



SOCIAL JUSTICE AND POLICY TRENDS: LESSONS FROM COVID-19 REGULATORY IMPACT

Prof Thuli Madonsela

SASUF SEMINAR – UWC

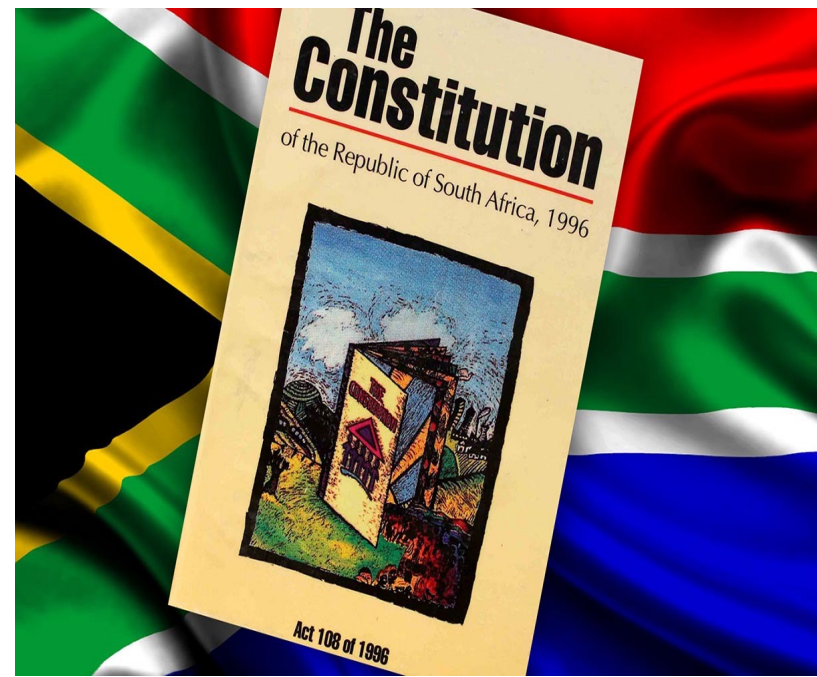
30 March 2023



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OVERVIEW



SUSTAINABLE DEVELOPMENT GOALS



LESSONS FROM SOCIAL JUSTICE AND POLICY EXPERIENCES

Social justice policy impact studies have parallels with gender mainstreaming approaches, which have been systematised in policy, law reform and programme design, implementation and impact assessments, since the Beijing Platform for Action (BPA) in 1995.



Handbook on Gender Management and Leadership

Practical Ideas on Gender Mainstreaming and Other Effective Strategies for Promoting Gender Equality

Thuli N. Madonsela



ABOUT THE AUTHOR

Thuli Madonsela, a Human Rights lawyer, gender specialist and policy analyst who holds a BA Law (UNISWA) and LLB (Wits), is the Managing Director of Waweth Law and Policy Research Agency and Executive Chairperson of the Centre for Reconciliation and Equality Studies (CRES). The author of several articles, book chapters, papers, reports and speeches on various aspects of gender, Thuli Madonsela was one of the 11 Technical Experts appointed to assist the Constitutional Assembly in drafting South Africa's new Constitution. Her post graduate and vocational training has included equality and non-discrimination, gender studies, strategic and scenario planning, project management, leadership, women leadership development, governance, mediation, arbitration, negotiation skills, adult education and Emotional Intelligence.



A former Deputy Head of the Planning Unit of Justice and Constitutional Development, Thuli Madonsela was also a member of the South African Women Lawyers Association (SAWLA) and served as a member of the Equal Opportunity and Affirmative Action Board at the Deputy Director General level, for the Equality Commission. In this capacity she conceptualised, co-edited and co-authored the Resource Book for Equality Court Cases. She was also a member of the Commission for Employment Equity (CEE) and in this capacity she contributed to the drafting of the Employment Equity Act. She has also served as a member of the African Labour Development Trust (SALDT). She is

She is a co-drafter of the Promotion of Access to Information Act, the Employment Equity Act, Draft Legal Services Charter, the Justice Vision 2000, Employment Equity Policy, the Draft Legal Services Charter, South Africa's National Policy Framework for Gender, the Provincial Gender Strategy of the Northern Cape, the Children Addendum to the SADC Declaration, and the SADC Declaration on Gender. She chaired the session of SADC Ministers of Justice and Law in Durban, March 1998. She is also the author of Equality Jurisprudence in Landmark Cases.

