

5.5 Conclusion

'The fights against corruption like many efforts for the enjoyment of human rights is a long term process demanding a firm grounding in a countries institutions, laws and culture.'¹⁸⁷

'An engaged civil society and media that value and demand accountability and transparency are vital in addressing corruption.'¹⁸⁸ My conclusion to the chapter based on the aforementioned good governance institutions is that they are already making governments to be accountable. Some of these institutions have a proactive role, for example the office of the Ombudsman or the Public Protector by the power of own motion may commence investigations if the office is of the view there lies in an administrative decision or process, a possibility of maladministration, corruption or violation of a right.

¹⁸⁷ UNHR 'The human rights case against corruption – office of the high commissioner'.

¹⁸⁸ As above.

Chapter 6

Summary, general remarks, recommendations and conclusions

6.1 Summary of the study

Accountability, transparency, inclusion of citizen participation in decision making, and responsiveness are core in ensuring good governance and that there is respect for human rights. In summary, this is what this study has unpacked and revealed. The importance of the institutions established to promote good governance, be it through legislation; hence, termed state-based and those that are through civil society and non-profit organisations, has been discussed. It remains critical to refer to the inclusion of citizens, communities, various groups of citizens such as the youth and the elderly. I find it necessary at this point to quote Beth Noveck on what the immediate former president of the United States of America said on transparency: ‘Our commitment to openness means more than simply informing the American people about how decisions are made. This means recognising that government does not have all the answers and that public officials need to draw on what citizens know’.¹⁸⁹ Enquiring into the contribution that meaningful engagement has brought in the adjudication and realisation of economic, social and cultural rights it has been revealed that the courts could be relieved of the role that it is often faced with if meaningful engagement is done prior to an administrative action. We have seen the successes of meaningful engagement in the *Olivia Road* case, which did influence change of housing policies by municipalities so as to be human rights compliant.

6.2 General remarks

On the subject of citizen participation and engagement, those with the expertise in the area inform others of the importance of including public participation at the design of a concept all the way to implementation, review and evaluation. International Peacebuilding

¹⁸⁹ B Noveck ‘Enhancing citizen participation in decision making’ (June 2009) The White House.

Advisory Teams intimate that ‘a social political contract between the governors and the governed requires a process of negotiation and interaction’.¹⁹⁰ It is thus pertinent to remark that governance runs smoothly where the authorities trust their citizens and more importantly, where the people trust their government as there are less chances of friction.¹⁹¹

6.3 Recommendations

Enabling conditions for the achievement of effective public participation and meaningful engagement are among others political motivation, resources being made available by the government of the day, where information sharing and access to information are prioritised, where there is civil society capacitation and the media is independent.¹⁹²

A great deal of what occurs in the current modern times is the use of the internet which in my view, the government must make it accessible to a good part of the public. Other methods of participation that have been used in the past need to be addressed to compliment the use of the internet, such as making the aged, mostly found in rural areas literate. In essence, this takes care of the challenges generally met with these methods mostly done by way of public meetings and often characterised with non-attendance. It is also my view that the non-attendance is a result of calling different segments of the society to a central point without focusing on how to target a particular group.

‘Scholars report that using internet-based interactive technology to facilitate citizen participation programs not only helps to gauge citizen preferences in government decisions, but also improves decision-making and transparency.’¹⁹³

¹⁹⁰ Ipat (n 42 above).

¹⁹¹ As above.

¹⁹² As above.

¹⁹³ Kim & Lee (n 29 above).

6.4 Conclusions

According to the human rights-based approach (HRBA) on the relationship between human rights and good governance ‘human rights strengthen good governance framework and this require going beyond the ratifications of human rights treaties, integration into the legislation state policy and practise.’¹⁹⁴ The ‘credibility of democracy depends on the effectiveness of the state’s response to people’s political, social and economic needs.’¹⁹⁵ What in essence has been the focus in this piece of work in profound terms is democracy and as one of the principles thereof being citizen participation and engagement, inclusiveness, responsiveness and the effectiveness of meaningful engagement in the realisation and adjudication of economic, social and cultural rights. There is no other way this could be discussed without unpacking the responsibilities that are given to the institutions that play an oversight role on governments to be compliant with the standards set in the international arena to enhance good governance and respect for human rights.

