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Taking Economic Equality Seriously

**Report on the International Conference on Social Justice: Law, Policy and Social
Justice**

Boschendal Conference Centre, South Africa,

11 October 2021

Prepared by The Law Trust Chair in Social Justice at Stellenbosch University

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Foreword

As the world struggles with unprecedented inequalities, poverty, and hunger, economic black swans such as Covid-19 that have not only spotlighted these extreme inequalities but also alerted the world to their threat to the resilience and sustainability of nations and world peace, social justice has once again come to the fore. South Africa has a history of state-engineered inequality and poverty manufacturing with constitutions that promise equality and well-being to all.

Now, eyes have turned towards developments in social justice research, teaching, and dialogues to find common ground as a way out of the poverty and inequality maze. Such initiatives seek to leverage the spaces availed by the global Sustainable Development Goals (SDGs) to catalyse change regarding ending poverty and decisively confronting structural and legacy inequality. In this context, the Law Trust Chair in Social Justice (CSJ) at Stellenbosch University hosted the Third Social Justice Summit and Second International Conference at the Boschendal Conference Centre in the Winelands. Building of the consensus achieved at the inaugural summit and conference captured in the Hazendal Declaration and Summit.

The pursuit of social justice has been at the centre of South Africa's quest for peaceful coexistence from the onset of colonialism and global efforts on peace from time immemorial. Coined between 1840 and 1843 by Italian Jesuit scholar Luigi Taparelli, social justice was embraced by world leaders as a basis for global peaceful coexistence in the 1919 Treaty of Versailles. Blaming injustice generally and social injustice, which is injustice between social groups and nations in particular, as the dynamite leveraged to ignite the first world war, world leaders adopted the Treaty of Versailles. It was adopted as a framework for group relations that ensured all groups were treated equally and afforded a fair share of society's social goods, particularly those relating to the economy. The Treaty of Versailles further supported the establishment of the International Labour Organization whose mandate was to oversee the process of advancing just, equitable and fair economic relations between groups. Though social justice unquestionably

underpins the post-World War II Charter of the United Nations, the Universal Declaration on Human Rights (UDHR) and subsidiary treaties such as the

- United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,

it was not until the Copenhagen Declaration in 1995 that social justice once again occupied centre stage. It further underpins the United Nations SDGs, including SDG 10 on ending inequality and SDG 1 on ending poverty.

When South Africa adopted its globally acclaimed Constitution, social justice was embraced as both a goal and pillar of the new society sought to be established on the ashes of apartheid and colonial continuities plus other injustices, including patriarchal and heteronormativity continuities. To this extent, the Constitution of the Republic of South Africa, 1996 boldly declares that it is being adopted as a foundation to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights [and freedoms]” where every citizen’s life is improved, and every person’s potential is freed.

Our Constitutional Court has consistently clarified that ours is a transformative Constitution that provides a framework for dismantling the unequal distribution of social and economic fortunes and consequent power relations as a legacy of racial, gender, disability and other past injustices. This message reverberates in Constitutional Court cases such as *S v Makwanyane*, *Port Elizabeth Municipality v Various Occupiers*, *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism*, *Brink v Kitshoff*, *Minister of Finance v Van Heerden*, *Daniels v Scribante*, *Mahlangu v Minister of Labour and Others* and *City of Tshwane Metropolitan Municipality v Afriforum*.

In *Van Heerden*, Moseneke J went further to state, minus reparative measures to redress the structural imbalances along the contours of apartheid and colonial injustices, the constitutional commitment to social justice and related equality rings hollow.

In *Makwanyane*, the court further asserted that the Constitution seeks to re-anchor South Africa on *ubuntu* and that social justice is a dimension of *ubuntu*, which in simple terms is about embracing the humanity of all within a paradigm of shared humanity.

The Law Trust Chair's conception of social justice has been shaped by the jurisprudence emerging from these and other Constitutional Court cases, global treaty and leadership pronouncements and scholarly works, including work attributed to concept originator Taparelli and modern philosopher John Rawls. Rawls' 1971 magnum opus *A Theory of Justice*, presented the concept of social justice as an integral part of the concept of justice, whose plasticity then had come to incorporate substantive justice anchored in fairness to all. The working understanding is that social justice refers to a model of power relations and distribution of social and economic fortunes in a society that amounts to equal enjoyment of all rights and freedoms.

This is reflected in the just, equitable and fair distribution of all opportunities, resources, benefits, privilege and burdens in a society and between societies. Social justice is ultimately about embracing the humanity of all by ensuring a fair distribution of burdens and benefits of membership in the society and in relationships between societies.

Appreciating that the first democratic elections of 1994 and progressive constitutions of 1993 and 1994 only achieved political and legal equality as a gateway for addressing other inequalities, the 2021 summit and conference focused on economic parity and inclusion as a pressing social justice challenge of our time. The life of Palesa Musa, arrested as a 12-year-old child during the 1976 anti-apartheid student riots, and whose face inspired the Musa Plan for Social Justice, agreed to at the inaugural summit, remained a stark reminder of the link between past injustices and key economic inequality contours in the South African landscape.

The summit and conference sought to consolidate and scale ground covered since the inaugural conference where there was consensus that the shadow of our unjust past

continued to define fortunes and relations in our society. There was agreement, as reflected in the *Hazendal Declaration and Resolutions*, that government alone, even in the absence of corruption, including state capture, and incompetence, cannot address poverty and inequality at the speed needed to prevent the spiralling of these due to exponentiality.

The focus of the Summit and conference on progress achieved since the adoption of the Social Justice Declaration at the inaugural summit regarding the advancement of equality and the elimination of poverty through leveraging the global SDGs, in 2019 and the next steps considering lessons from the Covid-19 pandemic, which triggered an economic black swan. The key themes included:

- 1 land reform, property rights, and the distribution of assets;
- 2 business ownership;
- 3 financial inclusion;
- 4 wealth and income distribution;
- 5 social security and the basic income grant;
- 6 agriculture and food security;
- 7 education and digital inclusion;
- 8 social justice resonant economic theories, including indices for measuring economic growth;
- 9 emerging tools for social impact conscious economic planning and
- 10 the role of law reform and judicial activism in advancing economic parity and SDG goals.

Key Summit outputs included a cocktail of dialogues delivered as a hybrid event, with some attending in person and others joining online. In addition to keynote speeches, research papers from work being conducted in various centres of excellence on social justice, nationally and globally, were delivered and analysed by participants. It was heart-warming to note a trend of increasing research activity and outputs on various aspects of social justice, including economic justice.

The Summit also recognised someone who has contributed extraordinarily to advancing social justice. Dr Imtiaz Sooliman, founder of Gift of the Givers, was recognised as the Social Justice Champion of the Year, a decision applauded in all quarters, including the media.

Key summit outcomes included a sense of consensus on the need to accelerate transformation in the pursuit of economic inclusion based on race, gender, class, disability, and other markers of exclusion. The spirit of the consensus is reflected in the attached resolution termed the Boschendal resolution on mainstreaming social justice into economic policy design and law reform. The contents of this resolution include an agreement to mobilise society around the development and adoption of a social compact that outlines where society desires to be regarding economic and social inclusion.

It functions as a basis for healing the divisions of the past and achieving lasting social cohesion in the country and beyond. The need to bring data science into policy design and law reform to ensure laws, policies and programmes are tailored for all by understanding humanity in its diversity and meeting all groups where they are socially and economically while ensuring targeted redress for existing imbalances received a resounding approval.

In this regard, pilot work already underway under the CSJ, including a prospective Social Justice Impact Assessment Matrix (SIAM), and a pilot research study seeking to yield sufficiently disaggregated data, were considered favourably.

It was an immense privilege to host the summit with the Council of Social Justice Champions, the Law Faculty and the University Leadership headed by Vice-Chancellor Wim De Villiers. Support by the Bertha Foundation and all stakeholders added to the positive spirit and success.

As we contemplate the next steps, it is heartening to note that though three years since the inaugural summit, we are not there yet, the needle has shifted, particularly regarding partners that have hopped onto the social justice quest, the strengthening of synergies and the readiness to deliver concrete change.

We hope that the contents of this report will help the national and global social justice movement break more ground. Key to the next steps is raising awareness of the Musa

Plan, and previous declarations on social justice, expanding and consolidating research and ensuring that all corners of society are rallied around the development, adoption and implementation of a social compact.

Professor Thuli Madonsela

**Law Trust Chair in Social Justice at Stellenbosch University and
Convener of the Musa Plan for Social Justice**

Acknowledgements

Thank you, firstly, Cathy Mohlahlana, for the amazing facilitation of the conference. To Marna Lourens, Diane Gahiza, Themba Seyisi and the social justice team. Thank you also to the fantastic humans who have put the conference's technical part together. We received feedback from delegates who were not in the room. They said everything was fabulous. We also thank the conference organisers and, in particular, the Bertha Foundation at Boschendal for providing us with a magnificent setting, world-class conference facilities, and accommodation.

A special thank you to our Council of Social Justice Champions for your unceasing work and support in convening this conference.

To the vice-chancellor of the Stellenbosch University, who is also the Social Justice Council of Champions co-chair, thank you for the vision behind creating the CSJ. It was originally the vision of the late Professor Russell Botman. We are grateful that his dream lived on. The current vice-chancellor, Professor Wim de Villiers, took the vision and re-established the CSJ.

Our special gratitude goes to Professor Nicola Smit, Dean of the Faculty of Law, who has also stepped into the shoes of someone else who created the Chair and has resolutely supported the Chair's work. Thank you also to Professor Sonia Human, who has climbed and summited Kilimanjaro for social justice. Thank you, Professor Nicola, for not only supporting the Chair but coming to lead from the front and participating in these deliberations with us.

To the Deputy Vice-Chancellor Professor Deresh Ramjugernath, thank you for giving the keynote, and Justice Mlambo for giving the other keynote. Finally, thank you to our speakers and participants in this room and our international speakers and delegates in the virtual room.

1 Introduction

The International Conference on Social Justice took place on Monday, 11 October 2022, under the theme Law Policy and Social Justice: Taking Economic Equality Seriously". It was followed by and fed into the deliberations of the Social Justice Summit a day later. The conference was a hybrid event that took place simultaneously at the Boschendal Conference Centre and online.

The conference is a global platform that seeks to bring together social justice researchers and other stakeholders to reflect on advancing equality and ending poverty in economies globally, especially focusing on the progress, shortfalls and prospects regarding law and policy responses to the Covid-19 pandemic and SDGs on the African continent.

The conference focused on economic parity, including the role of economic equality in sustaining peace, stability, and the rule of law in emerging democracies.

The event brought together academics, lawyers, legislators and other policymakers, judicial officers, civil society, business, and international stakeholders. The format included two plenary sessions in the morning and a series of smaller group discussions in the afternoon.

The plenary sessions focused on "The role of transformative law reform and policy-making in achieving economic parity" and "The role of universities and civil society organisations in integrating social justice, economic equality and peace in economic planning and monitoring and evaluation."

The parallel panel discussions focused on:

- land reform, property rights and the distribution of assets
- business ownership
- financial inclusion
- wealth and income distribution
- social security and the basic income grant
- agriculture and food security
- education and digital inclusion

- social justice resonant economic theories, including indices for measuring economic growth
- emerging tools for social impact conscious economic planning
- the role of law reform and judicial activism in advancing economic parity and SDG goals.

The purpose of the different plenary groups was to interrogate the various aspects of inequality. The participants agreed on a resolution that outlined the next steps to address inequality.

2 Conference Concept

As a global platform, the International Conference on Social Justice themed: *Law, Policy and Social Justice: Taking Economic Equality Seriously*, sought to bring together social justice researchers and other stakeholders to reflect on advancing equality and ending poverty in economies globally with a special focus on the progress, shortfalls and prospects regarding law and policy responses to the Covid-19 pandemic and SDGs on the African continent.

The conference further explored the role of economic equality in sustaining peace, stability and the rule of law in emerging democracies. The event brought together academics, lawyers, legislators, policymakers, judicial officers, civil society, business and international stakeholders.

3 Objectives

The key objectives of the conference were:

1. To provide a forum for sharing ongoing research outputs and engaging in dialogue on advancing equality and related social justice matters, including ending poverty by 2030 in line with the United Nations (UN) SDGs, thus anchoring peace, stability, and the rule of law.

2. To contribute to the deepening of social justice scholarship and the systematisation of the incorporation of a social justice lens in academic work, policy design, law reform, legal practice and other endeavours that have implications for advancing equality and ending poverty by 2030 through the presentation and discussion of research papers and related outputs.
3. To provide space for ongoing exploration of good practices in the use of disaggregated data to predict the social justice impact of planned law and policies focused on economic equality and sub-issues such as:
 - land reform, property rights, and the distribution of assets
 - business ownership
 - financial inclusion
 - wealth and income distribution
 - social security and the basic income grant
 - agriculture and food security
 - education and digital inclusion
 - social justice resonant economic theories, including indices for measuring economic growth
 - emerging tools for social impact conscious economic planning
 - the role of law reform and judicial activism in advancing economic parity and SDG goals
 - contributing to the awareness of SDG goals and incorporation thereof in academic scholarship and teaching, as well as policy design and law reform
 - promoting collaboration on social justice, research, teaching, policy reform and monitoring progress.

4 Benefits

- Learn from good practices demonstrated across various academic disciplines.

- Use the opportunity to present new pathways for achieving an equal economy aligned with the Musa Plan for Social Justice (M-Plan) key objectives and the SDGs.
- Meet other academics engaged in social justice research to share what works and what does not and identify synergies and opportunities for collaboration.
- Be part of key social justice policy development that feeds into concrete recommendations for action.
- Receive peer feedback on research directions and outputs while tapping into a broader reservoir of literature and information on social justice scholarship and policy directions.
- A programme of activities allowing open dialogue, constructive critique and self-reflection and connection to an emerging global social justice movement.

5 Background

The CSJ is a social justice hub that promotes social justice scholarship, consciousness, public policy design skills and collaboration around social justice issues and community access to social justice resources to accelerate social justice reform in academia and society. The International Social Justice Conference preceded the Third Annual Social Justice Summit. The Summit sought to reaffirm and give effect to the CSJ and stakeholders' commitment made by government, business, civil society and academia to join hands in implementing the M-Plan at the Inaugural Social Justice Summit and International Conference, held in August 2019.

At the Inaugural Summit, delegates approved a Social Justice Declaration adopting the Social Justice M-Plan and committed to joining hands to accelerate progress on poverty and inequality. The International Conference that followed further adopted a resolution that committed the academic community, civil society, and business community to join hands with the government to drive the eradication of poverty and inequality in pursuit of social justice.

To ensure that these goals are realised, this conference sought to deepen social justice scholarship focused on identifying, discussing and engaging socio-economic theory which prioritises social justice and inclusive economic sustainability as a prerequisite for the achievement of peace and for reducing poverty and inequality in South Africa and on the African continent. The conference further sought to evaluate the African continent's responses to the Covid-19 pandemic and its impact on poverty and inequality on the continent, incorporating food security and income security.

6 Opening Plenary

The programme director, Ms Cathy Mohlahlana (News Anchor), welcomed the delegates. After that, the National Anthem and African Union Anthem were sung, and the preamble of the South African Constitution was read.

Professor Deresh Ramjugernath – Stellenbosch University Deputy Vice-Chancellor: Learning and Teaching

Good morning distinguished guests, speakers, delegates, colleagues, ladies, and gentlemen. It is my privilege and honour this morning to welcome you on behalf of Stellenbosch University and the CSJ to the Third Annual Social Justice Summit and International Conference.

This morning as we are undertaking the formal opening of this year's event, I would like to acknowledge the members of the Council of Social Justice Champions.

There is Professor Wim de Villiers, the Rector and the Vice-Chancellor of Stellenbosch University, who is the co-chair of the council. Then there is Ms Basetsana Kumalo, the co-chair of the Council of Social Justice Champions. She is also the Executive Chairman and CEO of Basetsana Women Investment Holdings Pty Ltd.

There is our facilitator, Cathy Mohlahlana. Dr Sharlene Swartz is Research Director for Human Sciences Research Council, an Adjunct Associate Professor of Sociology at the University of Cape Town and a visiting fellow at Harvard University and the University of Cambridge. Then there is Justice Dunstan Mlambo, Judge President of the Gauteng

Division. There is also our very own Professor Thuli Madonsela, the CSJ at our institution and the M-Plan convener.

There is Professor Haroon Borat, who is a Professor of Economics and the Director of the Development Policy Research Unit at the University of Cape Town. Professor Tshepo Madlingozi, the Director of the Centre for Applied Legal Studies (CALS) at the University of Witwatersrand. Finally, there is Judge Dennis Davis, Judge President of the Competition Appeal Court of Cape Town.

At Stellenbosch University, we are proud to be the home of the CSJ. The CSJ is a social justice hub that promotes social justice scholarship, consciousness, public policy, design skills and collaboration around social justice issues and community access to social justice resources, and is envisioned to accelerate social justice reform in academia and society.

The International Social Justice Conference precedes the Third Annual Social Justice Summit. This year's international conference is titled "Law, Policy and Social Justice: Taking Economic Equality Seriously". The theme for the summit this year is "Social Justice, Economic Equality and Peace: A New Socio-economic Pathway for South Africa and the Continent".

The summit seeks to reaffirm and give effect to the CSJ and stakeholders' commitment made by government, business, civil society and academia to join hands in implementing the M-Plan, which was at the Inaugural Social Justice Summit and International Conference, which was held in August 2019.

At the inaugural summit, delegates approved a social justice declaration, adopted the Social Justice M-Plan and committed to join hands to accelerate progress on poverty and inequality. The international conference that followed further adopted a resolution that committed the academic community, civil society, and business community to join hands with government to drive the eradication of poverty and inequality in pursuit of social justice.

To ensure the realisation of these goals, this conference seeks to deepen social justice scholarship focused on identifying, discussing, and engaging socio-economic theory, which prioritises social justice and inclusive economic sustainability as a prerequisite for

the achievement of peace and for reducing poverty and inequality in South Africa and on the African continent.

The conference further seeks to evaluate the African continent's responses to the Covid-19 pandemic and its impact on poverty and inequality in the continent, incorporating food security and income security.

The backdrop of the conference will be an appreciation of the fact that there is no gainsaying that in the absence of meaningful progress on the social justice dimensions of economic equality and poverty, sustainable peace remains a pipedream on the continent globally.

This is evident in the growth of extremism through the mining by demagogues of poverty, inequality and related grievances of communities and groups that feel left behind regarding economic equality. It is further evidence that the Covid-19 pandemic has worsened poverty and inequality, particularly economic inequality and food security.

Over the next couple of days, this event will provide a forum for sharing ongoing research outputs and engaging in dialogue on advancing equality and related social justice matters.

We also hope for the events to contribute to the deepening of social justice, to scholarship and the systemisation of the incorporation of a social justice lens in academic work, policy design, law reform, legal practice and other endeavours that have implications when advancing equality and ending poverty by 2030.

We are sure that the event will provide the space for ongoing exploration of good practices in the use of:

- Disaggregated data to predict the social justice impact of planned law and policies, focused on economic equality
- Issues such as land reform
- Property rights and the distribution of assets
- Business ownership
- Financial inclusion
- Wealth and income distribution
- Social security and the basic income grant

- Agriculture and food security
- Education and digital inclusion
- Social justice resonant economic theories

Including:

1. Indices for measuring economic growth
2. Emerging tools for socio-economic conscious economic planning
3. The role of law reform and judicial activism in advancing economic parity
4. Sustainable Development Goals.

In addition, we are hoping that this summit and conference will increase awareness of the SDG goals. And in cooperation thereof in the academic scholarship and teaching, as well as policy design and law reform, as well as promoting collaboration on social justice, research, teaching, policy reform and the monitoring of progress.

I am proud to say that at Stellenbosch University, as part of our Vision 2040 and in keeping with our strategic theme of a transformative student experience, we are placing a significant emphasis on social justice and human rights.

This is a leading transformation agenda of the Division for Student Affairs, placing human dignity at the centre of everything that we do, correcting past injustices through a conscious focus on social justice, equality, freedom, and ethical behaviour.

We have developed a critical citizenship course, which is part of our co-curriculum, and are undertaking training on anti-racism, anti-sexism, democracy, and critical citizenship for our students.

We include our students in the work of the Division of Student Affairs, ensuring diversity in a broad sense, including demography, as well as a variety of views and ideas.

We are developing values-driven environments, building trust by being true to the university's values and ensuring the highest integrity.

We are empowering our colleagues to facilitate difficult, crucial conversations as they transform their environments. And we are addressing serious socio-political, economic,

health and wellness challenges that have a negative impact on the lives of students and opening access to services.

In this way, we are embedding an understanding of social justice and good citizenry into our graduate attributes. Hopefully, this will be critical in developing greater social cohesion and aiding nation-building.

Ladies and gentlemen, it gives me great pleasure once again to extend a warm welcome on behalf of Stellenbosch University to the conference and the summit.

I wish all of you a very successful event. I hope that you have excellent deliberations that will propel our social justice discourse.

Professor Wim de Villiers – Stellenbosch University Rector and Vice-Chancellor and co-chair of the Council of Social Justice Champions

On behalf of Stellenbosch University and the Council of Social Justice Champions, I would like to welcome you to the Annual Social Justice Summit and International Conference.

At the inaugural summit in August 2019, delegates approved a social justice declaration, adopted the Social Justice M-Plan, and committed to join hands to accelerate progress on poverty and inequality.

Last year, the virtual conference that followed the inaugural event further adopted a resolution that committed the academic community, civil society, and business community to join hands with government to drive the eradication of poverty and inequality in pursuit of social justice.

This year we have gained some distance since the start of the Covid-19 pandemic, so part of this conference's aim is to evaluate the African continent's responses to the Covid-19 pandemic and its impact on poverty and inequality on the continent, incorporating food security and income security.

Stellenbosch University strives to be relevant to the people of our country, continent, and the rest of the world, making meaningful contributions that will take humanity forward.

We are working hard to become a transformed and integrated academic community that celebrates critical thinking, promotes debate, and is committed to democracy, human rights and, very importantly, social justice.

That is why as vice-chancellor and rector of Stellenbosch University and co-chair of the Council of Social Justice Champions, it is so encouraging to see this conference and summit going from strength to strength, and we want to see the impact that it brings about.

