dealing with inequality, social justice, and injustice at that level, you will not have a normal society. When we are talking about ensuring that the institutions account and the institutions are being pushed into a transformational agenda it ensures that people do the right thing. But at the same time, we push even those who are beneficiaries who themselves behave badly, those who get the land who are not supposed to, and we are talking black people themselves, and those who get the land but not utilise it productively. Those are some of the things where we have to hold each other to account.

Lastly, we need to strengthen those frameworks. We are now being given an opportunity with a bill specifically focussing on women's access to land. We also have an opportunity in terms of the constitutional judgment which pushes for the upgrading for land tenure by April 2021. These give us an opportunity to come in and address those patriarchal tendencies that have held us ransom as women, to not be part of transformation and ensure that we get what is rightfully ours, the right to land. Thank you.

5 3 Ms Judy Gitau (Equality Now, Regional Coordinator, Africa), *The Africa Free Trade Agreement: Corruption Accountability and social justice for women*

Good afternoon everybody and thank you so much, Stellenbosch University and to yourselves for putting together such a fantastic convening that is actually drawing linkages between gender, accountability and corruption.

I work with Equality Now, a global women's rights organisation that works on the rights of women and girls, working on issues such as ending sexual violence, ending harmful practices, equality in the law. In all of these things we see corruption as one of the drivers that is resulting in these violations and so I am quite pleased to speak.

Again, as you have already said, my area or the question that I have been asked to present on is on the Africa free trade agreement, corruption, accountability and social justice for women.

Let me begin by saying that trade and regional integration lead to Africa's development agenda. The African Union (AU) has noted on several occasions that trade and regional integration are key pillars in structural transformation and industrialisation and are important for the realisation, for example of the AU's Agenda 2063. Therefore, the Africa free trade agreement is a flagship programme for the AU

and a response to Africa's status as the world's least economically integrated continent.

This agreement started to bring together our 55 member states of the AU, covering a market of more than 1.2 billion people and also having a combined gross domestic product of 3.4 trillion. In terms of numbers of participating countries, the free trade agreement will be the world's largest trade area since the formation of the World Trade Organization (WTO). And estimates by UNECA indicate that it has the potential to boost Africa's intra-African trade by 52.3%, by no means a small feat.

More critical to discuss today, as one of its general objectives, is its commitment to promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of state parties. It is supposed to ensure that gender equality is promoted in all of its processes. Indeed, inclusiveness as termed in its constitutive documents, means gender inclusiveness at its heart.

It is therefore critical from the onset to establish what the free trade agreement means for women and for purposes of our context, how it will ensure social justice for mitigating and even resolving some of the setbacks that are there with regard to gender equality.

To start us off, I do think it is important for us to highlight some of the ways through which corruption already widens the gender-based asymmetries and empowerment, access to resources and enjoyment of rights. I will speak only to four of these and quite briefly as earlier today and in fact by the two speakers before me most if not all of these have been alluded to. So, I will limit myself to the four and limit it even further to make sure it speaks to the free trade agreement.

We know that corruption creates barriers to accessing basic public services and resources, an impact worst felt by women and girls. Women form the majority of the global poor and the majority of the poor in our continent. The poor rely on publicly provided services and therefore suffer disproportionately when corruption depletes the number of resources available to their service. These services include health and education, which ultimately determine the capability and ability to engage in trade, if at all.

Second, corruption that takes the form of sexual extortion is also something we need to bear in mind. Often women do not have access to political or economic resources to leverage their rights or access needed for trade, and the currency that is

then traded is the currency of sexualisation. The resultant effect is SGBV and the attendant impacts of that.

Thirdly, corruption reduces women's access to markets and credit. It is interesting to note that as this trade agreement seeks to increase markets, including by bringing in an untapped 1.2 billion, most of whom are termed mid-class as I have said earlier, inequality means women are not necessarily the ones being talked about here in this agreement, resulting in women beginning from a backfoot.

The situation is due to gender biases in education, in training, gender inequalities in distribution of income and command of resources, as well as unequal access to productive inputs such as credit, land as has been said by Dr Mahlati just before me, land and technology which translates into significant gender differences and lack of access to capital. Once again, women begin on a backfoot even though the trade agreement is supposed to expedite trade for the entire continent.

Finally, corruption reinforces women's social and economic marginalisation. Ironically women's remoteness from some corruption networks reinforces their social and economic marginalisation. In addition to other barriers women may face as entrepreneurs, corruption imposes restrictions on their ability to conduct business.

When we talk about speedy monies or speedy payments that can allow entrepreneurs to bypass regulations for obtaining business licences or to evade complex legal requirements for forming companies, women lack this. And therefore lack the resources necessarily to meet these payments, lack information about business services available or how to hold these actors to account, or knowledge of the means of negotiating these networks.

In summary, do women suffer more from corruption than men? The answer is a resounding yes. Yes, they do as, one, they form the bulk of the global poor. Two, they have no economic resources to leverage to gain services and do not have the political clout and knowledge to hold states to account or navigate the system.

So what, if any opportunities, portend for women for social justice under Africa's continental free trade agreement in the current context? I wish to focus on three main opportunities, which is informed by the pathways the agreement takes.

Without being redundant, because as you have already indicated, most of you are familiar with the agreement, the three pathways that I wanted to highlight are that the free trade agreement creates a single continental market for goods and services with

free movement of business, persons and investments and thus pave the way for accelerating customs union.

The second pathway is to expand intra-African trade through better harmonisation and coordination of trade liberalisation and facilitation and instruments across the RECs, whether it is Southern African Development Community (SADC) or the ESC, whether it is ECOWAS and across Africa in general.

We also know that the agreement is also expected to enhance competitiveness at the industry and enterprise level through the exploitation of opportunities for skill production, continental market access, better re-allocation of resources. I will latch onto these three in speaking about the opportunities that portend as we move towards the operationalisation of the trade agreement.

On the first pathway, on creating a single market, it is critical that the agreement, in the same breath that creates this huge market, also empowers women to have capability to access these markets and have the ability to produce goods for these markets.

Ladies and gentlemen, though we are using the language of trade, we are basically calling for what CEDAW, that is the Convention on Elimination of all Forms of Violence Against Women, and the Maputo Protocol, the protocol to the AU on the rights of women, have already conversed, which is special measures for affirmative action.

This is provision of quotas for women to level the playing field and enable them to benefit from the agreement equal to their counterparts. This is putting in place programmes to support women on the same level. As an illustration, I wish to single out public procurement as presenting a useful entry point for women entrepreneurs and trade and economic development.

Public procurement plays a significant role in unleashing the potential of women-owned businesses and it can propel inter-regional trade for women-owned businesses through the financing opportunities and wealth creation it provides. Implementing, for example, a preferential public procurement system requires that the public procurement programmes be gender responsive in meeting their socio-economic objectives.

Allow me to move to the second pathway quickly, the pathway on expanding intra-trade within the African context, whether within the RECs, as I have said earlier, or broadly within the African context. Let me start by emphasising again what has been said by the speakers before me. Women are mostly small-scale and informal traders,

a product of what we have said is a limitation to access to resources being land, being credit and so forth.

As you know, small-scale and informal traders have their attendant challenges, and this may limit their participation in this free trade area. So, we could have the free trade area, but have women who are not able to do so. And some of these challenges include the high transaction costs and border delays occasioned by them being informal and the system being particularly strict and formal.

Corruption, as we are now talking, and gender-based sexual harassment that is sometimes hot on the heels, as I have already highlighted with regards to corruption and then sexual harassment being a currency to enable the women to proceed. Poor basic infrastructure and facilities and weak trade association, especially for women in informal and small-scale businesses.

Challenges to participation in agricultural value chains include women's inability to access upstream segments of value chains due to low productive capacities and gender-based barriers to market access.

As to public procurement, a variety of supply-side constraints prevent the majority of women from effectively just tapping into this market. As I have already said, these include lack of financing to cover basics, for example, basic bids for securities. So if we are bidding to trade, I need to be able to provide certain securities which a woman who is a small-scale bidder will not be able to place.

There are also complex tender requirements. And, again, as we have said earlier, we are starting from the backfoot. Many of the women are starting from the backfoot and therefore do not have the knowledge to understand these tender requirements that are particularly complex. And women's limited opportunities to effectively network and access information.

So what then? The AU member states should and indeed must invest in improving trade infrastructure in their countries to facilitate women's participation in intra-African trade within the context of this free trade area. Such infrastructure should include, and should not be limited to improvements in border and custom-related infrastructure, port facilities, road, rail transport, safety, security, simplification of bid processes, lowering of securities and the other attendant challenges that I have listed here and above.

As policies are currently being developed and now that the operationalisation has been postponed, it was supposed to have been done in June but due to COVID-19

has been postponed and it is thought that it will be in January 2021, it is critical that as the policies to operationalise are being created, such gender sensitivities are put on the table. And the drafters should bring on board gender experts to draft gender-sensitive policies that respond to the issues that I have listed above.

Further, AU member states should support national networks and associations for these women, small-scale and informal women groups through favourable policies and regulatory environments that facilitate knowledge transfer, access to technology, access to resources as a consortium, trade networks and information. So, they should also support national-level trade agencies to raise awareness about the free trade area so that opportunities are then made available for women entrepreneurs.

On to my last pathway. The free trade area is also expected to enhance competitiveness at the industry and enterprise level through exploiting opportunities for scaled production, continental market access and better re-allocation of resources.

Let me give an example of agriculture, drawing from the previous speaker, and say strong agricultural value chain systems that effectively integrate women along all their segments are critical. To enhance their productive capacity and enable their effective participation in intra-regional trade, women entrepreneurs should be able to produce goods and services with significant African content in terms of raw material and value addition. And it is only in this way that they can respond to the emerging preferential trade regimes under this free trade area.

The AU Commission member states, and indeed the RECs, SADC, ECOWAS, ESC should intensify their efforts to collect gender-disaggregated data to inform women's patriation in various levels of value chain production and not just have women be at the beginning, whether they are the farmhand. They should be able to be there in the entire value chain; production, processing and marketing. And their overall ability to enhance their presence in downstream value chain segments should also be filled.

In conclusion, ladies and gentlemen, gender equality is a fundamental right, but a right that should not only be found in policies and laws, but should also be substantive. We do not just want it to be procedural, we want it to be substantive. And so while a lot of our laws, a lot of our policies and now a lot of the new agreements and regimes that are coming up do recognise gender equality and do broadly provide for gender equality, the proof is in the eating of the pudding. The proof is in the realisation of this. And this can only be done by putting in place strategies, programmes and systems that breathe life to these particular policies.

I would like to end by quoting from the CEDAW committee, which stated that “the formal removal of barriers and the introduction of temporary measures to encourage the equal participation of both men and women in all spheres of life of their societies are essential prerequisites to true gender equality”. I thank you all very much.

CHAPTER 6: PARALLEL SESSIONS

PARALLEL SESSION 1: *Assess the impact of the Constitution on women's human rights, particularly women living under customary law*

6 1 Professor Elmien du Plessis (Associate Professor at the Faculty of Law, NWU), *Women's rights in land and customary law*

The African Development Bank in 2015 made it clear that data from around the world shows that economic growth is higher, and poverty rates lower, in countries with more gender equality. Gender equality is not only an end in itself, it would seem, but it is also important for the alleviation of poverty. The reason seems to be that gender equality means that women enjoy higher levels of human capital, more employment and entrepreneurship, and access to productive assets and resources, which in turn means increased rights and a voice as citizens. The effects are long term and intergenerational. Women are more economically active as farmers in Africa and are the people who mostly grow Africa's food. They own a third of the businesses and work 50% more hours than men. But they are denied the same economic, social and political opportunities that men and boys enjoy. As such, women face challenges in not having access to land, inputs, assets, markets, information and knowledge, time, decision-making authority, and income.