A researcher for many years, she has published on a wide range of subjects, mostly on equality, constitutional law, and human rights.

LESSONS FROM SOCIAL JUSTICE AND POLICY EXPERINCES

*As long as there is injustice
somewhere, there cannot be
sustainable peace anywhere.*

*As long as some are excluded,
optimal and sustainable human
progress will remain elusive.*



THE GIFT OF COVID-19 TO SOCIAL JUSTICE

VOICE IN THE WILDERNESS

Our SCOPRA Policy Statement and Policy Brief in April 2020

9. *Have all affected groups been consulted or involved in the policy design and afforded opportunities to influence the design and possible rethinking of potentially unduly harmful impact.*

General Observations and Conclusions

Policy responses to COVID-19 show a level of appreciating that preexisting racial, gender, age, social class and geographic disparities predispose any epidemic to a disparate adverse impact on disadvantaged groups. However, it appears that more attention needs to be paid to the use of disaggregated data to predict the likely impact of any intended policy on poverty and inequality and avoid undue harm. Some of the Disaster Management Regulations, Directions, Guidelines, Statements and By-Laws seem not to have considered the likelihood of preventable and unequal adverse impact on disadvantaged groups in the policy design. Examples include public transport users and the informal economy, which are the backbone of township, rural economies and the livelihoods of a significant cohort of the middle class. The impact on family life, particularly parenting, needs better consideration and so does the impact on education, mental health and social cohesion. The impact of school closures on food security for children, child-care arrangements for the poor were not factored in the planning process. It also appears that poverty and inequality and geographic disparities in internet access were not considered in initial policy decisions to temporarily shift to online education. I

The disaggregated data and participatory inadequacies are apparent in the fact that COVID-19 Regulations, Directions, Guidelines, Statements and Bylaws imposing one size fit all movement restrictions have unduly harmed some groups more than others. The paucity of disaggregated data anchoring and inclusive participation in policy design, is also apparent in that the Social Relief and Economic Support Package (SRESP) primarily focusses on health and the economy despite the impact of the physical distancing disaster management policies transcending life and livelihoods and impacting on education, family life, communication and mental health,

² The presumption here is that poverty is an inequality issue and that an equality impact assessment will invariably include social class disadvantage mitigation or exacerbation.

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THE GIFT OF COVID-19 TO SOCIAL JUSTICE

REALITY BY 2022

Not only did inequality expand during Covid-19, threatening SDGs and the peace agenda, there were new entrants among the poor or disadvantaged at the lower echelons of social gradients and new dollar millionaires at the top end of social gradients (Story of Nthabi Molefe's manufacturing business plus Lockdown Impact on Township Business Report, Pregnant children and those that dropped out of school or university, Food and Nutrition Security Anecdotes). The opposite lesson was the democratization of access to health services and, later, income assistance though imperfectly done in that was not tailored the reality of many.

Affected areas regarding worsening inequality included:

1. Economy and Economic Rights (Market Access, Income, Wealth, Business Ownership, Jobs)
2. Health – Mental Health
3. Education
4. Food Security and Other Social Rights
5. Rule of Law and Policy Tracking
6. Gender (Incl. GBV)

WORLD LEADERS IN 2023

UN Sec General, Antonio Guterres: Firm pronouncements on the importance of advancing equality on World Social Justice Day 20 Feb 2023 and has noted the diverse impact of the Covid-19 black swan on SDGs

ILO: Issued a strong statement on social justice on Feb 2020, 2023

President Ramaphosa: Firm commitment to social justice in Keynote Address to Constitutional Conference, 22- March 2023 25 Years

(2023)