National Human Rights Institutions are independent public bodies that fight for the furthering of human rights in their countries by monitoring and reporting on human rights situations in the country.¹⁹⁶ As part of the mandate they are tasked with, they also play an advisory role to the government and parliament on human rights and legislative issues.¹⁹⁷ The United Nations rely on these institutions’ contributions when assessing adherence to the international good governance and human rights standards. In executing their mandate in the furthering, promotion and protection of human rights, they keep checking if the government of the day proceeds in the appropriate way.¹⁹⁸ In what we may term a prevailing burning issue in South Africa regarding the farm evictions, which

¹⁹⁴ <https://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance> (accessed 20 June 2018).

¹⁹⁵ As above.

¹⁹⁶ <https://www.humanrights.dk/publications/review-literature-national-human-rights-institutions> (accessed 22 June 2018).

¹⁹⁷ As above.

¹⁹⁸ As above.

by now the South African Human Rights Commission has come out clear to talk about, is the promise that was made by the current president that no farm evictions will take place until the people can be given decent housing.¹⁹⁹ The Commission has raised their concern on the delivery of the promise that was made in 2014 and during April 2018 and has undertaken to demand answers from the executive. It is worth noting that the right to adequate housing is a socio-economic right provided for in section 26 of the South African transformative and progressive Constitution. Through case law, the Constitutional Court has pronounced that evictions can only take place when the government has made available alternative dignified housing for the people. The Commission has also cautioned the government on the recent tragedies that befell pupils who drowned in pit latrines at schools to say that such an environment is not compliant with the realisation of the right to basic education (section 27) in the Constitution, among other rights.²⁰⁰ Being specific to the Public Protector, the office has been able to handle high profile cases of corruption and maladministration in the land and as such has had an influence in the country's political and economic landscape. It is with no doubt that corruption has a strong negative effect on the realisation of economic, social and cultural rights as only a few get to benefit to the detriment of the whole society. The poor remain in poverty. It is against this background that strengthening and adequately providing resources for good governance and human rights institutions are necessary, for their effectiveness is pivotal.

'Civil society is the aggregate of NGOs, institutions, families and even individuals that manifest interest and will of citizens. It works in the interest of citizens but outside the government and profit making sector.'²⁰¹ This definition was shared at a lecture session in Ghana on the role of civil society in promoting and protecting human rights organised by Marian Conflict Resolution Centre. It is indeed desirable that they find support from governments through collaborations since they contribute impeccably well to the subject.

One other important sector's participation in good governance issues is the Media. Its work thus far as the fourth estate does not go unnoticed and is encouraged to remain

¹⁹⁹ 'Ramaphosa's promise on farm evictions, SAHRC wants answers' *News24* 5 April 2018.

²⁰⁰ <http://ewn.co.za/2018/03/21/sahrc-reminds-anc-of-post-1994-human-rights-violations>.

²⁰¹ 'Lecture on the role of the civil society in promoting and protecting human rights' MCRC.

strong in reporting on human rights violations, maladministration and corruption. It is partly through their work that some cases of violations end up with the judiciary for adjudication. And talking about the judiciary, it is only proper to end by quoting the current Chief Justice who said in his presentation at the conference on the role of the judiciary in promoting peace, good governance and sustainable development that ‘there simply can be no state or government without the judiciary in a democracy and when the judiciary enjoys both individual and institutional independence and is faithful to its constitutional mandate, peace, good governance and sustainable economic development is achievable’.²⁰²

²⁰² ‘The role of the judiciary in promoting peace, good governance and sustainable development’ speech by CJ Benin (2013).

BIBLIOGRAPHY

Books

Chatuverdi, H R & Mitra S K (1982) '*Citizen Participation in Rural Development*' Oxford & IBH Publishing Co.

Chirwa, DM & Chenwi, L (eds) (2016) '*The Protection of Economic, Social and Cultural Rights, International, Regional and National Perspectives*' Cambridge University Press

Chenwi, L (2009) '*Meaningful Engagement in the Realization of socio economic rights South African experience*' (2009) Law and Politics in Africa Asia and Latin America

Currie, I & De Waal, J (2005) '*The Bill of Rights Handbook*' Juta

Faber, C (2000) '*Social rights under the Constitution: Government and decent life*' Oxford University Press

Hill, LB (2005) '*The Model Ombudsman: Institutionalizing New Zealand's democratic experiment*' Princeton University Press

