

Cambridge University Press

978-1-107-02945-3 - Engaging with Social Rights: Procedure, Participation, and Democracy in South Africa's SecondWave

Brian Ray

Index

[More information](#)

INDEX

- Abahlali BaseMjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others (Abahlali)*, 105–06, 126–29, 137, 142, 177, 344
- case overview, 110, 126–27
- dignified framework for evictions in, 177, 180, 203, 348, 350
- National Housing Act and, 126, 127, 128
- PIE and, 126, 127, 195–96
- proceduralization in, 195–96
- section 16 and, 127
- section 26 and, 127–28, 195–96
- administrative-law review, 207–09
- advocacy organizations, 341–42, 343–44
- African National Congress (ANC), 34, 37–38, 42, 190, 200, 202, 296, 325, 340–41, 358, 360, 363–65
- Albiston, Catherine, 21
- American Political Science Association, 311, 319
- ANC. *See* African National Congress (ANC)
- anti-land invasions, 178–81
- Anti-Privatisation Campaign, 133
- basic services cases, 129–44
- Joseph*. *See Joseph and Other v City of Johannesburg and Others (Joseph)*
- Mazibuko*. *See Mazibuko and Others v City of Johannesburg and Others (Mazibuko)*
- Nokotyana*. *See Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others (Nokotyana)*
- Batho Pele White Paper, 294
- Bilchitz, David, 265, 360
- blockages, 30
- Blue Moonlight*. *See City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Blue Moonlight)*
- Blue Moonlight II*. *See Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality and Another (Blue Moonlight II)*
- Botha, Henk, 281–82, 323
- Brand, Danie, 84, 86, 323
- Breaking New Ground housing policy, 202
- Brinks, Daniel, 334, 346–48, 353, 355–58
- Budget and Expenditure Monitoring Forum, 342
- Building Regulation Act, 112
- CALS. *See* Centre for Applied Legal Studies (CALS)
- Cameron, Edwin, 159, 161, 162, 165
- Canada, 22, 23
- Canadian Charter of Rights and Freedoms, section 33 of, 25
- catalytic courts, 191, 224–29
- Centre for Applied Legal Studies (CALS), 112, 341
- Centre for Housing Rights and Evictions (COHRE), 113, 120, 127–28

- Certification of the Constitution of the Republic of South Africa* (First Certification judgment), 3, 33, 45, 46–48, 52, 53–54, 182–83
- justiciability of social rights in, 3, 33, 52
- objections to social-rights provisions in, 47–48
- section 26 and, 53–54
- Changing Tides*. *See* *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (Changing Tides)*
- Chaskalson, Arthur, 200, 350, 360–61
- City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties (Blue Moonlight)*, 107, 118, 146, 150–59, 208, 223, 291, 357
- authority of courts in, 314
- Blue Moonlight II* and, 146, 184, 221, 223, 237, 249, 254, 270, 271
- catalytic courts and, 226
- companion decisions, 169–73, 197–98, 218, 244
- Golden Thread*, 171–73, 244
- PPC Quarries*, 170–71, 244
- Court's interpretive role in, 207
- enforcement process in, 271
- Grootboom* and, 153–54
- Housing Act and, 151, 153–54
- legalized accountability and, 361
- legitimate expectations and, 266
- meaningful engagement in, 184–85, 236, 249, 254, 257
- municipal policies in, 345
- Municipal Systems Act and, 151
- National Housing Act and, 157, 158, 163, 185, 207, 226, 250–51
- PIE and, 151–53, 159, 163, 174–75, 198, 216, 217, 244, 268
- procedural authority in, 197–98, 250–51, 269–72
- reasonableness review in, 156
- section 25 and, 151, 152, 157, 183, 197
- section 26 and, 152, 155–56, 157, 158, 183, 250–51, 290
- section 152 and, 157
- section 153 and, 157
- Supreme Court of Appeal's judgment in, 158
- temporary delay of eviction in, 172
- City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (Changing Tides)*, 251–52
- civil society organisations (CSOs), 255, 257, 297, 314–15, 321–22, 340, 362
- CLC. *See* Community Law Centre (CLC)
- COHRE. *See* Centre for Housing Rights and Evictions (COHRE)
- Community Law Centre (CLC), 52, 120, 341
- community participation, 296–99
- invited spaces and, 321
- limits of, 317
- meaningful engagement and, 321–22
- pitfalls of, 316–22
- social rights and, 335
- Constitution of South Africa (1996), 1
- First Certification judgment, 3, 33, 45, 46–48, 52, 53–54
- justiciability and, 15, 33–43
- section 1 of, 182–83, 192–93
- section 16 of, 127
- section 25 of, 70, 72, 78, 80, 151, 152, 157, 183, 184, 197, 201, 234, 237–38, 240, 241–42
- section 26 of, 39–40, 48–49, 52, 53–55, 56, 71, 72, 75–76, 77, 78, 79, 80, 89, 90, 99, 110, 113, 114, 120, 127–28, 152, 153–54, 155–56, 157, 158, 160, 167–68, 175–76, 177, 183, 195–96, 198, 199, 201, 202, 234–35, 237–39, 240, 241–42, 247, 250–51, 256, 266–67, 290, 352
- section 27 of, 39–40, 48–49, 50, 53, 60, 64, 65, 66, 90, 95, 98–101, 133–35, 137–38, 141, 201, 214–15, 256
- section 28 of, 39, 52, 56–57