Stellenbosch University has committed to being a force for good in the transformation of South Africa into a place of opportunity for all, a place of shared prosperity and a place where there is sustainable, peaceful coexistence.

I believe that goal of peaceful coexistence is another theme of this conference, to engage with theory that prioritises social justice and inclusive economic sustainability as a prerequisite for the achievement of peace and for reducing poverty and inequality.

Because if there is no meaningful progress on the social justice dimensions of economic equality and poverty, sustainable peace remains a pipedream on the continent and globally.

The grievances of communities and groups that feel left behind must be adhered to, especially since it has been made more evident by the Covid-19 pandemic.

I hope the insights we gain today will help us find solutions to these challenges.

Thank you for attending, and good luck with this important work.

7 Keynote Addresses

Dr Sharlene Swartz – Division Executive of the Inclusive Economic Development Research Programme at the Human Sciences Research Council

Adjunct Professor of Philosophy at the University of Fort Hare, and former Associate Professor of Sociology at the University of Cape Town

Thank you so much for the honour of being able to give this address.

My talk is entitled *Redistribution Strategies and Approaches to Drive Transformation and Social Justice in South Africa*. I want to speak about the link between social justice, socio-economic equality and social cohesion because I think they are important, and they are linked.

Social cohesion is about the linkages between people from diverse groups in a country, whether South Africa, the wider continent, the global south, or the world, but also between people and the state and its institutions. Those are two pieces we need to keep in mind as we think through the themes of this conference, bringing about socio-economic equality as part of our social justice vision and mission.

Social cohesion depends on socio-economic rights, it depends on the elimination of all forms of discrimination, and it depends on a strong sense of active citizenship.

Inequality and levels of violence globally are linked and associated statistically, and they are the enemy of social cohesion. This is why I want to spend a little time talking about the state of where we are in South Africa, which I hope will have some resonance for those of us who are not from South Africa, but from the continent or the global south.

I want to just ask a few questions about what prevents us from achieving greater social justice outcomes and a few priority recommendations, which we will spend the next day and a half deliberating.

In terms of the South African context, inequality shows South Africa's levels of inequality outstripping other countries such as Russia, the United States, the United Kingdom, India and China. We often speak about our Gini coefficient as being the highest in the world, 0.65, 0.67, possibly 0.7, but so much greater than other countries, such as China or Russia. Our inequality is dire and stark, the top 10 per cent earning 86 per cent of the wealth.

Those statistics are then borne out by the Human Development Index, a level of health measured through life expectancy, a measure of educational attainment and a measure of income per capita. You have often seen the South African Human Development Index at 0.66, and we are probably around 115th out of 180 countries globally using the Human Development Index and measuring progress according to the Human Development Index.

However, I am not sure that we have seen in stark resolution the difference between population groups in South Africa when it comes to the Human Development Index.

The Human Development Index score for white South Africans is 0.91, for Indian South Africans 0.81, for coloured South Africans 0.66, and for black South Africans 0.58.

To put that into context, what does it equate to? South Africa, as a whole, is 115th in the world, with a few notches up or down over the last few years. But white South Africans are in the same human development category as people in Sweden and the United Kingdom and slightly ahead of Belgium and France. That is quite a stark difference. Black South Africans are really below the 115th mark on the scale.

Why is that important? Because racial tension in our country is fragile and it affects our social cohesion. Again, the relationship between social cohesion and racial trust is really important. But there are other stories to tell on this graph. One story is that over the last 27 years, the Human Development Index for South Africa has improved. We are getting better.

What has happened in the last five years? I think when those figures are released and done, things are still getting better, and the gap between the historically defined population groups in South Africa is diminishing slowly, but it is not diminishing at the rate that we would hope for to bring about equality between black South Africans and white South Africans. That is an important point for me in thinking about how we bring about social justice in the country, on the continent and in the global south.

Much of the data that I am talking about this morning is from the South African Social Attitudes Survey, which we have been running at the Human Sciences Research Council since 2003, and then we have some data from before that. White South Africans believe that their quality of life is lower than it actually is, while black South Africans' quality-of-life perception reality is quite aligned.

This is important because when we experience protest or unrest, it is often based not on the reality of human development but on how people perceive their lives to be different.

Of course, one must remember that one thing that statistics does, is obscure the reality between people who are doing incredibly well within a population group and people who are doing incredibly poorly. And so, an average often obscures the real hardship of

people's lives. I do not think statistics tell the whole story. They help us to somewhat understand where we are as a country in terms of our context.

In addition, evidence shows that economic satisfaction, when measured over the last 13 or 14 years, has slowly declined. I have disaggregated it by two provinces, Gauteng and KwaZulu-Natal because we are only three months away from the July unrest. Satisfaction has dropped in general for the country, although from 2017, there was a slight improvement, while it has been quite a lot poorer for people who have lived in KwaZulu-Natal, where those unrests took place, and for Gauteng.

Seventy per cent of South Africans believe that income differences between the rich and poor are too large. Sixty per cent demand redistribution. I often wonder why the other 40 per cent are not demanding redistribution, 37 per cent of South Africans are angry about income inequality. So, I ask myself, why are the other 63 per cent not angry about income inequality given our huge inequality statistics?

What about social cohesion, racial mistrust, xenophobia, and violence? A few statistics from the South African Social Attitudes Survey show that two-thirds of South Africans over the years, constant across provinces and time, say that they do not trust people of other races. They do not hate them, they are not aggressive towards them, but there is a social distrust. People believe that people from other race groups, and population groups are an economic threat or a cultural threat, a threat to their values.

That is important because it has not spilt over into racial violence, but it has spilt over into other forms of violence. Often the violence that we experience in our country is outwardly directed. It is not between historical population groups, but it is against people who are lesbian and gay, for example. A study that was done in 2016 how many people participated in homophobic violence? Only 0,5 to 1 per cent of the population is still 240 000 to 400 000 people.

Three-quarters of men are complicit in gender-based violence, which is outwardly directed violence. The ongoing xenophobic violence in our country in the last ten or so years. We have the most violent protests in the world, which have increased ninefold since democracy. We live in a country where many men have been militarily trained and

where children grow up in houses where adult men have been militarily trained. Violence is part of our history.

What are some of the critical questions to ask? Why have we not achieved the changes in socio-economic equality that we would have liked 27 years into our democracy in South Africa? The first question is, do we recognise the fragility of our social compact? The racial mistrust that we have is there, but do we recognise our current achievements? That graph I showed earlier is horrific in terms of the differences between population groups, but the story of somewhat improvement and somewhat lessening of the gap is something that goes misrecognised.

Do we have a shortage of will? Again, a South African Social Attitudes Survey question asked people, did they think a restitution tax was necessary. One in two black South Africans thought it was, only one in ten white South Africans thought it was. Why is there not more demand from black South Africans for a restitution tax? Why is there not more offering and goodwill from white South Africans towards a restitution tax or a wealth tax?

Do we have a shortage of confidence in government? Again, the South African Social Attitudes Survey shows diminishing confidence in government, democracy, and political leaders. Likewise, if I disaggregate it from KwaZulu-Natal and Gauteng, it is even more marked than for the general population. An unprecedented low satisfaction rate of 19 per cent in KwaZulu-Natal in 2021 helps us understand why the July unrest happened. Improving confidence in political leaders, but we have been on a decline for the last ten years or so. Then national government, just losing faith in the ability of government to bring about the change that people so desire.

Do we have a shortage of money? I know that Neil Coleman will be here from the Institute of Economic Justice. They put out a brief a few weeks back, and just an indication of the fact that government has not spent the money that it had allocated towards social relief under the Covid-19 pandemic. Is there a shortage of will, a shortage of money?

It does not seem like there is a shortage of money. It is possibly a shortage of priorities. But there is also a shortage of efficiencies. Again, the Institute of Economic Justice speaks about our tax collection. We are not doing as well as we should, and many people

are avoiding tax in our country. If there were more income, there would be more redistribution. Tax is an important piece to look at. A wealth tax. Our colleagues at the University of the Witwatersrand, Chatterjee (Dr Sudeshna Chatterjee – scholar-practitioner in the field of human rights, social justice and inclusive governance) and colleagues have spoken about how it is possible to raise R143 billion that could be used to fund a wealth tax that would really help to redistribute capital.

It is not an income tax, but a wealth tax. It would have a minimal burden, 1 per cent if you have a capital wealth of R3.6 million, up to 8 per cent over R1 billion. There are people who will speak at length about that in the next two days. But a wealth tax is possible.

Do we have a shortage of strategy? We have the Sector Education and Training Authority, the Expanded Public Works Programmes and Broad-Based Black Economic Empowerment. All those are incredible programmes, but are they bringing about the gains that we need? They really are not. Do we have a shortage of capacity? Yes, money is sent back to Treasury every year because it has not been spent. Do we have a shortage of character? Well, the Zondo Commission has told us that in spades.

Do we have a shortage of efficiency? Here one of the things is, have we really embraced some of the technological changes around tenders and contracts and title deeds using blockchain technologies? We have not. We need to do that because these are some of the non-obvious ways we can bring about and hasten social justice transformation in our country.

What are my recommendations for action? Some of them are obvious. Of course, we need more employment initiatives. The wealth tax and the universal basic income grant are important and urgent. A national youth service programme that not just employs young people but helps young people to know each other across these divides, racial mistrust lines. Land reform. Those are obvious, but also technological solutions to efficiencies. Public education campaigns around the gains that we have made. Non-violent strategies for change.

Urgent responses to the Zondo Commission report when it is released. Strengthening the equality in the South African Human Rights Commission Council to squash racial instigation and to strengthen social cohesion, because of the way that it is linked to

demanding restitution and redistribution and offering restitution and redistribution. And then strengthening some of our existing policies. We have a lot of really good policies, but we often do not have all the capacities and efficiencies to make them happen.

Thank you again for the opportunity to provoke you with some of these figures and ideas. I look forward to the rest of the discussion.

8 Advancing Economic Parity Through the Judicial System: Opportunities and Obstacles

Judge Dunstan Mlambo

Judge President of the Gauteng Division of the High Court of South Africa, Chairperson of Legal Aid South Africa, trustee of the Legal Resources Centre's Public Interest Law Clinic

Let me also acknowledge my thanks and appreciation for being invited to provide this short talk at the beginning of this particularly important conference. For this, I thank Stellenbosch University, particularly Professor Madonsela, who has tirelessly always ensured that I participate in these discussions. It is extremely rewarding.

As I commence with this talk and espouse the context I will refer to, I am unable to resist the temptation to reflect on those aspects of our past that have resulted in the poverty and inequality reality we find ourselves in this country. It was clearly and eloquently documented in the presentation before me.

We are witnesses today of the entrenched implications of a lot of apartheid consequences regarding the affordability of and access to basic services for the black majority in South Africa.

No one can deny that the inferior living conditions imposed on South Africans by the discredited system of apartheid had severe socio-economic consequences on their lives.

It stripped most of their human dignity and deprived them of their basic human rights.

It consigned the majority of South Africans, mainly black people, to grow social inequalities, social dislocation under the influx of control laws and destitution on a massive scale.

I have to mention this, lest we forget, because it is where we should look to when we try to craft solutions.

These backgrounds that I have given, I believe, provide an appropriate setting 27 years after we adopted a progressive Constitution with an elaborate Bill of Rights in which social justice has pride of place to examine the role of courts or the judiciary in assisting in the promotion of economic parity. This must simultaneously encompass the impact of the separation of powers principle.

I pose the following question. Have we witnessed meaningful advances in the social justice agenda that we find in the Constitution? I propound the notion that for economic growth to translate into economic parity within society in our constitutional democracy, the state as the duty bearer must adopt rights-informed legislation and social justice policies that follow a distributional pattern of focusing on the poor and ensure the availability of financial and human resources for the implementation of such policies.

In my view, the judiciary's role is not determined by the individual or collective idiosyncrasies of judges, but rather by the architecture of the Constitution and the norms and values found therein. While the process of differentiated incorporation may allow courts to enforce socio-economic rights in a useful and appropriate manner, it does not speak to the capacity of such adjudication to rectify social injustice.

Have the South African courts contributed to positive social change? I ask again. In this regard, the inescapable elephant in the room is the proliferation of what has been termed lawfare. That is the litigation invoking judicial review of what I loosely term political action, in which the judiciary's decisions have come under directed and consistent backlash.

The criticism has been that the courts are encroaching on the domain of the executive and legislature.

This perception, I am afraid of the politicisation of the judiciary or judicial capture, as some prefer to call it, is in part informed and reinforced by information distributed on the media platforms.

The media itself is a useful tool for sharing information. However, the function for which it is often used to create and deliberately misrepresent narratives about certain

institutions, such as the judiciary, has the effect of undermining the judiciary. This narrative of a politicised or captured judiciary impacts how the public views the judiciary or the courts.

In relation to the judiciary specifically, such public narratives have the detrimental effect of discounting the courts' authority.

The three arms of government are established to perform important and interrelated functions guided by the separation of arms principle, which simply stated means that there shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

These separate branches exist for the proper governing of South African society.

The people democratically elect those in Parliament. On the other hand, the members of the judiciary are appointed by the Judicial Service Commission (JSC) in an open and transparent manner after public interviews.

The JSC is made up of members of Parliament, among others, and are then appointed by the president.

In our constitutional system, and to ensure against unchecked abuse of public power, we have adopted accountability, the rule of law and the supremacy of the Constitution as values of our democracy. The Constitution empowers the legislature, the executive to make law and oversee its implementation. The jurisdiction to pronounce on the constitutional validity of laws or conduct is conferred on the judiciary.

All the institutions of the government are subject to the rule of law of the Constitution. As I have said, a system of checks and balances was ushered in as an important device to limit the power of each of the three branches of government. The doctrine of separation of powers requires that the arms of government perform the distinct functions of the state to prevent the centralisation of public power.

What therefore are the post-apartheid initiatives to fight poverty and inequality? I want to suggest that we should not forget that under apartheid, socio-economic benefits, such as social security, education and healthcare, were regulated by law on a racially discriminatory basis. Fast forward 27 years from 1994, we remain confronted by poverty

and inequality, sometimes rated to be worse than under apartheid. Why does this scenario persist after the demise of apartheid when we have courts that have been created specifically to play a meaningful role in this regard?

Class differentiation has stepped into the bridge previously occupied by apartheid.

Former President (Thabo) Mbeki described South Africa as a two-nation society. One of those nations being white, relatively prosperous, regardless of gender or geographic dispersion.

The second and larger nation is black and poor, with the most affected being women in the rural population and the disabled.

As we have witnessed currently, several political parties have approached the courts to have various decisions with political implications reviewed. The Constitutional Court noted in the matter between the United Democratic Movement (UDM) and the Speaker of the National Assembly that they, the UDM, invited the court to get involved and to clarify the nature and extent of Parliament's powers, adding, and I quote, "rightly so, because everyone has the right to have a dispute that the application of law can resolve decided in a fair public hearing before a court."

Perhaps we should be directing our inquiries regarding the courts' involvement in these political contestations elsewhere.

There is clearly a need for the courts to adjudicate on political matters, but I leave it to you to consider why we find ourselves so often in this position.

Clearly, the Constitution has not levelled the playing field between the two nations identified by Former President Thabo Mbeki. Instead, we have the most unequal society in the world. We have overtaken Brazil as the country with the highest disparity in income between the rich and the poor. Why? I ask again, does this reality persist when we have courts that have the Constitution at their disposal to tackle this spectacle?

There are several reasons for this, and I briefly examine them. The first one is affordability and access to courts.

In our expensive court system, lower-income groups and the poor can't enforce their rights without funds or legal aid.

There is no doubt that addressing economic inequalities, joblessness and redistribution is critical to alleviating the plight of the poor.

It is correct that there are gaps that exist in the delivery of civil legal aid to the indigent and the poor so that they can approach the courts to ensure that the state promotes, fulfils and protects the rights enshrined in the Bill of Rights.

Where this avenue is not available to people to have their issues heard in an open court, such people, out of frustration, resort to violent protests of the kind we have witnessed in service delivery protests across the townships.

In one case, *Mohlomi v Minister of Defence*, the court recognised that South African society is pronounced by poverty and illiteracy and bound by the differences in culture and language.

The court further indicated that most injured persons are either unaware or are poorly informed about their legal rights and what they should do to enforce those, and access to professional advice and assistance is difficult for financial or geographic reasons.

In another case, that is, *President of the Republic of South Africa v Modderklip Boerdery*, the Constitutional Court highlighted that the first aspect that flows from the rule of law is the obligation of the State to provide the necessary mechanisms for citizens to resolve disputes that arise between them.

This has remained, however, pie in the sky for the ordinary man in the street, rendering courts irrelevant to their plight.

The recent looting spree is clear evidence that the prevailing poverty and marginalisation of the poor sectors of society remains a powder keg ready to explode, as we saw.

The other reason that I want to recount briefly is the polycentricity of the socio-economic reality in our society.

Socio-economic cases are considered to be polycentric because of the conception that they have budgetary consequences.

For example, a case involving a person's right to housing would impact not only that person and the state but also the interest of other citizens. The interest of other citizens

would raise questions such as whether the money should be used to build a crèche, hospital, or school.

The Grootboom case, which we all know about, is a good example of a case involving a budget decision.

The case brought to the attention of the authorities the widespread problem of accessing adequate housing by desperate people.

The declaration by the court that the government's emergency housing programme was unreasonable has since inspired other litigation and policy revision in the area of housing rights, but sadly, this has not been enough.

Similarly, the Constitutional Court dealt with the *Treatment Action Campaign* case in a manner leading to nevirapine being available at state expense to all HIV-positive mothers to prevent the transmission of HIV/AIDS from mother to child.

These cases show that socio-economic rights are justiciable, and with the assistance of persuasive arguments, the courts can draft the remedy which impacts positively on the lives of poor people and those who are indigent.

These cases gave us hope that socio-economic justice would be accelerated, but this, I am afraid, has fizzled into a finger-pointing game with no meaningful progress whatsoever.

The problems on the ground are actually a lot more serious. There is a pronounced lack of access to clean drinking water in a number of black communities. There is the continued use of pit latrine toilets for school learners who happen to be black. Moreover, in recent times, Eskom has come back with load-shedding, which affects the poor as they have no options. The rich and affluent will complain, but they have options of purchasing generators and dealing with that issue. We are still in the throes of the Covid-19 pandemic, and its onset, as we all have seen, resulted in a massive jobs bloodbath for black workers in particular.

More than ever, there is a need for transformative jurisprudence. The most effective way to address these ills, I suggest, is an unwavering pursuit of transformative jurisprudence. Transformative jurisprudence must be founded on the court's understanding of the actual conditions in which people live.

There is a degree of consensus over the general meaning of transformation among progressive lawyers in South Africa. In *State v Mhlungu*, Justice Albie Sachs commented that the Constitution is a momentous and intensely value-laden document. To treat it with the dispassionate attention that one might give to tax law would be to violate its spirit as set out in unmistakably simple language. How true this was, as Justice Sachs said.

In such a deteriorating situation as we have in this country, the courts must, as custodians of the Constitution, contribute meaningfully to defuse the situation on the ground by making justice accessible to all.

Given the precarious situation, we find ourselves in, good men and women of the judiciary should find ways and be encouraged to restore respect for the rule of law in this country and assist in promoting socio-economic justice towards economic parity.

The short history of litigation in our courts under our constitutional democracy has demonstrated that the courts can and are able to do more. Has the time not come for the judiciary in South Africa to become judicial activists in the fight to alleviate poverty and inequality, as demanded by the Constitution?

I want to leave you with these thoughts, the Constitutional Court has handed down innovative judgments which are cited with approval internationally by other foreign jurisdictions because of how they have given expression to the dictates of our Constitution. But I want to suggest that we all have a responsibility to ensure that the relevant litigation finds its way to the courts to enable the courts to shape our social justice jurisprudence.

There is no reason whatsoever to resort to violent protest to ensure that all the people in this country have the opportunity to develop into upright citizens concerned with the welfare of others in the spirit of *ubuntu*. Our Constitution has been acknowledged as the most progressive constitution in the world. Armed with the Constitution as a guide, we as the judiciary are under an obligation to lead the country and its people into a peaceful era where the rights enshrined in the Bill of Rights are protected, promoted, and fulfilled for all.

Let us work together to make the Constitution a living document in the lives of all people, regardless of race, gender, and class.

The Constitution and the welfare of the people it serves are more significant than all of us put together. Let us join hands across the racial divide, between the haves and the have-nots, to root out the cancer of corruption, greed and self-aggrandisement that has crippled our democracy.

Let us focus on the income disparities we have in this country. Our preoccupation with paying obscenely huge salaries and bonuses to executives and starvation wages to lowly-based workers must end. We must realise that the first step towards addressing our problem is agreeing and paying decent wages that will enable lowly-paid workers to provide appropriate shelter for their families and afford essential commodities of life, like food, transport, education and healthcare, to name a few.

If we do all this, we should also find time to shape the litigation that I have mentioned that will enable the courts to assist in promoting economic equality in South Africa in doing this through the social justice agenda of the Constitution.

Let me end it there but thank you very much for giving me this opportunity and listening to me.

9 Concluding Remarks

Professor Thuli Madonsela

Law Trust Chair in Social Justice, Law Faculty, Stellenbosch University and Convener of the M-Plan

Thank you to the organising team from Stellenbosch University, the Council of Social Justice Champions and other universities that have played a role in bringing this event to fruition.

Of course, thank you to the vice-chancellor who addressed us earlier as co-chair of the Council of Social Justice, together with Ms Basetsana Kumalo. Also, thank you to our Dean of Law, Professor Nicola Smit, who is with us now.

We have heard an amazing galaxy of leaders addressing us at the conference today, essentially building on work that started four years ago.

The work started with the social justice roundtable in 2018, then the first summit in 2019, the second summit in 2020 and this year. At the initial summit on social justice, we also had this international conference that we have today.

This morning we first heard from the Deputy Vice-Chancellor, Professor Deresh Ramjugernath, who outlined the purpose and objectives of this conference, which I would ask you to refer fully to his speech. At the core of that is that we are building on what we have done all over those years and shining a spotlight on taking economic justice seriously. He also linked this to the work Stellenbosch University is doing, which is about placing human dignity at the centre of all the university is doing while correcting the unjust legacy of our past and responding to all other injustices and inequality that beset this nation and this continent.