One factor that impedes women from reaching their full potential is customary tenure systems, where women usually have weaker land rights than men, with their rights in property often dependent on their relationship with men – be it a father, husband or son. If women are given control over the land they occupy and use, it can lead to an increase of 20 – 30% of production. This is an improvement also for food security. Likewise, the outcome is better when women are included in locally and politically decision-making.

I will look at women's land rights in terms of customary law, and the problems that women face in this regard. A quick overview of the grid of legislative and regulatory instruments in which women's land rights are situated aims to show the problem areas and the areas where some of the solutions lie.

Therefore, I will start by giving the constitutional framework and the court's interpretation before moving to the broader legislative framework, in which specific

institutions such as marriage, inheritance and property should be understood. This is done to show how this plays out on the ground, and what it means in terms of land rights, before answering the question: what is the way forward?

Constitution

The Constitution in section 25(6) makes it clear that “[a] person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure that is legally secure, or to comparable redress”. From the 1997 White Paper, we know that this also refers to people who live in terms of so-called communal tenure systems, in other words, those who reside in the rural areas of the former Bantustans, with various guiding principles laid down. The one question was: how will land rights look, administered under traditional authorities? Apartheid land administration had these lands registered in the name of the state with inferior rights in land allocated based on various systems, and this had to be replaced by a system that bestowed more secure rights in land to people. This is the conversation and the process of the past 26 years.

Regarding the general securing of tenure rights in these areas, we have not lived up to the constitutional promise. This is also true for women’s rights, because of a complex interplay between political power, and resistance from below. To understand this, it is important to understand the constitutional framework for the recognition of customary law.

Section 211(1) of the Constitution provides that “[t]he institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution”. This means that traditional leaders' power and functions depend on the content of customary law.

What this entails is not clear. We have customary laws that are written down in books, and some codified, but we also have laws as they are practiced in communities. The former is formal customary law, and the latter is the living customary law. Our Constitutional Court has made it clear that the customary law that is applicable in South Africa, is the living customary law, but the legislature have failed to grasp what this entails, and have often disregarded this when making laws. This inevitably leads to tension, and often to deadlocks, as we will see when we look at the legislative framework.

The courts have further made it clear that we should not view customary law through the prism of common law, and that customary law must be considered on its own terms. In this process, it is important to ask the question of who determines the content of this law. Often, laws as they are, have been written down in books through the interpretative lens of scholars with little understanding of nuances, and are laws as explained by the traditional leaders themselves, who benefit from an overinflated interpretation of the laws. The focus should rather be: how are these laws practiced, and not how it was construed in books, and more pertinently, interpreted and applied by the colonial and apartheid government. While the way these laws were applied and interpreted over decades also influenced shaping the present, the living customary law often co-existed next to the official version. This is confirmed in our case law.

In *Alexcor* the court stated that “indigenous law is not a fixed body of formally classified and easily ascertainable rules. By its very nature it evolves as the people who live by its rules change their patterns of life”.

Acknowledging that it might not always be possible to know the meaning of living law, the court in *Shilubana* stated that “customary law is by its nature a constantly evolving system. Under pre-democratic colonial and apartheid regimes, this development was frustrated, and customary law stagnated. This stagnation should not continue, and the free development by communities of their own laws to meet the needs of a rapidly changing society must be respected and facilitated.”

In *Gongqose*, the Supreme Court of Appeal (SCA) ruled that the Constitution recognises that customary law is an independent entity of law, which can only be altered if done so explicitly by legislation, or by the Constitution. The *Ntamo* case in the Eastern Cape recognised the democratic processes that take place on a community level and stated that traditional leaders cannot override this.

Customary law

Traditional Leadership and Governance Framework Act 41 of 2003

This living customary law, especially pertaining to decision-making and leadership, sometimes clashes with the role and functions of traditional leaders as set out in

legislation. This is then often political contestation, where traditional leaders see themselves as having intrinsic power to govern within the traditional communities.

Concern has been raised that this will have dire implications for women's rights, as the models that the traditional leaders advocate for is based on the patriarchal model of the man as the head of the extended family, and not necessarily in line with living customary law, and not aligned with the Constitution and the constitutional values.

Traditional leadership is governed by the new Traditional and Khoi-San Leadership Act that creates the framework in which provincial laws operate to set out the powers and functions for traditional leaders. It entrenches the tribal boundaries as created in the Bantu Authorities Act of 1951, where "homelands" were constructed, and boundaries disputed.

The Act forces rural residents to live under a governance system that is based on lineage and not democracy. It places a disproportionate amount of power in the hands of traditional leaders who can disregard the voices of the people. This has even more dire consequences for the rights of women, as women seldom sit in traditional councils or are traditional leaders, where decision-making takes place.

It has been called rural patronage, and some of the leaders have been referred to as tinpot dictators. These are now people who hold power to make decisions over land use, as we will later see, that has a profound effect on the lives of the people living on the land, without, at least in terms of the legislation, the people having a say in the matter. The lack of transparency and accountability opens the door for corruption. Stories of traditional leaders and councils colluding with mines are rife, and despite inquiry after inquiry being held, and leaders being found corrupt, this practice still continues.

Traditional Courts Bill

This Act should be read with the Traditional Courts Bill, a Bill that introduces an administrative procedure for Traditional Courts, with the aim to ensure participation of women, and resting on the idea of restorative justice. It emphasises the promotion of equality, freedom of sexual orientation, identity and religion, in an effort align it with the Constitution.

The court system is made up of the various levels of traditional leadership set out in the TLGFA – the court will be presided over by a traditional leader or person designated by the leader.

There were various versions of the Bill, with every version fiercely contested once tabled, due to concerns about women's rights, and because people did not have a choice to opt out if they did not want to be subjected to customary law.

The jurisdiction of the court is limited to certain types of disputes, such as theft, damage to property, impairment of dignity, *ukuthwala*, initiation, customary law marriages, custody, succession and inheritance and customary law benefits.

The courts' function in accordance with customary law, subject to the Constitution. It explicitly requires full and equal participation by women and vulnerable persons. It also requires that persons who may be affected by its decision must be given a fair hearing, and that the decisions must be impartial. While another person may assist a party, legal representation is not allowed. Hearings must be open to all members of the community.

The biggest problem is that the bill sets up a parallel system of justice for those living in former homelands and does not provide them with the option of "opting out" of chief's courts. And the problem is that the current traditional councils are descendants of the Bantu authorities created in terms of the Bantu Authorities Act, where traditional leaders had little legitimacy and immense power over people. The history of the traditional councils and the artificial homeland boundaries cannot be regarded as separate from the current issue. The politics of it all profoundly affect the rights of the people on the land, especially women.

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In South Africa no Act gives substantive protection to customary rights in land. There is the protective Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA), which protects communities from being deprived of rights in land without their consent, and has recently been the focus in two court cases, *Baleni* and *Maledu*, that re-iterated that communities have a right to say no to mining, and that what is required is consensus, but consensus in terms of customary law.

The only legislation that passed the past 26 years is the Communal Land Rights Act, which was declared unconstitutional soon after promulgation, mostly on procedural grounds in the Constitutional Court. The substantive issues with this Act

are the assignment of decision-making powers to structures where there is limited women participation. While women have some power on the bottom, there was limited provision for women's participation in structures.

The other problem is that, in line with the common law notion of what ownership entails, land rights would be on a community level, defined in terms of the Traditional Leadership legislation. There is no provision for family units, where women's land rights are mostly situated and protected. Women's rights in land were furthermore restricted to married women, thereby undermining single women's rights in land, and limiting women's land rights to their relationship with a man.

To date, there have been attempts to introduce another Act, but this has not happened, and it is unclear where we are in the process.

Marriage

Other areas of the law that impact on land rights are family law – marriage – and succession.

In terms of the Black Administration Act of 1927, married women had no legal standing and all marital property vested exclusively in the husband. Together with the common law notion of absolute ownership and exclusivity with regard to property rights, this gave men absolute power over property. The normative basis on which common law ownership rests is, however, fundamentally different from the customary law notion, where different rights can vest in the same property, and that the rights are socially embedded. Previously, women had rights in the fields and strong rights to house property, especially in polygynous households, but the Act robbed women of those rights. This goes against historical accounts where women, in terms of customary law, had rights in arable land, house property and were allocated land in their own right, and even inherited land in their own right.

While the 1927 Act diminished these rights, women continued to have access to land; this diminished greatly in the 1950s and 1960s when apartheid led to a shortage of land. White officials started enforcing the Act. Official customary law saw the arable lands go to males, with a strict male inheritance of the land. Land that was granted to women in terms of customary law, was cancelled by the Native Commissioner.

Declining marriage rates led to the belief that single women with land will not marry, and fear of a collapse of society at family level meant that patriarchs used this rule to ensure that women are under the control of their fathers or husbands.

Husbands were furthermore recruited in the mines, and the migrant money sent home became an important source of income, leading to a decline in agricultural production as the mainstay of rural livelihoods. This means that widows and deserted wives became more vulnerable to eviction from the married homes, and more vulnerable. Codified customary law means that women in these instances were left with very little upon such an eviction.

We are still suffering from the hangover of this, and it is imperative that the way forward is not chartered on outdated colonial ideas, but based on the values of our Constitution which is a participatory democracy.

What does this mean in terms of land rights?

While we do not have legislation that substantively protects customary land rights, and more specifically women's right in land, consultation done for the Communal Land Rights Act and Traditional Courts Bill did show an interesting shift that needs mentioning. These consultations highlighted how vulnerable women are to be evicted by family members. But there were also stories of how widows and unmarried mothers could claim residential sites in their own name.

The stories interwoven the customary entitlements with claims to equality. If men were entitled to get residential sites to support families, then surely this should be the case for single mothers too? Some women explained that, since they were members of the community, the children's basic survival needs justified this. Many other stories emerged of headmen allocating land to widows or single mothers.

There seems to have been a shift towards also allocating sites to women who do not have children later. But this is not true for all communities.

The studies also indicate that women often must pay to get land, excluding poor women. Like outsiders, the land is also allocated with strict conditions. So, while it is possible to get land, it is not allocated in the same way as for men.

The case studies suggested that the changes in how land is allocated were due to the dramatic political shifts with the transition to democracy, where women felt that they had rights.

The case studies that show some positive developments regarding women's access to land should indicate that sometimes that law, and the Constitution, does open up a space for people to contest their rights and the law. This is an important realisation, as it shows the gaps and possibilities.

What is the way forward?

So, what is the way forward? It seems as if the solution lies in ensuring that the emphasis is on democracy from below – through committed political processes and laws that see women and support them. This will help relieve some of the tension between state law and living customary law with regards to women's land rights, when women are involved and heard in the formulation of solutions, and if it is ensured that women participate in the decision-making processes, especially on matters that affect them. This should then also translate into women being more involved in national and traditional law-making. Women's rights must inform living customary law, in national law and traditional law-making.

There should also be a clear move away from apartheid laws and thinking, and it should not be used as a blueprint when laws govern "communal" land – communities should define their boundaries in a participatory process. Added to that, individuals should have the choice to opt out a community that is governed by traditional law.

When we make laws, it is always important to remain committed to freedom, public participation, and democracy. We will do more than just play empty talk on gender equality by giving women a voice.

6 1 1 Discussion – Question and answer session

Question to Mandisa Shandu (Executive Director, Ndifuna Ukwazi)

Please talk about how communities are holding powers into account and thoughts about how people can hold power into account knowing that you are familiar with the law and the shortcomings of the law. Certainly, we cannot always look at the law as a response to corruption.

Question to Professor Elmien Du Plessis: In the same vein, any thoughts on how we can learn and draw from customary law in thinking about how to respond to

corruption. What can we draw from the customary legal systems and values and practices?