- section 29 of, 182, 184
- section 33 of, 25
- section 34 of, 79–80, 201
- section 36 of, 50, 76
- section 72(1) of, 283
- section 118(1)(a) of, 283
- section 152 of, 131, 157, 196
- section 153 of, 157, 196
- social-rights provisions in, 16, 34–37, 39
- text and structure of, 39–43
- Treatment Action Campaign* decision and, 60
- Corder, Hugh, 35
- Daily Maverick* (newspaper), 366–67
- Davis, Dennis, 36, 37, 52
- de Vos, Pierre, 123
- democracy
 - accountability and, 285–87
 - conceptions of, 281–82
 - participatory, 60, 107, 280–85, 287–92, 335
- democratic engagement, 7, 12, 218, 223, 274–329
 - administrative practices and, 307
 - civil society organizations and, 321–22
 - community participation and, 296–99, 302, 316–22
 - democratic experimentalism and, 276–78, 302, 318–19
 - eviction model and, 274, 282, 290, 314, 317, 322, 328, 331, 333, 335–36
 - institutional reforms and, 305–06
 - invented spaces and, 299–302
 - legalized accountability and, 302, 306–07, 312–16
 - limits of, 322–29
 - local protests and, 299–302
 - meaningful engagement and. *See* meaningful engagement
 - participation legislation and, 293–95
 - participatory democracy decisions and, 281–85
 - participatory governance and, 318–19
 - PIE and, 274
 - social rights and, 280–92, 333–66
- democratic experimentalism, 9, 18, 27–28, 191, 212, 219–24, 276–77, 336
 - catalytic courts and, 191, 224–29
 - community participation and, 280–92, 310–11, 318–19
 - democratic engagement and, 276–78, 302, 318–19
 - democratic experimentalist review, 18, 27, 43, 45, 219, 221–22, 278, 308–09, 310–11
 - destabilization rights and, 28
 - experimentalist court, 219–24
 - incrementalism and, 221–22
 - legalized accountability and, 277, 308–09
 - meaningful engagement and, 218–29, 276–77
 - participatory governance and, 274–75, 281–85
 - proceduralization and, 39–43, 274–75, 367
 - social rights and, 29–33
 - weak-form review and, 27, 28
- democratic experimentalist review. *See* democratic experimentalism
- Denmark, 23
- Department of Performance Monitoring and Evaluation (DMPE), 363
- Disaster Management Act 57 of 2002 (DMA), 175
- Dixon, Rosalind, 30
- Doctors for Life International v Speaker of the Assembly (Doctors for Life)*, 283, 285, 286, 326
 - meaningful engagement and, 288
 - participatory democracy in, 287, 288, 313, 324–26
- Dorf, Michael, 220
- Dugard, Jackie, 4, 141, 142, 213–14, 215–16, 281, 297, 337, 350
- Ekurheleni Municipality, 143
- engagement. *See* meaningful engagement