Professor De Villiers again reminded us about the commitment that was made at the first summit where the Social Justice M-Plan was adopted. He also grounded what we are doing in Stellenbosch University's commitment to be a force for good within its own spaces and in society. He spoke very deeply about the link between peace and justice, reminding us that if we do not make meaningful progress on economic equality, we will not be able to sustain peace, or rather peace will be a pipedream.

Then we had Professor Swartz, who gave us the reality, the link between justice, socio-economic equality, and social cohesion. She gave us a graphic depiction of the statistics.

What I personally am taking home, is what she shared with us on South Africa's place in the Human Development Index globally, that a country with the resources such as ours is placed at number 115 out of 181 countries. Also, what I want us to reflect on as we go through this conference, is the similarity in the contours of inequality now in the Human Development Index and apartheid.

White at the top at 0.91, being at the same level as the most developed countries, such as Sweden.

Those of Indian and Asian descent were second, they were second under apartheid, at 0.81. Those classified as coloured, 0.67, placed third as they were placed third during apartheid. Finally, those classified as Africans or indigenous Africans last, as they were last during apartheid.

Of course, these indicators do not tell us about intersectionalities within these groups and they also do not tell us about the status of people with disabilities across these groups. What is the status of women, the LGBTQ community, rural versus urban, and so forth? It is nonetheless an index worth noting. She also noted the link between the Human Development Index and the country's development, alerting us to the link between peace or social cohesion and economic parity. Again, she gave us statistics in this regard.

What I found interesting as somebody who teaches social justice at the university, was the levels of willingness to see the change between these different groups. It was lowest among white people and, of course, highest among those of African descent. But it would be interesting to ask government, where does it source most of its solutions when it looks at economic design?

To what extent, therefore, does government use Nancy Fraser's framework? The framework says that for true social justice, all groups need to be represented in both the policymaking and the outcomes. They need to be recognised in the way the policy is structured and meeting them where they are in terms of their diversity. Thirdly, restitution for those who were historically disadvantaged.

If I were to check with Treasury in particular, it would be interesting to look at who they consult for policy design? What is their race? What is their class? What is their gender? What is their historical upbringing? I am saying this because I know, for example, that there is a different sense of justice between my nephews and my children.

Because my nephews have known how it feels to go without food for three days. When we talk about somebody who is going without food which has been stolen, I get different responses from the kids who have never gone without a meal and the kids who have gone without a meal. It does not make any of them bad people; it just means sometimes we cannot relate to what we do not know. That is why Nancy Fraser is right about ensuring everyone is brought to the table where the spoils of democracy are decided.

Then we heard our last speaker, Justice Dunstan Mlambo, who spoke about the role of the judiciary and emphasised the importance of anchoring everything in the Constitution, that the idiosyncrasies of each judge should not determine how the law is interpreted. He also wonders about the limits of the law. The law, of course, is an

important instrument of change that must be used in fidelity to the Constitution, but it has its limits.

I must indicate that, of course, the discussions this morning are primarily focused on South Africa, but we invite you, wherever you are, to take South Africa as a case study and use it to look at peace and justice in Mozambique, peace and justice in Angola, peace and justice in Kenya, and peace and justice in Somalia and all over the world. Ask yourself, can we truly make progress on social cohesion and peace when justice is not realised? Can we truly make progress on social cohesion and peace when democracy does not work because there is corruption?

But what if democracy works? What if there is clean governance, but democracy only works for some, and it only just works to cement the position of those who were historically advantaged, and it only just works to safeguard the property and other interests of those who were historically advantaged? Can we have peace? At the CSJ, we do not think so, and I think the speakers this morning told us that if we want peace, we must invest in justice.

10 Keynote Plenary One

The role of transformative law reform and policymaking in achieving economic parity

Professor Haroon Borat

Economics and Director of the Development Policy Research Unit, University of Cape Town

It is certainly an absolute honour and pleasure to participate in this panel. I am not legally trained. I am an economist. So, to talk about law and equality already is a challenge for me, and certainly, with the speakers following me, I feel even less capable of thinking through these dynamics.

But let me in the ten minutes I have, without a PowerPoint, just try to touch on four areas, if you like.

The first is to talk about, at least from an economic lens, what we need to consider in terms of growth, poverty, and inequality dynamics in South Africa.

The second is where I think, and it is partly a lens through which we can think about the law's role and legislation's role in attaching itself to both households and firms in this equality-inequality debate.

The third is to give you some considerations, in my view, about how law and equality could operate.

And then, finally, just to offer some critiques for debate in this panel.

South Africa has gone through a period. Very quickly we step back, the first of those. We need to locate the notion of law and equality or law and inequality within the broader context, I would argue, of growth, poverty, and inequality dynamics.

The reason I argue that is that those three are inextricably linked. High levels of economic growth in an era where inequality has risen, will effectively mute the impact on poverty levels. Low levels of economic growth, irrespective of everything else, will do very little to both poverty and inequality.

A high-inequality society like ours will not see any reduction in inequality levels if we do not have economic growth.

Likewise, if we kickstart our growth trajectory, hopefully, with some of the changes that we may or may not see in the next few months on the policy front, growth may increase.

But if it results in a particular form of growth that is capital intensive or does not create a sufficient number of jobs, we may see very little by way of the impact on poverty and inequality.

In many ways, they are, let us call it, forced bedfellows: economic growth, poverty, and inequality. That means, as a starting point, that the role of the law and the role of legislation is tied to all three.

Any attempts, for example, to impact purely or design purely to affect inequality, may, without thinking about it, have spill-over effects on growth and on poverty.

Inevitably, the same will be true whether we go for legislation to affect growth, impacting poverty and inequality.

That is a really fundamental component of how we think about welfare in society. It is about growth, poverty, and inequality.

Absolutely critical, within that, and going into my second point, what would be the role of the law and legislation? And what is a useful lens, at least for me, is to think about households and firms.

I would argue that in this broader growth, poverty, and inequality paradigm, you can almost imagine a table or a grid of households and of firms.

Let us start with households. The role of the law in terms of growth, poverty and inequality is to think about those interventions or to set legislation that would govern, impact on, facilitate things such as social assistance to households. That is the well-known social grant system we have. I think underappreciated is the role of social insurance. To what extent are we also thinking about health access, education, unemployment insurance and so on?

The third will be a range, and this is just off the top of my head, there could be another differentiation, a range of subsidies that the state offers. Probably the most important hidden subsidy, let us call it, that the state offers is zero-rated VAT on specific commodities that the poor consume. That is a really important piece of tax legislation, Dennis will talk about this later, a piece of tax legislation that is directed at households to protect, or rather, to minimise the impact of high prices on the poverty levels of those households.

We have a range of other interventions that the state can legislate. For me, that is really important, that will be my next set of deliberations, but I think it is really important to identify what are those interventions across those different let us call it elements: social assistance, social insurance, the range of taxes and subsidies, and so on. The key issue is to keep in mind the ones we have covered or not covered.

Let us give an example that we should be debating, say of taxes. We know that technological change is coming. The global debate has been classified as the tax on robots. But that is a really good example of how you can use the tax system to think about protecting the welfare of households.

But what we often forget is that firms also, because if you think of it as growth, poverty and inequality, well, 90 per cent of all jobs in any society in the global economy comes from the private sector, comes from firms. You have to feature in your notion of growth,

poverty and inequality what kind of support or, if you like, switching that is required from legislation for firms.

Here is a very good example. We are thinking about the employment tax incentive, to put a wage subsidy, that is a wage subsidy for firms to encourage them to hire young people. That is a form of a subsidy from the tax authorities to firms to encourage them to employ young people.

We could legislate, I will give you another example, instead of just thinking of firms as big, listed companies and so on, we could little legislate, which we do not currently, that every single local authority has to provide storage facilities for every single micro-enterprise and survivalist firm wanting to operate in townships.

We have no legislation to govern, protect, or encourage the growth of small and medium micro-enterprises in townships. That is the model. If you want to grow firms and get economic growth, you have to encourage firms to grow and generate jobs.

How do you set in place legislation to encourage that? I would argue, Chair, equally important. Of course, Professor Madonsela was at the centre of this and was our leader, if you like, in the period of state capture, is that equally important is that you have to define an environment that firms are allowed to grow. You must have governance in place. You must have stable democracies. You must have a voice for people. You must have infrastructure that facilitates investment. All of that can be legislated, and we need to figure out where the challenges lie.

Then thirdly, and I am running out of time, there are some considerations around thinking through law and equality.

I would argue that there are three or four big issues. One is, what is the new legislation? You can look at new legislation in terms of, say, the Covid-19 grant that we have had and so on, but we do not often, and that is my second point, think enough about tweaking existing legislation.

We move from a system of sectoral minimum wage laws to an entirely new national minimum wage law. South Africa is too beset with, I would argue, or focused on new legislation, new intervention.

What about tweaking existing legislation to protect, grow the economy, and reduce poverty and inequality? The thing we never do.

If there is one point that we could debate, is we never remove, or do we hardly ever remove bad legislation?

I was struggling, at least in the growth, poverty, and inequality sense; I was struggling to find legislation that we have removed because it had adverse outcomes. Perhaps the panellists can remind me.

The final point is that, given my outline at the beginning, law and economics are bedfellows. How legislation is passed also has to consider its economic impact. What do I mean? The current massive debate we are having at the moment is about a generous basic income grant.

One of the questions would need to be, what are the fiscal considerations around such a grant? If we have fiscal instability or a massive growth in debt, that undermines our growth prospects. Can we think of a design of a system that balances both welfare needs and fiscal considerations?

Final two comments. My critiques. First, are we evaluating enough the impact of our legislation on everything from water access right through to labour law? Are we evaluating the consequences of law regarding growth, poverty, and inequality? I would argue we are not doing enough of that.

Then my second critique is very little focus is on the follow-through. We have the legislation, but we have very little focus on enforcement of the legislation.

I think there is an entirely different discussion to be had about the enforcement of legislation. Whether it is people paying taxes, whether it is the minimum wage being adhered to, and so on, often the lack of enforcement can undermine the very process of the legislation that has just been undertaken.

11 Litigation successes and limits in terms of economic parity

Professor Tshepo Madlingozi – Director for the Centre for Applied Legal Studies Wits University

The theme of this year's conference, taking economic equality seriously, is crucial because it forces us to rethink how we think about social justice and how we do social justice. Because in the past, the way we felt about social justice is social justice being how to keep people alive, just giving them the very basics, but not really thinking about economic parity and economic redistribution.

I hope this is the first of a series of conferences and sessions where we really prioritise this theme. No social justice without economic redistribution. No social justice without economic redistribution.

I want to dedicate my short input to the memory of the more than 350 people who died this year in July. More than 350 people. We know that these were some of the most impoverished people, some of the most structurally marginalised people, and the damned of the earth. At the heart of this unrest, forget about the initial instigation, is really this question of economic inequality and normalised social injustice. I hope we will have a moment of silence for the more than 350 people who died.

I have been asked to talk about the limits and successes of litigation as far as economic parity is concerned. Now, what is the summary? The summary is that there have been few successes but many obstacles and limits. I will just make three points.

I will first outline some of the successes, then come to the limits, challenges, or obstacles, and then propose some new that we can think about as civil society engaged in social justice.

What are the successes? There have been several. Forcing the government to reprioritise its budget to allow people to live. We can think, number one, of the ARV treatment case, which is really important to economic equality because these were lifesaving drugs. There is no social justice if people are not healthy. That is one of the key successes. Mark Heywood is in the room, maybe he can talk about that later.

Secondly, we have seen cases focusing on schools' norms and standards in education. We have seen some cases that were focused on norms and standards in education, as I said, going towards this issue of social mobility. Because, of course, without education, there is no social mobility. Without social mobility, there is no economic prosperity.

Thirdly, we have seen cases focusing on anti-eviction jurisprudence and anti-eviction laws, allowing people to set up homes near workplaces and, therefore, access job opportunities. Anti-eviction jurisprudences.

Related to that, a key component of litigation has been the question of meaningful engagement.

That has been one of the key successes of litigation, developing this policy of meaningful engagement.

As Professor Madonsela said earlier, we cannot talk about economic equality, we cannot talk about social justice if people are affected by decisions are not engaged in those decisions. So, meaningful engagement.

Lastly, I can talk about social security. As CALS, representing the Black Sash Trust together with Freedom Under the Law, we were able to stop the complete destruction of the grant system by going to court, by forcing the minister to be held accountable, up to the point where the minister was forced to pay personal costs for her role in social security.

Today, we can talk about basic income grants because of the litigation successes that ensured that we have a social security system that is still applicable.

Those were some of the successes in terms of litigation. But if we are honest with ourselves, we can say that none of those cases and none of the litigation that we have been doing for the past more than 20 years have contributed towards economic redistribution. Let us be very clear about that.

And this is my second point just to outline some of the limitations. None of these cases has really helped us to dismantle economic apartheid and economic colonialism. Why is that? Of course, this is an age-old question, can the law transform society? Can the law dismantle power relations that ensure social injustice in society? That is the key question here.

What are some of the limits? The first limit, of course, is state capacity. State capacity. Let me give you one case study. As CALS we have a case in Limpopo in Sekhukhune where we are representing about ten villages, about 5 000 households to access water. We won the case about seven years ago.

Today, their water has not been rolled out. There has not been the implementation of that court order. We have been able to get two contempt of court decisions, but there is still no implementation of that court order. Why? State capacity.

Sometimes it is not just a question of corruption, it is the fact that the people who are supposed to make these decisions are either incompetent, underqualified or because of factionalism municipalities have collapsed. If you look at the latest report of the auditor-general, it shows that over 70 per cent of municipalities are dysfunctional. Over 70 per cent. We cannot talk about social justice in the context where institutions have collapsed.

That is the first thing, state capacity. We can go to court, win cases, it is good for us, and get more donor funding, but there is no implementation and, therefore, the problems continue. The second one, of course, is corruption. The second obstacle is corruption. We can win in court, but because of corruption, money is misappropriated, and there is no implementation.

The third one that I want to talk about is the fact that institutions were hollowed out during the years and many years of state capture. We cannot talk about social justice if institutions continue to be crippled by cadre deployment and crippled by state capture.

The fourth thing, of course, is neoliberalism. This is a term that we do not like to use in law. Neoliberalism, a commitment to austerity measures. Our Constitution says most of the socio-economic rights are to be realised within available resources. In the context where available resources have shrunk because of a commitment to a certain macroeconomic policy, there is not much we can do. Neoliberalism, a capitalist framework, we need to talk about that obstacle.

The last one, of course, is the failure in South Africa to be honest about historical injustices, the failure to talk about the fact that there is no commitment in South Africa towards redistribution, redress, restitution, and reparation. South Africa is one of the most

bizarre countries. The idea that we can achieve social justice without white people losing anything is insane.

The idea that you can achieve social justice without white people losing something, without redistribution, is a significant limit in litigation.

The fact that we have not been honest as a country about what it will take to achieve economic equality, the failure of reparation, the dishonesty about how we do social justice. Just hold the state accountable, leave white people alone, but inequality still rises. We need to be honest with ourselves.

The third point I want to make very briefly, Chair, is about some of the new tactics we are forced to implement to counter some of these obstacles. Here I am referring to some of the things that we are doing at CALS. First, we are very deliberate in moving away from litigating against the state to focusing more on the horizontal application of the Constitution. Horizontal application of the Constitution.

For the past 20 years, there has been, not an obsession, let me be very clear, there has been too much focus based on holding the state accountable, letting big business get away with murder, literally, letting historical beneficiaries of colonialism not to be held accountable. Horizontal application of the Constitution – that is number one.

Number two, to intervene in rebuilding state institutions. You have cases against the Financial Service Conduct Authority, which is a key institution to ensure that there is no state capture, ensuring there is not a toxic relationship between the state and big business. We have intervened to make sure that the commissioner who is appointed will be a competent person.

We have taken cases on behalf of the Commission for Gender Equality commissioner and next year we will be doing an extensive project on equality courts. A key constitution, equality courts, are underutilised in South Africa. As civil society, we are forced to intervene in rebuilding state institutions if we are committed to economic parity.

Thirdly, that caused us to enter into critical partnerships with the state. The old model where civil society are the angels and the state are the evil and the relationship between the two must be confrontational and must be adversarial; we need to move away from that critical partnership with the state.

At CALS, we can achieve a lot during Covid-19 lockdown by lobbying directly and working with state officials. You will not see this on our website. Very quietly, a phone call to a state official saying, but how about you do things this way? Critical partnership with the state. It is a democratic state, we need to hold it accountable, but we need to help build its capacity.

The fourth thing, of course, is to expand the agency of marginalised people. Litigation can do that, but litigation can also be demobilising, disempowering and deradicalising litigation. Change will only come from ordinary people. How do we expand their agency? How do we engage in training workshops to expand the agency of marginalised people?

I will give you one example of how we are doing this. For the past seven years, we have been working on a project on social and labour plans with mining-affected communities where, of course, for a mine to get a license, they must elaborate and outline their social and labour plans. But most of these mining companies do not adhere to these plans. So, we go into those spaces and “capacitate” local communities to know about the social and labour plans and also how to hold mining companies accountable.

We have seen some successes in Burgersfort in Sekhukhune and so forth where the local communities are starting to benefit from mining in their areas.

These are some of the things that we are forced to do as a civil society if we are committed to social justice as redistribution. Less litigation, but focusing on critical partnership with the state and expanding the agency of marginalised people.

We need, finally, to intervene in budgeting. How do we make sure that we have not just a pro-poor budget, but how do we ensure that we have a constitutional budget? Most of the budget that is passed, do not pass constitutional muster because they do not help us realise the socio-economic rights in the Constitution. How do we move away from just litigation but intervene in budgeting?

Chair, those are some of the things I wanted to talk about, some of the limits in terms of using litigation to achieve success and some of the things we could be doing.

Judge Dennis Davis – Judge President of the Competition Appeal Court of Cape Town

Listening to Professor Madlingozi, it gives me great pride to see that a successor of mine, as the Director of CALS, has taken that centre to far greater and more radically aggressive positions.

I want to just, if I may, because I was asked to talk about transformative constitutionalism and then the question of inequality.

I am going to briefly, in about three minutes, just suggest to you when we talk about transformative constitutionalism, I have borrowed from an article recently written by Heinz Klug, who suggests that when we talk about the particular concept of transformative constitutionalism, we really are talking about five different things.

He says, for example, that there is one element of it which is about constitutional interpretation and trying to encourage apex courts to, as it were, adopt a slightly more progressive form of interpretation to all forms of law. There is a second meaning: it is really a lens to distinguish constitutions of the global north from us in the global south. Third, there is a distinction between a preservative constitution designed to preserve the status quo and a transformative constitution designed to destabilise the status quo for all sorts of progressive ends.

Fourthly, it represents a specific constitutional vision which serves, as he suggests, as a symbol, a means, and a commitment to transform society. And then, finally, to develop, as it were, a conceptual understanding of how our social-legal idea of law actually emerges. In other words, what promotes and frustrates the vision contained within the Constitution?

What I want to concentrate on are the fourth and fifth aspects. That is that the Constitution we passed, whatever its demerits, etc., does if you read it in a particular way, it does in a sense, represent some form of commitment to transform society. That is, if you take seriously the idea of a society based on freedom, dignity and equality for all. I think that it also helps to assist us in the conceptual understanding of where law fits into the grander scheme of things.

Let me, as it were, just say one thing about the vision issue. It does seem to me that insofar as the vision of the Constitution, which tried to represent a radical break from the past basically, and whatever the content of the Constitution, it must be so that if we are actually to develop a democratic set of institutions and democratic country, there has to be a radical break from the past.

Indeed, I have been reminded quite often in the last few weeks, and rightly so, that if you look at the Constitution, in the preamble, it talks about healing the wounds of the past. In fact, it is manifestly obvious that we have not healed the wounds of the past. It is absolutely extraordinary when you look at the statistics.

Just two, if I may. A 2020 paper produced by the Wits University Southern Centre for Inequality Studies and the World Inequality Lab, notes that the top 10 per cent of South Africans earn 86 per cent of the aggregate wealth. 0.1 per cent, 3 500 individuals earn close to a third. I probably think it is more, given the recent work that I have been doing at the South African Revenue Service.

Indeed, I would want to argue that we are not able to have and will not be able to have a democratic society over any period of time, even the rudimentary one that we battle through at the moment if we continue with those figures. If we have over 40 per cent unemployment, the second figure is entirely unsustainable, given those figures, to actually have a constitution that proclaims to be transformative and means anything. They are just unsustainable, and it is a disgrace that more than 25 years into democracy, we are still there.

The further point is the question of how you develop a conceptual understanding of the law and, therefore, to what extent it influences this particular socio-economic reality I have been referring to. I would want to agree entirely with both Haroon Borat and Tshepo Madlingozi in much of what they said.

My fundamental proposition is I find a lot of the litigation that he cited absolutely right. It is helpful. It is helped enormously, and it certainly makes liberal and socio-economic lawyers extremely happy to think that they have achieved something, and indeed they have. But the truth is that what we really are talking about and what we need to examine

is something that Haroon Borat spoke about earlier, which is, of course, how law spills over and affects both growth patterns and, more so, inequality and distribution.

Because, and it seems to me that fundamental to the enterprise of any Constitution which is going to assist, and that is the best it can do, assist the political and economic struggle for a seriously reformed society which heals the wounds of the past and represents a radical break, it seems to me that set of laws need, firstly, to address the questions of how a law at present reproduces both the tepid levels of growth and the extraordinary levels of inequality.

In a way, it is essentially doing something that is quite remarkably depressing, which is to the extent that there is any change, it does not benefit 45 to 50 million people in the country. Yes, there may well be a restructuring of elites at the top into a non-racial elite, but that does not assist the millions and millions and millions of people living on the margins.

Therefore, we have to ask ourselves, how can we rethink law to rupture present trajectories? There are a series of things that we can talk about. First, of course, where the law does come in, let me say right up front, is that to some extent, it comes in to try to prevent increasing levels of corruption and state capture, as Professor Madlingozi said.

Because it does not matter how brilliant your constitution is, if the guardrails of the constitutional project are corrupted, if you have a revenue service which is corrupted, a national prosecuting agency which is corrupted, a police force which is both inept and corrupted, etc., a parliamentary system which slavishly supports the executive without demure, well, you are not going to have any kind of accountable democratic society.