Prof Wilmien du Plessis: I was present in the public hearings of the Upgrading of Land Tenure Rights Act (ULTRA) Amendment Bill. Two systems were stuck or problematic when we talk about women's rights in terms of customary law in the rural space, and I think it applies in the urban space as well, which is on the one hand, we are stuck with this kind of dual system of formal and informal registration of rights in the deeds office where it is a sophisticated and expensive system in formalising common law ownership and ULTRA itself and even the state itself, not understanding that that is the only way one can secure rights and renders everything else insecure.

On the other hand, we have a massive reliance on the state to protect people on the ground which even in ultra (1991 legislation) and even after that IPILRA, with the CPA Act intentioning to protect different forms of tenure, relying heavily on the state to play a very big role. I think we have to say that the state has failed to a large extent to play that role in recognising any kind of complexity and nuance. We need to move away from the reliance on the state without moving towards the reliance on private property and common law and old structures, finding something in between that does not make it so complex and nuanced that no one can understand that system, and we cannot support it.

Mandisa Shandu: Holding power to account and accounting from below is very important. Right at the beginning of our work to advance urban land justice, we knew that it would be important to ensure a space where people will be at the centre of making demands for access to housing, affordable housing, dignified housing and services and so we created a movement called Reclaim the City. This is not the only movement that is affected by these issues, but I will draw on some lessons there because of our proximity to reclaim the city.

The first is to say that there is still significant value in people being able to participate in formal processes because this is, of course, a kind of legislative requirement to consider the voices of the people in terms of them wanting to object to a new building or to a piece of land being sold or leased out. So you would very clearly state that this is something that ought to be earmarked or used as a lease for affordable housing or another socio-economic right. The work that must be done here for accountability and

decision-making is to ensure that there are responses that are real and valued. People need to be aware, even municipalities ensuring that people know and are encouraged to participate in certain decisions.

Another way to hold the state to account is when people activate actions or any kind of demonstrations, immediately affecting them. The first difficulty here is articulating and defining what the issue is to somebody who may not see it as an issue, secondly to not see that it is their role to address that issue, thirdly, to not address that as an urgent issue. So, defining, shaping and categorising the core demands and actions towards holding the relevant state party to account is a large part of the difficulty.

Another difficulty is poverty being criminalised in many spaces by almost every level of government, so activism and attempts to hold people accountable is being met with serious violence and brutality. We have seen this with the latest demolishing of homes in various informal settlements and resisting this has been met with violence. So, there is an ongoing challenge to articulate the issue and to safeguard the people doing the action.

In thinking about corruption too, there are aspects of the private sector as well in its proximity to the state and these kinds of processes that they ought to be held accountable, as well with the state actors and that requires different strategies. It is quite complex.

Professor Elmien Du Plessis: We are responding to corruption, and many people are not just letting it go. What can we learn from customary law? The problem is, without over-romanticising it, the ideas of justice and how societies work here, the concept of restorative justice is quite good with supplementary readings on how it is entrenched in African societies. The idea that an African society is injured when there is an injury like corruption, the whole society suffers. We need to go and look at society for solutions as you will not find these solutions by looking at particular parties and in that aspect, I agree that the private sector also needs to come into play here because there is something wrong there, there is something wrong with our society that corruption takes place where we need to look at it holistically. But I think we are responding to corruption on land and communal land. There are issues with that concept as well. If we look at *Dlobeni* for instance, I know that in KwaZulu-Natal, there was a case that did not go to court because the advocate held the private company accountable, and we just need to keep on making noise.

In a book I have recently read, there is a saying that goes, “rain that falls slowly penetrates the ground better than a harsh thunderstorm”. We need to raise these issues until it penetrates the ground.

For women’s rights, the issue of titling is that titles go to the men, which is even worse for women’s rights and that contestation can no longer take place, but I think we need to reframe that. It is a question of securing rights and insecure rights, we are moving into a constitutional broadness and during apartheid we had a hierarchy of rights with ownership at the top, and all other rights would depend on this ownership and during apartheid, only white people could own land but it does not mean that we now need to make owners of everyone, I think the Constitution in section 25(6) requires that in some instances rights in land that are secured by legislation can trump the rights in ownership even if it is not ownership. How do we secure rights in a way that people have enough rights to do all the things that the World Bank wants them to do and use the security? Maybe it might take away the central role of the state, I do not know. It is an interesting question.

My idea is that legislation should rather create the space for people to contest it locally, set out the boundaries or values that must be there. Maybe people can make their own choices. If they want to put it in the CPA and privatise it that way, it should be something that comes from the community and not the top first.

PARALLEL SESSION 2: *Consider the impact of corruption on advancing gender equality, particularly in the face of Coronavirus COVID-19 state procurement and social and economic relief delivery*

**6 2 Motlatsi Komote (Research and Advocacy Officer, Women and Democracy Initiative, Dullah Omar Institute, University of the Western Cape),
Corruption and its Effects on Women**

I just wanted to start off by saying that I will be looking at how corruption impacts on women in specific ways and women’s role in combating corruption. First and foremost, I will start by saying that there is absolutely no doubt that corruption has had a negative impact on women during this COVID-19 pandemic.

It is safe to say that the structural issues that were there before the pandemic in terms of gender inequality which had previously manifested itself, or continues to

manifest itself, in homes and the workplace, especially in informal trade or informal work and in other areas where corruption impacts negatively on the lives of women has been amplified, especially for poor black women.

We have to interrogate who benefits from corruption. In this instance, I believe that people with power and access to resources stand to benefit the most in what is unfortunately an already capitalistic or capitalist society that we live in. In these kinds of discussions we also have to consider what access to power as opposed to exercise of power means when making reference to corruption, although I will not necessarily go into that in much detail.

The first thing that I want to address is the burden that women are faced with. Women feel the effects of corruption both at a seen and unseen level. Women are faced with the burden of care and unfortunately due to this pandemic will be in an even more stressful situation than before. Globally women have had to adapt to the restrictions brought on by governments for the pandemic, which has led to women having either additional childcare or having to provide for teaching services for children in the home in addition to the daily work that they do.

Also, it is quite important to note that women have increased levels of stress which has been caused in some instances by being locked up with abusive partners for longer periods of time due to the lockdowns and having to make decisions about where their next income will come from, which has come at a high emotional cost, which impacts on women's ability to enjoy the kind of life that they have.

Just to note that corruption increases gender inequality even further. I am not sure what studies have been done to date since the pandemic started, but we will most likely see that there will be more job losses, especially in sectors that women predominantly occupy.

Although parts of the lockdown were absolutely necessary in protecting everyone, what has been really shocking was seeing that there is been a looting of funds meant to assist and provide families with either food or other forms of economic relief during this time. Capitalism, patriarchy and other factors obviously aid corruption. And gender equality cannot be fully achieved when the negative underlying factors impact women's ability to participate and receive social and/or economic relief.

We have seen women being affected by their inability to access grants or social security. CSOs and grassroots organisations have played a really active and good role

in keeping an eye out for such issues and assisting women and communities specifically with bearing the brunt of these burdens.

What has been very important in our discussions as the Women in Democracy initiative is that the money that we are spending in anti-corruption relief efforts should ideally be going towards bettering the situation of women, and unfortunately corruption keeps on taking away from these efforts.

Just yesterday I read somewhere that the deputy Minister of finance noted before parliament that the government would implement departmental budget cuts. This means yet again that money that is needed and crucial towards improving our health sector and education sectors will not be received. Again this means that there will be a gap in achieving gender equality.

Over the last year we have been monitoring, although sporadically at this stage, annual performance plans, state of the nation addresses and so forth with this feminist lens where we tracked women-centred policy and action taken by key government departments. What we found is that some of the promises made by various ministers that we looked at did not necessarily translate into action or adequate policy plans or monetary allocations in terms of some of the decisions made.

For example, one of the departments in our analysis last year did not appear to recognise women's systematic and structural discrimination. The Department of Social Development, in that particular APP, the Minister noted the barriers to economic participation of both women and youth and their response to this was to leverage the 30% procurement policy of government contracts for small and medium-sized enterprises (SMMEs), for women and youth. We have noticed that in many of these policy considerations or annual performance plans, women are bundled together with other groups.

It is just as important to note that gender-based violence has rightfully taken centre stage in discussions that government has been having, but what we see, and I completely agree with Professor Gouws on this one, is that we have seen that the National Strategic Plan on gender-based violence has been established, but that there has been no budget to date.

We need to consider that there are possible links between money being reprioritised, money being given towards anti-corruption efforts and that even to date we have not seen adequate prosecutions of people who are allegedly corrupt in the criminal justice system.

Obviously COVID-19 has shown us the scale of corruption at various levels and has further exacerbated issues of access and corruption at both a local and national level for women. And there has been a deterioration of service delivery nationally.

We have looked at the effects of corruption at various stages, and what we see is that the lack of adequate PPE in hospitals affect women the most because they tend to be the ones in the frontlines. And unfortunately it has exposed them to precarious situations, especially community healthcare workers who work in communities who are now faced with an even more dangerous working situation.

What has been interesting is that in terms of job insecurity, according to a Budget Justice Coalition submission that was made last year, corruption costs no less than 27 billion per annum. And I think that is quite shocking, to say the least.

Then in terms of access to household energy and water requirements, we all know and have seen that Eskom and other state-owned entities have been receiving multiple bailouts, but unfortunately this does not translate into access of those resources for women in rural or other areas.

Instead, it has meant that women have had to access electricity in other forms. They have had to either rely on unreliable energy resources, women have had to now go and fetch water from rivers or wherever else because they do not have access to clean water. And unfortunately, with corruption, it has meant is that women have not been able to access water tanks like they should have been.

Just to go back to my point on gender-based violence, the president has called it a second pandemic. But again, we see that the National Strategic Plan on gender-based violence and femicide still has an unfunded and costly budget in the different government departments which speaks to the lip service that women are being given by government.

Lastly, there have been cuts in the national prosecuting authority and detective services, which has obviously affected the prosecutions that we have against perpetrators of crimes and gender-based violence within the criminal justice system. We are of the belief that we need more gender-responsive budgeting, but we believe that this gender-responsive budgeting should ideally be led by women across all sectors of government.

In conclusion: we cannot combat corruption if we are not also having simultaneous discussions around patriarchy and capitalism and how these aid an already failing system. Thank you.

6 3 Amanda Jane Wilde (CG of the first Broad Based Economic Integration Co in SA (Umsinsi Health Care), *Reducing corruption in the health sector: The Constitutional provision for cost-effectiveness as an essential element of our procurement system*

I wanted to take us down the rabbit hole that is public health procurement, particularly in terms of reflecting on the COVID-19 pandemic and particularly the emergency procurement that has been taking place, to equip our frontline staff with the products that they need to keep them safe.

A little bit of background. You can probably tell I was not born in South Africa. I was actually born in a place with very little sunshine, the north of England, and I fell in love with South Africa around 2004, 2005. I moved down here at the end of 2006.

I originally came down with a classic multinational corporation, and we were given the opportunity to set up our own business in South Africa. During that time, we really got the opportunity to look at the health sector, particularly the public health sector. Bearing in mind that I am coming from a country, the UK, that has a national health service that is actually dedicated to the service of every member of the population of the UK.

We do have private healthcare in the UK, but it is used very rarely, and it is only used for routine, mundane things where you are effectively queue hopping. It is not used for major issues and certainly if you had something very seriously wrong with you, the last place you would go in the UK is to a private hospital. You would go and sit in the foyer of your academic public hospital and cry until somebody takes care of you.

So, I came down at the end of 2006. We structured a business and at that point we looked at what had happened in South Africa, particularly in the health sector and noticed that, number one, women were not present, particularly in the business of South Africa in healthcare.