- Epp, Charles, 277, 304, 309, 312, 313–14, 316, 334, 351, 353, 354, 362. *See also* legalized accountability
- Equal Education, 341
- eThekweni Municipality, 179
- eviction model, 7, 11, 142, 170, 173, 175, 184, 216–18, 233–73
- democratic engagement and, 274, 282, 290, 314, 317, 322, 328, 331, 333, 335–36
- Government of the Republic of South Africa v Grootboom* and, 237–41
- impact of, 331–53
- backlash, 349–51
- middle-class capture, 346–49
- on municipal policies, 345–46
- regulatory effects, 346–49
- incremental substantive development and, 242–48
- limitations of, 267–69, 273, 351–53
- procedural, 269–73
- substantive, 267–69
- meaningful engagement and, 248–60
- National Housing Act and, 328
- PIE and, 233, 242, 328, 344, 352
- procedural authority and, 248–60
- weak-form review and, 237–38, 239, 243
- experimentalism. *See* democratic experimentalism
- Finland, 23
- First Certification judgment. *See* *Certification of the Constitution of the Republic of South Africa* (First Certification judgment)
- first-wave cases, 7–8, 45–82. *See also* second-wave cases
- divergence of opinion over, 83–102
- First Certification judgment, 46–48. *See also* *Certification of the Constitution of the Republic of South Africa*
- Grootboom*, 51–57. *See also* *Government of the Republic of South Africa and Others v Grootboom*
- Jaftha*, 75–77. *See also* *Jaftha v Schoeman and Others*, *Van Rooyen v Stolz and Others*
- Khosa*, 64–69. *See also* *Khosa and Others v Minister of Social Development and Others*
- Modderklip*, 79–81. *See also* *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd*
- Port Elizabeth Municipality v Various Occupiers*
- proceduralization in, 86–88
- Soobramoney*, 48–51. *See also* *Soobramoney v Minister of Health (Kwazulu-Natal)*
- Treatment Action Campaign*, 57–64. *See also* *Minister of Health and Others v Treatment Action Campaign and Others*
- weak-form review and, 46, 56, 81, 84–85, 97
- Forbath, William, 21, 59, 85, 90, 209
- Friedman, Steven, 301, 302, 320
- Froneman, Johan, 162
- Fuller, Lon, 20
- Gauri, Varun, 334, 346–48, 353, 355–58
- Gauteng Province, 143
- GEAR. *See* Growth, Employment and Redistribution (GEAR) strategy
- Gini coefficient, 331
- Glenister v President of the Republic of South Africa & Others*, 283, 285–87
- democracy and accountability in, 285–87
- participatory democracy and, 283
- Golden Thread*. *See* *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others (Golden Thread)*
- Good Governance Learning Network (GGLN), 296–97, 343

- Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others (Juma Masjid)*, 174–75, 181–83, 184, 189, 227
- authority of courts in, 314
- case overview, 181–82
- catalytic courts and, 227
- eviction model, 261
- High Court judgment in, 181–82
- meaningful engagement and, 183, 184, 199, 235, 253, 259, 292
- PIE and, 184
- proceduralization in, 181, 199
- section 1 and, 182–83
- section 25 and, 184
- section 29 and, 182, 184
- section 8 and, 182–83
- Government of the Republic of South Africa and Others v Grootboom (Grootboom)*, 15, 22, 51–57, 73–74, 83, 138, 140, 147, 188, 203, 217, 225
- administrative-law review of, 207
- catalytic courts and, 225
- eviction model, 237–41, 243, 261
- Housing Code and, 143–44
- justiciability in, 193
- minimum core, 53–54
- municipal policies in, 346
- National Housing Act and, 114, 154–55, 157, 158
- overview of, 51–52
- PIE and, 146, 147, 238, 261
- proceduralization in, 86, 87, 95, 210
- reasonableness review in, 54–57, 325
- Rental Housing Act and, 147
- section 1 and, 193
- section 25 and, 234, 237–38
- section 26 and, 3, 52, 53, 54–55, 56, 79, 89, 90, 110, 114, 153–54, 157, 234–35, 237–39
- section 27 and, 137–38
- section 28 and, 52, 56–57
- social change and, 338
- substantive limits of eviction in, 267
- weak-form review and, 45, 84–85, 89–91, 107, 135, 144, 188, 196, 209, 210
- Grootboom*. *See* *Government of the Republic of South Africa and Others v Grootboom (Grootboom)*
- Growth, Employment and Redistribution (GEAR) strategy, 42, 296, 341
- Hattingh and Others v Jutta (Hattingh)*, 146
- Hayson, Nicholas, 36
- Heller, Patrick, 296, 311
- Hirschl, Ran, 8, 22–23, 330, 331–32, 354
- Hlophe v City of Johannesburg (Hlophe)*, 290–92, 315, 361
- Hollow Hope, The: Can Courts Bring About Social Change?* (Rosenberg), 22
- housing, right to. *See* Constitution of South Africa (1996), section 26 of
- Human Development Index, 331
- incrementalism, 221–22
- India, 296, 311
- Inner City Resources Centre (ICRC), 112
- Interim Constitution (1993), 47–48
- Constitutional Principles, 1
- International Covenant on Economic and Social Rights (ICESCR), 40, 55, 182
- Isandla Institute, 342–43
- Israel, 22
- Issacharoff, Samuel, 325
- Jaftha v Schoeman and Others, Van Rooyen v Stolz and Others (Jaftha)*, 75–77
- case overview, 69–70
- catalytic courts and, 226
- PIE and, 77
- proceduralization in, 92, 97
- section 26 and, 75–76, 77, 99, 147
- section 27 and, 141
- section 36 and, 76
- weak-form review and, 89–91