It goes further, and I think the point has been made already if you are going to take the Constitution at large. Its redistributive framework seriously, then you have to ask, to what extent does the budget itself reflect the priorities which are contained within the Constitution? To what extent does, when the government sets out the budget, does it start from the premise that the progressive realisation of a whole range of socio-economic rights should actually be a foursquare front?

This is not about litigation. This is about, essentially, the actual policy we implement. Is it going to be one of austerity, borrowing slavishly from old economic shibboleths? Or

is it going to be one which ultimately says to itself, to what extent can we actually develop an economic policy congruent with what we promised within the Constitution? That seems to me vital, but I do not have more time to talk about that. Haroon Borat started to invite me to talk about the tax. I am happy to do that in the question time.

The truth is that it seems to me there are two aspects I can just briefly touch on. One is that we still do not have, and I keep on saying this, we have absolutely no clear vision as to how we will address inequality and have a growth policy that ultimately reduces inequality and creates redistribution simultaneously. There is nothing.

Well, that is just hopeless and, frankly, we should say so. If you look at the projections of the government over the next couple of years after this year's rather skewed growth rates as a result of Covid-19, it means we will have a higher growth rate because of the collapse last year, we are talking about less than 2 per cent next year and the year after. Therefore, it shows that present policies are just inept, to put it politely.

Then the question is, well, what laws can? The budget must be reconsidered, the economic policy has to be reconsidered, and where there are legal impediments, they need to be altered entirely.

So that in a sense, how the patterns of wealth in relation to the economy and large corporates are taken into effect. That does, in fact, result in rethinking tax. It certainly, I think, I will give the Minister of Trade and Industry credit here, it certainly means rethinking competition law, which he has been trying to do.

It certainly means rethinking other areas of law, property law and contract law, and similarly in private relationships and company law.

To summarise, if we take the transformative project seriously for the fourth and the fifth meanings which I have set out, then, one has to rethink the entire process of the budgetary policy to render it congruent with the commitment to dignity, freedom and equality for all.

It also means that, to a large degree, where law is an obstacle to the levels of redress and inequality and redistribution, then that law needs to be changed.

We need conceptual apparatuses to understand that, and we do not. I know I am probably speaking to my own book, but I have found it immensely depressing that in areas

of private law and contract in particular, I find myself always on the receiving end of judgments of the Constitutional Court and the Supreme Court of Appeal which tell me, yes, in fact, the contractual law should be changed but never is.

And it is not just about contract law, it is about the question of private relationships and private power.

We have not embraced a fundamental insight. It is not just the State that reproduces these patterns. It is large corporations. It is private power, which is as pernicious as important as public power in reproducing State structures.

It is extraordinary to me that in a country such as South Africa, where it was private power which was, as it were, a symbiotic twin of the apartheid regime, we somehow do not see that anymore as being equally pernicious.

So, we need to renovate all of that law. We need to interrogate it. I was delighted to hear that the CALS is actually thinking in this particular direction. And, yes, we do need to empower the marginalised, but the question is, how?

Litigation on its own is only one strategy. Still, the truth is you cannot empower the vast majority of this particular country when they live utterly on the margins and where the particular economic policies that we have continued to reproduce and exacerbate those inequalities.

Bluntly put, social justice and a transformative constitution either work together, or we do not have either.

Therefore, the challenges are at least two or threefold. The one is, quite obviously, that we need to rethink our economic policy to promote the vision of the constitution rather than work against it.

Secondly, we need to understand that there is a range of laws, as I have indicated, which reproduce the present patterns and need to be changed. Not necessarily by litigation.

If you have a democratically elected government committed to some form of transformative project, they should be doing it in the first place. That, of course, says everything, including land and spatial demography, to put it bluntly.

Thirdly, it is true that we had had a whole series of interviews with the JSC, and I, for one, would have very much liked some much more aggressive questioning, politely, of course, about precisely what I am talking about.

How do judges see the reconfiguration of our law, and particularly our private law and private power? How do they see that, and why have we done so little regarding all of those issues?

Ultimately, what we have to ask ourselves is a foundational question, which is in the Constitution. How do we heal the wounds of the past? You do not heal them by eliding over the past and saying, ooh, we are all now in a situation where we are a rainbow nation; forget about the past.

You do not heal it by ultimately reproducing economic policies born of the Washington Consensus playbook or a variation thereof. And you do not heal it by essentially allowing the core system of law to continue exactly as it does.

And you do not heal it by ultimately allowing a structure of governance which is much more concerned with rent-seeking and rent capture than it is about the lives of 14 million people.

I simply do not want to live in a society where the vast majority continue to eke out a living, where somehow, we are proud that we are given the R350 grant a month. My goodness, R350 a month, while our politicians probably have that for an afternoon tea. That does not seem to me to be acceptable.

It is all of those questions that make the challenges. I am delighted we are having this conference, for the simple and apparent reason that we need to think through these particular challenges and work our way towards solutions. I cannot possibly do more than set this out, as I have done, and I am pleased to amplify where I think we can do far more as we go along in our discussion.

12 Reintroducing Design Thinking into Law Reform and Policymaking

Professor Thuli Madonsela

As has already been announced, we are looking at the role of transformative law reform and policymaking in achieving economic equality, and I am exploring the possibility of introducing design thinking and systems thinking in the practice of law reform.

Everything I will share with you is based on an experiment we have been doing at Stellenbosch University, including a pilot that we are currently undertaking at Swartland Municipality.

A lot of it started during my days as public protector. It was all consolidated during a year I spent at Harvard University in 2017.

Can we pause for a moment and think about what the law would look like if everyone counted and what the laws would look like if everyone's democracy dividend was accounted for? When democracy was first given a name in the fourth century in Athens, everybody who was regarded as everyone counted and everybody's democracy dividend was accounted for if they were regarded as everyone.

You will note what I have said here. I said those who were recorded is everyone. Those who were regarded as persons in law. Women were not counted, and slaves were not counted. Their laws reflected reality. But everyone else was counted, every deme was accounted for.

When Athens distributed money when policies were made, literally what was referred to as a ward was represented in the policymaking, and every person was part of the law-making. They called them demes.

That is why democracy comes from the Greek word demos, which is people, and Kratos, which is power, people's power or rule.

So, we flip back into our situation. Does everyone count, and is everyone's democracy dividend accounted for?

In apartheid, like in ancient Athens, certain people's lives did not count, and their democracy dividend was not accounted for.

That was known, that was fought for, and we flip to where we are today, 27 years into democracy.

This is what I have learned 27 years into democracy. When we plan for development, such as turning this beautiful place into a conference centre from a farm, we are required by law to start with an environmental impact assessment.

The law requires us to do so to ensure that there is no environmental degradation. If, for example, there were birds, animals, flora and fauna, we keep that alive.

Of course, those following the Conference of the Parties discussions and the climate change problems will say there have been deviations. Corruption, indifference and incompetence have led to environmental degradation. Of course, at the core of all of that was greed. That is why we now have a climate crisis, despite those.

But otherwise, the law has always been seen as an instrument of social change, and without the law, we would no longer have any of our wetlands.

We would not have these beautiful mountains because anybody would be building wherever they wanted and mining wherever they want.

In the second case study from the design thinking environment, we come to business offerings. What have we learned from businesses? Those who run businesses will know that when you innovate a business, a service, or a product, you start with market research and product research.

Your research will cover who the target market is, where they are now, their disposition, and where they are positioned.

Two, who can afford it? You do the living standards measure to ensure your product is targeted at the right market. You also think about how you will get to the people in your design. How will you get the service or product to the people efficiently and effectively?

Of course, we know that some businesspeople are foolish enough not to follow this. But we also know that they are not there anymore.

For example, we do know that, when the market changed, Ford insisted there is a story that Henry Ford, who was the first inventor of the mass car said, well, the people, Americans can have any car they want in any colour they want, as long as it is black.

Of course, people voted away from that; at some stage, Ford was no longer a market leader.

I think eventually they rethought, and they did, again, the design thinking looked at what is best, what are the market needs, how do we reach the market, and today people are back, and they are using Fords.

Kodak was not that lucky. When people changed, and they repurposed the cellphones for taking photos, and people did not need to take their pictures to be developed anywhere because they can keep them here, Kodak did not follow sufficiently enough, or rather was not agile enough and, of course, it became history.

I am speaking to you here not as a pontificator sitting at the top of a mountain. Let us come to government, which is where we are. In the world, how do governments design laws and policies?

As a full-time member of the South African Law Reform Commission for quite some years, the executive commissioner who really influences the heart of the commission, what I have since learned, I had not learnt then, so I was part of the problem.

Ben Turok said, we are sad he is not here, but he was at the first summit and at every event that we had before he passed on. He said at the first summit that government's approach to law design is a spray gun approach. Just think about Black Economic Empowerment (BEE).

Whoever designed BEE, was there design thinking that said, what does society look like at the end of BEE? Who is going to benefit? Who is not going to benefit? How is it that Royal Bafokeng ends up being whiter than a 100 per cent white company in terms of the application of BEE? This is no joke. There was a year when Royal Bafokeng had a lower BEE score than Anglo American. Design thinking.

Ben Turok said it is a spray gun approach. In 2007 when I gave a paper at the Institute for Cultural Diplomacy in Germany, I said, governments all over the world tend to use a one-size-fits-all approach, with one exception.

Over the years since the Beijing Platform for Action we started doing something called mainstreaming gender.

Insofar as women and men, there has been little consideration around how this will impact women and men.

Not fully, but there was that conversation since the Beijing Platform for Action.

But did we ask how it will impact older persons versus young people? How will it impact on women and men?

In a country like South Africa, where practically you can talk about a Monopoly game where the blue team was allowed to play, and the pink team was kicked out of the game and asked to come back in 1994 without resetting the game, how have we made laws? Have we considered the strategic advantage of those that were advantaged by the past? Not really.

Remember when we increased VAT by 1 per cent? I recall us complaining about the impact on gender and poverty, and the answer was just to insulate some items, food items.

The presumption is that the poor only eat food or that inequality is only a food issue. Then I remember when I bought shoes at Woolies, and suddenly, I paid R10 more than what was on the item, and then they told me that VAT just kicked in a few days ago, and they had not been able to change that; R10 is not a lot of money for me, but practically change.

But they say the average wage in South Africa is about R200. So, what did that 1 per cent VAT increase across the board mean to the poor? And what colour is poverty? What gender is poverty? We know that poverty is a colour in this country. One per cent white, 64.2 per cent African, coloured 38 per cent, and those of Indian or Asian origin 6 per cent. I am talking about upper-bound poverty, which is about R900 per month. Because I do not even want to talk about lower-bound poverty, because nobody can live on that, they cannot even live on the R900. We still increased the VAT in a country that is trying to advance equality, in a country that was gender mainstreaming.

People from government would say it is not true that we have this spray gun approach but let us look at what happened in Covid-19. Remember, the first regulations only allowed supermarkets to operate. I have a story of Sarah Mantwa that comes from our Covid-19 Policy and Relief Monitoring Alliance (SCOPRA) work. Mantwa is a domestic worker who

is a small-scale farmer. She farms cabbages and sells the surplus to the local spaza shop. Lockdown, she cannot go and work. Sarah is a domestic worker, which means Sarah cannot go to work because she must look after her own children because the preschools are also closed. The closed market means Sarah cannot even sell cabbages and the cabbages rot. So, Sarah loses her job and loses her opportunity to work for herself by selling to the market.

Did we think about that? Were we angry at Sarah? Were we indifferent to her pain? No. The science failed us, the lack of systems thinking, the lack of impact consciousness, and the lack of design thinking.

Here at Stellenbosch University, we have decided that it is not really in our interest just to criticise. Why do not we borrow these tools from design thinking and work with government and fumble together to make this work?

As a result, we have come up with a team that brings in data scientists from our data science school here at Stellenbosch University, mathematical scientists from the African Institute for Mathematical Sciences, and then us lawyers and statisticians, including the former statistician general, to use disaggregated data, just like a business does, to predict how any policy we are planning is going to impact on different groups in society with two ideas in mind. Will it advance equality and reduce poverty? Two, will it at least not exacerbate it?

Why are we doing that? It is because we believe that there is a social justice duty. All states have a legal duty to advance social justice. This is what we believe in. All states, not just South Africa. Where does that duty come from? It comes from the UDHR because it promises everyone all those human rights. And if everyone is going to enjoy those human rights, they must be met where they are. In other words, the laws should understand and respond to differences and also to disadvantage.

It comes from the Universal Declaration of Human Rights or the International Bill of Rights, and CEDAW, CERD, and the International Conference on Population and Development. It comes from the African Charter on Human and People's Rights.

As I was preparing for this conference, it also struck me that the African Charter on Human and People's Rights is one international human rights instrument that does not

just look at individual rights, it also looks at group rights. That is why we talk about the African Charter on Human and People's Rights.

It is not enough to just say this person and that person are affirmed because the impact of the past has affected people as groups, but even the impact of the present. Our notion of social justice is not just about addressing racial disparities. It has to address gender and age disparities, all of the issues provided for in the Universal Declaration of Human Rights. It also has to address the intersection of inequalities or injustices. Certainly, that formula would not work for women.

What is social justice? In our formula, we take the formula from John Rawls, which is really just simply fairness to all. No group in society should have a better chance at everything, to get it easier than everyone. And no group should find it more difficult to exist. John Rawls really talked about a fair distribution of societal goods and burdens, and this was in 1971.

Of course, the whole notion comes from some Italian guy, Taparelli, who came up with it in the 19th century.

At the CSJ we talk about social justice ultimately being about the just, fair and equitable distribution of all societal opportunities, resources, benefits, privileges and burdens.

In South Africa, we have also been influenced by the Constitutional Court jurisprudence.

I just want to look at South African policymakers in the face right now and say in 2004, you were bold enough to give yourself pensions.

In Parliament, you passed a law to give yourself additional money at our expense for pensions so that you could achieve parity between yourselves and those that were in Parliament before apartheid. Why is it difficult to extend the same to every person in this continent and in this country?

Why was it easier to have BEE given priority over the Equality Act? Chapter 5 of the Equality Act was about carrying everyone left behind. To date that Chapter 5 is still not implemented. BEE, which mostly benefited politicians and their families, was pushed through.

But this conference is not about South Africa, it is about the continent. Therefore, I say, we played the African anthem, did we all hear it? About how it talks about an Africa for all, a forever green Africa? Not forever green for some. Forever green for all of us. That is not possible without redressing existing imbalances. They may be ethnic in other countries, regional, or age, but we were warned this morning that a group that is left behind systematically in this continent is the one group we should be investing in.

According to Kwame Nkrumah, it is the young people of this country. Another group that we are leaving behind that could be a huge investment in our sustainable development are women.

Not only are we failing to comply with our constitutions and the UDHR, but we are also failing ourselves in terms of sustainable development and peace.

But not all is lost. The Ethiopians say little by little, an egg will walk. We have walked this journey for four years.

It does not look like we have achieved much, but I think we have summited many hills. I do believe that together we are equal to the mountains ahead of us.

13 Question and Answer session

Facilitated by Cathy Mohlahlana, Conference Programme Director and News Anchor

With the Q&A chat and some of the questions that are there, it is such an important issue that is being raised by Professor Sandra Liebenberg talking about the fact that state capacity is an issue that has been raised by all of the panellists here today.

The collapse of local government, referred to by Professor Madlingozi, how does one begin to resolve the issue?

Does the Public Service Commission perhaps have a greater role to play here?

Once the fiscal framework and budget arrive in Parliament, the horse has bolted from the stable, making meaningful changes difficult. That is the one question that Sandra is asking. She also asks, how does one achieve greater openness in economic policy so that the considerations of social justice and human rights can have more impact?

One of the questions that I also wanted to put to the panellists after having listened to different people speak is whether there is consensus. Do we have consensus in this country that the state of affairs is not the way it should be?

To what extent does the answer to that question have a bearing on how we see meaningful changes, whether it is in the economy or policy?

Or do we find that that responsibility lies mainly on the shoulders of Professor Madonsela through the summit, some of the panellists that we have heard from, and some of the civil society organisations?

Is it the burden of others to solve this problem, or do we have a consensus about the fact that this is an issue that exists?

Who agrees that it is a problem and who does not agree that it is a problem? Professor Madonsela?

Professor Madonsela

Thank you, Cathy. Fortunately, on this platform, everyone who attended the first social justice summit agreed there was a problem. Those who attended were big business, the government represented by Minister Jackson Mthembu, may his soul rest in peace, the business community represented by the head of the JSC, Nicky Newton-King, who is now a member of the Social Justice Council, and Busi Mavuso who represented Business Leadership South Africa. Also, our colleagues from the Solidarity Fund, Adrian Enthoven and Gloria Serobe attended.

So, there was a consensus. One of the highlights was [the late] Ben Turok being so happy that there was an agreement between him, Helen Zille and [the late] Former President De Klerk.

So, there was. I think where there is probably disagreement, where we need to find each other, what needs to shift?

Judge Dennis Davis says things cannot be the same, and Tshepo Madlingozi says things cannot be the same. We need them to find a consensus on what needs to change.

People find it easier whenever we have conversations like this to shift it back to the State, an incompetent state, etc. I think Madlingozi is advising us to use this platform to

focus on civil society honestly. Because the state is an easy target, but many other platforms deal with the State, its corruption, incompetence, and indifference.

For us here at Stellenbosch University, or at least at the CSJ, and the vice-chancellor's message about town and gown. That relationship between town and gown, is that where do we see these gaps and how do we close them?

That is why we have established this project under SCOPRA and this instrument called SIAM. It is the SIAM. Government had its own matrix, which is called social and economic impact assessment systems, and we realised that they do not implement it consistently. They would not have come up with the regulations they came up with for Covid-19 if they were using it consistently. Secondly, the questions that it asks are not grounded on the equality duty.

If you looked at the Equality Act in the UK, which we have modelled some of our work from, there are specific questions when you design law. Who is the beneficiary? Have you consulted? Which groups have been consulted? Which groups have had input? Who is going to benefit? Who is going to have burdens?

It is really influenced by Nancy Fraser's social justice matrix, where she looks at who has been represented, who is being recognised by this law, and who will benefit from restitution if they need restitution.

I change it around also and say, we know what the problem in government is. And we are holding government's hand. Can we focus on the problem in civil society and how we zero in there and hold government's hand?

For us it does not matter who is governing.

I think in Swatland it is the DA. I have never been asked. Does anybody know who governs at Swatland? I do not know. But we have never even asked. What is important to us is we are in this boat. If it sinks, we are all going down. The anger is in our countries, in our continent. If it sinks, we are all going down.

Cathy Mohlahlana

Professor Borat, I want to give you an opportunity to come in here to reflect in part on what has been said by the other panellists that spoke after you.

The budgeting issue has been brought up not just by Professor Madlingozi but also by Judge Dennis Davis, who says, we actually have to rethink the current structure of the economy and the role that budgeting can play as an instrument to deal with inequality.

What does that mean practically? What would the budget need to look like to address some of the challenges being spoken about?

Professor Borat

I think that is a great point. To some extent, my dear friend, Professor Madonsela, has already taken this notion of design thinking there. I think she is alluding to the fact that we need to move to the level at which we understand how the specifics or the second-order concerns around the legislative environment operate.

What does that mouthful mean? We have a whole range of incentives and facilities designed to support firms. I mentioned this in my input. Whether it is from the basics, that is, the enabling environment, infrastructure, everything from ports to roads, or whether it is direct incentives to firms, such as wage subsidies, it is not clear what is designed. I use that phrase deliberately, designed to encourage growth in the right areas that will reduce inequality.

What do I mean? Do we have a highly supportive legislative environment for small businesses, micro-enterprises, and what I call good supply-side economics? I would argue not. I would argue that in many ways, the economy and the legislative environment on the supply side is focused on large businesses, listed companies, and capital-intensive businesses. It is part of a path of dependency in how we think about the role of legislation concerning economic growth.

As a consequence, I fear, and I am going to be a little bit controversial. Perhaps what Professor Madonsela was saying is that we end up in a discussion which says, what more can the state give us? How many more grants can we top up? For me, in a shrinking tax base with low growth rates, you will always hit a limit to what is possible.

Are the state thinking productively and creatively through legislation to encourage the growth of survivalist enterprises? Of the informal sector? Of those nodes of growth that are going to be inclusive? That are going to reduce poverty and inequality?

I think you are having a very different conversation then. You can have both conversations, not either or. And the two can happen. I just think that we do not think enough about that.

The only route to reducing poverty and inequality in a context such as South Africa and most other developing countries is to create jobs.

So, you have to ask the question; where do jobs come from? Ninety per cent of jobs come from firms, from the private sector. And that, though, includes micro-enterprises and the informal sector. I must emphasise that. I am not talking about listed entities. We have what I think is a dearth of design thinking around that part of the economy that can create a large number of jobs.

Cathy Mohlahlana

Thank you so much for that, Professor Borat. I am going to give Professor Madonsela an opportunity to respond to you shortly.

But for those joining the plenary session in person, I will give you an opportunity.

If you want to ask a question, you can just go straight to the microphone, and I will be taking those questions from you after Professor Madonsela's response. Professor Madlingozi, you can also get closer to the microphone for some reflections you would probably want to share.

Professor Madonsela

Thank you. I just want to thank Professor Borat. To just say, though, what I am inviting colleagues to do, when we go to the groups this afternoon, is to start thinking without a box.

For example, Professor Borat, I do not think jobs create equality. I do not even think that they end poverty.

Because my domestic worker is my domestic worker and me giving her domestic work does not create equality for her. This province has a lot of people who are farm workers.

They are seasonal workers. For a period, they are employed. Most of the time, they have no food but a job. Or at least some of the time. So, I disagree that jobs create equality or end poverty.

I also am not suggesting, Professor, that they do not make a difference. I am just saying, let us get out of that box. There are no jobs. Even if there are, there will never be enough jobs ever. A few weeks ago, we had a lady who attended the Thuma Women Ready to Lead platform and told young people to stop looking for jobs.

Something in between there is work, which includes being self-employed. Look for work. I think governments in Africa should start thinking about how we support work instead of business and jobs.

One of the reasons Professor Swartz, who spoke earlier, talked about not enough uptake of the fiscal support package that government brought out for people was that lack of market analysis, that the majority of people work for themselves. They do not have jobs. They do not have businesses as classified under South African law because they are not registered under anything.

But the lady who was arrested for selling atchar works for herself. She cannot claim that package because that package now says you have to prove that you are paying tax. But she is far below the tax threshold.