In our industry association, very few women were heading up businesses, and those who were were probably heading up the very small businesses rather than the medium-sized to large-sized businesses. So I would say I was one of the very few managing directors of a medium- to large-sized business for the first ten years that we were here.

We made a decision very early on that we were here to serve the public sector of South Africa. Again, that is because coming from the UK I am very used to a national health service. So, yes, we did have private-sector health business, but we predominantly had a public sector health business of around 80% of our overall business, which is quite close to reflecting what public healthcare is as a proportion in South Africa.

We very much set up our business to be in sympathy with healthcare. This is a very big part of the problem when we look at corruption and things going wrong. I am going to talk about it in a little bit more detail. But we can see that perhaps being in sympathy with the needs of the health system is one of the things that a business has to consider when going into the health sector.

Unfortunately, the way our legislation is structured does not support that kind of mind view. Today, we have frequently talked about the fact that women are nurturing by nature and that when they are put in positions of power in their businesses, they tend to look for ways in which they can forward and advance women's needs. However, our legislative system does not support that approach.

Instead, we have a procurement system, particularly in health, that values the wrong kind of competition. Procurement has effectively been turned into a competition of suppliers. In the last ten years I have very rarely, if ever, seen in our sector any reference to patients' needs or even the needs of the doctors and nurses that are working in the health sector.

What this means is that if you are not a woman who is leading a medium- to large-sized business and if you are in a particularly small business, the procurement mechanism is focussed around an unhealthy kind of competition.

For example, I have heard an MEC for Health in Gauteng actually address a whole room of suppliers and tell them that the health budget is a pie to be shared and that everyone deserves their slice of pie. It is not, it is a budget to be spent wisely and carefully and in the interest of patients and the needs of patients and the care of patients in our hospitals and our health structure.

So what I have seen over the last ten years is despite initiatives on our side to be a very socially oriented business that is focussed on making sure that we have a high representation of women (we have never had less than 70% - 75% representation by women in our business at all levels, from senior management all the way through) and even though you can structure your business to be socially sensitive, foregrounding

the voices of women, because we do not have a procurement system in our hospitals that is centred around patient care, that is the crux of the problem.

Basically, it is centred around suppliers rather than patients. It is centred on a point-scoring mechanism, which means that who you are as a supplier matters more than what you can bring in terms of being able to care for patients and services. And we have really seen this during the COVID-19 pandemic, that it has not at all been about the care of our healthcare professionals or the care of our patients, it has been about who can I do business with and how can I bring things to the table.

If we look at the Constitution, Chapter 13, Section 217, after transparency, fairness, equitability, competitiveness, there is that last little line in the paragraph that says that every purchase the government makes must be cost effective. It does not say should be and it does not say might be, it says must. It must be cost effective.

When you burrow down into the nature of cost-effectiveness in healthcare, what you are effectively saying is how effective this product is compared to the money you are paying for it. In that respect, you have to consult the outcomes that the patient receives from those products.

You cannot just look at the product and measure it. You cannot just look at the product and weigh it. You cannot just take a scan of the box label. You actually have to get the product out of the box, put it on a patient or get a Dr, a nurse to use it and assess, is that product safe and easy to use in terms of your Drs and nurses and, number two, do your patients benefit from that product?

This resonates very strongly with the nurturing nature of women and what we talked about this morning, that wherever women can when they are in positions of power, they will help drive women's needs.

That at the end of the day, we have so many girl children, so many boy children, so many men and women, patients in our hospital system, that their needs have to start coming first rather than the other way round where we actually put the supplier first.

We do not even consider the needs of the Drs and nurses and we certainly do not consider the needs of the patients. We make our decisions based on price, single unit price, rather than actually the cost of use of the product in terms of delivering its outcomes and, most importantly, delivering care as well.

Pulling us back to the Constitution, we need to link cost-effectiveness to care and re-inspire a procurement system in South Africa that is focused on the needs of

patients first and foremost. I would pull the experiences of the national health service in as well.

For many years, the national health service has bought things unwisely, wasting money, not buying the things that it should have done. Yet, when we are particularly looking at the strategy documents of, for example, National Health Scotland or university hospital groups in the UK, we are starting to see the needs of patients being first and foremost thing in listings.

Suppliers are mentioned, developing good relationships with your suppliers. That you should be able to partner with them, rather than having them all sit there like a bunch of hungry animals waiting for you to throw them scraps of business that they then have to run around and find a product that meets at least vaguely, perhaps some of the needs that were scoped out initially in the first place.

What I have seen in South Africa over the past ten years (and this is not to say corruption does not take place in other countries, it really does, and it does in the UK as much as it does anywhere else) that by shifting things on their head, moving it from the supplier to the patient, looking at it in terms of delivering care for patients with products that are innovative and deliver good outcomes and that have quality is perhaps a good way to do it. We can inspire the women in business and the women in care as well, be they nurses, be they Drs, be they in the procurement departments.

Another problem is that most of our hospital procurement departments are very masculine. You do not see many women in procurement in the hospitals; when we look at the procurement departments, they are nowhere near the patients. So the procurement departments are either in a bunker, up in a tower, or across the field, about as far away from a patient experience as possible.

We also talked this morning about shining a light on things and the fact that women are less likely to be corrupted when there is a very bright line shining on the process. We lack transparency entirely in the health procurement system. In the UK there are catalogues. You can go online, you can see all the products, the prices are all visible, the companies are all visible, the hospitals can make sensible choices. That does not exist in South Africa.

So, we are missing transparency, we are missing fairness. We are missing a healthy kind of competition. We are missing women's voices and their ability to care about what they do and how they do it in the health sector. If we could introduce those things, we could turn things around.

6 4 Professor Amanda Gouws (Distinguished Professor of Political Science, SU) *Gender Equality and State Capture*

I want to start by talking about the difference between corruption and state capture because that is important to understand.

I want to talk about that because in 1994, when we transitioned to a democracy, through the women's movement and through women's activism, we created what was called the national gender machinery for women in South Africa. It consisted of an integrated set of structures in the state; the Office of the Status of Women, the Women's Empowerment Unit, gender desks in all the civil service departments, a multiparty gender caucus in parliament, adjoined monitoring committee for the quality of life and the status of women, as well as the autonomous Commission for Gender Equality.

Those institutions are very important in terms of being the structures in the state that promote gender equality, and we have to understand how state capture has actually undermined those structures.

Corruption, we think of that as on an individual level, but state capture is systemic and well-organised by people who have established relationships with each other and with regard to transactions on an increasing scale. What happens is that it repurposes the institutions of the state in a way that those institutions are structured, governed, managed and funded to give them a different purpose from their formal mandates.

Through these symbiotic relationships, individuals get access to decision-making power and are often unelected. So they are not elected by us, but they become unelected or powerful because they get access through these relationships and then repurpose these institutions for a different purpose.

How have these institutions actually undermined the gender equality project? The first point that I want to mention is the issue of slate politics. If we look at how slate politics work, it is a predetermined list of names that is being put forward for the positions on the list to be elected. Often, women are not included in the slates or in positions that make them unelectable. So first of all, it also has an impact on the election of women.

But then what happened was that since 2009 really, the institutions of the state were, or the institutions of the national gender machinery were systematically closed

down. We lost the Office of the Status of Women, most of the gender desks and most of the other institutions became dysfunctional because they were not really headed by women who were connected or had a commitment to the gender equality project or the promotion of gender equality.

If we look at it now, we have lost most of those structures negotiated by feminists and women determined to make a difference. In its place we got a Ministry for Women. It was first called the Ministry for Women, Youth and People With Disabilities and then called the Ministry for Women and then again called the Ministry for Women, Youth and People With Disabilities.

The Ministry of Women could not establish a national council on gender-based violence in the past nearly ten years. It was not able to reach more than 28% of its targets. This tells us that there is a very limited commitment to gender equality, which is part of the repurposing that went on during the whole process of state capture between 2009 and 2017.

The other problem is that some of the independent institutions, such as the Commission for Gender Equality became captured by the African National Congress (ANC) Women's League. So, it is not autonomous and independent. It lost its independence when in the Commission on Gender Equality Act 39 of 1996, one of the requirements to become a commissioner is that you will be non-partisan and autonomous. But we see this is not the case with many of the commissioners in the Commission for Gender Equality.

Another way in which the state capture works is cadre redeployment. Cadre redeployment means that even if people are corrupt or they have been actually accused of corruption, they just get repositioned in another position, maybe on another level, from local government to provincial government. We have just seen this with the redeployment of Ms Gumede, who was under investigation for corruption in KwaZulu-Natal, and has now been appointed to the provincial government.

The issue of cadre redeployment is also problematic when we look at state capture and how, for example, this redeployment of Ms Gumede was called an exercise of women's empowerment. It also undermines what we understand by women's empowerment and what we understand by gender equality.

This is a consequence of what looks like a lack of political will. But it is not necessarily a lack of political will. It is actually strategic and planned in the sense of

how institutions are repurposed and their mandates are changed to actually benefit the issue of state capture.

The consequences of this, if we look at all the state structures that we had since 1994, is how they have all been dismantled and how we have lost them. With that, we lost positions where women and specifically feminists who are committed to change inequality have no place to be actually, to access the state. Because it was through these structures that women accessed the state. Now these structures are more or less all closed down, which means a loss to gender equality and the promotion of gender equality in the state.

The only way we can reverse this is if we reverse the consequences of state capture and repurpose those institutions and re-establish them for the purpose that they were put in place, rather than now having all kinds of other purposes that are undermining the project of gender equality. Thank you very much.

6 4 1 Discussion: Question and answer session

Question from Advocate Xoli Maduna: We have identified where the various forms of corruption take place. But what do you think we should then do to ensure that the government actually attacks the scourge of corruption in the most effective manner given your various talks?

Amanda Gouws: I want to just give you some anecdotal evidence of how bad the procurement processes are. Last year I was asked to facilitate a workshop on gender-based violence for one of the provincial governments. But before I could do that, they had to put me on the database of service providers. The checks and balances were good. But the minute I was on that database, I started getting calls for tenders. I get three calls for tenders a week for providing toilets, water tanks, PPEs, all of that. I am an academic, I cannot provide that. But if you are inclined to corruption, imagine how easy it is then to go into a corrupt service provision.

I agree with you, there should be catalogues, there should be preferred service providers and it should be about the needs of the patients or whatever it is that you need equipment for. The government's way of dealing with procurement is really very peculiar.

I really have to say that in my view, affirmative action contributes to this. As long as we are going to continue to say that certain service providers should be used above other service providers, we are not going to get into a situation where all providers are treated as equal.

Question from Advocate Xoli Maduna: Motlatsi, you also pointed out the budget, in terms of the budget cuts in various spaces and also what the government would undertake in terms of their APPs which really comes to nothing. Now, if you listen to this discussion, all these policies that are undertaken, how do we ensure that they are actually meaningful, impactful, and address gender equality?

Motlatsi Komote: That is a challenging question to answer. The first thing that I would say is that in South Africa, we are probably getting to a stage where we have far too many laws, but we are not dealing with the actual problems. My sense would be that we keep implementing new laws, but we are not dealing with the actual structural problems already there. And having a new, for example, anti-corruption agency, or having a new law will not necessarily deal with that.

In terms of creating meaningful policies, it is quite difficult. Just listening to Amanda speak about the health sector, I was also starting to think about the national health insurance, which government has been trying to implement or thinking about implementing for a long period of time. Just seeing how government has dealt with some of the funds right now during this pandemic and questioning how they are actually going to implement a very important policy such as national health insurance, is quite difficult.

I would just leave it by saying that we have to deal with the structural issues first. We really have to have hard conversations around corruption at what is deemed a smaller level. Because corruption really starts with you getting a traffic fine on your way to work in the morning and paying off the R50 cold drink as they call it or stealing something from somebody.