- Joe Slovo*. See *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Joe Slovo)*
- Johannesburg, inner-city housing policy in, 297
- Joseph and Other v City of Johannesburg and Others (Joseph)*, 105–06, 129–33, 134, 189, 202, 236, 356
- basic service disconnections in, 262–64
- case overview, 129
- eviction model, 261, 262–64, 328
- government-citizen relationship in, 265
- housing rights in, 143
- Justice Thembile Skweyiya's judgment in, 130–31
- Mazibuko* and, 129, 264
- multi-factor test in, 263
- Nokotyana* and, 264
- PIE and, 263
- procedural rights in, 314
- PAJA and, 129–33, 196, 205, 262
- section 26(3) and, 266–67
- section 152 and, 131, 196
- section 153 and, 196
- section 26 and, 266–67
- judicial review, alternative forms of, 23–27, 28, 29–33, 36–37
- democratic experimentalist review, 27–28. See also democratic experimentalist
- practice, 30–33
- theory, 29–30
- weak-form review, 17–18, 24–27, 29, 31–33
- Juma Masjid*. See *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others (Juma Masjid)*
- justiciability, 5–7, 15–28, 33–35, 37–39, 43, 44, 333–37
- democratic legitimacy, 19–20
- institutional competence, 20–21
- myth of rights, 21–23
- Kennedy, Duncan, 252
- Khosa and Others v Minister of Social Development and Others (Khosa)*, 64–69, 141, 157
- catalytic courts and, 225, 226
- equality issue in, 68–69
- government's arguments in, 67
- interpretive approach in, 65–67
- proceduralization in, 91, 93, 97, 99
- reasonableness review in, 68
- section 27 and, 64, 65, 90, 99–101
- Treatment Action Campaign*, compared with, 64–65
- weak-form review and, 45, 89–91
- King, Jeff, 221–22
- Koelble, Thomas A., 304, 320
- KwaZulu Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007, 126, 127, 128
- Landau, David, 24, 32
- Langa, Pius, 121
- Langford, Malcolm, 23, 234, 337, 344
- Legal Resources Centre, 120, 123, 341
- legalized accountability, 304, 306–07, 334, 354
- democratic engagement and, 306–07, 312–16
- democratic experimentalism and, 277, 308–09
- meaningful engagement and, 358–66
- legitimate expectations, 264
- Liebenberg, Sandra, 31, 49, 206, 211–13, 317, 323, 360
- Local Government Municipal Structures Act 117 of 1998 (Municipal Structures Act or Structures Act), 294–95, 357
- Local Government Municipal Systems Act 32 of 2000 (Municipal Systems Act or Systems Act), 131, 151, 295, 320, 357
- local protests, 298–302
- Machele and Others v Mailula and Others (Machele)*, 105–06, 147
- Magistrates' Court Act 32 of 1944, 70