That is one person who works for herself but cannot work for herself now, because we stopped her from selling atchar and then she ate the capital and now cannot proceed to work.

I am just saying, let us get out of the boxes if we achieve economic parity.

Cathy Mohlahlana

Let me do this. Judge Davis, I think you asked it on the platform, I will give you a chance to respond, then Professor Madlingozi will have the final word.

Judge Davis

Just a couple of points. Yes, obviously jobs alone are insufficient, although I would not discount that. The fact that the vast majority of people eke out nothing is unsustainable.

It is unsustainable that people can live on the R350 or R800, whatever grants may be. It is just not sustainable.

But you are right, of course, that one wants to think about a reconstruction of the economy as a whole, which means how would one reconstruct the agricultural sector so that it encourages smaller farmers and communities to develop their own sustenance and, in fact, do more than just that? How do we encourage small businesses, little businesses, etc.? A whole host of opportunities have to be dealt with on that basis. It is not a binary. It is not one or the other. It is a question of a holistic examination of how one actually addresses the question of inequality.

The second point I want to make is that I readily accept that we should not blame the state for everything. But the reality is that we have a state that has perpetrated a kind of rent capture of an extraordinary kind.

We lose fortunes of money, fortunes on state capture. We do not need, as it were, to increase taxes if we were able to actually use the money to where it was supposed to go.

That would, in fact, contribute enormously towards the questions of not just job and employment creation and work seeking, but it would basically be able to renovate a whole range of stuff.

On top of that, we have an enormous tax gap. The level of tax evasion is extraordinary in South Africa.

Both the commissioner of inland revenue and I have put it at more than R100 billion. It may be more than that. If you could collect half of that, you would be able to sustain all sorts of projects. In other words, if you want to put it bluntly, one in ten cents disappears from the tax paid we are supposed to have.

I also agree with Professor Borat that, in fact, we should be looking at creative incentives for a whole range of issues. But the foundational problem exists, and Sandra Liebenberg's point about local government is correct. In vast swathes of this country, local government ceases to operate in any meaningful way. And in some areas where it operates, it seems to operate only for the wealthy and not for anybody else, which is equally problematic.

The point is, yes, how do we deal with that? And then, how do we deal with the relationship between the state and the private sector? That is a significant challenge. Again, it is not a binary. We should be focusing on the whole, composite picture. Simply put, at the moment, when Professor Madonsela asks, are we all in agreement, well, no, we are not all in agreement. Because who is going to say that they want greater levels of inequality and who will support levels of poverty?

But when you adopt, as some people do, a libertarian view of the world, when, in fact, you do not examine private power as being an extraordinarily pernicious influence, when, in fact, the idea of healing the wounds of the past and merely to forget the past, when you actually have no clue about what redistribution policies really are to be implemented, well, I for one am suggesting we do not have a consensus on this.

I am afraid to say that we can talk as much about law as we like, but there is a fundamental flaw in politics in South Africa at the moment, and until that gets fixed, it does not matter what the courts do. They will be a Band-Aid.

Cathy Mohlahlana

Judge Davis, thank you so much for that. Professor Madlingozi, I will give you a chance to provide us with your response. I also have a question here. Godfrey Ramalisa says, must we not extend accountability in public infrastructure development beyond finance by the auditor-general or litigation by the Human Rights Commission, public protector, or civil society by establishing an office of the engineer-general effectively to deal with design aspects of the economy?

I will allow the panellists to reflect and see who wants to take that. You can just raise your hand for those who are part of the session virtually.

Professor Madlingozi

I just want to make three points. The first point is that we have a paradox in Africa where we have a paradox of constitutions without constitutionalism in most states. Constitutions without constitutionalism. In South Africa, the paradox is the other way

around. We have constitutionalism without a Constitution. It is a paradox that I call constitutionalism without a Constitution.

I am returning to the original meaning of constitution, *constere*, meaning to stand together. We do not have that. We have constitutionalism, but we do not have a united, post-segregationist society.

We desperately do that if you want to ask whether we need a new consensus. We need a new Convention for a Democratic South Africa on economic policy. Let me ask people in this audience, in 1994, we had the Reconstruction and Development Programme. That was followed by Growth, Employment, and Redistribution, and then we had AsgiSA as a microeconomic framework.

What do we have today? None of you can give me the answer because you have not taken it upon yourself to know the economic framework. We also have a responsibility to educate ourselves.

How many of you take part in local development planning? Every year or every four years, municipalities are supposed to have these platforms where the local citizens give input on how the development framework should look in municipalities. How many of you have taken part in those?

Lastly, we have something called the National Planning Commission, which Professor Madonsela, was supposed to be part of this design thinking. Give us a plan, a framework. But it is just a white elephant. None of you can tell who the chairperson of that commission is. None of you can tell me who that commission's deputy chairperson is.

Lastly, Professor Liebenberg talks about how we make sure that economic processes can be more open. Well, under the presidency of Thabo Mbeki, the Treasury became a super ministry, unaccountable and insulated from many things.

When we talked to the Ministry of Social Development, they agreed with us regarding what needed to happen, but then they said we would be vetoed and overruled by the Treasury. How do we ensure that we have a ministry of finance that is open and accountable but, of course, not populist?

My message is that we need to educate ourselves. We need to get involved in the local development framework. But we also need to understand the macroeconomic framework governing our country.

Professor Madonsela

Thank you. I am going to take the question on the suggestion for an engineer-general. I honestly think we have to take it seriously. In my early years as a public protector, a friend, who I met in 2012, had suggested that we should appoint an engineer in our strategic planning unit. The advantage of engineers is that they think holistically about the interplay of all of the factors and are outcomes driven. They are the original systems thinkers.

But I think the person who asked the question was also concerned about the amount of money we lose on infrastructure, the overbilling, the false billing, and the overcharging. During my days as public protector we saw that. We just had a stadium, for example, now that is said to have cost R50 million. Without prejudging the case, it looks excessive for something that does not even look like a fixture. It looks like it is something portable. But I do not want to prejudge. I think that is the one.

The second reason why we need an engineer is that I am not just saying we should look at the implementation.

Before a policy is passed, we have to think about what the end result looks like and then work backwards. That is why BEE is wrong. Not the concept but the design. Because it is not based on what society looks like and what it means for a community like eManzimeleni in Kwa-Zulu Natal. If, for example, we have a system that focuses on supplier development and tenders, what about those working for themselves but not in supplier development? Does it mean they do not deserve the democracy dividend?

We have an engineer in the room, Professor Mpofu, who has been brought precisely because of that design thinking. He is part of our pilot project. The project is firstly looking at Swartland, and secondly, we are taking the SIAM and turning it into two things: a tool that policymakers will use in designing laws and a game that they are designing that is called the Social Justice Explorer to encourage what they call serious gaming. We are collaborating with German engineers in this process.

14 Keynote Plenary Two: The role of universities and civil society organisations in integrating social justice, economic equality, and peace in economic planning, monitoring and evaluation

Cathy Mohlahlana

In the second plenary session, we are looking at the role of universities and civil society organisations in integrating social justice, economic equality and peace in economic planning, monitoring, and evaluation.

For that session, our panellists will be Professor Dan Kgwadi, Dr Kayum Ahmed, Dr Leslie van Rooi, Dr Choice Makhetha and Mark Heywood. Let me kick it off then and invite Professor Dan Kgwadi to come on. He is the vice-chancellor of the North-West University. Professor Kgwadi, the floor is yours.

Professor Dan Kgwadi – Vice-chancellor of the North-West University

On the role of universities, from an education place in the whole space of closing the gaps, social gaps in society, is within all of us.

We all know very well that without education, you are not in good standing as far as the gaps in the society is concerned. As well, that translates to as well as your economics and these.

Some of us are typical examples of that. Whenever we talk about closing the gap and inequality as an economic one, I use myself as an example. At the moment, if I can tell people where I come from and my history, it would not be easily understood that I today ended up here as the vice-chancellor of a university.

My university, obviously it is the second largest in South Africa. When you talk of contact universities, I would say it is the largest. It is UNISA and North-West University because of the student numbers.

The whole point I am trying to make is that only education brought me to this stage. Some of us come from backgrounds that would not be close to the people we relate with or the meetings we get invited to, because of our social standing before and now.

However, education is only quality education that can contribute a lot to closing the social gap.

We at higher education are very much aware that we are leading institutions that are actually playing a crucial role in closing this gap.

By so doing, we also need to take the lead in doing it. We are not only producing students. We are not only producing but ending up with a product that will take a particular position in the economy. We should also prepare their mindsets so that when they leave our institutions, they actually leave our institutions as transformed people.

Because universities lead to transformation, they are transformation agents. Therefore, it is very ironic if you find in any institution of higher learning questions around inequality, women abuse and some of these critical topical issues around social injustice, and you find them at a university. Universities must not be places where you can find social injustice at all.

We at the North-West University have committed ourselves to social justice. Social justice forms the fulcrum of whatever we do.

Of course, we come from a background that you would understand why we would actually embrace social justice that much. It is the measure of a historically black university of Bophuthatswana, North-West University after the homelands, and then the University of Potchefstroom.

Potchefstroom University was predominantly Afrikaner, and then University of North-West was predominantly black and with all its historical disadvantages.

So, imagine these two institutions. You cannot forget and ignore the issues of social justice. That is why it really became the fulcrum of whatever we do. Of course, apart from social justice, we also had to look at how we treat each other. We had to go on an ethic of care. The ethic of care is also one of those things that can underpin social justice. If you really do unto others what you would have them do unto you, you will never go wrong in whatever we do. So, that ethic of care also is particularly important to the University of North-West.

As I have said, redress is something that we cannot ignore at universities. Whatever we do in our employment, we need to prioritise, and we do prioritise equity. There must

really be equity in whatever we do, considering the injustices of the past and how we participate in the redress of such.

Of course, then the next thing that is really key is the distribution of resources.

In this whole topic, the distribution of resources is important to ensure that the systemic economic inequality that is built in the system, be it at government level, be it in whatever system we have, is addressed, and it is also through the distribution of resources.

Assistant Professor Kayum Ahmed

Heilbrunn Department of Population and Family Health at the Columbia University Irving Medical Center. Co-lead of the Health and Human Rights Certificate and affiliated with the Global Health Justice and Governance programme. Former South African Human Rights Commission CEO and division director at the Open Society Foundation.

Since it is very early in the morning in New York City, where I am based, I am feeling a little bit more theoretical and philosophical this morning. I am going to be talking a little bit about the US university. I offer a US-based perspective on the university's role in its engagement with social justice and economic equality, perhaps as an example of what not to do at universities across South Africa.

One of the striking features of all of the top five schools of public health in the United States, including Columbia University, where I am based, is that they are all named after millionaires or billionaires, most of whom are white men. So, you have names like Bloomberg, Gillings, Mailman at Columbia, Rollins, who immortalise white, wealthy families.

Harvard's TH Chan School of Public Health carries the name of a Hong Kong property development family who donated \$350 million to the university, which is the most significant gift in Harvard's 385-year history.

On the one hand we have schools of public health at prestigious American universities that honour and glorify capitalism, a system of wealth creation that is intimately connected to and dependent on white supremacy and patriarchy.

These public health schools are acutely aware that the billionaire class after whom their schools are named is profiting from the Covid-19 pandemic while black, indigenous, and people of coloured communities died disproportionately.

Then, on the other hand, all these public health schools promote social justice and economic equality in their mission statements. Since the murder of George Floyd in particular, American universities have rebranded themselves as anti-racist, socially just entities that embrace the Black Lives Matter movement.

The university, therefore, occupies a paradoxical position in the United States. On the one hand, as Professor Kgwadi mentioned, it offers the possibility of acquiring knowledge that could serve as an instrument that liberates us from the violence of capitalism. At the same time, the physical and epistemic architecture of the university reinforces social and economic injustice.

The question for me is, how do we ensure that the university lives up to its social justice mission rather than succumbing to the corporatisation of education?

Drawing on the scholarship of people like Mamdani, Mignolo, and Welch, I suggest that the paradoxical position of the university stems from its position, often on top of a hill, as an authorised site of knowledge production. And so, I want to somewhat disagree with Professor Dan Kgwadi about the university being a centre of knowledge production and transformation. I think that is part of the problem.

I want to offer the following idea: to undo the structural racism, patriarchy and class linked to capitalism and Western modernity; the university must instead become a site of epistemic disobedience rather than being seen as an authorised centre of knowledge production. Only through its reconstitution as a site of epistemic disobedience that delinks from dominant Western thought and ideology supporting capitalism can the university play a meaningful role in advancing socio-economic justice.

Dr Leslie van Rooi – Stellenbosch University Senior Director: Social Impact and Transformation

The role of institutions of higher learning in South Africa was defined and redefined under the Higher Education Act 101 of 1997. I think the broader #FeesMustFall era and the

Covid-19 era have taught us some lessons. We have jointly learned lessons, and I will share some remarks around that, then something about the university context and then closing remarks. My focus will be on where we have come from and perhaps also indicate where universities are heading.

Perhaps we should remind ourselves that pre-97, we had several departments and focus areas of higher education in South Africa, differentiated amongst clearly defined racial categories and lines. In '97, it really led to the start of a merger era. Professor Kgwadi mentioned something about that and the effect on his institution. And really, this still affects the conversation around processes, identities, our sense-making, and our institutions.

Of course, it was a deeply unequal system, and we still question inequality within the sector and the system, both within institutions and linked to the communities that we serve and the communities that we are based in as institutions.

Then you know that, of course, the Act makes distinctions between private and public institutions, which later gave rise to the Technical Vocational Education and Training (TVET) idea. It also led to the establishment of higher education.

Something of the core of what the Act brings to the table is this new focus of an institution. Universities predominantly were redefined in the South African context to integrate the idea of engagement, to be a university for the public good, to serve the broader societies, the realities of societies, to engage with the public of a university.

Of course, universities have many publics, and the Act clearly defines that.

A clear shift from science as an isolated ivory tower on a mountaintop institution to science for society, both in the immediate context, the so-called town and gown context, the regional context, national, continental, and of course, international. Then a very clear ask of South Africa's universities to deal with its histories, not only as institutions but to help the country.

There, of course, we have heard this morning something of the power of the preamble of the Constitution that indeed asks universities under the Act to enhance social cohesion, to focus on nation building, to write a new story, and certainly to deliver

graduates not only to write this new story. And to create new opportunities, not only for themselves but for society at large.

Thereafter we have seen a much stronger focus on research and this research idea for society.

We have seen tremendous growth in numbers in the higher education sector, both in the so-called traditional university sector and in the TVET sector or the further education sector in the broader sense. Of course, one can ask a number of questions about that. How does it look? How does it play out?

Indeed, we have differentiated our universities and their role in the sector. South African universities, post-apartheid, have entered into much deeper conversations with its continental partners and global partners.

We have seen two more significant shifts that have really impacted how we position ourselves and relate, amongst others, to civil society in the broader sense. One was, of course, Fees Must Fall from really 2015 up to 2017, the effects of the broader movement, both in terms of public engagement and how we relate.

The focus remains post-2015 on participation, access, support, success, inclusion, changes in the curriculum and, of course, the role universities are tasked to play in society. This has led to a new year, an even more recent era of engagement both on and off campus.

So, the communities and the public that universities serve has had a much larger voice, specifically post-2015, in making sure that we engage and understand the realities that impact the ideas and identities on campus.

Almost all conferences since last year, actually since mid-2020 up to where we are now, have focused on the role of universities as engaged within the context of Covid-19. Most social impact-related conferences have focused on this theme, and it does seem to hail in, and this is global, something of a rediscovery of civil society partners in our own university context in South Africa. And then, of course, fantastic, outstanding, painfully relevant case studies linked to Covid-19 worldwide.

All of a sudden, our link, for example, with the healthcare system, specifically the public system, the education system, and so forth, has also increased on a very local level.

Of course, the idea of serving not only what we regard as within the so-called borders of the university, but the public in its broader sense. And then, of course, as I see we will deal with later, the question of emergency remote teaching and learning, specifically at residential universities.

The so-called online world of universities has seen a much stronger focus, and I will make some concluding remarks about that just now.

Throughout the pandemic, it was quite clear that universities are seen in a very different way as anchor institutions, the institutions that can bring together, voice, lobby stronger, and partner. Universities are considered more neutral, and, of course, one can ask questions about that. Indeed, institutions of higher learning have been regarded and pushed to have fewer boundaries and to address some of the most immediate challenges caused by the pandemic. And, of course, there are several examples.

On a very local level, we were tasked with a number of NGOs and municipalities three days before lockdown started to think differently about food provision, science, data and, of course, also the services that we render in, for example, this university's tertiary hospital or the hospital linked to the university.

Perhaps lastly, something on the focus areas of this university. Universities across the globe measure its impact aligned to the SDGs. These are the focus areas of our university. We have combined some of the goals to help us to guide our focus.

Of course, also in the context of South Africa, our National Development Plan is dormant in several ways, but at least in focus areas guiding us and directing the type of engagements universities aspire towards and act upon.

Then, of course, the various provincial goals, depending on what happens in the provinces.

You would note that at this institution, like at others, there is a strong focus on education and involvement in schools, and perhaps some figures on the type of initiatives in schools.

Closing remarks. Last week we had a national conference of all universities in South Africa that focused on this idea of universities as engaged institutions, open institutions that invite in, that allows to be invited in and that involve on many levels.

Here universities were restated as institutions that should bring together, institutions that should support and guide, and of course, institutions that should influence.

There, the question around the economic impact of institutions, not only in its research and deliver graduates but also on a local level, was discussed. Core to the discussion around economic impact, was whether indeed institutions do contribute to a more economically equal society or whether we perpetuate the idea of economic inequality. Hopefully, in the Q&A we will deal with that.

Over the last couple of years, we have shifted away from this idea of a developmental, service-oriented university to perhaps a more entrepreneurial university focused on financial constraints and financial sustainability.

A very strong focus and critique on rankings that take away or can take away the idea of engagement, the idea of collaboration, both amongst institutions and between its universities and its own publics.

In the future, the focus will remain on the sustainability of a fragile sector, a pivotal, but fragile sector. The idea and challenges around access, funding, and success remain. Of course, how we participate also in terms of our relations and relationality locally and globally.

Then a huge question currently at all our university campuses, specifically those historically with a residential experience, is if indeed the online learning experience can lead to a more inclusive engagement around education or whether it will perpetuate something of the inequalities.

Dr Choice Makhetha

Senior Director: Student Affairs at Stellenbosch University

For me, it is about universities being a resource to society. My approach was not to start at university because the whole education system needs to be looked at and actually benefit from the entire process. So, I look at education broader, politics, civil society, and government, and the role of government in all this. Because, whatever happens at government level, at the Department of Higher Education and Training, at the Department of Basic Education, affects what happens at university.

We must focus on the quality of education right from the entry-level. We have to overhaul our system to ensure that the quality of education we give at basic level, at primary and secondary, is of the quality that we will be impressed with.

And to get our college system working well and equipped for the purpose, especially the part of articulation, articulation between colleges and universities. You find that students come with qualifications from TVET colleges, and they cannot access universities or are made to repeat courses they have done. That aspect needs to be resolved because there are cost implications and time constraints involved in the process.

It is imperative that universities, such as Stellenbosch University, work very hard to focus on first-generation students. Those students who are the first in their family to come to university to ensure that the kind of experience they have at university is equitable to other students. Still, their specific needs are attended to because every student is different. Therefore, every student needs a support system that is tailor-made almost to make sure that they are successful, they are set up for success.

Also, the general experience of all first years coming into universities. Because we all know that our students come from a schooling system that really needs a lot of work. But what we say as a university is that we support a student from where they are, and the blame does not lie with anybody else, but we have to work to ensure they are successful.

The one part that, as universities, I know many universities are doing this, but we need to do more, is to work with secondary schools. And not just work with secondary schools a few once in a while, in passing, but to build a sustainable system where we work with secondary schools that needs support, to make sure that we focus on several courses and beyond just maths and science.

Because universities come with a lot of resources in different divisions, even counselling and development services, where you find a school in need of such services and social workers, to say, as we partner with schools, how do we support the learners and how do we support schools with all the services that the university has to make sure that learners are, one, excited about coming into university? We must excite learners about taking the next step and continuing with their work.

As a country, we need to forget about 30 per cent as a pass. For any direction a person is going to take, 30 per cent does not make it. I think that mindset of 30 per cent is destroying our country. Our learners need to be challenged in such a way that they believe they deserve the best and that they can enter university and contribute to society.

In general, the role of the university is enormous. Still, the university must meet the business sector, civil society, and government as equal partners coming together to ensure that education wins. Civil society, the time has come for protests to change and the approach to unhappiness to be different and not to burn schools and libraries.

The business sector has to start thinking about pathways of students coming into the economy at different levels and learning on the job. Because many students finish their degrees and do not have experience, where should they get experience? We need to encourage our students to be entrepreneurs, but there will still be those who go into the job market and should be able to access the space.

In conclusion, on the government side, we are heading for local government elections, and we have all seen how destructive the approach to politics has been. We need a system that focuses on providing services because universities also depend on services. This support system, when it works well, education will win.

Mark Heywood

Editor of Maverick Citizen.

Thank you very much, Cathy. And thank you, Professor Madonsela and Stellenbosch University for joining the dots between social justice and matters of economy and economics. I think it is something we have ignored for far too long, and we are paying the price for.

I cannot overstress the urgency of this discussion. Because with the technological revolution, the crisis created by global heating, and the issues that we have been discussing this morning, the inequalities will all be exacerbated and worsened unless we consider the connection between social justice and the economy seriously.

What I want to do, Cathy, is speak from the perspective of activists and civil society, is really three things. First of all, I want to try just to frame this question of economics and

social justice. The second is I want to build upon what Tshepo Madlingozi said and talk about what I think it means for civil society organisations, activism going forward, and activist strategies. And thirdly, I want to say just a little bit about what is to be done.

Kayum, who preceded me, talked quite a lot about the responsibility of capitalism for the crisis that we face in South Africa and the world today. I want to start with what Vladimir Lenin said about 120 years ago as he built the Bolshevik Party in Russia. He said that politics is an expression of concentrated economics. I think that is true. I think that we can also say that social injustice is an expression of economics or an expression of economic injustice.