Those are things learnt and taught, and we live in a society where corruption has become so normal that we do not even see it anymore. In fact, when we hear that funds have been looted, a lot of us are like, oh, not again, as opposed to it is shocking and should not be happening. So, there is something to be said about the ethical side of our society and morality as well.

Question from Advocate Xoli Maduna: Amanda, in terms of wide consultations when policies are made, do you think that there is enough of that? And if the government is to widely consult on these policies, especially with experts on gender, do you think that there is enough of that happening or if it is not, how do you think it should happen?

Amanda Jane Wilde: I do not think there is enough of it and I see it as a combination of gender and experience, if that makes sense. When we put legislation together, it should be fit for purpose in the sector it is designed for, if that makes sense. It might take that we say we have a national procurement policy, but then we have sectoral procurement policies that are linked to education, linked to healthcare, linked to the different sectors that actually bear in mind the nature of the sector that you are buying in and the impact it has.

There is definitely a lot more room for wider consultation, not just on a gender basis, but absolutely to pull in experiences of how it has gone wrong. We need to make our legislation more practical. We do not fail in South Africa for having beautifully written legislation, we fail for its implementation.

We see a lot of procurement departments in hospitals, and for ten years, we have never claimed a single BBBEE point, and we have an 80% public sector business. We do not claim points because we promised our employees that we would never differentiate between them based on the things they could not change about themselves. And race, gender and age are very difficult to change. So, we chose not to.

That does not mean we have not embraced transformation. We have won a wall of awards and certificates for our gender transformation; our salaries are gender and race matched. We managed to achieve that very quickly.

But I have black female colleagues who have walked into hospitals in South Africa and been told that if they want their orders, they had better not be working for a white woman. This is in a hospital system.

They would be better off as black women to go and form their own single-person healthcare business and then face all of the challenges. And I am not saying women should not go and form their own single-person businesses, but in the health sector, it

is virtually impossible to survive as a single-person business. You have to get to a critical size, and you need to develop relationships as well.

There is not enough consultation on gender and there is not any experience either. We do not pull in the experiences.

PARALLEL SESSION 3: *Assess the impact of the Constitution on women's human rights impacted by Gender-Based Violence (GBV) and poverty*

6 5 Sheena Swemmer (Head of Gender Justice, Centre for Applied Legal Studies (CALS), UJ), *Sexual violence cases, customary law damages and the Constitution*

Customary law damages

Customary Law damages is more of a community-informed law. What we have seen emerging, particularly in rape cases, is that there is an exchange of money in one instance by the accused or the accused's family to the complainant or their family. This is what is colloquially referred to as damages. Normally the victim or their family is paid so that the victim does not go forward with the case or if they say they no longer want to testify. The form it can also take is pressure by the families, instead of money. The issue here is not only that it is an informal system, but it is negating access to justice in terms of the criminal justice system.

In some cases, we have also seen magistrates and prosecutors considering these deals to mitigate a sexual offence case. I wanted to link this to the overall subject of the roundtable and how this is really seen as a form of corruption. But when we look at corruption as an abuse of public resources or an abuse of power for personal gain, it really does fit into this kind of definition. We often see sexual offences, and this is an issue that we have in our law actually acknowledging sexual offences as private matters, but here we have private deals that can affect justice in terms of the criminal justice system and procedure. Three examples of how this looks:

New Frame is a kind of advocacy and a socio-economic newspaper or media publication in the country. In this instance, a minor child was raped and left for dead by a distant family member and also an alleged drug dealer. The accused's mother

offered the family of the child money not to continue with the case. The complainant's mother refused.

A case that was heard in the Magistrates Court in Gauteng in 2012, and a direct quote from the case. The prosecutor then says to the complainant: "Yes, after you were confronted, what happened then?" and the complainant says:

"Actually he had said to me he apologises for what he had done, he had requested for me not to press charges against me and then promised to compensate me."

Here we can see that the complainant did not accept money and that we see that these cases had proceeded to court. But in some cases, they do not proceed to court

Section27, a Human Rights NGO here in Johannesburg, says this is quite common in sexual violence in schools. They remarked that poor learners are most vulnerable to sexual advances by teachers because teachers have status and money. Families of young girls will sometimes negotiate payment from the teachers who sexually abused these girls in exchange for not reporting the teachers to authorities. So, this often occurs in homes where there is no wealth.

Legality

The actual payment of damages is recognised as a legal remedy in many jurisdictions, we usually call it, in South Africa, delict. This is entirely acceptable. In communities, it is not that it is inherently bad, but in terms of damages under the law, you are still allowed to proceed with the criminal case. And that really is the issue around this. Legal damages still allow for a criminal case, where a person can be found guilty. But when you have these types of community damages and you have an agreement not to report, the issue becomes wider than just the individual case, and this is where constitutional considerations come in. What the victim wants and feels are often not considered, especially for children. So, these negotiations between families do not let the victim speak, they have no input in this. What happens when the victim wants to press criminal charges and feels the negotiation has negated any chance of proceeding on these grounds?

But there is also another issue, and its importance in South Africa because we have a very high rate of people committing multiple rape, not just of one individual, but of

multiple victims. When we have damages claims, and the deal does not go to court, we have the chance of people not being found guilty and serving time. Then there is the question, what about other victims of crime?

Concerning the Constitution, we see that there is no equality before the law, and in the case of sexual offences, victims are not necessarily protected or have equal access to the law as in other cases. There are issues of dignity and issues around access to the law.

Way forward

Damages are not necessarily inherently problematic, but people in communities need to be informed that this does not mean one does not have the option to go to court to open a criminal case. The law allows this in delict and in criminal matters. Victims can still be heard in the court.

There is also an issue with regards to funding. Under the Victims Compensation Fund, something similar to the Road Accident Fund (RAF), the state compensates victims of sexual violence. This creates a situation where people will be compensated, rightfully so for their psychological and physical trauma, which could then match the actual trauma to a fair amount. The Victim Services Bill is out for comment, under which the state will represent victims of sexual offences in getting damages from their offenders. However, there is no point, because these perpetrators have no real money. But with the fund, you can get compensation in comparison to your actual trauma.

In South Africa, the Sexual Offences Act and the Children's Act require a duty to report any sexual violence or offence committed against a child. This places an obligation on everyone, in any community, to report rape to the police, when a child has been raped, because children are more vulnerable than other individuals and we need to report this.

Although a cultural sphere around compensation exists in our country, it goes against victims' rights. And there are some things we can try to do about it, but it would really take educating communities around the rights of victims and the legal system.

Comment by Mmabatho Ramagoshi (*Chief Advisor to Minister Maite Nkoana-Mashabane, Minister of Women in the Presidency*): A comment on what Sheena was saying, something very critical.

Information to communities in the rural areas, because of the issue of paying damages, we know it is happening in many villages and what is missing Sheena, is the issue of making the survivors, even when they are not children, know that, even if this perpetrator has given a cow or whatever to your family, you still have the right to go and open a case. And this is the missing link because many of them feel that because this person has already paid, it means I cannot do anything else; this message is critical, and young children know that if parents do this, they are still protected by law to go and open a case.

Roberta Solis: The points raised by Sheena are extremely interesting and very important to be debated concerning the Access to Justice compensations, it remains an important issue, and the pandemic as we know is only heightening these issues by bringing them to light and adding additional layers to the challenge.

Marthe Muller (*COO of South African Women in Dialogue*): Question on the link between paying damages and the possibility of corruption to pay people to keep quiet. I understand the cultural context. I want to understand the theme of corruption and what happens when we pay people to keep quiet about issues in terms of what are crimes in the Constitution and in terms of rights?

Sheena Swemmer: We acknowledge that these things are culturally based. There are issues around what damages would be fitting for this type of offence if this were a civil process and a person going to court. But there is this dark side, 'paying for silence' and that is not something that only occurs in sexual offences, it is especially problematic and sinister in sexual offence cases in South Africa because we have a high rate of sexual offences and we have impunity in our country, so we have these offences committed without people worrying about any kind of justice or punishment or relation thereto.

Roberta Solis: Under the UN Convention Against Corruption, any way of achieving undue advantages is considered corruption, so in these cases, the money that is being

used or any other advantages that are being used to achieve such a purpose to the person that is paying that money, or asset or any type of bribery, that would be considered corruption. We have been working on this with the International Association of Women Judges so that people do not just automatically connect corruption with undue monetary and financial advantages. In this case, sextortion. A lot needs to be discussed around this, and light has to be shed upon such cases.

PARALLEL SESSION 4: *Explore analytical tools for aligning policy, legislative, regulatory and jurisprudential interventions with international, including SDG, constitutional and legislative social justice commitments*

Jayna Kothari (Executive Director of the Centre for Law and Policy Research in Bengaluru, India and Counsel practicing in the Supreme Court, India)

The Indian Constitutional provisions on social justice and court jurisprudence for interpreting these provisions with regard to everyday justice

Today I am going to be speaking on the impact of the social justice provisions in the Indian Constitution, how the courts have interpreted social justice constitutional provisions and their meaning for everyday justice.

Broad overview of the Indian constitutional framework – in our Constitution we have two different chapters, one is the chapter on fundamental rights which is in part 3 of the Constitution where basic fundamental rights are provided, the right to equality, non-discrimination, the right to life, religion and many other provisions.

Another chapter which is part 4 of the Constitution, is very unique and refers to the directive principles of state policy. The directive principles are not seen as justiciable rights. Still, these are really aspirational for the state and when the Constitution was drafted, it was felt that as a developing country, we did not have the means to guarantee many of the socio-economic rights to all citizens yet. Still, these should be goals for the state to work towards and fulfil.

So a bulk of social justice and social rights provisions are all housed under these directive principles, part 4, which were seen as non-justiciable and some of these, are the rights to umbrella social rights, the right to livelihood, the right to education, the

right to work, to housing, to health, the right to equal pay to work, and the right to social security.

All of these rights are largely seen as social rights. All of these rights under the Indian Constitution have been housed under the Directive Principles to state policy, where there are obligations on the state to provide equal pay for all women, to provide adequate livelihoods, to ensure that people with disabilities are protected, the basic health of everyone is ensured, the right for children to grow up in a healthy environment.

However, our Supreme Courts and High courts have been extremely activist and are quite innovative and have found different tools for interpreting and making these social justice provisions actually enforceable and justiciable and bringing them within the ambit of fundamental rights. Therefore, many of these directive principles have been made enforceable by the courts and by the expanding jurisprudence of the right to life jurisprudence.

This really started in the late 70s and early 80s in India, when the Indian supreme court devised the concept of public interest litigation. It was not there in our Constitution and court procedure. Still, the Supreme court kind of laid down that we will expand locus standi, we will expand so that it is not just the person that is effected or whose rights have been violated. Still, any person can come to court and seek the enforcement of fundamental rights for all those who do not have access to courts.

They devised public interest litigation; in fact, some of the academics called it 'social action litigation'. This form of litigation could swing the courts' interaction to enforce fundamental rights even with just a letter. No need for filing a petition, the court would take it up with just a letter. With public interest litigation, we still have a very active public litigation practice in India in the Constitutional courts, which has really led to a large expansion of the enforcement of fundamental rights.

Some of the examples of how public interest litigation was used when it was first started, during the early 80s, were to enforce fundamental rights of the most vulnerable, poorest and the most excluded, and the initial cases were bonded labour, removal of bonded labour, its system and exploitation.

Cases of public interest litigation relating to the health of workers, prisoners' rights (we had a whole spate of cases where there was torture in prisons and extremely bad prison conditions), and related cases of persons with mental illnesses who were in government homes and forcibly sterilized, including many forms of abuse.