- Malan v City of Cape Town (Malan)*, 146
- Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd. (Maphango)*, 146, 159–69, 196–97, 246
- Court's enforcement role in, 168–69
- PIE and, 164
- proceduralization in, 164
- relationship between Constitution and common law in, 159
- Rental Housing Act and, 148, 149, 159–62, 164–65, 168, 196–97, 205, 217, 227
- Rental Tribunal and, 163, 166–67
- section 26 and, 160, 167–68, 247, 266
- Supreme Court of Appeal judgment in, 161
- Matatiele Municipality and Others v President of the Republic of South Africa and Others (Matatiele)*
- case overview, 283
- Court's judicial role in, 286
- participatory democracy in, 287, 313, 324–26
- public participation in, 285, 286
- Mazibuko and Others v City of Johannesburg and Others (Mazibuko)*, 46, 134–39, 142, 168, 188, 191, 194, 265–66, 320, 327, 328
- administrative-law model and, 208
- Blue Moonlight*, compared with, 157
- case overview, 4, 105–06, 134
- democracy and accountability in, 287
- eviction model and, 264, 328
- High Court judgment in, 135–36
- incremental substantive development and, 243
- interpretive approach and, 211
- Joseph* and, 129, 264
- legitimate expectations and, 264
- meaningful engagement and, 282
- minimum core in, 138
- PAJA and, 142
- participatory democracy in, 323–24
- pre-paid water meter policy in, 134–35, 202, 227
- procedural authority in, 106–07, 250
- reasonableness review in, 360
- section 1 and, 193
- section 27 and, 90, 133–35, 137–38, 214–15
- social change and, 338
- social rights and, 136, 141, 213, 266, 274–75, 280–81, 303, 335
- Supreme Court of Appeal's judgment in, 135, 136, 140–41, 142
- Water Services Act regulations in, 139, 142
- weak-form review and, 210
- Mbeki, Thabo, 59, 96
- meaningful engagement, 257, 274–329, 353–58, 366
- Blue Moonlight* and, 184–85, 236, 249, 254, 257
- community participation and, 321–22
- democratic engagement and, 275, 278–83, 287–93, 303–06, 360
- democratic experimentalism and, 218–29, 276–77
- Doctors for Life* and, 288
- eviction model and, 109–11, 248–60
- Hlophe* and, 291–92
- Joe Slovo* and, 118–20, 122–23, 125, 126, 183, 195, 223, 228, 249, 252–53, 254, 259, 288, 327, 328
- Juma Musjid* and, 183, 184, 199, 235, 253, 259, 292
- legalized accountability and, 358–66
- Mazibuko* and, 282
- Nokotyana* and, 228
- Olivia Road* and, 71, 111–17, 118, 124, 133, 183, 194, 199, 205, 208, 223, 239, 248, 253–54, 257, 258–59, 288, 289, 290, 319, 355–58
- participatory democracy and, 287–92
- Pheko* and, 183, 199, 235, 253
- Port Elizabeth* and, 249, 257, 284

Cambridge University Press

978-1-107-02945-3 - Engaging with Social Rights: Procedure, Participation, and Democracy in South Africa's SecondWave

Brian Ray

Index

[More information](#)

376

INDEX

- meaningful engagement (*cont.*)
 proceduralization and, 199, 248–60, 265
 public-reporting requirement, 255–56, 257, 258
 Schubart Park Residents' Association and, 199, 253, 287, 292
 weak-form review and, 42–43
 media coverage, 313–14
Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others (Merafong), 175–76, 279, 323
 Michelman, Frank, 19, 161, 164
 middle-class capture, 346–49
Minister of Health and Others v Treatment Action Campaign and Others (Treatment Action Campaign or TAC), 22, 57–64, 83, 100, 138, 140, 204, 216, 262, 325, 341, 362
 case overview, 3
 catalytic courts and, 225
 justiciability in, 193
 Khosa, compared with, 65
 minimum core, 60
 PAJA and, 262
 proceduralization in, 87, 91, 92, 95–96
 remedy, 62–64
 section 27 and, 60, 90, 137–38, 201
 weak-form review and, 84–85, 89–91, 209
Modderklip. See President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Modderklip)
 Mokgoro, Yvonne, 66–67
 Moseneke, Dikgang, 121, 122, 127, 128, 180
Motswagae and Others v Rustenburg Local Municipality and Another (Motswagae), 146, 176, 178
 Mureinik, Etienne, 35–37, 40, 201
 N2 Gateway project, 119, 124
 Nadvi, Lubna, 302
 National Council of Provinces (NCOP), 283
 National Development Plan, 295, 363
 National Housing Act 107 of 1997 (Housing Act), 143, 151, 154–55, 163, 164–65, 244, 328
 Abahlali and, 126, 127, 128
 Blue Moonlight and, 157, 158, 163, 185, 207, 226, 250–51
 Chapter 12 of, 153, 226
 democratic engagement and, 274
 eviction model and, 328
 Grootboom and, 114, 154–55, 157, 158
 section 152 and, 131
 nevirapine, 58, 61
 New Zealand, 22
 New Zealand Bill of Rights Act, 25
 Ngcobo, Sandile, 121, 283–84, 285, 286, 326
 Nkabinde, Bess, 182
Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others (Nokotyana), 143–44
 administrative and bureaucratic failures in, 228
 Joseph and, 264
 meaningful engagement and, 228
 procedural authority in, 194–95
 rejection of evidence in, 137
 right to housing in, 143
 section 26 and, 202
Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others (Olivia Road), 4, 75, 106, 109, 111–18, 146, 158, 168–69
 case overview, 111
 civil society organizations in, 117, 255, 314–15
 COHRE report and, 113
 experimentalist judging in, 220
 Grootboom and, 116
 High Court judgment in, 113–14