What that means is that we can no longer talk about social justice, we can no longer pay lip service to this constitutional notion of social justice if we are not also discussing how it is that society creates, allocates and distributes its resources. Because social justice is about unleashing resources on an equitable and fair basis so that nobody is left marginal to society. These days, the majority of people are marginal to society. Perhaps that is the greatest contradiction, if you like, of modern democracy: although it is meant to represent majority rule, democracy has been manipulated to assist minority rule.

These are all matters of the economy. But the problem we face in our democracies is that economics is treated as if it is a matter that is above democracy, that is above public engagement. Professor Madonsela asked the question about how bodies like the National Treasury make decisions.

We are told that there are a set of laws, that there is a science that operates beyond the comprehension of the ordinary person engaging in a democracy. We have to say that that is nonsense, that all of us can engage on allocative questions about societal resources. We have to puncture that myth and insist upon our rights to discuss and to be a party to these discussions.

This leads me to the second part: what does this mean for civil society? Look at civil society's work in South Africa over the last 27 years of democracy, nearly 25 years of the Constitution. You can say that we owe a great deal to activism, social justice, and human rights activism. But I also want to say that civil society has failed in certain fundamental

respects, and I think that this question of connecting the economy with social justice is perhaps one of the most prominent examples of that failure.

Because I make this criticism of myself, we have acted as if it is enough to claim rights. Because the Constitution says we have a right to health and basic education, if we go onto the streets, if we go to the courts, if we win in law, that will be sufficient.

Now, winning in law is important, and our country's jurisprudence is rich, powerful, and influential, but it is also insufficient. Because how is it that we have won repeatedly in law, and yet inequality has widened? We have won battles over basic education, but the quality of basic education has worsened. We have famous judgments like Grootboom, but there are now more homeless people in our big cities than at any previous point.

I was party, as Tshepo mentioned, to winning, I think, significant battles around HIV. But when it comes to mental health, or more recently, when it comes to Covid-19 and the response to Covid-19, all the old inequalities resurface, all the old power imbalances between pharmaceutical companies and governments resurface with a vengeance.

I do not have time to talk about it, but if you look at mortality rates due to Covid-19 between provinces, the mortality rate in a province like Gauteng is something like 325 people per 100 000. The mortality rate in the Eastern Cape is 557 per 100 000 people. So, inequality shapes our response to Covid-19. Even if you went into Gauteng, the leader, if you like, and looked at inequalities in mortality rates between Diepsloot and Sandton, you will find the same expression that was presented to us at the start of this morning in relation to the Human Development Index.

Therefore, the sad fact that we are presented with is that while rights should shape the economy, it is the other way around. It is the economy that is shaping rights at this moment in time. Our Constitution is not supreme, it is the economy that is supreme. It should not be the case, and it need not be the case. But until we establish the principle that rights should shape the economy in practice. I guess what I am saying for civil society is that activists must address this question constantly and squarely and not treat it as if it is some esoteric discipline that is on the edges of activism, that is best left to specialist economics organisations, and so forth.

One of the things we learned from AIDS activism was that we had to become virologists, we had to master the science of HIV, the science of medicine so that we could engage as equals on these questions. We have to master the economy so that we can engage as equals on matters of economy and as activists and as lawyers; we need the support of economists in that endeavour. To go back to what Lenin said, another famous saying of Lenin was every cook should be able to be a prime minister. I would say that every activist should be able to be an economist at this moment in time.

I want to finish by saying, how do we align economy and rights? I guess that is the big discussion at this moment. I just want to suggest a couple of things building on what colleagues have said before me. There are issues that you might call macro interventions, there are issues that you might call micro-interventions.

On the macro interventions, we have to move beyond austerity. We have to move beyond austerity. You cannot have a capable, sophisticated, modern state while hollowing it out simultaneously by freezing posts and cutting public sector salaries. We have to decide on an issue like a wealth tax. It came up in presentations earlier today. Dennis Davis referred to tax evasion costing us about R100 billion. These are not issues that we can leave on the sidelines.

However, where I want to concentrate my last few minutes of comments is on what I would call some of the micro questions, which is how the state uses the powers given to it under the Constitution to remedy some of these questions of inequality. I want to take Cathy's particular example. People have talked about jobs and work and livelihoods. One of the expressions of our economic crisis in this country today is food injustice. We have 12, some say 15, million people in this country who are hungry every day.

We have a generation of children who are not getting basic nutrition. They will grow up stunted throughout life, physically and intellectually, because they are being deprived, as we speak, of essential nutrients. We have given through the Constitution the state the power to intervene in the food system, in food markets. In the same way as we did with antiretroviral medicines, we can regulate the price of essential foodstuffs so that food is not used to make unjustifiable profits.

It frustrates me that we have all these powers. You can look at many areas of society and many areas of economy and say, why is it while the state has these powers? They exist today in law. Yet we are not using those powers to better the position of poor and marginal people in society? We have to move beyond talking about the economy in abstract terms to talking about the economy in practical terms that will lead to immediate social betterment.

Which brings me to the final point. I think we will be making another oversight, almost as big as the oversight of ignoring the economy when we talk about social justice if we think that the solutions to what we are discussing at this conference lie primarily or solely in law.

They lie in politics. They lie in political decisions. They lie in accountability of elected representatives to the people who elect them. They lie in our political choices as a country and that we express as citizens when we elect people to government and give them this constitutional sword to realise the vision of social justice, democracy, and human rights. I will stop there.

Thank you.

15 Question and Answer session

Facilitated by Cathy Mohlahlana, Conference Programme Director and News Anchor

Professor Ahmed

In Leslie's presentation, I was surprised to discover that you are talking about the university as a potentially neutral space for which these conversations can take place, which we know is perhaps a perception of what universities are, but they are clearly not neutral spaces. Stellenbosch University, as we know, played a vital role in designing the system of apartheid in South Africa. And so, the university cannot be neutral.

At Columbia University, where I am ranked as one of the top 20 universities in the world, it is an institution, as I mentioned, which, again, is situated on land stolen from indigenous Native Americans, the Lenape people. Again, it is an institution with its roots in the form of coloniality that cannot make it a neutral space for us to have these conversations.

I worry when universities begin to focus on things such as the ranking system, the university ranking system as a way of determining who gets to speak and whose knowledge matters. Because if you want to be the number one university in the world, which is Oxford University, you have to be a product of a colonial empire, of stealing wealth from various parts of the world in order to support this institution that is now the number one institution in the world. So, I am not sure that this ranking system, that this notion of neutrality around universities is necessarily the direction we want to take.

I am also not sure, and it is tough for me to disagree with Mark Heywood on anything, but I am going to attempt to do so by suggesting, Mark, that even if we were to reframe the question of economics through a human rights lens, we must acknowledge that human rights in itself, and the UDHR, the international covenant, derive from a Euro-American, epistemic discourse centred on individual rights, centred on the protection of property.

So, even if we looked at economics through a human rights lens, it does not necessarily fundamentally change the underlying system of capitalism that fuels the current economic challenges we face. I feel like a more radical approach is required that recognises the value of a rights discourse but also must identify some of its challenges. As you can hear, I have lots of good arguments against stuff and am very bad at offering solutions. But I see the problematising of these concepts as critically important in thinking through how we ultimately figure out the solutions.

Professor Kgwadi

I think Dr Ahmed did not get me right somewhere. I am never a proponent of universities as centres of knowledge. I also do believe strongly in indigenous knowledge and therefore, indigenous knowledge; its centre can never be at the university. Actually, we have realised in our own research and projects that indigenous knowledge comes from society. There is so much out there that the university needs to make part of its knowledge systems. But it is not centred at the university as such.

I rather said that as transformation agents, universities have a key role to play there. Because as universities, we are melting pots of our societies. We are also a microcosm of society.

All these different students that we get at our institutions, if we do a good job in terms of transforming their mindset, if we transform that, as they go out of our institutions; we know they come differently into our institutions, but by the time they go out, we should have transformed their mindsets to such an extent that they can play a very good citizenry role out there. Therefore, in that way, we will have a greater impact on society through the products we send out with a good and proper mindset from our institutions.

Dr Van Rooi

Thank you. Perhaps two remarks. The one on neutrality. I deliberately used quotation marks. Universities cannot be neutral. We should not even try to be neutral. We cannot be ahistorical. We are moulded by a story about what universities are supposed to be.

But in terms of relating to a number of spheres in society, universities can play a key role. My point is that, specifically during what we experience as the pandemic, universities had to play different roles in relation to the state, NGOs, civil society in its broader sense, the health, economic clusters, safety, and so on forth.

It asks universities to take on a totally different mantle, and this allows for a more open, broader, more engaged, more aware space, perhaps, and for universities to become a platform for engagement also when differing views, differing opinions, differing outlooks among civil society partners and also where trust levels are low, for example, with government plays out. Then the idea of, between quotation marks, “neutrality” comes in.

Perhaps a remark on rankings. It is a very critical question in university discussions locally and internationally. There is a strong critique against it because it can steal away from the idea of collaborating fully and engaging fully as institutions and with the universities public.

Very often, it is never an either-or question regarding engagement. However, we will have to continuously check as universities how we view rankings, what we measure, how

we would like to measure concerning others and, indeed, what and who sets the standard. That remains a critical part of where we are now. Thanks.

Cathy Mohlahlana

Thank you so much for that, Dr Van Rooi. I have a question here from Emile Engelbrecht who is asking, would a university that publicly announces emergencies, for example, a climate emergency or a gender-based violence emergency, benefit the fight against these by, for instance, incentivising more research in these directions? If so, how could any university personnel start pushing such public announcements backed by the entire university, considering that some Professors have different opinions and there is the idea of democracy within universities?

Dr Van Rooi

Let me maybe allow Professor Kgwadi to respond to that question. The role of universities in announcing public emergencies is fundamentally addressing some of the significant societal issues and taking a powerful stance that could be research-backed. How easy is it as a vice-chancellor, and what are some of the considerations that universities have to make in this regard?

Professor Kgwadi

Indeed, universities must provide the lead in societies. If there is any complicated question or challenge that the societies face, we would expect universities to provide leadership on that aspect. It is really unavoidable that we have a position. Of course, it will also be a researched position that we take; it is not just an opinion. Whatever the university comes up with should not be an opinion, it must emanate from research, it must be a fact of research in one way or the other. I really fully support that statement and I agree with that approach.

Dr Makhetha

I also want to touch on difficult societal issues, like gender-based violence (GBV). I think it would be important as we approach research to approach it so that we involve the people. Go to rural areas, understand the context, talk to students and understand their issues on campus, talk to different people in different settings and find ways of bringing government on board and all other movements who are involved dealing with these issues to understand the issue from different angles so that we can come up with a solution for that.

Then, going back to the role of universities in general, and for me, within the secondary schooling system, it is a matter of really making a contract with the different schools in the area for a period longer than just one year, a five-year kind of period. And not just working with the learners, but working with the school management teams, working with the parents, working with governing bodies and especially working with the community around the school so that they understand what the issues are, and bringing other sectors.

For instance, we have an example where we found that a school needed furniture at another university and we were there to talk about maths and science and other subjects. But we realised that correctional services had a system where they can fix the school furniture and the desks learners use and, in that way, we built a partnership with the correctional services as a university, working with the schools to make sure that education and the infrastructure is taken care of.

Mark Heywood

I want to respond to two issues. One is the question of human rights and the second is the question of universities and their relationships with civil society in particular.

To respond to Kayum, I think one of the things I did not talk about in my introductory input is exploring how human rights can unleash economies. At the moment, economies are trapped in an impasse. Economies are failing globally, particularly in South Africa. They are not able to get growth, they cannot create jobs, they are fixed in particular models of how business does business etc., and we are stuck.

Forcing human rights, well, we do not have to force because it is a constitutional obligation that may trigger economic development so that human rights become a catalyst rather than what most economists see and policymakers see as a burden and a drain on economies a set of responsibilities. Of course, human rights have always been contested. But one of the things that I would say, having engaged with a number of historians recently, is that this idea that human rights have purely liberal origins is, in fact, not historically sound.

You can go back to the beginning of the 20th century and see, for example, how Marcus Garvey tied human rights to black people's liberation and to the Charter of African People's Rights that I think was put out in 1924 or something like that, and to the beginnings of Pan-Africanism. You can look at how human rights were used in Jamaica in the 1950s and 1960s. There is a contest over human rights, but I think for social justice activists to just surrender the idea that human rights are somehow liberal, and individual is perhaps giving up the space a little bit too easily.

Of course, they are not a panacea, but we have never imagined that human rights are a panacea. They are a lever. They are a lever for social justice and they provide us with a vital architecture for reconstructing society. One of the things that often frustrates me with economists who do not, for the most part appreciate the value of human and legal rights, is that they have great ideas about reconstructing society, but they have no architecture onto which to fix those ideas.

If you look at some modern economists, there is an English writer called Kate Raworth, who I think has some great ideas. She has written a book called "Doughnut Economics". But nowhere in there will you find anything about the international human rights framework. This compelling framework exists in international human rights treaties such as the covenant on economic, social and cultural rights.

It is true they have not been implemented, but they have not been implemented because we as civil society or as society as a whole have not built enough pressure to make sure that when our governments sign up to those instruments, they actually enact them, they put resources to them, etc. etc. There is a whole discussion there.

The last thing I would like to say is this discussion has provoked a number of thoughts for me about how we have to rethink universities and civil society. The time, I think, has come to rethink how civil society operates seriously.

But it also made me think about the relationship between universities. The presenter from Stellenbosch and Professor Madonsela, whose work is an example of this, has talked about building better relationships with civil society. As they embark on this new journey, I think that universities need to think much more seriously about what civil society represents. I think they take it for granted. They do not realise what a resource it is, as if civil society is just a massive informality.

We need to start to theorise civil society better. You need to understand that civil society generates ideas, civil society tests ideas, civil society creates knowledge, and civil society spreads knowledge. Civil society organisations should be integral to generating knowledge, learning and education. Civil society should not be an appendage at the university, like the CALS, and I do not mean that in a derogatory way, but they are happy if they have this centre and that centre.

One of the things I find about the Treatment Action Campaign (TAC), for example, is often the people in TAC used to talk about TAC as being like a university. We built a movement because there was excitement about learning amongst ordinary community activists. The funny thing is that if you look at the generation of TAC leaders that were created between 2000 and 2010, you will find them spread all over society now.

You have somebody like Vuyiseka Dubula, who runs the HIV Institute here at Stellenbosch University. Vuyiseka did not start with a university education. She started with an activist education, with a civil society education, and that equipped her to become a leader in society with a completely different set of values. Let us do it, let us build this thing.

16 Reports on Parallel Sessions

Education and digital inclusion

Introduction by the facilitator

Professor Jonathan Jansen Distinguished Professor of Education, Stellenbosch University and President of the Academy of Science Africa

Resource person

Dr Juliet Stoltenkamp Director: Centre for Innovative Education and Communication Technologies (CIECT), UWC

Respondent

Mr Kabelo Mahlobogwane Thuma Foundation Chief Ambassador

Presentation

Eshrat Jahan Bangladesh Judicial Service, Bangladesh Digital Inclusion of the Judiciary vis-à-vis

Goal 16 of the SDGs

Rapporteur:

Maricia Froneman Head of Department: Access to Justice and Social Justice, Thuma Foundation and Tertiary Educator, Law Lecturer and Admitted Attorney and Conveyancer

Professor Jonathan Jansen

Thank you very much, honourable chairperson. I am delighted to give some feedback on session seven, education and digital inclusion. We had a very animated discussion on the issues and I just want to start with the framing.

As you can imagine, what comes up in any discussion on education and the digital world is the issue of readiness. Dr Juliet Stoltenkamp was excellent in giving us a sense of what readiness means to transition to this brave new world.

She also spoke about the necessity of partnerships, of bringing people together to try and resolve issues of readiness and, of course, issues of inequality. She then made a very important point about the sustainability of these kinds of digital innovations in the context

of pandemic disruptions and the like. She gave quite a few examples of how we can and need to do this.

Kabelo was very animated and very committed, obviously as a teacher and a unionist to making us aware of the need to prioritise digital solutions within the African context. He kept coming back to solutions that address the particular social, economic and political conditions of the educational environment in South Africa and on the African continent. That should be a starting point and a departure point for engaging with digital inclusion issues.

Speaking of which, we had an excellent presentation by Eshrat Jahan from the Bangladesh Judicial Service who spelt out how to do digital inclusion of the judiciary with an emphasis on two things.

One was access to justice and, secondly, the delivery of justice. She gave some excellent examples from the Bangladeshi experience about how the digital world can be used, especially in the context of the pandemic, to achieve goal 16 of the SDGs.

That competitive perspective, I thought, kept us South Africans honest in the way she spoke about digital justice, if I may frame it that way.

We had excellent support from Maricia Froneman as the rapporteur, who spoke very powerfully about or raised questions throughout the session around issues of identity, artificial intelligence and the law, issues of accessibility. That kept us all on our toes as we tried to make sense of the role of education in this digital world.

This being South Africa, you can imagine that we had a lot of discussions on the realities of who gets access to the digital world. Of course, the pandemic lockdown showed us very clearly that the former white schools, middle-class, upper-middle-class schools, and public and private schools tend to have an uninterrupted education process, which is lockdown to this day.

Those without data and devices and the technological infrastructures around them do not, which is the majority of our children.

In a nutshell, solutions include building digital infrastructures now for pandemics as they occur and will recur into the future to give us any chance of having some measure of equality across the digital divide.

Land reform, property rights and the distribution of assets

Introduction by the facilitator

Constance Mogale National Coordinator of the Alliance for Rural Democracy

Resource person

Professor Elmien du Plessis, Associate Professor at the Faculty of Law, North-West University

Presenters

Dr Soraya Beukes, Cape Town University of Technology/Dullah Omar Institute

High court rule 46 protecting the right to a primary home against the sale in execution: unlocking SDG16 – access to justice

Mark Rountree, National Policy Officer, GOOD

Rapporteur:

Prof Karin van Marle, Vice-Dean, Department of Public Law, University of the Free State

Constance Mogale

In summary, Elmien's framing started by pushing us around the issue of language and terminology and how we define our terms.

She argued that not having good words could result in exclusion and make people invisible as informal rights owners. Property is not a natural right; it is politically determined. We should move away from these mental pre-constitutional, apartheid approaches to property that elevated ownership to the exclusion of all other rights and remember that the law is not necessarily the changing one.

She mentioned the dual system we inherited as South Africans, which described a title deed as real rights and others which discriminated against people living in customary land, people with informal rights under traditional leaders, or people living in informal settlements. She was saying we needed to identify more rights in property, more ways to describe property rights and a new language.

In terms of short-term solutions, she mentioned legislation such as the Interim Protection of Land Rights Act, which does not really provide real ownership rights but

protects the land and boundaries from being infiltrated. Then the recently passed ULTRA (Upgrading of Land Tenure Rights Act) and the lack of a redistribution act.

Land reform in South Africa has three legs: land restitution, which has an act; land redistribution, where there is no act; and land tenure reform, where there is no act because the Communal Land Right Act 11 of 2004 was scrapped down the roll by the Constitution. She proposed short-term solutions, which would be legislation, and mentioned looking at IPLRA and ULTRA.

The long-term solutions included developing the land administration system to record rights, such as rights of access, use and control, to make sure that people's tenure rights were protected and people would not have to call for a title deed, which is an apartheid system which excluded other rights. Legislation needed to create rights and restitution of lost rights due to apartheid, and called for a new comprehensive redistribution act, and that land reform must happen.

Soraya spoke briefly about section 46, promoting progressive security of tenure in the South African court rule number 42. She defined section 26 of the Constitution as a right to a home where one usually resides versus rule 46 for eviction in a financially stressed home. She cited several authors and cases, such as *Jaftha* and *Gundwana*, 2011, and *Nkwane v Nkwane*. In this, she summarised how homeowners can often not continue with regular payments, even though they have already lost their Section 26 right to a home. Thus, dispossession because people could not pay. Yet, despite the market value of the repossessed property, it would be sold at a lower price, with the debt remaining with the original owner who was dispossessed. Accordingly, the above rulings recognise the unbalanced financial power between section 26 rights holders and the bank.

The courts can protect homeowners against financial institutions by applying the High Court Rule 46, providing that the court has the discretion to set a reserve price on a home facing a sale in execution. However, the courts often did not invoke this rule and continue to allow financial institutions to sell homes far below their worth.

As a result, a home which is worth R500 000 can be sold in the market for only R30 000, with the original homeowner still continuing to pay the debt and blacklisted, without the ability to access another home. Courts must heed the call for SDG 16 to promote

sustainable development and not execute the sale of houses at a value lower than the market value.

Mark Rountree spoke about the city of Cape Town and the way it remained racially divided to this day, still based on apartheid planning. He emphasised that apartheid spatial policy was poverty by design and systemic. As such, the system has not transformed.

He mentioned the obstacles to change in terms of state capacity, neoliberalism, corruption and state capture, as well as a failure to redress and restitution.

The recommendation was, therefore, to reverse apartheid spatial planning, we needed to ensure security of tenure to people in informal settlements and a moratorium on the disposal of land.

Business ownership

Introduction by facilitator

Nicky Newton-King Former CEO of Johannesburg Stock Exchange (JSE)

Resource Person

Yvette Nowell, South African Programme Director, University of Cambridge Institute for Sustainability Leadership

Respondent

Mudinda Tshimbidi, Consulting Senior Manager, Accenture South Africa

Rapporteur:

Bongani Mgyai Lecturer, Stellenbosch University Business School

Nicky Newton-King

We had a spirited conversation about the role of business in achieving social and economic justice. The right place to start that conversation is whether or not we thought business got it. The comment was made that there was a lot of jargon. It was felt that this particular area of business practice is full of three-letter acronyms. There was some concern that people were capable of trotting out the acronyms and not necessarily following them with new business practices that really make a difference.

On the other hand, there was a recognition that some businesses really got it, especially when it was driven by the chairman, by a commitment and willingness from the CEO and from the board which followed that commitment through with key performance indicators (KPIs), forcing their business units to concentrate on the delivery of types of business practice that made a difference in this area.

What needed to change how business regards its role in social and economic justice? The first was to realise that we cannot afford to fail but to recognise that the scale of the issue is so big that you really needed big system thinking beyond just your own particular business. Recognising that there was interconnectivity between businesses, between business and government, between business, government and other social role players, and to actually be prepared to be moved out of one's comfort zone in how things were done, in order to be prepared to make a real difference.