Many of these cases were taken up by the Supreme court, as these rights were guaranteed under the expansion of the right to life. Some of these social rights guarantees were moved and brought into an expanded interpretation of the right to life, which is Article 21, a fundamental right under the Indian Constitution.

The court not only used the tool of public interest litigation but also expanded Article 21 to say that the right to life is, life with dignity, and if any person were to live a life with dignity it will include food, clothing, shelter, health, education and all that is worth living a life with dignity.

To date, there has been a creeping expansion of Article 21, issues of housing rights, health, and livelihood, where all of these were brought in and made non-negotiable parts of the right to life. They then became justiciable.

There was a very interesting case where the right to livelihood was part of the right to life, *Olga Tellis v Bombay Municipal Corporation* 1985 SCC (3) 545, a case where hundreds of pavement dwellers were being evicted from the pavements in Bombay. They were on the pavements because they had no other place to live, very much like the *Grootboom* case of South Africa and in that case, while the case was about eviction, they argued that not only was the case about eviction, but also because they worked in the city and if they moved, they would lose all forms of livelihood.

The court held that the right to livelihood is an important aspect of the right to life, this was really a landmark judgment which is cited even to date. Other important decisions included the right to life has been expanded to include important social rights guarantees, concern the right to housing and the right to education.

The right to health was guaranteed, not just in the case of emergency treatments, but all forms of workers' access to basic health. There was also a guarantee to the right to food, and basic meals for children in schools were made a constitutional guarantee under the right to life. Most interestingly, the issue of sexual harassment of women at the workplace was also included in the right to life.

In these ways, the right to life includes many social rights guarantees. In recent times of the COVID-19 pandemic, issues of migrant workers, health, and livelihood issues have been severely affected. Still, the Supreme court, which was once an activist, is kind of rolling back on some of these rights, resulting in great disappointment in India. You know, we are asking, when the Constitution has upheld many of these guarantees for us, why are the courts not implementing these

guarantees in times of COVID-19 and how do we use the Constitution to respond to such urgent needs?

6 6 Dr Anna Petherick (Departmental Lecturer in Public Policy and Researcher, Building Integrity Programme, Blavatnik School of Government, Oxford University), *International policies, commitments and treaties pertaining to gender and/or corruption, and opportunities for a more joined-up approach to both reducing corruption and improving gender equality.*

There is an international flavour to this panel which I wanted to embrace a bit, and before we get to the analytical tools to think about whether the policies are being implemented and designed in the right way, perhaps a comparison across countries would be a good start.

I want to take a step back and look into the international environment because recently I wrote a report for the UNODC about Gender and Corruption, and one of the chapters of the report was about international treaties and agreements and policies in the international realm.

As a political scientist, this was a bit out of my comfort zone, so I emailed a number of feminist legal scholars, particularly those with expertise on international law, and they kept turning me down.

Eventually, I wrote back to one professor, a specialist in feminist international law, and I asked why no one could suggest any readings to me about gender and corruption within their scholarship. Her reply: "I am afraid I do not know anyone who does work on gender in the context of corruption or anti-corruption in my field. This would be a problem for everyone you would try to contact."

So the first point I would want to make to this panel is that this space is very wide open, and there is a dramatic need to really understand the International Policy in the legal environment in the area of Gender and Corruption.

One reason there is a dis-scholarship is that legal efforts to address corruption and gender inequality have developed separately; they have not spoken to each other at all. On the corruption side, the mid-90s and mid-2000s were extreme, with an activity that culminated in the UN Convention Against Corruption which came into operation in December 2005.

On the gender side, as one of the speakers earlier mentioned, things got underway a bit earlier with the adoption of the Convention of Discrimination of all forms against Women at the end of the 70s, and concerns of CEDAW's effectiveness led to the Vienna Declaration and programme of action, which in turn led to the formal adoption of the Principle of Gender Mainstreaming in the UN and of course in 1995 in the Beijing Declaration.

What is really interesting here is that these two legal languages, when you read the law, are not natural bedfellows. They are separate revolutionaries, with evidence to be found in the wording. CEDAW and the Beijing Declaration explicitly focus on women's rights and it was agreed that there was a need for a gender asymmetric approach. In contrast, the United Nations Convention against Corruption (UNCAC) does not mention the word " women " or gender " anywhere.

The only real example that I am aware of where these two international concerns are coming together is through the SDGs, which are supposed to speak to each other. I wanted to point out that, first of all, there is a need to make better sense of how to bring these things together, but also from my limited experience in understanding international law in these two areas suggest that there is some examples through analogy, perhaps from what I have read in the area of housing. I read a few studies about how in the early 90s there was an interplay between the reports of the CEDAW committee and the UN special rapporteur on adequate housing. And they developed these normative synergies that guided the development of the interpretation to women's right to secure housing. They are an inspiration through analogy for what needs to be done regarding gender and corruption. We really want to know what the international environment is doing, and organisations are encouraging countries to do.

Opportunities as I see them:

There are opportunities in the fact that UN, UNCAC itself, although it was written some time ago, defines corruption, it avoids corruption, but where it does, it refers to bribery as an undue advantage. This is very broad language that includes non-monetary bribes and should include sexual corruption.

The issue concerns how some countries interpret it and the legal systems that made it very clear that sexual corruption does not fall within the quite broad statute about corruption and in others, it does.

And as far as I am aware, this was never contested in South Africa even though the statute about gratification is sufficiently broadly phrased, in my humble opinion as a political scientist. The second point I want to make is to just draw the panel's attention to increasing work in Human Rights in thinking about how it may address the issues of gender and corruption. There is an opportunity to move away from the reliance on criminal law, which allows for a different approach when thinking about corruption, a shift away from repression and these issues around accountability towards prevention. This may be an area where South Africa could be a pioneer in some way because the Constitution emphasises human rights. But of course, it is not straightforward, as human rights and anti-corruption do not always align very well in the area of privacy concerns. Another reason why it is somewhat difficult is that obviously the impacts of some forms of corruption, such as state capture, are vast across many, many people rather than individuals. But the third opportunity, and this is really about seizing the moment right now, I think the reason why I was asked to write this report for UNODC is that we are in a moment of political will to start acting on whatever knowledge is available. And that has really been the case since the #MeToo movement spread around the world. And there are numerous examples of this, not just the UNODC, but the G20 is very interested in this as well. I know the AU has held a gender summit at one of its recent meetings. Thank you very much.

6 6 1 Discussion: Question and answer session

Professor Thuli Madonsela: Dear colleagues, we have heard from two colleagues, one talking about how the Constitution itself can be leveraged as an analytical tool to track and promote progress in advancing women's rights, promoting gender equality and pushing back against corruption.

We have heard Dr Anna Petherick focus primarily on international tools such as the Beijing Platform for Action, CEDAW and others, and looking at opportunities they offer to push back against corruption, advance women's rights and promote gender equality.

I would like us to discuss how we turn these into everyday tools that decision makers can use as templates to determine the likely impact on gender equality. For example, here at Stellenbosch University we designed a tool that we call a gender impact assessment tool, and I will talk to you briefly about that just now.

However, we know that there are gender matrices. This morning I referred to one that we designed for the national school of government that is used. It is a 12-dimensional one that looks at various things, whether you are doing them from leadership to laws. Have you used data to assess the impact of this law or policy? Have you consulted men and women equally? And things like that. So that is a gender matrix.

There is also in South Africa something that is called SEIAS. It is called Social Impact Assessment Systems and was designed by the government itself. Ideally, or at least in terms of government policy, they are not supposed to pass anything without taking it through SEIAS. SEIAS has to ask, what is going to be the economic impact of this? What is going to be the social impact? And in doing so, disaggregate groups about economic impact on women, poor, older persons, disabled people, big business, small business, and so forth.

But all of these tools are disparate. Professor Sandra Fredman has her own three-dimensional matrix that looks at redress, inclusion and representation and there is Nancy Fraser who also has a three-dimensional tool.

This morning we heard about another analytical tool that has five dimensions. I hope you all remember the tool that Professor Wolff brought to our attention this morning.

For me, the question is, how do we bring all of these together to the point of a decision maker? For example, I spoke to the head of the National School of government yesterday, whose responsibility is to make sure that people in government make the right decisions. So this is an opportunity to influence him now, or people like him who train government people.

He has designed something that is modelled on how pilots are trained and they have to wear this thing like a helmet. It is designed in such a way that it is something you wear like a helmet and has certain dimensions that say, before you make a decision, think about what implications it will have for constitutional compliance, for the NDP, for audit findings, and so forth.

I want us to answer the question first: does having those tools matter? And, two, what tools do we know between us in this room? Third, is there a way of interpreting these tools so that decision-makers can have one frame of reference and make the right decision in terms of advancing women's rights, advancing gender equality and pushing back against corruption and ultimately ensuring that there is accountability for the advancement of women's rights?

Dr Anna Petherick: First of all, I want to say that they are very valuable, specifically because those who are often in a position to make decisions on behalf of others are those who are benefiting from existing power structures and if you like, probably would not have been exposed to the processes that affect people with less power in society. The question is, how do we design tools so that they are quick enough to use and simple enough to use for people who have to make decisions quickly and where they do not become an exercise in ticking boxes. I am not familiar with the idea of this helmet, but I think that kind of approach by something literally physically having to sit on your head before you make a decision could be very valuable.

Professor Thuli Madonsela: The UK, for example, is one place where they are exemplary to the extent that with the Equality Act you are required, before you pass on a policy, to sign off to indicate that you have complied with the equality duty in the act. Prof Fredman was concerned that this has created a whole army, a whole industry of quality impact assessment designers, and it becomes a case of ticking a box. More like the Black Economic Empowerment (BEE) facilitators or consultancy industry here.

But still, you are saying we need a tool, which is why we have this group of experts in the room that can help us.

I have been involved in designing at least three of these instruments, and I do not know, have you seen the nine-dimensional one? The first question it asks is what your purpose is and whether it is aligned with the Constitution and its values, including social justice.

The second dimension asks who the beneficiary of the policy about to be passed is? The third one asks, does the policy decision or law differentiate? In South African law, a proper equality approach is, thou shall not differentiate. But the truth is, in a

diversified world, the first question we should ask you is have you differentiated. That is my view.

So that is why this instrument says that. The fourth one says, have you used data and is it sufficiently disaggregated? The fifth question asks, will your policy confer a disproportionate advantage on any group? The sixth one is, does your policy reduce historical advantages and disadvantages because of the situation in terms of section 9(2) of the Constitution and section 7(2). The seventh dimension asks whether there is a group that is going to be advantaged or disadvantaged. And the eighth one is if you knew that one group was going to be disadvantaged, do you have a compensation strategy?

For example, when they were deciding that they were putting everyone on digital learning, the question here would be, have you checked if everyone can do digital learning? If they cannot do digital learning, have you made provision for access? I am hearing now for example, at university, as we are speaking, there still are students that have not received computers or data. But that is just social justice generally, it is not necessarily gender specific.

You could say the same thing about childcare. When they closed down ECDs and closed down family visits, the question that should be asked here would be, have you considered the impact on mothers and what is your compensation strategy for that?

Then, lastly, have you consulted the groups? That is in line with all the other tools that others have designed, but it is not enough that you are responsive to a group. Being consulted is part of respecting your human dignity and your agency. It is also part of destigmatising you when you are consulted because then nobody is looking down on you. You are being treated as an equal and not just as a beneficiary of policy, but also as somebody with the power and ability to design policies.

Mbali Mtshali: I am a law professional, and I am an admitted attorney, but I also am in the field of working as a company secretary in the non-profit sector. So, I am not exactly specifically in this field, but because of the SDGs and the policy, that is why I was drawn to this.