Howard, C (2010) '*The Organizational Ombudsman: Origins, Roles and Operations - a legal guide*' American Bar Association

Khoza, S (2007) (ed) '*Socio-economic rights in South Africa: A resource book*' Community Law Centre, University of the Western Cape

Finterman, C (1997) '*Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*' International Commission of Jurists

Journal articles

Amadi, L & Ekekwe, E 'Corruption and Development Administration in Africa: Institutional Approach' (2014) 8 *African Journal of Political Science and International Relations*

Arambulo, K 'Giving meaning to economic, social and cultural rights: A continuing struggle' 2001 *Human Rights and Human Welfare* (111-123)

Ares, Hernandez E 'Corrosive effect of corruption on trust in politicians: Evidence from a natural experiment' (2017) 4 (2) *SAGE* 1-8

Armstrong, E 'The role of active participation and citizen engagement in good governance' (September 2013) *Division for Public Administration and Development Management*

Caddy, J 'Why citizens are central to good governance' (2011) *OECD Observer* 229

Chambers, N & Cornforth, C 'The role of corporate governance and boards in organisational performance' in Walshe, K, Harvey, G & Jas, P (eds) (2010) '*Connecting knowledge and performance in public services: from knowing to doing*' Cambridge: Cambridge University Press 1-24

Chenwi, L 'Engaging meaningfully with government on socio economic rights: A focus on the right to housing' (2011) 26 *Southern African Public Law*

Chenwi, L 'Meaningful Engagement in the Realisation of Socio Economic Rights: The South African experience' (2011) 26 *Southern African Public Law* 128-156

Drury, C Kriekhaus, J & Lusztic, M 'Corruption, Democracy & Economic growth' (2006) 27 (2) *International Political Science Review* 121-136

Girindawardana, D 'The role of ombudsman institutions in improving public service delivery (2015) *Governance for Development*

Holmes, B 'Citizens' Engagement in Policymaking and the Design of Public Services' Research Paper 1 (2011-2012) *Parliamentary Library Research*

Liebenberg, S 'Engaging the paradoxes of the universal and particular human rights adjudication: the possibilities and pitfalls of 'meaningful engagement'' 2012 12 (1) *African Human Rights Law Journal* 1-29

Liebenberg, S 'Participatory approaches to socio economic rights adjudication: Tentative lessons from South African evictions law' (2014) 32 (4) *Nordic Journal of Human Rights* 312-330

Liebenberg, S 'Remedial principles and meaningful engagement in education rights disputes' (2016) 19 *Potchefstroom Electronic Law Journal*

McLean, K 'Meaningful engagement: one step forward or two back? Some thoughts on Joe Slovo (2010) 3 *Constitutional Court Review* 223-242

Mnamuchi, O & Ortuanya, S 'The human rights to health in Africa and its challenges: a critical analysis of Millennium Development Goal 8 (2012) 12 (1) *African Human Rights Law Journal* 178-198

Nakuta, J 'The justiciability of social, economic and cultural rights in Namibia and the role of NGOs' in N Horn & A Bösl (eds) *Human rights and the rule of law in Namibia* (2008)

Nekola, M 'Political participation and governance effectiveness - Does participation matter?' (2014) *Center for Social and Economic Strategies (CESES)* 1-8

Odongo, G 'Caught between progress, stagnation and in a reversal of some gains: reflections on Kenya's record in implementing children's rights norms' (2012) 12 (1) *African Human Rights Law Journal* 112-141

Pillay, P 'Anti-Corruption Agencies in South Africa and Brazil: Trends and Challenges' (2017) 9 (8) *African Journal of Public Affairs* 1-14.

Ray, B 'Engagement's, Possibilities and Limits as a Socio-economic Rights Remedy' (2010) 9 *Washington University Global Studies Review* 399-425

Rezaul, Islam M & Mungai, N 'Forced evictions in Bangladesh: A human rights issue' (2016) *SAGE* 2016 (15)

Trilsch, M 'what's the use of socio-economic rights in a constitution: taking a look at the South African experience' (2009) 42 (4) *Law and Politics in Africa, Asia and Latin America* 552-575

Van der Berg, S 'Meaningful engagement: Proceduralising socio-economic rights further or infusing administrative law with substance?' (2013) 29 (2) *South African Journal on Human Rights* 376-398

Wiles, E 'Aspirational Principles or Enforceable Rights? The Future for Socio-Economic Rights in National Law' (2006) 22 (1) *American University International Law Review* 35-64.