- Johannesburg's inner city
 regeneration strategy in, 110,
 111–13, 156, 345
 meaningful engagement and, 71,
 117, 124, 133, 183, 194, 199,
 205, 208, 223, 239, 248, 253–54,
 257, 258–59, 288, 289, 290, 319
 PIE and, 112, 113, 120, 345
 procedural authority in, 249, 250,
 254, 290
 public-reporting requirement in,
 258
 reasonableness review in, 116–17
 Rental Housing Tribunal and, 164,
 197
 section 26 and, 167–68, 266
 settlement in, 118
 and Supreme Court of Appeal, 115
 Thubelisha Homes and, 119
*Occupiers of Portion R25 of the Farm
 Mooiplaats 355 JR v Golden
 Thread Ltd and Others (Golden
 Thread)*, 146, 171–72, 173, 174,
 198, 237, 246
Blue Moonlight and, 171–73, 244
 PIE and, 171, 173, 198, 244–46
*Occupiers of Saratoga Avenue v City of
 Johannesburg Metropolitan
 Municipality and Another (Blue
 Moonlight II)*, 146, 184, 221,
 223, 237, 249, 254, 270, 271
*Occupiers of Skurweplaas 353 JR v PPC
 Aggregate Quarries (Pty) Ltd
 and Others (PPC Quarries)*,
 146, 170–71, 172, 246
Blue Moonlight and, 172, 197–98,
 237, 244
 PIE and, 170–71, 244–45
 temporary delay of eviction in, 172
*Olivia Road. See Occupiers of 51 Olivia
 Road, Berea Township and 197
 Main Street Johannesburg v City
 of Johannesburg and Others
 (Olivia Road)*
- O'Regan, Kate, 35, 121, 122, 137–40
- PAJA. *See* Promotion of Administrative
 Justice Act 3 of 2000 (PAJA)
- participatory democracy, 60, 106–07
 decisions in, 281–85
Doctors for Life, 283–88, 313, 324–26
Glenister, 283, 285–87, 325–26
Matatiele, 283, 285, 286, 287, 313,
 324–26
Mazibuko, 323–24
 meaningful engagement and, 287–92
Merafong, 175–76, 279, 323
Poverty Alleviation Network, 274–75,
 279, 323
 social rights and, 280–92
 participatory governance, 318–19, 336
*Pheko and Others v Ekurhuleni
 Metropolitan Municipality
 (Pheko)*, 146, 227, 259, 315
 experimentalist judging and, 221
 meaningful engagement and, 183,
 199, 235, 253
 procedural limits of eviction in,
 269–70
 section 26 and, 175–76
 section 26(3) and, 175–76
 PIE. *See* Prevention of Illegal Eviction
 from and Unlawful Occupation
 of Land Act 19 of 1998 (PIE)
- Pieterse, Marius, 264–66
 Piper, Laurence, 302
 Pithouse, Richard, 300–01, 302, 320
 Planact, 343
 polycentric disputes, 20
*Port Elizabeth Municipality v Various
 Occupiers (Port Elizabeth)*,
 70–75, 172–73, 216
 case overview, 69–70
 constitutional-enforcing legislation
 and, 218
 emergency housing policy in, 237
 and *Grootboom*, 239–41
 incremental substantive
 development and, 242–44
 managerial judging in, 110, 146, 147,
 149, 183, 196, 234, 249
 meaningful engagement and, 249,
 257, 284
 PIE and, 70–72, 73, 75, 89–90, 92,
 99, 113, 147, 203, 217, 237,
 239–40, 249