The reason why I find that the use of tools and analytical data is so vital is as a company secretary, it has helped me to assist in seeing real-time live action in terms of governance and being able to identify where you can see practically speaking live, real time, where if there is an issue you can pick it up and figure out where the issue

is. Is it with the board, or is it with management? If it is something that we can pick up, is it with an internal audit? These are certain things that we can use as tools.

My main question is, if we are looking at using these tools for the decision makers, then we actually need to look at, one, correctly speaking, who are the decision-makers at the table? Because these are the people that need to have an input when these instruments are being put together.

So, whether it is policy drafting, implementation or who the policies are being crafted for, who are the decision-makers and ultimate implementers of these tools? Because when it comes to using them, exactly like Anna had said, a lot of times, and I have seen this as company secretary, it is so easy to check box and especially as a female in this industry, I have especially observed that.

The other thing I had noted is, when policymakers had considered the issue of access to justice and the tools, not only did we have to look at do the students have laptops, we also had to ask whether they even have access to the infrastructure of a signal tower, to have airtime or data to access those tools?

It is not enough to just have these tools, and there must be total alignment between the policy, the tool, implementation, and finally the enforcement of it so that there can be holistic social justice.

Muriel E: I totally agree with Mbali in terms of the drafting of the policy. And I was also thinking in terms of where I am currently working where you have your executive where most of the executive is only working on compliance and not thinking in terms of who is the external party that assessed them in order just to see the governance within the institution and whether there will be a governance framework to see whether those executives are doing the right thing.

Because they cannot play judge, jury and executioner over themselves and just have an external body to do that assessment, whether they are complying. Also, do they go the extra mile, do they have the interest of the institution at heart, driving the institution forward? This is not about compliance but what is good for the institution and driving the institution forward in terms of social justice.

Professor Thuli Madonsela: Muriel is also saying it is important that even if you have the tool, you differentiate between the person who has to comply and somebody who has to monitor compliance.

At the beginning, after the Beijing Platform for Action was adopted, governments were required to have gender focal points that were supposed to design tools for mainstreaming gender and then they would become the enforcers. Somebody was telling me that the gender machinery is dead because the expectation was that everyone must do things themselves.

But from what Muriel is saying it looks like we killed those gender focal points too early. You still needed somebody to oversee things for lack of a better word. But maybe I am wrong, and the gender focal point was not the right overseer. Maybe there are other ways of overseeing progress, like gender commissions, courts, as we have heard from India. And here in this country also, courts are playing an important role in moving the needle.

Dr Anna Petherick: Thank you very much for all of your comments. Some really great points have been made. There has been a really nice arc to the conversation where Professor Madonsela started by talking about the need for differentiating a little bit more. Then, a fantastic nuance was added by asking whether people in different positions can use the same tool.

When it comes to focusing on the current problem and in the COVID-19 environment, when a lot of laws need to pass quite quickly, we can think about different tools for different speeds of policymaking.

Some of the tools that have been discussed that require big data, for example, are not quick things to do. And this is how we have this great industry, as you noted, Professor Madonsela. These guys, there is a tender, they get their contract and they go and work on it for a few months. We do not have that to work with right now.

Certainly, in the UK context where we have this environment, because this is the way it is done, gender mainstreaming in the UK, all of this has just been completely circumvented in the era of COVID-19, and gender mainstreaming simply has not happened at all.

One option where there is a genuine need for new rules to be put in place very, very quickly would be to require that in the process of making decisions in whatever policy area, that you have experts in, not just if you like from gender, gender experts, but experts who are really knowledgeable about different areas of social injustice in a country and these people genuinely have a voice in the process of making policy recommendations.

Where policy can take a little bit longer, that is when you can do your studies to look at relative impacts on different groups and add a lot more if you like meat on the bone. One thing that I am always very conscious of is that when studies use sex-disaggregated data, this always calls for more and more sex-disaggregated data, which I support, but it is really about how you use this information that matters.

As I said this morning, there is not enough consideration of intersectionality, particularly in the area of gender and corruption. And, frankly, all gender studies should be intersectional. And that goes for thinking about the tools that come into play when we are thinking about mainstreaming and designing good policy.

If you have a really, really long time, ownership of policies is central for anyone who will push them through. That is when you do not necessarily use your consultants who will go and crunch some data for you. But you really use that as the basis to bring in people within your company or your political party, whatever it is, who are from groups who are under-represented. But also to have people in your company go through the exercise of reaching out to those groups themselves and listening. But that obviously takes a lot longer.

So I guess I wanted to take what has been said so far about differentiation and then try and push it forward a little within the current context of urgent decision-making. To think about not just a different number of parts to our tools, but how many parts are sensible depending on how long we have to create new policies, whether in the corporate sector or in government.

Professor Thuli Madonsela:

Thank you, Dr Anna Petherick. My colleague has basically indicated that we need to be careful about what kind of instruments we are going to use because these decision-makers do not have time like academics, they need instruments that can be used immediately.

It seems to me that what is emerging seems to be a suggestion that you could have generic instruments but be careful about instruments for people who have to make decisions, whether as parliamentarians. I can imagine as Dr Anna Petherick was speaking, I was imagining a state law advisor who has to certify that a bill complies with the Constitution. What kind of instrument would work for them.

We have designed this matrix from our side, but what we hope to emerge from this conversation is, should these instruments be combined? Because, for example, the

SIAM is only looking at social justice. Government's SEIAS is looking at social and economic impact. And obviously, somebody else might design an instrument that is looking at environmental impact. And somebody might also look at the broad justice gap. Is this instrument going to foster justice?

Professor Cathi Albertyn: Thank you, Professor Madonsela. Just maybe two points. The tools that come from Nancy Fraser and Sandra Fredman's tool, works with Nancy Fraser or Iris Marion Young that Jonathan Wolff was talking about, or even Jonathan Wolff's own work in disadvantage are at too high a level of abstraction for my mind to be workable tools for government.

Because what they are really trying to do is at quite a high level, they are trying to talk about what equality means. So, Nancy Fraser's work is really important for saying equality is not just about social equality, it is also about economic equality and political equality.

So they can provide a frame, but you need, as you yourself have said, a far more targeted detail for something to be useful for government officials and policymakers. So, I would take those just as conceptual frames that need to be broken down into categories, subcategories, and questions that are particularly targeted at particular kinds of outcomes.

Professor Thuli Madonsela: Thank you, Professor Albertyn. What would you suggest we put forward? Do you think it is a worthy exercise to try and influence decision-makers to use some analytical tool at the level of planning? And those who are responsible for monitoring progress, like the planning commission, is it useful to assist them with some analytical tools that can make them better decisions?

Judges themselves often look at how it will impact the client in front of them or this justice seeker in front of them, but not all of them are equipped to look at what will impact people like this person. For example, there is a case at the Pretoria High Court of *the NEF versus the Public Protector*. The judgment is shocking to me. The way the judge sees this woman as a non-person. When Professor Jonathan Wolff was talking about looking down at a person – this judge does not even look down at this woman. She does not exist. All he is concerned about is the pain that the NEF would experience if it were to do the things that I thought it needed to do as a Public Protector

to prevent people from suffering the pain that had been suffered by this particular complainant.

Just back to you, Professor Cathi, as we are trying to wrap up this conversation, is there any point in looking at analytical tools? Where should we take this conversation? Because we all agree that the situation is not where we want it to be 25 years after the Beijing Platform for Action.

Professor Cathi Albertyn: I think that you are doing different things for different constituencies. So you cannot give judges a tool, you can give judges training. You can go to the judicial education institute and offer gender training to judges, but they build their own tools through their jurisprudence and we influence that in different ways. Much as I would love to give the judges a tool, you might need different things.

CHAPTER 7: CONCLUSION, RECOMMENDATIONS AND FURTHER RESEARCH AGENDA

Conclusion

The COVID-19 pandemic has caught us as a nation off guard. It has highlighted a pressing question of our times. Who is accountable for ensuring gender equality and reduce corruption?

Gender equality cannot be achieved without recognising, and addressing, the fact that individuals face different, often contextual and intersectional forms of discrimination (for example due to gender identity, sexual orientation, class, religion, caste, ethnicity, age, disability, and location, among others).

It has also been shown how the issue of accountability and corruption must be addressed as a societal issue that impacts deeply on the economy, and vice versa.

The inquiry has found that corruption disrupts the achievement of gender equality and affects men and women differently. Corruption impedes sustainable development and economic growth in developing countries. Further, it marginalises already vulnerable women living in poverty, putting basic public services and goods out of their reach and leaving them lagging behind in the economic, social and political development of their country. Gender inequality also interferes with women's ability to advance at all levels of politics and decision-making, which impacts their ability to claim their social, economic and political rights.

While the pandemic has highlighted gender disparities and reinforced them, it also shows us how they can be rectified by policy action grounded in a constitutional framework committed to the constitutional values of human dignity, freedom and equality. Achieving gender equality and the empowerment of women is a constitutional imperative and integral to all of the SDGs, specifically under SDG 5. Moreover, COVID-19 has demonstrated the importance of good governance to social, political and economic imperatives to end corruption and to ensure accountability and gender equality. The golden thread that we need to tug on, the thread we need in our needles, is the law.

Innovative ways to support women's access to justice and empower them to realise their rights is of the utmost priority. We urge the government to recognise the importance of a social justice framework where the focus is on addressing deep-

seated structural inequalities within our society. Social justice is egalitarian in nature and seeks transformation and change in the world. It is about the just and fair distribution of all opportunities, resources, privileges, burdens and benefits in society.

Recommendations: Introduction, opening remarks and keynotes

- To achieve long-term change, policymakers need to affect the processes that maintain gender inequalities and that leave room for corrupt activities, thereby requiring a systems' change.
- Radical interventions, such as public-private partnerships are needed.
- Theory building remains important – there are people who believe that nothing is as practical as a good theory. Words make worlds, words form and transform worlds.
- Society requires a greater knowledge of the law and the rights of individuals at root-level, as well as a greater understanding and clarity of the roles of the law and government. This all revolves around the importance of education, starting at an early age, as tertiary education may only reach 6.7% of the world's people. It would be one of the biggest contributions to Goal 5 of the SDGs (to achieve gender equality and empower all women and girls) and to social justice if our schools taught rights and the laws that protect those rights as a subject as essential as maths or language or, indeed, history or geography. In addition to knowing the laws that can help and protect everyone, young people must be taught what they can reasonably expect from government.
- Proper implementation of the NDP is key: It is built on six pillars and seeks:
 - **Accountability of government**, the private sector and CSOs;
 - **Prevention and rebuilding social cohesion** – in ensuring women's safety, accountability is achieved; rebuilding social cohesion requires evidence-based interventions to be preventive rather than reactive;
 - **Justice, safety and protection** – government must ensure that reporting results in justice, without bribery;
 - **Response, care & support and healing** – as a nation, while we come from a brutal past, we failed to heal this brutal past, thereby perpetuating abusive relationships;

- **Economic power** – we cannot, as a country, talk about women’s empowerment if we do not put money in the hands of women. In the 26 years of democracy, even though women make up more than 51% of the population, very few women have benefited from the government’s incentive schemes and preferential procurement policies, requiring a refocus on access to land and financial services for women without collateral, so that that they can benefit from the programs and policies that government has put in place;
- **Research, information and management** – evidence-based interventions supported by data, research and having information at our fingertips will highlight the most abused communities and the type of problems that such a community might experience to ensure that we are action-ready with a knowledge of interventions at community and local level.