There were, though, a lot of conversations in this team about the case for business doing things itself and many examples of where businesses could be effective on, for instance, anyone of the SDGs, coupled with a strong urging that businesses choose a couple of SDGs where they can make the most difference. It does not, for instance, make a lot of sense for businesses that are not in the health sector to try and look at health-related SDGs, and for businesses that are not in the finance sector to look at things that are in the finance area. So, choose the SDGs where you can make the most difference and then change your KPIs to enable that difference.

We had an extensive conversation about carrots and sticks, where the businesses responded best to incentives, which of course would be the inclination as a businessperson, or to carrots, where you either forced new policy changes through legislation or regulation.

“Obviously, in my previous life, we did a fair amount of carrotting, and that does make a difference.” There was some concern from some of the panellists that we have allowed enough time to go past for us just to let business do business and that maybe we needed to start thinking more seriously about some sticks. “I remain somewhat concerned about that.”

Then we focused on the question of agency that various role players in business, whether or not you are the chairman, the CEO or the clients of business, or for that matter, the owners and particularly pension fund trustees have in relation to a company and its company business.

There was a strong suggestion from our panel that we should focus on the power that pension fund trustees have to direct how their ownership in a particular company is used and use that shareholding to engage a company on its business practices.

We then had a bit of a conversation about disclosure and whether forcing disclosure of certain practices, related to the SDGs, would enable research on what companies are doing, and to be able to pull out best practice and, in fact, to use statistical information to show that conduct that is embracing of sustainability and the SDGs does not mean a trade-off for shareholders between performance and sustainability.

“I think there is more than enough international research starting to be developed here. It would be very good for us to have some South African research in that regard.”

This panel concluded with the recognition that business has a critical role in achieving the social and economic justice we all needed in this country. But there was a way to go, notwithstanding the willingness that some businesses and many businesses, in fact, were showing, before these recommendations were mainstreamed.

Financial inclusion

Introduction by the facilitator:

Phelisa Nkomo Development Economist: Department of Economic Development

Resource person:

Boniswa Madikizela Lecturer, University of Johannesburg

Respondent:

Wantu Madonsela, Managing Trustee, Thuma Foundation

Rapporteur:

Dr Futhi Mtoba Founder, TEACH South Africa and Chair of the Council at the University of Pretoria

Phelisa Nkomo

In our discussion on financial inclusion, I was joined by three colleagues, one Ms Boniswa Madikizela, who was the real key respondent, and Mbusowabantu Madonsela, who was reflecting on the gaps as a respondent. Then we had our other colleague, Ms Futhi Mtoba, who was also part of the team, and we had other guests who participated.

Several issues were raised and discussed, the first of which was to look at a consensus regarding how we defined financial inclusion. That financial inclusion, by design, should be able to provide the poor, in this context people from working-class communities, as well as women's access to affordable, sustainable and good-quality financial products.

At the heart of that, the intention was to make sure that you reduced poverty, addressed issues around income inequality, and led to sustainable development, a developing economy, not growth.

“Because we think that growth and economic development are two different things and we think that the conversation here at this conference is about economic development, not about economic growth. Because we are looking at the well-being of citizens as individuals, but not only GDP numbers and we thought that we needed to make that separation.”

We also broadly picked up the theme that our focus over the years as South Africans were on the bankability of citizens, instead of looking at financial inclusion as an enabler to make sure that citizens actually participated in the economy. We also highlighted the nexus between economic exclusion and financial inclusion and that the nature of the economy really defines the type of economic inclusion that any economy experiences.

Our resource person delved into her experience as a lecturer at the University of Johannesburg, where she reflected on the financial literacy and financial education of young people within the academic sector and talked about and mapped out for us how

socio-economic issues defined the type of financial inclusion and understanding that people have.

She highlighted three systems that produced individuals, leading to a better understanding of financial systems. Socio-economic issues – commercial adverts, the quality of education that young people have, and the type of financial products that are presented in the economy.

We then agreed that part of it was that many young people who attend university right now, particularly from black communities, are actually first-generation graduates. In essence, their exposure, understanding, and interaction with money is very limited and they have minimal access to education. Mbusowabantu then came from a very different entry point, which was interesting, around the stokvel and how the stokvel actually could be a leverage for increased financial inclusion.

His assessment, of course, was that there was no investment in financial literacy for people who were part of a stokvel, and at the same time, the mainstream banking system has not been able to design products to suit this kind of category of people. You have those who are part of the mainstream, but also those in the stokvel system, because they do not trust the mainstream system. In essence, we have parallel financial systems.

Key proposals were, firstly, the need for financial literacy and education, which should be integrated into the education curriculum. Even though younger and particularly black people in this context may not have a lot of interaction and exposure to money, they needed to be able to learn.

The other issue that was raised was the importance of mathematics as a subject. The discussion around maths literacy versus mathematics. Because we think the integration of mathematics and reintegration of mathematics as a core subject would also help younger people to be able to resolve challenges.

The third issue revolved around the insurance industry and how we needed to demystify the issue of owning or having an insurance or funeral policy as part of financial inclusion. Because of how those policies are designed, they have a lot of extractive relationship with policy owners, and we are of the view that there is a huge opportunity for clear legislative development.

We lastly recommended an intentional legislation that looks at behavioural issues, because we also acknowledge that there are consumerism issues that we needed to address and part of it has to do with how black people, who are in the majority in South Africa in particular, relate to money and how the fact that actually, at the kitchen table, there was no conversation about the rands and cents of the family. There was a component where there needed to be a conversation at the family level, but this should be seen together with public education. Thus, this legislation should be aimed at protecting the poor and vulnerable who may have limited financial education, in the same way that we have been able to introduce legislation for the retirement sector and the medical healthcare sector.

Social Security and the Basic Income Grant

Introduction by the facilitator

Dr Mshai Mwangola, Founder of the Department of PEACE, Harvard University, Author, Musician, Oraturist and Founding Director, the Orature Collectio; Chair, Board of Trustees, Uraia Trust,

Adjunct Faculty, African Leadership

Resource person

Mr Xolile Brukwe, head of stakeholder relations at the National Development Agency

Respondent

Panashe Gabrielle Maningi, Economic researcher and analyst, and an ambassador with One Young World and the Thuma Foundation

Olivier Tshimbidi, Chief Information Officer and CEO PAX Africana Holdings and Managing Partner, PAX Technologies

Rapporteur

Marthe Muller, Chief Operations Officer of South African Women in Dialogue (SAWID)

Dr Mshai Mwangola

It is such a pleasure to join you. I learn so much as I always do every time, I get an opportunity to sit in these discussions. I had the just absolute privilege and pleasure of

sitting in and holding the space for a most amazing discussion. Our resource person was Mr Xolile Brukwe, who heads the stakeholder relations at the National Development Agency.

We then had Ms Panashe Maningi, an economic researcher and analyst and an ambassador with One Young World and the Thuma Foundation step in as our respondent. Our rapporteur, Marthe Muller, is the COO of South African Women in Dialogue and was absolutely amazing.

Mr Brukwe took us through the concepts and the context, saying there were many ways to think about basic income grants and social inclusion. We focused on South Africa, looking at the rationale in South Africa and what South Africa was trying to achieve in terms of social inclusion through basic income grants.

We explored the legislative terrain in the country, looking at Section 27 of the Constitution, and the global commitments South Africa has made, for example, with the Universal Declaration of Human Rights.

We then started thinking about how they have been rolled out. What has been the rationale? What is it that was intended? What had actually happened? In terms of challenges, despite the very good intentions, these basic income grants have not really served those they were meant to serve if you think of them as being put together to serve the most vulnerable in society. Instead, they have tended to serve those already in the system. Finally, we considered how Covid-19, in particular, has really amplified the challenge.

“While there is a provision for children, persons with disability, the elderly and the vulnerable from 18 years of age to where one can benefit from the old age grant, there is those who are excluded. For example, unemployed adults with no income are excluded. So, the grants are still needed. We are not saying they are not needed. They are needed to compensate for the structural complexity and high cost of reduced income in old age which results in poverty, given that if people get to old age and they do not have the savings either from their employment or self-employment or being

informally employed, they are going to become even worse off than they were when they were working and barely making ends meet.”

As a system of social inclusion, the very first question we asked was, what is the effectiveness? And if they are not effective and have left out people, what is it that we can do about this? Because we found that the paradox is that the vulnerable people are actually being made more vulnerable in the system. So, what form should this take, and what should the financing arrangements be?

Panashe gave us data to support the argument and contextualised the state of the economy, providing us with economic data concerning who was involved in the economy and who was left out. Because we are talking about inclusion as we do this. She talked about the high rate of inequality. We also looked at the social consequences of when people were left out.

Subsequently, we discussed models and strategies, and some of the important priorities that we came up with together was that we must address the root causes of poverty and inequality. Of course, we must ensure that those who are already excluded are given access to the existing grants, but beyond that, we want to address these root causes so that fewer people have to rely on this net as is currently the situation.

In terms of priorities, first of all, we must link the discussions on economic development with those in social development because we are talking about social inclusion.

We must pay attention to the education system in terms of improving access, retaining people in the system, and making sure that the system responds to the needs and context, so that we are actually preparing young people to fit in and thrive in the economy.

We have to think about health holistically to look at it in terms of people’s mental health and the health of communities. We need to look at the economy and stimulate it to be able to absorb the labour that actually exists, both in order to grow the employment rate and also to create a facilitative environment for people who will be self-employed so that they can actually thrive at being self-employed.

We need to address the historical causes of poverty and inequality. Obviously, here we are thinking about and working on the legacy of apartheid. But we must also look at the gendered nature of poverty and inclusion. We must address the geographical nature of poverty and inequality. We know that women and girls are often the ones who are left out the most. We know that people living in rural areas, who have lower rates of literacy and Western education are also the ones who are left out.

We talked at length through several models. The UN Women's Generation Equity gives us social sustainability values. We had great insights from the South African Women in Dialogue through the rapporteur. We looked at a programme in Namibia that has been based on income grants from Germany that suggests that it is better to provide job guarantees and pay attention, build in provisions that look at the issue of dignity and self-respect. Because we do not want people to feel victimised or to feel that they do not have their self-respect because they are taking in charity.

We also addressed the importance of programmes that attend to healing where there has been historical, generational, community or individual trauma.

We looked at models such as the Bhutan National Happiness Index which urges us to look beyond the economic sphere when discussing inclusion.

Then, while paying attention to the dangers of copy and pasting solutions, we looked at some examples from countries that have lessons to teach us, both in terms of what not to do. For example, Tunisia has done very well in alleviating poverty, but we saw what happened when people said that was not enough. We also looked at China, Brazil, and Singapore.

Three great priorities I think that the speakers gave us as we ended up is, first of all, we need to explore, to turn government upside down so that government is accountable to family.

Making government officers and officials directly responsible to the human beings that they serve so that we think of development from the grassroots. What does it look like if you are in charge of 50 families?

We talked about expanding the mandate of the South African, I am not sure if it is the Reserve or Central Bank, so that it goes beyond the focus of interest rates and begins to

look at development in the bigger economy from the inside out so that we are not relying on money from outside.

Then we discussed developing a prospective view based on a long-term vision, not the kind of short-term, five-year, or ten-year programmes we are accustomed to. And to really challenge ourselves to stop being selfish in terms of what we want to get out for ourselves. Thinking bigger, thinking about communities and societies instead of always about what we can get for ourselves and for our families.”

Wealth and income distribution

Introduction by the facilitator

Keith Errol Benson, Founder of the Department of PEACE, Harvard University, Author and Musician

Resource person

Victor Kgomoewana, Author, Conference Facilitator and Speaker

Respondent

Olivier Tshimbidi, Chief Information Officer and CEO PAX Africana Holdings and Managing Partner, PAX Technologies

Rapporteur

Ashraf Garda, Media Host, Radio Presenter and Founder of Champion

Ashraf Garda

We had Victor Kgomoewana together with Olivier Tshimbidi as the two panellists. Victor asked how the law and policy have responded to wealth and income distribution? He then referenced the Disaster Management Act currently in place in South Africa regarding Covid-19.

He argued that, in fact, that Act was already in place before and should have actually been there to help now and even beyond Covid-19 it should be there, implemented properly and efficiently, to assist all South Africans.

Covid-19, in many ways, deepened inequality.

He then spoke about the elephant in the room, about corruption and how that has ensured the perpetuation of the wealth gap. He, therefore, said that socio-economic justice remains elusive.

The issue of the lockdown was important. We agreed that 70 per cent of children were denied access to a good quality education because of a lack of access to Wi-Fi. We then spoke about environmental, social, and good governance as important issues.

The Royal Bafokeng is a good example of a community that gets these rights despite the inequalities in South Africa.

Olivier Tshimbidi spoke about buckets, bucket carriers and pipelines and commented that in South Africa, there was too much money going into the bucket carriers, not into developing pipelines. It is a huge problem. He spoke about a bigger understanding of the seven arms of wealth.

“By and large, our policies do not answer that question about people understanding how important wealth creation is and therefore says that policies need to have a relook at that completely. Do we understand how to incorporate the seven elements of wealth in terms of growing wealth or not at all? Government policy, therefore, is geared to the bucket holders. It has to be changed to the pipelines, which is where the real wealth is being generated. In addition, 10 per cent of internet access across the country is the maximum we are getting in terms of education. The vast majority of South Africans, the overwhelming majority just do not get it.”

He made the final point that we have to speak to people to participate in the economy and go to them where they are. We have to meet them in their languages. We have to speak to them in their languages.

Keith Benson made the point that perhaps a 10 per cent tax, called redistribution, a wealth tax, should be allocated as a once-off.

Finally, Nomzano, one of the audience members, spoke about the examples in communities and how, in spite of poverty, communities still make things happen because of the access to human capital within communities. She does not believe that enough attention is paid to how the economies of power in communities thrive and sustain despite atrocious negatives against them.

Social justice resonant economic theories, including indices for measuring economic growth

Introduction by the facilitator

Deprose Muchena, Regional Director - East and Southern Africa - Amnesty International
Resource person

Professor Justine Burns, Associate Professor and Head of Department, School of Economics, University of Cape Town

Respondent

Professor Margaret Chitiga-Mabugu, Economics, Faculty of Economic and Management Sciences, University of Pretoria, Pretoria

Rapporteur

Professor Khumbulani Mpofo, DSI – NRF SARChI Chair in Future Transport Manufacturing Technologies, Tswane University of Technology

There was much consensus that, first, to really have a useful conversation, we have to look at the backdrop in which we are having this conversation. Thirteen years after the global financial crisis, two years into Covid-19 has taught us lessons about the state's role, economic growth, inequality, and social justice being the inclusive outcomes and fair outcomes that take place after an economic development process has taken place.

At the very onset, our main speaker spoke about the need for consensus on definitions. Because we speak about social justice, but it is approached from different angles and sometimes it makes us deal with an elusive concept. So, the definition of consensus and consistency was important.

The second issue we took from the conversation was the historical debates about what starts first. Do we need economic growth to tackle inequality, or do we actually need to have economic inequality as the main driver of planning so that growth responds to inequality?

We dealt with that and then discussed why it was important to measure. It was agreed that we are measuring because we want to be accountable for our planned outcomes.

Therefore, economic growth and indices of economic growth are essential for us because we want to be an accountable society.

The degree to which government, academic institutions, civil society work with indices that could be used at national, provincial and local levels is the degree to which we can agree on outcomes.

The final submission from our main speaker was just about whether the indices we have been using could pass the test of time in our measurement of economic development outcomes. The response from our respondent, Professor Mabugu, was provocative, which argued, why do we always bundle together inequality and poverty as two terrible problems that should be fixed simultaneously? Could it not be that if you unbundle them, you have a better chance of succeeding in addressing them? So far, the evidence is that we have not been able to reduce inequality and poverty together. Could we unbundle them?

The final conversation was about what was missing in this conversation of economic growth, social justice, and outcomes that society is looking at. We looked at three potential issues. We felt governance was missing in the conversation. To what extent is governance a blocker of facilitating the proceeds of growth towards reducing inequality and poverty?

In many societies, even when governments or states are getting their pro-poor policies right, many times the presence of corruption or faulty governance nullifies the impact of social justice outcomes.

We also spoke about the importance of leadership as that missing link that can bring an entire multi-disciplinary approach to dealing with social justice outcomes in a context where poverty and inequality are very high.

There was a sense that what was driving us or holding us back was the presence of silos within academic institutions, within governments and even civil society to come together and see a creative way of facilitating these three processes of growth, social justice, poverty and inequality to ensure that we have the outcomes that people would want.

In summary, there was a challenge for leadership. What can we do to reduce silos? What can we do to become interdisciplinary? What can we do to have a consensus of definition so that the problem is shared and understood by all?

Emerging tools for social impact conscious economic planning

Introduction by the facilitator

Professor Bruce Bassett, Senior Resident Researcher and Head of the Cosmology Group, AIMS South Africa and Professor, Department of Mathematics, University of Cape Town
Resource person

Professor Bruce Mellado, Director, Institute for Collider Particle Physics, Wits University, and iThemba LABS

Respondent

Ms Nolwandle Made, Project Officer, Social Justice and Covid-19 Policy and Relief Monitoring Alliance Law Trust Chair in Social Justice, Stellenbosch University

Presenters

Zahra Movahhedinia, York University Tracing Unemployment Rate of South Africa during the Covid-19 Pandemic Using Twitter Data

Finn Stevenson, University of the Witwatersrand an Economy/Mobility Analysis: Can mobility indicators be used as a proxy for economic activity in South Africa during the Covid-19 pandemic?

Rapporteur

Giselle Baillie, Researcher: Unit for Institutional Change and Social Justice, University of Free State

Professor Bruce Basset

How can we use innovative tools to get interesting lenses on important topics? For example, could we use Twitter to understand unemployment in real time? Can we use mobile data, movement data to understand economic trends, and economic recovery? To start with, we looked at a few case studies. Those both looked promising.

We saw how health data was being visualised around Covid-19 and identifying hotspots to get very accurate real-time information. We saw, for example, the development of GBV tools to understand this topic. In particular, exciting opportunities for two bi-directional information flow. But not just data coming from the victim to some central source, but also information flowing both ways.

We talked about what was needed for these tools to actually work. “It does not matter if you have the best hammer in the world. If it is stuck in your toolbox and nobody is using it, it is of no use. How do these tools actually make a difference?”

We identified the importance of leadership. Leaders need to engage with people who make these tools so opportunities can appear. For example, leaders have to clear the way for sharing of data. Covid-19 is a great example. If the data is not shared, then people with the algorithms or the tools cannot actually work. That takes leaders who understand the importance of clearing away. In fact, this conference is a lovely example. Professor Madonsela made sure that data scientists and statisticians were at this conference on social justice, being part of the discussion. A lovely example of the importance of leadership.

Data sharing was key. Professor Madonsela highlighted the importance of being clear about what goals you want. Science is agnostic. Science can be good or bad. We needed to ensure that it was being used for the right purpose. And finally, everybody agreed on the need for cross-disciplinary discussions and collaboration.

Scientists, people in government and people in humanities are not used to working together. We have to learn how to work together.

The role of law reform and judicial activism in advancing economic parity and SDG goals

Introduction by the facilitator

Professor Tshepo Madlingozi, Director, Centre for Applied Legal Studies, University of the Witwatersrand) Litigation's successes and limits in terms of economic parity

Resource person

Dr Justice Madvedzenge, Lecturer, University of Cape Town

Respondent

Advocate Jayna Kothari, Executive Director of the Centre for Law and Policy Research in Bengaluru, India and Counsel practising in the Supreme Court of India

Rapporteur

Professor Nicola Smit, Dean, Faculty of Law, Stellenbosch University

Professor Tshepo Madlingozi

Our panel had two legs: The role of law reform and judicial activism in achieving economic equality and the realisation of the SDGs.

We had two fantastic participants. One, Dr Justice from the International Court of Justice, as well as Advocate Kothari from the Centre for Law and Policy Research in India.

We started at the conceptual level debating the concept of judicial activism, the pitfalls and the prospects.

One of the things that we debated was this accusation that judicial activism actually breaches the principle of separation of powers. We reached a consensus that indeed politicians liked to say so when the courts are interfering in policy and budgeting. But we agreed that judicial activism was necessary for economic equality in three ways.

Number one, we discussed case studies in India and in other parts of Africa where, number one, courts were able to innovate by reading the constitution in a very progressive way. For example, in India where there was no specific right to shelter, the courts could read the right to dignity, to make that provision.

We discussed that judicial activism is also good for holding the state accountable. And then, finally, economic judicial activism was very important for economic equality because it can hold the state to the social contract it formulated with the citizens.

We debated situations where the bench might be conservative, such as what sometimes happens in the United States of America, where judicial activism has actually worked to maintain the status quo.

Finally, we debated some preconditions for judicial activism. Number one, that there had to be access to justice. Someone had to bring those cases to court to trigger judicial activism.

Number two is a transformative, adjudicative culture, a progressive legal culture. There is no point in having judicial activism when you have a conservative legal culture. And then finally, we made a recommendation that judges should be trained in budgeting, macroeconomics and so forth. Those were the three preconditions that we laid out for judicial activism.

We ended on the note that the courts cannot do everything. Therefore, we turned to the role of law reform. What is the role of Parliament and law reform in achieving economic equality? Here there was a consensus from participants that you can have an excellent constitution and an active bench, but if the legislative framework still has a lacuna, or gaps, or if it is not progressive, then you will have a problem.

Here we ended up on a note of making a recommendation to civil society, that often civil society participated in policymaking only by going to court to challenge an unconstitutional policy or asking for a progressive policy. But we made the recommendation that civil society must be trained in lobbying. They must be able to lobby, just like big business does, to lobby for progressive law reform.

Agriculture and food security

Introduction by the facilitator

Dr Lloyd Chigowe

Resource person

Dr Tsakani Ngomane Director for Extension Programme and Senior Lecturer, University of Pretoria

Respondents

Annelize Crosby Head Land and Legal, Agri SA

Professor Umezuruike Linus Opara Distinguished Professor and DST/NRF South African Research Chair in Postharvest Technology, Stellenbosch University
Rapporteur

Zukisa Tyson Mangaliso Household Food Security Specialist

Zukisa Mangaliso (stand in)

One of our panellists suggested that we needed urban agriculture to promote food security, especially in townships such as Khayelitsha and Soweto. Because people were starting to migrate from rural areas to urban cities.

We also had a solution to adopt agricultural extension to support smallholder and subsistence farmers.