- Port Elizabeth Municipality v Various Occupiers (Port Elizabeth)* (cont.)
 proceduralization in, 92, 97
 section 25 and, 70, 72, 240, 241–42
 section 26 and, 71, 72, 113, 199, 240, 241–42
 section 29 and, 182
 section 29(1) and, 182
 section 34 and, 80
 stronger Court authority in, 241
 weak-form review and, 89–91
- Poverty Alleviation Network and Others v President of the Republic of the South Africa (Poverty Alleviation Network)*, 274–75, 279, 323
- PPC Quarries*. See *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries (Pty) Ltd and Others (PPC Quarries)*
- President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Modderklip)*, 79–81
 case overview, 69–70
 eviction order in, 78, 197
 section 25 and, 78, 80, 201
 section 26 and, 78, 79, 80, 201
 section 34 and, 79–80, 201
 Supreme Court of Appeal judgment in, 79
 weak-form review and, 89–91
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), 69, 89–90, 126, 127, 146, 159, 171, 198, 207, 216, 227, 274, 328
- Abahlali* and, 126, 127, 195–96
 anti-land invasions and, 178–79, 180, 351
- Blue Moonlight* and, 151–53, 159, 163, 174–75, 198, 216, 217, 244, 268
- Changing Tides* and, 251–52
 democratic engagement and, 274
 eviction model and, 146–49, 233, 242, 328, 344, 352
- Golden Thread* and, 171, 173, 198, 244–46
- Grootboom* and, 146, 147, 238, 261
- Jaftha* and, 77
- Joseph* and, 263
- Juma Masjid* and, 184
- Maphango* and, 164, 196–97
- Olivia Road* and, 112, 113, 120, 345
- Port Elizabeth* and, 70–72, 73, 89–90, 92, 99, 113, 147, 203, 217, 237, 239–40, 249
- PPC Quarries* and, 170–71, 244–45
- Zulu* and, 198–99
- proceduralization, 6, 84, 86–88, 91–101, 129–44, 188, 367
- Abahlali* and, 195–96
- Blue Moonlight* and, 197–98, 250–51, 269–72
- democratic engagement and, 315
 democratic experimentalism and, 39–43, 218–24, 229, 274–75, 367
- eviction model and, 248–60
 first-wave cases and, 86–88
- Grootboom* and, 86, 87, 95, 210
- incrementalism and, 243
- Jaftha* and, 92, 97
- Joseph* and, 314
- Juma Masjid* and, 181, 199
- justiciability and, 243
- Khosa* and, 91, 93, 97, 99
- Maphango* and, 164
- Mazibuko* and, 106–07, 250
- meaningful engagement and, 199, 248–60, 265
- Nokotyana* and, 194–95
- Olivia Road* and, 249, 250, 254, 290
- participatory democracy and, 60
- PIE and, 242
- Port Elizabeth* and, 92, 97
- second-wave cases and, 46, 60, 68, 108, 164, 191, 194–96, 222, 249
- Soobramoney* and, 86, 92, 95
- Treatment Action Campaign* and, 87, 91, 92, 95–96
- without deference, 91–93

Cambridge University Press

978-1-107-02945-3 - Engaging with Social Rights: Procedure, Participation, and Democracy in South Africa's SecondWave

Brian Ray

Index

[More information](#)