Table of cases

Government of the Republic of South Africa v Grootboom and Others 2000 ZACC 19
2001 (1) SA 46 CC

Head of Department of Education, Free State Province v Welkom High School CCT
103/12 2013 ZACC 25

Minister of Public Works v Kyalami Ridge Environmental Association CCT 55/00 2001
ZACC 19; 2001 3 SA 1151 CC

*Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City
of Johannesburg and others* 24/07 2008 ZACC 1

Port Elizabeth Municipality v Various Occupiers 200412BCLR CC

Residents of the Joe Slovo Community, Western Cape v Thubelisha Homes and Others
CCT 22/08 (2010 (3) SA 454 CC ZACC 16

Table of Legislation

Constitution of the Republic of South Africa, Act 106 of 1996

Constitution of the Republic of Botswana, 1966 (as amended up to 2006)

Human Rights Commission Act 54 of 1994

Municipal Financial Management Act 56 of 2003

Ombudsman Act 5 of 1995

Prevention and Combating of Corrupt Activities Act 12 of 2004

Prevention of Illegal Eviction Act 5 of 1998

Public Protectors Amendment Act No. 22 of 2003

Table of treaties

African Charter on Humans and Peoples' Rights (1981)

Covenant on Economic Social and Cultural Rights (2008)

International covenant on economic social and cultural rights (CESCR) (1966)

Universal Declaration of Human Rights (1948)

Presentations/Reports/Papers

Abahlalibase Mjondolo 'Meaningful engagement' Centre for applied legal studies' 2009

'Anti-corruption policies and programs: a framework of evaluation' 2014

'A process in which individuals take part in decision making in the institutions, programs and environments that affect them' Helen *et al* 1984: 339

'Botswana country commercial guide – corruption' 2017

'Citizen Participation is not simply volunteering time on resources but occurs when citizens take part in making for the community' Dalton *et al* 2001:342

'Community psychology, power and participation' Paul Docket EGB E48

'Core democratic values' Susanne Beydown

'Coglianese, C, Kilmartin, H & Evan, M 'Transparency and public participation in the role making process- a non-partisan presidential transition task force report'

Van der Berg, S 'Conceptualising meaningful engagement in South African eviction cases' exclusive gem' (2012) *Oxford Human Rights Hub*

WEBSITES

[https://www.academia.edu/8492340/Citizens participation as an important tool to strength d emocracy](https://www.academia.edu/8492340/Citizens_participation_as_an_important_tool_to_strength_d_emocracy)

[www.biodiversity.ru/coast learn/pp-eng/benefits.html](http://www.biodiversity.ru/coast_learn/pp-eng/benefits.html)

<http://www.sandiegouniontribune.com/sdut-the-pros-and-cons-of-citizen-participation-2012feb18-story.html#>

www.oecd.org/dac/evaluation

[http://www.ohchr.org/en/sections/what we-do/protect-human-/rights/index.html](http://www.ohchr.org/en/sections/what-we-do/protect-human-/rights/index.html)

https://en.wikipedia.org/wiki/Human_Rights_Commission

<https://redprivet.com/our-thinking/what-we-mean-when-we-talk-about-meaningful-engagement/>

<https://www.escr-net.org/rights>

<https://legaldictionary.net/alternative-dispute-resolution>

www.un.org/en/ombudsman

<http://fpombudsman.org/wp-content/uploads/2016/04/Ombudsletter-11-Where-is-my-Pension.pdf>

<https://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance>

<https://www.humanrights.dk/publications/review-literature-national-human-rights-institutions>

<http://ewn.co.za/2018/03/21/sahrc-reminds-anc-of-post-1994-human-rights-violations>

[https://www.academia.edu/8492340/Citizens participation as an important tool to strength d emocracy](https://www.academia.edu/8492340/Citizens_participation_as_an_important_tool_to_strength_d_emocracy)

[www.govtech.com/e-government/5-ways-to-improve - citizen engagement - initiatives.html.](http://www.govtech.com/e-government/5-ways-to-improve-citizen-engagement-initiatives.html)

www.oecd.org/dac/evaluation

[https:// www.tei.org.za/index.php/resources/articles/fraud-and corruption/1705](https://www.tei.org.za/index.php/resources/articles/fraud-and-corruption/1705)