We also suggested that South Africa does not have legislation promoting food security. The country needed legislation to promote food security to end poverty and hunger in the country. As such, we suggested that the government needed partnerships with communities and the private sector, to end food insecurity.

We need to adopt SDG poverty, SDG 1 and SDG 2, and lastly, peace and justice and strong institutions to promote agriculture and food security.

Finally, we also agreed on the need for household food security, to promote rural communities and urban agriculture.

17 Concluding Remarks

Professor Thuli Madonsela, Law Trust Chair

Dear colleagues, Margaret Mead once said, and I quote: “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.” We know that what happened today is magical. What happened before today was magical. As I said when we started this morning, changing society, changing views and changing how we do things is an enormous task. It is like climbing mountains. You take it, like the Japanese say, kaizen, one little hill at a time.

We did summit a mountain today. The very fact that we came together across regions of South Africa, across professions, across the continent, and even beyond the continent,

we agreed that social justice is one of the most pressing priorities of our time. We committed ourselves to work together to make sure that we make greater progress in advancing social justice within the next few years in line with the UN SDGs.

Today was the conference part, and as we indicated when we started, the input from our conference will influence tomorrow's discussions at the summit.

There will be speakers tomorrow, but we go in there with all of the wisdom that we have harvested from our collective minds today.

When we adopt a summit declaration tomorrow, it will consider this reservoir of information that came from everyone.

For me, the key takeaway is that lawyers and economists need to work together and, secondly, that both law and economics need to be owned by the people if we are to be a substantive democracy as opposed to formal democracy. That is not just for South Africa, it is for the entire continent.

May God bless you all.

Addenda

Boschendal resolutions on mainstreaming social justice and economic policy design and law reform

The Boschendal Resolution on Mainstreaming Social Justice in Economic Policy Design and Law Reform was adopted at the Second International Social Justice Conference on 11 October 2021 at Boschendal Conference Centre, South Africa.

The conference, titled 'Taking Economic Equality Seriously', was hosted by the Law Trust Chair in Social Justice at Stellenbosch University and the Council of Social Justice Champions.

We, the participants at the Second International Social Justice Conference, gathered at the Boschendal Conference Centre, drawn from diverse disciplinary backgrounds from all South African provinces, various parts of the African continent and beyond:

1. **Note with deep concern** that the Covid-19 pandemic, which has cost millions of lives, particularly those of the poorest in the world, has exposed the scale of social and economic imbalances and left certain groups of societies severely exposed to heightened social and economic hardships, including food security disruptions,
2. **Believe the freedom** to thrive socially and economically, in equality with others, is the birth right of every man, woman or person on the continent and in the broader world, yet many remain bound in chains of poverty, inequality, hunger and various forms of social exclusion, including education and digital exclusion,
3. **Are convinced** that deepening poverty, hunger and inequality pose a threat to social cohesion, peace, stability and the rule of law, while undermining sustainable development and resilient economic growth, and that there is an urgent need to make meaningful progress in addressing these disparities in line with the global Sustainable Development Goals (SDGs),
4. **Reaffirm** our commitment to the Resolution of the Inaugural International Social Justice Conference, which took place at Hazendal Wine Estate in 2019, among them the endorsement of the Musa Plan for Social Justice (Social Justice M-

Plan), a Marshall Plan-like initiative dedicated to advancing social justice in South Africa; the acknowledgement of the threat that social injustice poses to sustainable development, social cohesion, peace and stability; and the seizing of the catalytic opportunity presented by the 2030 Agenda for Sustainable Development and the opportunities available for multi-disciplinary academic research to catalyse progress towards breaking the back of structural inequality and ending poverty,

5. **Further reaffirm** the link between social justice and human rights and, specifically, the grounding of social justice in international and regional human rights treaties such as the Charter of the United Nations (UN Charter) Universal Declaration of Human Rights (UDHR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights, the Maputo Protocol, and subsidiary human rights and social change instruments,
6. **Encouraged** and inspired by the concrete social justice commitments and program of action in the Copenhagen Declaration and Programme of Action of 1995, the SDGs adopted by the United Nations (UN) in 2015 as a universal call to end poverty, advance equality, foster resilient communities, protect the planet and ensure that all people enjoy peace and prosperity by 2030, the African Union's Agenda 2063: The Africa We Want, which is a shared vision and strategic framework for achieving a peaceful Africa that works for all,
7. **Acknowledge** the duty of African governments and the collective responsibility of all sections of society to advance social justice, particularly regarding social and economic parity, while being mindful of the interconnectedness and indivisibility of human rights and freedoms,
8. **Note progress** made since the Inaugural International Social Justice Conference, particularly regarding research and exploring good practice in the

- use of prospective social impact tools that leverage systems and design thinking, using disaggregated data to predict the social justice impact of planned laws and policies focusing on economic equality and other sub-issues,
9. **Note that the regulatory responses** to Covid-19, although well intended, had a disparate impact on the poor and other vulnerable groups,
 10. **Note that not enough attention** has been paid to the relationship between economic policy design and social well-being, including human development, environmental justice and mental health,
 11. **Note further** that many of the Covid-19 fiscal relief packages were insufficiently designed to meet the differentiated needs of diverse affected groups in society while, in parts of the continent, arbitrary and unduly excessive measures were employed in the enforcement of laws and other measures aimed at containing the Covid-19 pandemic, with poor and other disadvantaged groups bearing the brunt of such executive exercise, and
 12. **Are encouraged** by progress made since the Inaugural International Social Justice Conference, including experimental research and development work aimed at designing prospective social impact assessments, which includes the Social Justice Impact Assessment Matrix (SIAM) that is being piloted at Swartland Municipality in South Africa with a view to assisting governments, businesses and courts, to mainstream social justice impact considerations at the design stage to ensure planned legislation, policies and programmes are attuned to diversity and do not have a disparate impact on disadvantaged groups and make informed policy choices that eschew any unintended impacts that exacerbate poverty and inequality.

We thereby resolve to:

- ❖ **Recommit ourselves** to seize the opportunity created by Covid-19 rebuilding endeavours, including those presented by the African Continental Free Trade Area (AfCFTA) agreement, to deepen social justice research, innovation and teaching, strengthen collaboration across disciplines and

sectors between academic institutions, broader civil society, business and government, as well as across the continent, including combining law making with design thinking, engineering and data science;

- ❖ **Commit ourselves** to increase efforts aimed at advancing social justice through impact foresight anchored in systems thinking, design thinking to aligning policy design reform with social justice obligations focusing on poverty and inequality collaboratively with other stakeholders, together with educating civil society on social justice as well as engaging businesses and government to attune their policies;
- ❖ **Promote** greater accountability for socio-economic inclusion and participatory democracy as well as social accountability through actions that include fostering constitutional literacy, legal literacy and economic literacy, while promoting greater transparency in government economic policy design processes and enhanced access to justice through courts and other forums;
- ❖ **Collaborate** on a Model Law on Equality Duty initiative to assist governments to adopt a law or integrate in existing law a requirement for the certification of compliance with the social justice or equality duty before any law, policy or programme is passed and assist with a model law to facilitate this process, taking into account the lessons from and continued responsibility to advancing gender mainstreaming and children's rights, while remaining mindful of all intersectional inequalities;
- ❖ **Collaborate** to support a Covid-19 rebuilding better together agenda on the continent that transcends the binary focus on health and the economy and includes social well-being imperatives such as education, mental health, food security, climate change and digital inclusion, while fostering a deliberate implementation of the SDGs and Agenda 2063, with all hands on deck in fostering resilient communities, shared prosperity and peace in the constituent countries and the continent;

- ❖ **Collaborate** in fostering a climate of friendship and a culture of shared humanity through embracing social justice, respect for human dignity, embracing diversity and fostering social cohesion and peace on the continent;
- ❖ **Collaborate** towards assisting African governments to invest in people, particularly young people, and improve their position in the Human Development Index so as to foster an ecosystem that is conducive to peace and stability for all, and effective implementation of the AfCFTA agreement;
- ❖ **Reinforce** the role courts serve in supporting democracy through purposive and contextual interpretation of the Constitution in a manner that is anchored in a commitment to the realisation of social justice, combating corruption, and fostering good governance, accountability and the rule of law in a manner that fundamentally transforms economic relations for marginalised groups, in line with the African Charter and international human rights treaties;
- ❖ **Engage** in interdisciplinary research collaboration to design and implement research and capacity-building programs aimed at reinforcing state capacity for ethical leadership, good governance, and anti-corruption in order to improve responsiveness, accountability and broader checks and balances; and
- ❖ **Promote** the prioritisation of the realisation of social justice through economic redistribution and economic parity, ensuring active public participation in budgetary processes to achieve human rights resonant budgets that are informed by mainstreaming gender and intersectionality considerations such as GBV, child abuse and child marriage/adoption to remove social barriers to women and young peoples' economic participation.

Programme of action

To give effect to the above commitments, we adopt the following programme of action, based on the outcomes of the parallel sessions:

Theme 1:

Land reform, property rights, and the distribution of assets

- **In pursuit of** SDGs 1, 5, 8, 15, and 16
- **Property** rights are not natural rights but rather politically determined rights. Action will be taken to promote an understanding of property rights, particularly land that is anchored in shared humanity and distributive justice, restitution, and economic parity

Actions to be taken:

Civil society

- Engage in ongoing efforts toward inclusive law reform and redistributive policy which has the land at its core and hold government accountable for effective implementation.
- Develop policy/actions towards well-thought-out social housing on vacant public land and hold government to the implementation thereof.
- Work towards revising and restructuring the spatial planning programmes introduced during Apartheid.
- Pursue the implementation of a system of subsidy for public transport by government.
- Ensure that government focus on the development of goal-driven sustainable legislation.
- Implore government to develop security of tenure aimed at people living in informal settlements.

Theme 2:

Business ownership

- In pursuit of SDGs 4, 5, 8, 9, 11, 12, and 13.
- In a world of increasing socio-economic disparities, environmental stresses, and governance travesties in both the public and private spheres, the case for more focus on accelerating the achievement of the SDGs through closer multi-stakeholder collaboration is clear, particularly as Business is a more immediate presence for most people than the State.

Actions to be taken:

Business

- Encourage business owners to remain cognisant of the benefits business incentives bear in the commercial environment.
- Commit to specific SDGs, which can be tested against key performance indicators.
- Challenge business leaders to believe in and commit to achieving social justice and economic parity through improved socially responsible business practices and a focus on impact investment.
- Collaborate on financial education: Financial services and consumer-focused companies must reconsider the complexity of the language they use with customers to ensure proper understanding.
- Encourage gender equality: pay parity, conditions of work, fair hiring practices, board and executive gender parity.
- Encourage decent work and economic growth: fair pay practices, lending and pro-poor insurance practices, and early invoice settlement for Small, Medium and Micro-Enterprises (SMME).
- Climate Action: responsible climate-focused lending practices, just climate transition policies and financing.
- Civil society

- Introduce relevant and well-formulated training for governance structures such as trustees to enable them to perform their duties with competency and integrity for the benefit of all stakeholders and the public.

Theme 3:

Financial inclusion

In pursuit of SDGs 1, 3, 4, 8, 11, 12, and 17.

Financial inclusion provides marginalised groups with access to affordable and sustainable financial products. There is a link between economic exclusion and financial inclusion, and the consequence of this link is a denial of access to financial products and services.

Actions to be taken:

- Civil society
- Challenge government to design financial education responses that are fit for advancing economic parity.
- Encourage government to introduce financial education that is human-centred while addressing consumerism behaviour when it relates to wealth as well as investments.
- Encourage financial institutions to leverage alternative savings practices such as stokvels.
- Government
- Partner with the private sector to increase awareness and accessibility to funding initiatives such as the Solidarity Fund.
- Business
- Expand and coordinate across the banking sector, making synergistic efforts to assist customers with finance restructuring.

- Support Civil Society based Social Accountability, Cohesion and Inclusion initiatives aimed at combating corruption and inclusivity of all through research, advocacy, monitoring and resource mobilisation to complement the Solidarity Fund and keep South Africa on track regarding ending poverty and inequality in terms of Constitutional and Sustainable Development Goal commitments.
- Academic institutions, government and insurance stakeholders
- Academic institutions, government and insurance stakeholders dedicate research and development focused on challenging the status quo of funeral insurance policies.

Theme 4:

Wealth and income distribution

In pursuit of SDGs 1, 4, 8, 9, and 10.

The Covid-19 pandemic has in many ways deepened the already prevalent economic inequalities, with corruption perpetuating the wealth gap, thereby contributing to the elusiveness of socio-economic justice.

Actions to be taken:

Civil society

- Review government's current economic policy, focusing on understanding and incorporating all elements of the 7R Theory of Wealth Creation; Rates, Remuneration, Royalties, Rights, Rent, Returns and Replication
- Explore ways to utilise the Disaster Management Act to assist South Africans beyond the Covid-19 pandemic.
- Analyse the economies of communities that have managed to thrive and remain sustainable, despite poverty and inequality and to develop policy reflective of those analyses.

- Shift thinking away from economic policy geared towards “bucket holders” and move towards policy aimed at developing the “pipelines” as this is where real wealth is generated.
- Highlight resource distribution deficits and mobilise resources for underserved communities and socially impacted areas such as education and access to digital platforms by disadvantaged groups and communities.
- Stakeholders’ financial institutions, financial ministry, government
- Participate in the economy through meaningful engagement.

Government

- Use fiscal and monetary policy instruments to relieve market pressure and boost aggregate demand. This can be achieved by zero-rating South African Reserve Bank interest and implementing capital controls to retain domestic capital.
- Restructure and reprioritise the state budget, with efforts to raise alternative sources of finance domestically, utilising capital markets, institutional investors, and pension funds for meeting the finance gap without taking away resources from equality-advancing measures.

Theme 5:

Social security and the Basic Income Grant

In pursuit of SDGs 1, 2, 3, 10, and 17.

- The Constitution of the Republic of South Africa and the Universal Declaration of Human Rights provide for the right to access to social security. The right to access to social security has been largely politicised resulting in the failure to provide adequate social security to marginalised groups.

Actions to be taken:

Civil society

- Commit government to cultivate conducive environments for the promotion and growth of SMMEs and advance access to credit facilities to diverse entrepreneurs and innovators.
- Implore government to expand the South African Reserve Bank mandate.
- Make use of tools such as the Poverty Stoplight indicators in order to measure the well-being of families and communities.
- Assist government to recognise that the Basic Income Grant plays a significant role in economic development and equality but that long-term solutions and the adoption of a zero-tolerance to corruption mandate must be pursued.

Government

- Expand financial support directed at economic security and participation as well as ensure that systems are put in place to support the timely disbursement of relevant Social Relief and Economic Support Package (SRESP) funds.

Theme 6:

Agriculture and Food Security

In pursuit of SDGs 1, 2, 3, and 10.

- The Constitution guarantees the right to access to nutritious food and the state has an obligation to progressively realise this right.

Actions to be taken:

Civil society

- Assist and encourage government to develop, introduce and enforce designed legislation to address the progressive realisation of the right to access to food,
- while advancing the SDG goals and achieving an inclusive, diverse and fair food system.

- Hold government accountable to protect this constitutional right and further develop a food and nutrition security strategy.
- Encourage government, in partnership with the private sector, to implement a support system for both smallholder and commercial farmers; subsequently,
- encourage urban agriculture as another solution to achieving food security and poverty.
- Foster a culture of food gardening, particularly in vulnerable communities and encourage each other on food wastage.
- Support community-based food security measures such as urban gardening.

Theme 7:

Education and Digital Inclusion

In pursuit of Sustainable Development Goals 1, 4, 8, and 10.

- The proliferation of technology, information, and innovation present great opportunities to the education system. However, these complex digital times expose the social justice realities in our societies, accordingly, stakeholders must collaborate to develop inclusive solutions.

Actions to be taken:

Civil society

- Ensure that African governments and the private sector invest in developing digital infrastructure that will fast-track development and access.
- Encourage government to consult, incentivise and/or partner with young Africans to find African solutions to African problems seizing the opportunities that the African Continental Free Trade Area (AfCFTA) agreement presents to scholarship and research through design thinking.
- Government

- Extend assistance and adequate resources to foster equal access to education, early childhood development, GBV, mental health, e-learning, e-governance and e-commerce.
- Education fraternity stakeholders (educators, basic, and higher education ministry, civil society, businesses and students)
- Review and restructure the curriculum.
- Employ a holistic approach to restructure the education curriculum to include all diverse students.

Theme 8:

Social justice resonant economic theories, including indices for measuring economic growth

In pursuit of SDGs 1, 4, 8, 9, and 10.

- The importance of measuring economic growth cannot be overstated. It ensures accountability for planned outcomes. The degree to which government, academic institutions and civil society work with indices for measuring economic growth that could be utilised at national, provincial, and municipal levels is the degree to which we achieve outcomes that are agreed upon.

Actions to be taken:

- Stakeholders: Social justice practitioners and activists, civil society, businesses, government, and the judiciary.
- Reach consensus and maintain consistency regarding the precise definitions of social justice and surrounding concepts.
- Academic institutions, governments, and civil society to actively reduce silos within themselves to ensure a coming together for the facilitation of processes of economic growth and economic equality, ensuring outcomes that people want.

Civil society

- Ensure that government utilises effective leadership to bring a multi-disciplinary approach to dealing with social justice outcomes in a context where poverty and inequality are high.
- Monitor the extent to which corruption and faulty governance inhibit the facilitation of proceeds of economic growth towards reducing inequality and poverty and hold government accountable.

Business

- Support poverty mapping and civil society initiatives towards gathering disaggregated, current, and accurate data on poverty and inequality to support government policy planning.

Social justice practitioners and activists

- Through piloting the SIAM and other relevant assessment instruments, leveraging data analytics to catalyse the advancement of equality and broader social justice in line with SDGs 10 and 16 on advancing equality and responsive law and policy reform, and recommend specific policy changes.

Establish a consolidated Covid-19 Responses Index covering:

Covid-19 Policy directives from the WHO

- National Policies and Statements Relief Action by Government and Civil Society, indicating relevant stakeholders, resources involved, target group and municipal wards that have received assistance among the 4 392 Municipal Wards
- Designated groups impacted such as children, older persons, unemployed, self-employed, students, immigrants and the informal sector/gig economy.

Theme 9:

Emerging tools for social impact conscious economic planning

In pursuit of SDGs 4, 8, 9, 10, 11, and 16.

- The Covid-19 pandemic has disrupted the traditional business operational model, further exposing the high levels of inequality and poverty.

Actions to be taken:

Stakeholders (Businesses and government)

- Engage in collecting and collating data and statistics through community engagement to understand better the relationship between the current economic legislations and the socio-economic realities of communities.

Civil society

- Acknowledge the inadequate access to the internet and technological devices and hold government accountable.
- International community.
- Provide research assistance to civil society.
- Continue to help foster global and related relief.

Government

- Re-invest in the growth, skills development and operation of productivity-enhancing sectors such as healthcare, mining, agriculture, sport, fashion, and others while restructuring the economy to create vibrant and resilient local economies in all municipal districts fostering enterprising communities, young people and women.
- Maintain support for the social justice M-Plan which is aimed at advancing equality and ending poverty by 2030 in line with the National Development Plan (NDP), AGENDA 2063 and SDGs, thus fortifying constitutional democracy and peace and encouraging synergy with Covid-19 solidarity initiatives.

Social Justice practitioners and activists

- Through piloting the SIAM and other relevant assessment instruments, which involve leveraging data analytics to catalyse the advancement of equality and broader social justice in line with SDGs 10 and 16 on advancing equality and responsive law and policy reform, recommend specific policy changes.

Theme 10:

The role of law reform and judicial activism in advancing economic parity and SDG goals

In pursuit of SDGs 8, 10, 16, and 17.

- Although the South African Constitution makes no provision for the right to development, the Court has innovatively referred to the African Charter on Human and People's Rights and other international instruments to give effect to this right in the South African legal system.

Actions to be taken:

Judiciary

- Make economic issues matters of public interest under the constitutional framework to promote accountability, transparency, and equality on the part of the judiciary, government, businesses and civil society.
- Maintain judicial independence in adjudication while having regard to socio-economic realities and socio-political context.

Judiciary, Civil society and Businesses

- Actively participate in judicial activism within the confines of the law, to develop the law to align with its constitutional aspirations.

Government

- Engage in local level consultation; policy design models should incorporate disaggregated data-based planning and consultation with community forums.
- Conduct urgent poverty mapping to foster demand-driven service delivery and general democratic governance instead of supply-driven service delivery.
- Ensure transparency in policy design process: Procurement, entitlements and municipal ward-based service delivery index updated every week to improve social accountability, public trust, the rule of law and policy legitimacy.
- Ensure South African National Defence Force and police are all effectively trained in proper crisis response mechanisms, consistent with peacekeeping, with clear guidelines and standards for the protection of civilians and where there are breaches, swift action should be taken and justice should be seen to be done.

Civil society

- Implore government to implement and evaluate the current laws and policies as well as the applicable international instruments such as the SDGs.
- Uphold social accountability, including educating the public about rights and privileges in times of the pandemic, combat corruption and undue deviations from democratic governance and assist those struggling to access to SRESP benefits they are entitled too.
- Uphold the principles of solidarity as enshrined in our constitution and spirit of *ubuntu* through initiatives under the Social Justice M-Plan and others that are aimed at ensuring inclusivity for all, through research, advocacy, monitoring and resource and mobilisation to complement the Solidarity Fund and keep South Africa on track regarding ending poverty and inequality in terms of Constitutional and Sustainable Development Goal commitments.
- International Community

- Provide funding to the Government and NGOs for policy and relief implementation and monitoring compliance, and combat corruption while preserving the rule of law and a fair level of democratic governance.

Social Justice practitioners and activists

- Continue tracking Covid-19 policy responses and their impact, having reconstituted ourselves as social justice and SCOPRA, also monitoring ongoing unintended consequences of both policies and conduct of state functionaries and others across all Working Group domains.
- Help government consolidate Covid-19 legislation for public consumption per geographical domain, with purposes explained and provided for each regulatory change and provide a Digital Portal as a resource where all the consolidated policies can be accessed by all.
- Through piloting of the SIAM and other relevant assessment instruments that involve leveraging data analytics to catalyse the advancement of equality and broader social justice in line with SDGs 10 and 16 on advancing equality and responsive law and policy reform, recommend specific policy changes.