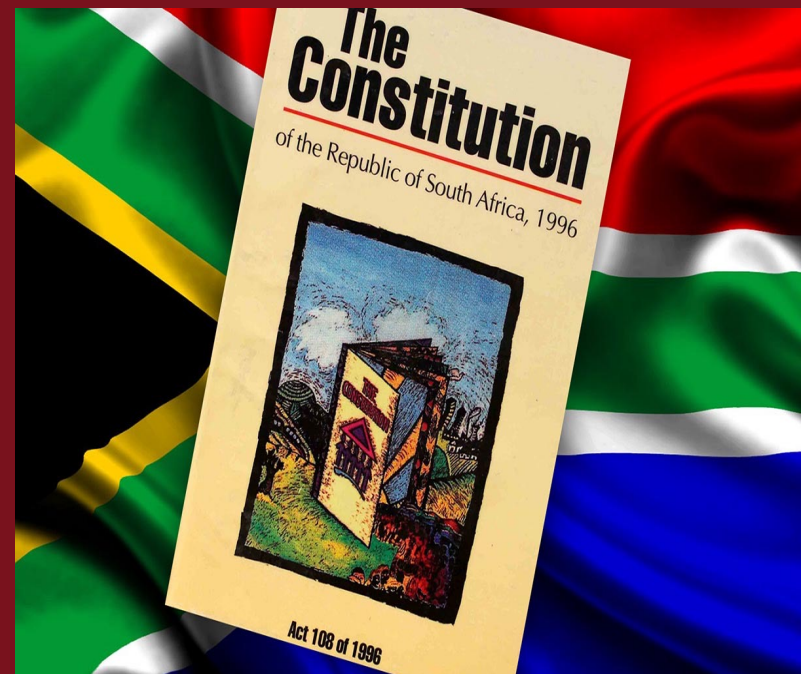
THE GIFT OF COVID-19 TO SOCIAL JUSTICE

The reality is that the duty to advance social justice and to eschew policies, laws and programmes that exacerbate inequality and poverty, was there long before the Covid-19 pandemic. Examples of normative standard instruments imposing an equality duty include:

1. UN Charter
2. UDHR
3. ICESCR
4. ICCPR
5. ACHPR
6. CEDAW
7. ICERD
8. Maputo Protocol
9. National Constitutions: e.g. SA's s7 read with 9, 237 and 233

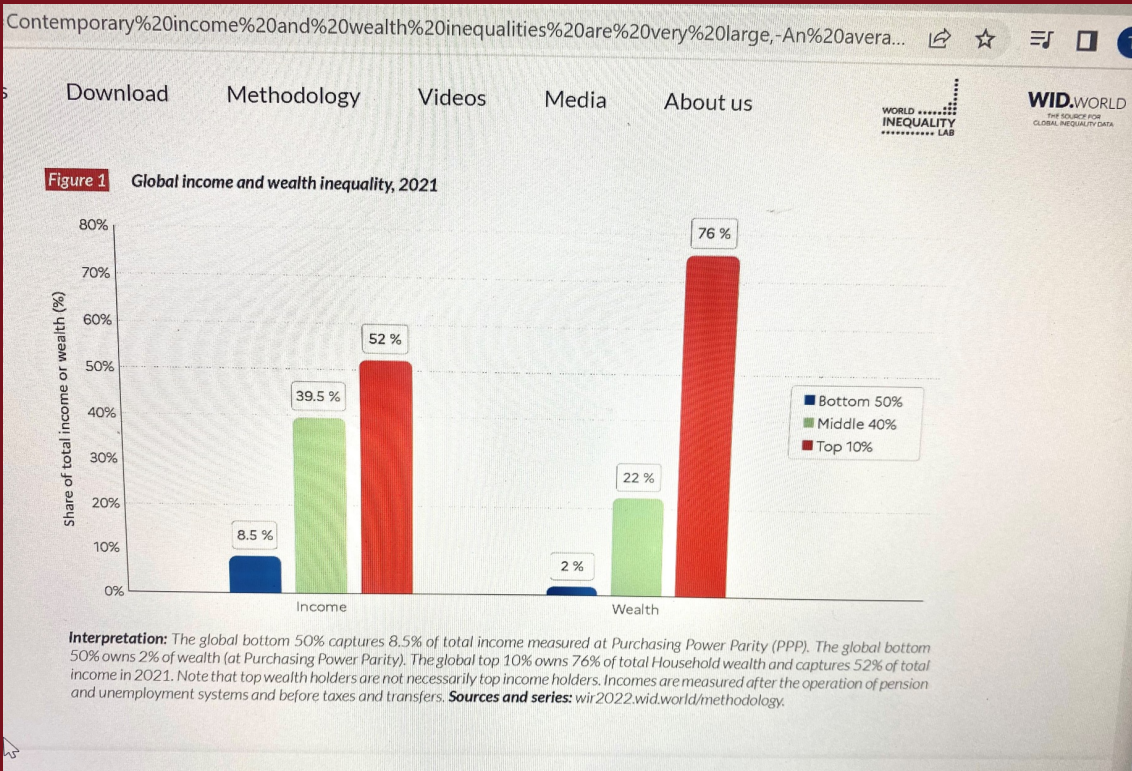
"The people of South Africa are committed to the attainment of social justice and the improvement of the quality of life for everyone. The Preamble to our Constitution records this commitment. The Constitution declares the founding values of our society to be "[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms"