The relationship between gender, corruption, accountability and advancing equality

- Transformative substantive equality enables equal legal rights and addresses systemic barriers in society, including lack of accountability that limit the advancement of women. This requires thinking about the root causes of corruption and inequality. The solution lies outside of the law, in social attitudes. Corruption is a learnt behaviour rooted in our history. We must unlearn the fundamental rupture in our society as provided for in our Constitution and our law.
- An open definition of corruption (the misuse of entrusted power for personal gain) allows for a consideration of the gendered dimensions of corruption and for seeing the different aspects of corruption. The need to separate the direct effects and indirect effects of corruption speaks to how women and men’s gender roles expose them to specific kinds of corruption.
- A gender lens is key to developing effective programmes and projects to combat and prevent corruption and achieve sustainable development and transformative substantive equality, including anti-corruption initiatives addressing corruption that disproportionately affects women.

- Holistic and preventive approaches that address the root causes of women's vulnerability ensure legal identity for women; advance women's land and economic rights; eliminate discriminatory legal regimes; support women moving from informality to formality in employment.
- Legal empowerment of women, evidence-based interventions including legal information and education, and local community-based paralegal support such as the church and police force.
- The education space provides an opportunity for intentional transformation and actions of the values necessary for the inclusive participation of a diversity body that seeks to achieve equality and intervention. Institutional accountability entails:
 - Respond to issues of universal access, including mental health, GBV, food security, student accommodation and resources to study, as well as registration and tuition fees.
 - Meet each student where they are with dignity, value them as they are with an understanding of the complex levels of inequality in the South Africa education system.
 - Treat one another as equals, demonstrate mutual respect, and embrace each student's diversity and complexity as human beings that need to be supported and to learn to function well with it. Students come with knowledge and experiences and therefore should be given the space to contribute and define their journey's future.
 - A commitment to provide differentiated but equal support. Leaders must be true to the brand, commit to work with the students and bridge the gap to ensure equal access with success and be conscious of our students' diversity. Some of these are first-generation students, differently-abled students with disabilities. An example of a community that needs support is the LGBTQIIA+ students from poor socio-economic backgrounds and highly privileged students. Each student requires different tools to manoeuvre each year of study as circumstances change. Each generation of students has different needs; therefore, the support system needs to be involved and relevant for institutions, executive leadership teams, and students to remain accountable on this journey.

- Requiring organisational ownership and a commitment to transform and shape institutional culture. To be inclusive and to value equality and demonstrate it. To create a developmental environment appreciative of gender diversity and equality.
- Disrupt the cycle of exclusion and inequality. Getting rid of feelings of entitlement of superiority and assigning inferiority to others.
- Executive leadership teams in the institutions need to be accessible and ready to account; a platform for discussion is important.

Corruption, accountability and social justice in the economy

- Substantive policy and plans of action must be drawn up in order to fundamentally create platforms upon which women can be uplifted to participate on an equal footing.
- Despite the widespread knowledge of the above state of affairs, government rhetoric surrounding COVID-19, as well as other high-impact economic events, has continually shifted responsibility to the citizens of the country, often in the form of instructions that the majority cannot realistically follow. This is true, for example, of stay-at-home mandates and frequent hand sanitisation. Rather, the initial burden of creating frameworks and sustainable economic environments must be borne by the government and the private sector, both of whom have the mandate and the resources to tackle these issues.

THEMATIC AREAS

Thematic Area 1

Assess the impact of the Constitution on women's human rights, particularly women living under customary law

- Emphasis must be on democracy from below, through committed political processes and law that sees and supports women.
- When we make laws, it is always important to remain committed to freedom, public participation and democracy.

- Legislation should create space for people to contest it locally, with required guidelines on boundaries and/or values.
- Accountability requires real and valued institutional responses. This necessitates knowledge, an awareness of rights and an encouragement to be participants in certain decisions.
- In order to advance urban and rural land justice, it is important to ensure a space where people will be at the centre of making demands for access, for example to affordable and dignified housing and services. A successful example here is the movement called Reclaim the City.
- Women's rights must inform living customary law, in national law and traditional law-making. This will help relieve some of the tension between state law and living customary law regarding women's land rights, when women are involved and heard in the formulation of solutions, and if it is ensured that women participate in the decision-making processes, especially on matters that affect them. This should then also translate into women being more involved in national and traditional law-making. Women's rights must inform living customary law, in national law and traditional law-making.
- There should also be a clear move away from apartheid laws and thinking, and it should not be used as a blueprint when laws govern "communal" land – communities should define their boundaries in a participatory process. Added to that, individuals should have the choice to opt-out of a community that is governed by traditional law.
- In securing tenure rights, legislation should rather create the space for people to contest it locally, by setting out the boundaries or values that must be there. People make their own choices.
- We need to move away from sole reliance on the state without moving towards the reliance on private property, the common law and old structures towards finding something in between. What can we learn from customary law? The concept of restorative justice is entrenched in African societies. The idea that African society is injured when there is an injury like corruption, the whole society suffers. This requires a holistic view that searches for solutions in society and not only by looking at particular parties.

- Another way to hold the state accountable is for citizens to activate actions or any kind of demonstration immediately affecting them and their difficulties. Defining, shaping and categorising the nature of core demands and actions for holding relevant state parties to account is a large aspect of the difficulties involved, as those in power may not see it as an issue, or their role to address that issue and address it as a matter of urgency.
- The importance of activism - poverty is being criminalised in many spaces by almost all levels of government. It attempts to hold government officials accountable is often met with serious violence and brutality. This speaks to the ongoing challenge to articulate issues and to safeguard those citizens taking action.

Thematic Area 2

Consider the impact of corruption on advancing gender equality, particularly in the face of COVID-19 state procurement and social and economic relief delivery.

- Commitment and political will to appoint the right people who understand gender analysis and gender budgeting – the gender desks are to monitor gender mainstreaming in the state.
- The Ministry of Women must work towards winning the trust of women who are interested in gender equality, and that really has to start with the implementation of the National Strategic Plan on GBV.
- The joint monitoring committee on the quality of life and the status of women is like a portfolio committee, but it has oversight over all the state departments. That committee has been dysfunctional for nearly ten years. It needs somebody to be appointed to that committee to do the oversight work for which it was established.
- We need to go and look at what is happening around the appointment of commissioners and the CEO for the CGE as there are allegations of corruption in the process.
- Deal with the structural issues first. We have many laws, but we are not dealing with the actual problems. Having a new, for example, anti-corruption agency or having a new law will not necessarily deal with corruption.

- Have hard conversations around corruption at smaller levels. Because corruption really starts with you getting a traffic fine on your way to work in the morning and paying off the R50 cold drink, as they call it or stealing something from somebody.
- Look at the ethical side of our society and the morality as well. We need to go back and instil *ubuntu* at all levels.
- When designing new legislation, it should fit the purpose in the sector it is designed for.
- Besides a national procurement policy, we should have sectoral procurement policies linked to education, health care, or other different sectors that bear in mind the nature of the sector you are buying in and the impact of what it has.
- Wider consultation when policies are made, not just on a gender basis, but to pull in diverse experiences of how it has gone wrong, thus what is needed is a combination of gender and experience.
- Make our legislation more practical. We do not fail in South Africa for having beautifully written legislation, we fail for its implementation.
- Salaries should be gender- and race matched.
- Difficult to survive in the health sector as a single-person business. You have to get to a critical size, and you need to develop the relationships as well.
- The processes by which many forms of corruption occur and the social structures that facilitate these processes tend to act against gender equality. The government must re-consider the constitutional elements that require guidance, effectiveness and value for money, with every procurement decision being cost effective.
- Make decisions based on products outcomes.
- Link cost-effectiveness to care and re-inspire a procurement system in South Africa that is focused on the needs of patients first and foremost. Also, consider the needs of doctors and nurses.
- Pull the experiences of national health services in as well, for example, National Health Scotland or university hospital groups in the UK.
- Develop good relationships with suppliers and partner with them in finding a product that initially meets the needs that were scoped out. Focus on delivering care for patients with innovative products that deliver good, quality outcomes. In

terms of PPE, the publication of catalogues and transparency of preferred service providers are needed.

Thematic Area 3

Assess the impact of the Constitution on women's human rights impacted by GBV and poverty

- With regard to access to justice compensations, damages are not necessarily inherently problematic, but people in communities need to be informed that this does not mean one does not have the option to go to court to open a criminal case. The law allows this in delict and in criminal matters. Victims can still be heard in the court.
- Under the Victims Compensation Fund, the state compensates victims of sexual violence. Victims are compensated for their psychological and physical trauma, which could match the actual trauma to a fair amount. Under the Victim Services Bill that is out for comment, the state will represent victims of sexual offences in getting damages from their offenders. However, there might be no point, because of the fact that these perpetrators have no real money. But with the fund, compensation can be achieved compared to your actual trauma.
- In terms of the Sexual Offences Act and Children's Act, there is a duty to report any sexual violence or offence committed against a child. This means that everyone has the duty to report rape to the police when a child has been raped, because children are more vulnerable than other individuals, thereby emphasising the need to report this.
- Although a cultural sphere around compensation exists in South Africa, it goes against victims' rights. It requires educating communities around the rights of victims and the legal system.
- Getting information to communities in rural areas is particularly important, because the issue of paying damages is prevalent in many villages. Survivors, even when they are not children, must be made aware to know that, for example, even if the perpetrator has given a cow or such reward to the family, victims still have the right to open a case.

- Guidance can be obtained from international bodies and organisations working against corruption.
- Acknowledge South Africa's commitments under UNCAC and CEDAW, the broad framing of "corruption" and "bribery" under the former, and the CEDAW Committee's recommendation that violence against women is a form of discrimination, which seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men.
- Under the UN Convention Against Corruption, any way of achieving undue advantages is considered corruption. Cases such as these mentioned above, where money is paid or any other advantages are being used to achieve such a purpose, would be considered corruption. This is being addressed with the International Association of Women Judges, so that people do not automatically connect corruption with only undue monetary and financial advantages.

Thematic Area 4:

Explore analytical tools for aligning policy, legislative, regulatory and jurisprudential interventions with international, including SDG, constitutional and legislative social justice commitments

- Undue hardship inflicted on certain groups such as women, rural communities, township residents and economies, those with mental health and disadvantaged learners and students, among others, can be prevented if the government uses disaggregated data and data analytics and involves all end user groupings in the policy design process.
- Government needs to give due regard to the equality duty and related social justice obligations in COVID-19 policy responses and all other policymaking processes.
- Policy action grounded in a constitutional framework committed to the culture of justification that we embraced as a nation by adopting the Constitution, which places the rule of law, incorporating an accountable state, at the core of our constitutional democracy.
- Policies to address gender inequalities and corruption have synergistic potential. Measures to improve substantive gender equality have the potential also to

reduce corruption. Measures to reduce corruption have the potential also to improve substantive gender equality.

- Accountability operates within a social environment that tends to hold women to higher ethical standards than it does men. To avoid gendered impacts, accountability policies should be designed with a gender mainstreaming approach.
- Effective anti-corruption and substantive shift in gender inequalities often require long-term institutional reform projects. Ideally, these should be seeded such that they last across political cycles.
- Data-driven solutions support legal needs surveys and reporting on SDG 16.3.3.
- Recognised that, in the era of COVID-19, when rapid policy responses to unfolding events are often required, substantive gender mainstreaming is still possible by including gender experts throughout the policy development process, whereby the likely gendered impacts of new policies are assessed with sufficient time to make adjustments to them.
- A substantive, rather than descriptive, assessment of gendered policy impacts, which is alert to intersectional variation in gendered experiences, should be committed to.
- Rather than headcounts of women involved or appointed to particular roles, the impact of policies should be considered in terms of how they affect the gendered structures in society by which some have less power and opportunity than others.
- A gender perspective assesses the implications for women of any planned action, including legislation, policies or programmes, in all areas and at all levels, making women's as well as girl's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres.

Further research agenda

There was consensus that further research and/or roundtables was needed on:

- The causal and influencing factors of GBV
- Sex-tortion

- Analytical tools
- Women living under customary law

THE END