Grootboom (Para1) Also see Van Heerden and Makwanyane, which views social justice as a dimension of Ubuntu.



SUSTAINABLE DEVELOPMENT GOALS





52 % = What the richest 10% take of global income



8.5% = What the poorest half take of global income



Wealth inequality is worse



2% is what the poorest 50 % own



76% is what the richest 10% own



The to richest got richer during Covid-19 with more dollar billionaires created [World Inequality Report 2022)

THE GIFT OF COVID-19 TO SOCIAL JUSTICE

The acute disparities in the social gradient were obvious before Covid-19

PREDICTING POLICY IMPACT THROUGH THE 9 DIMENSIONAL SIAM

The Centre for Social Justice(CSJ)

is a platform that undertakes research, innovative policy tools design, training and stakeholder management to promote social justice scholarship and consciousness, public policy design skills and collaboration, in academia and society, to accelerate social justice reform.

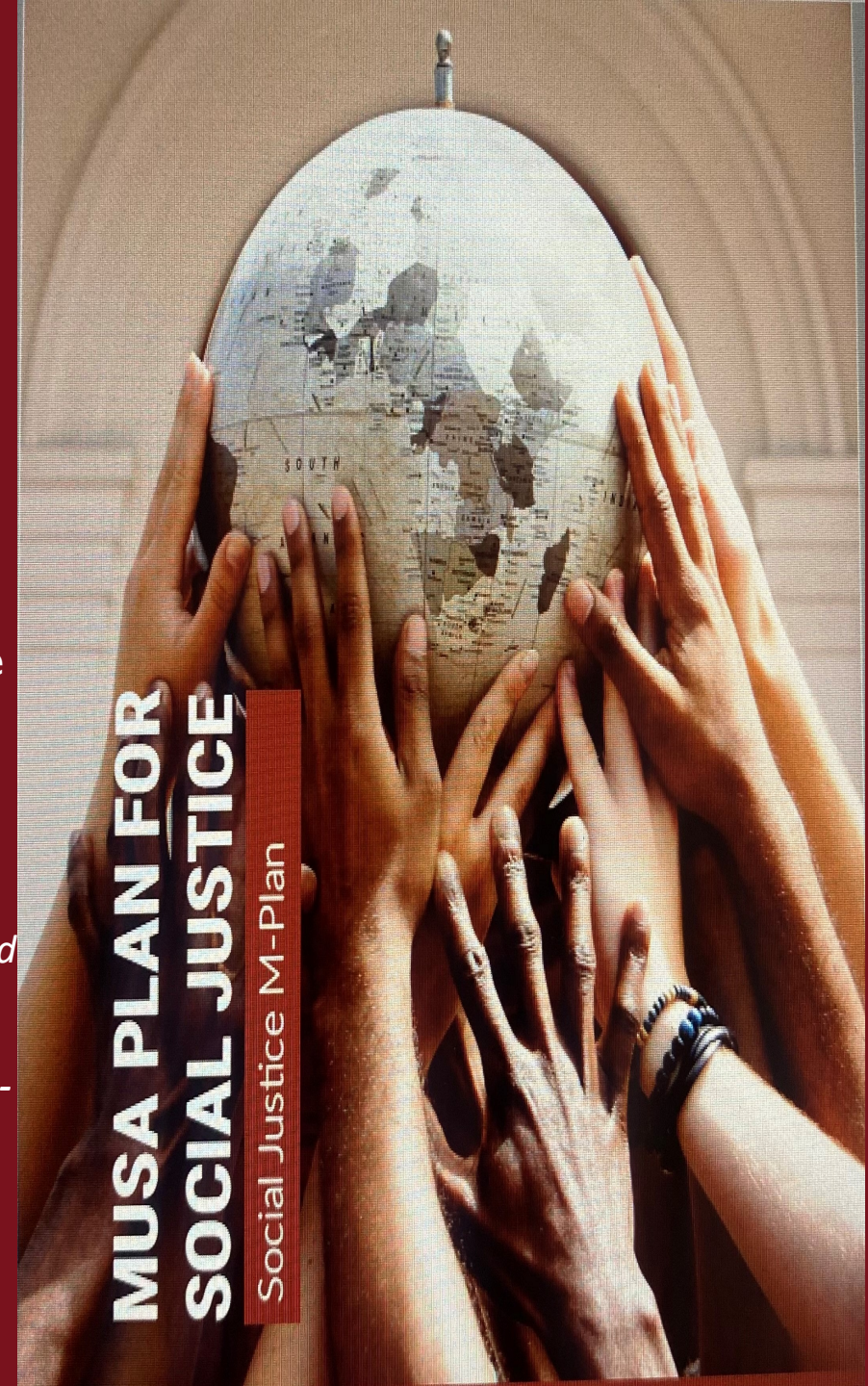
Social Justice

A concept coined by Italian Jesuit philosopher Luigi Taparelli in 1843, is:

A state where there is "...equal enjoyment of all rights and freedoms – reflected in the just equitable and fair distribution of all opportunities, resources, privileges benefits and burdens in a society and between societies"-
CSJ-SU, 2018

Note Rawls(1971), Copenhagen Declaration (1995) and Van Heerden 1995 and Fraser (1998).

Note Vienna Declaration regarding F& N Security and comment on conceptual plasticity of social justice



**MUSA PLAN FOR
SOCIAL JUSTICE**

Social Justice M-Plan

PREDICTING POLICY IMPACT THROUGH THE 9 DIMENSIONAL SIAM

SIAM seeks to restrict unintended harmful effects of social policy and related laws and programmes on some groups, to a social laboratory setting so that when such interventions are unleashed on humans, they have been adjusted and tailored to economic and social the realities of all and to disrupt inequality and poverty in line with SDGs 10, 1 and 5 plus international and constitutional equality obligations.



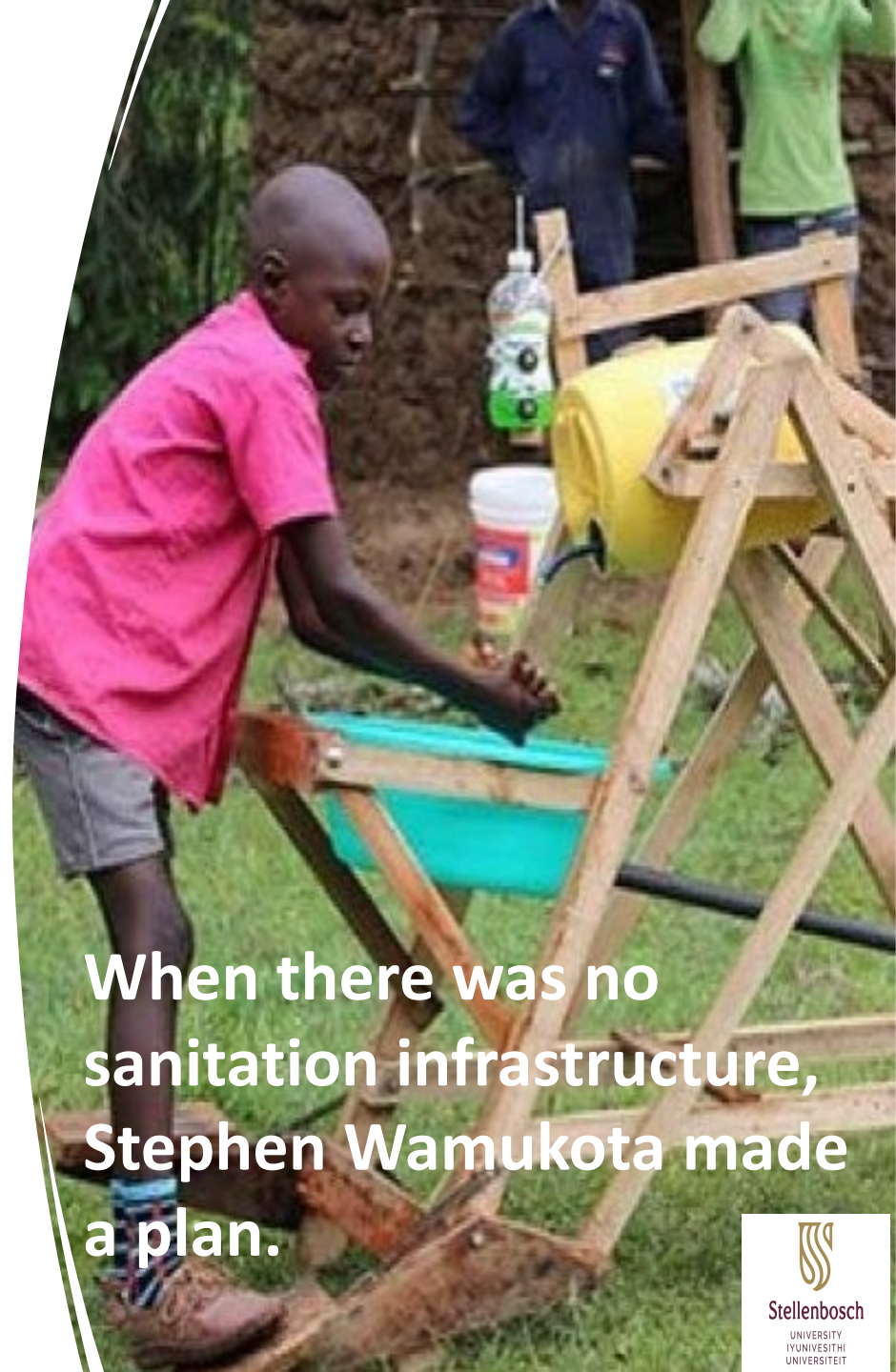
A properly planned garden takes into account the nature and unique needs of all species in the ecosystem to ensure all thrive equally.

1. SIAM informed the prediction in April 2020 that Covid-19 containment measures that focused on restricting the movement of persons and goods and forced commerce to go digital would impact disparately on historically discriminated/neglected groups such as rural areas, townships, women, persons with disabilities, older persons and children.
2. The theory of change underpinning SIAM is to test planned laws, policies and programmes in a simulated setting using disaggregated data to assess how (if implemented) such intervention would impact different social groups and the implications of such on inequality (SDG10) and poverty(SDG1).
3. If the prediction is that the intervention is likely to unintentionally harm or exclude from benefit any group(s), the intervention should be adjusted or implemented with a compensation strategy. For example, the first price would have been to avoid some of the lockdown restrictions or implement them with the compensation strategies that only followed much later. Also important is that the compensation strategies themselves should be tailored to the circumstances of all intended beneficiaries, which was not the case in South Africa hence many did not get compensated.

IMPLICATIONS FOR FUTURE PANDEMICS AND EQUITABLE NUTRITION

Pathologize the System Not People

- The tendency to assume that children and other historically discriminated groups need perpetual tutelage and feeding would have missed the genius of Kenya's Steven Wamukota and strategies to meet him where he was.
- The answer lies in consciously designing policies for all by tailoring to the circumstances of all and to transform preexisting disparities in opportunity, resources, privileges, benefits and burdens asymmetries in ways that expand freedom and agency while levelling the playing field.



When there was no sanitation infrastructure, Steven Wamukota made a plan.

THE NEXT STEPS

Experience is a great teacher to those that are willing to learn and grow from past mistakes.

It is in our hands and our collective interest to design for all and for desired impact regarding the advancement of social justice.





GRATITUDE

Thank you!
Dankie!
E Nkosi!
Asante Sana!

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Further reading: Madonsela TN "Making Social Justice Real" in Boggenpoel Z (2022)

Statement and Policy Brief by the Social Justice Think-Tank - Digital Roundtable on Social Justice and Mental Health in the face of the Coronavirus COVID-19 (April 2020)