INDEX

379

- Promotion of Administrative Justice Act 3 of 2000 (PAJA), 129–33, 142, 196, 205, 262
- Quinot, Geo, 131–32
- Reconstruction and Development Programme, 42
- Rental Housing Act 50 of 1990 (Rental Housing Act), 162, 165, 205
- Grootboom* and, 147
- managerial judging and, 149
- Maphango* and, 148, 159–62, 164–65, 168, 196–97, 205, 217, 227
- Rental Housing Tribunal, 160, 164, 166–67, 196–97
- Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Joe Slovo)*, 205–06, 109, 118–26, 146, 169, 254, 271, 328
- administrative and bureaucratic failures in, 227
- Breaking New Ground housing policy and, 202
- case overview, 118–20
- experimentalist judging in, 220, 221
- Joe Slovo II*, 106, 253
- Justice Sach's concurrence in, 130
- meaningful engagement and, 120, 122–23, 183, 195, 223, 228, 249, 252–53, 254, 259, 288, 327, 328
- municipal policies in, 346
- N2 Gateway project in, 119
- opinions in, 121–23
- section 26 and, 110, 120
- Rosenberg, Gerald, 349
- Hollow Hope, The: Can Courts Bring About Social Change?*, 22
- Rosevear, Evan, 23, 330
- Roux, Theunis, 15, 42, 80, 93–98, 190, 200–06, 311–12, 324–29, 330, 350, 356, 357, 360–61
- Sabel, Charles, 9, 18, 27, 28, 32, 219, 220, 221, 308
- Sachs, Albie, 2–3, 38, 51, 70, 73, 121, 164, 284–85, 288–89, 328
- Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another (Schubart Park)*, 146, 176–77
- case overview, 176
- High Court judgment in, 176–77
- meaningful engagement and, 199, 236, 253, 287, 292
- section 26 and, 177
- second-wave cases, 4, 7–8, 105–45, 187–229, 341
- Abahlali*, 126–29. *See also Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others (Abahlali)*
- administrative-law review and, 207–09
- Blue Moonlight*, 107, 118, 150–59. *See also City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties*
- catalytic courts and, 224–29
- defining characteristics of, 187
- democratic experimentalism and, 219–24
- eviction cases, 73, 109–11, 146–78, 185, 186
- anti-land invasions, 178–81
- managerial judging in, 149–73, 181–85
- meaningful engagement and, 109–11
- third-generation eviction cases, 178–81
- Golden Thread*, 198. *See also Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others*
- indirect enforcement in, 108
- Joe Slovo*, 118–26. *See also Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Joe Slovo)*
- Joseph*, 129–34. *See also Joseph and Other v City of Johannesburg and Others*

Cambridge University Press

978-1-107-02945-3 - Engaging with Social Rights: Procedure, Participation, and Democracy in South Africa's SecondWave

Brian Ray

Index

[More information](#)

380

INDEX

second-wave cases (*cont.*)

- Juma Masjid*, 189, 199, 227. *See also* *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others*
- legitimate expectations and, 264
- Maphango*, 159–69, 196–97, 205, 216, 227. *See also* *Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd. (Maphango)*
- Mazibuko*, 134–42. *See also* *Mazibuko and Others v City of Johannesburg and Others*
- Nokotyana*, 143–44. *See also* *Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others*
- Olivia Road*, 111–18. *See also* *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*
- patterns in, 192–99
- avoidance of substance, 192–94
 - creative procedure, 194–96
 - individual case management, 196–99
- Pheko*, 199, 218, 221, 227. *See also* *Pheko and Others v Ekurhuleni Metropolitan Municipality*
- PPC Quarries*, 170–71, 198. *See also* *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries (Pty) Ltd and Others (PPC Quarries)*
- proceduralization in, 46, 60, 68, 108, 164, 191, 194–96, 222, 249
- weak-form review and, 108, 135, 144, 188, 190, 191, 196, 206, 209–11
- service-delivery protests. *See* local protests
- Siddle, Andrew, 304, 320
- Simon, William, 9, 27, 28, 32, 221, 308
- Skweyiya, Thembile, 130–31, 132
- social change, 333–38
- social rights, 35, 330–31, 335, 368. *See also* Constitution of South Africa (1996), section 26, 27 and section 28
- alternative forms of review and, 29–33
- democratic engagement and. *See* democratic engagement
- democratic experimentalism and, 9, 18, 27–29
- entrenching, 34–37
- eviction model and, 233–73, 344–53
- justiciability and, 2, 34–37, 333–37
- democratic legitimacy, 19–20
 - institutional competence, 20–21
 - myth of rights, 21–23
- macroeconomic measures and, 331–32
- meaningful engagement and. *See* meaningful engagement
- participatory democracy and. *See* participatory democracy
- policy legalization and, 355–58
- proceduralization of. *See* proceduralization
- social change and, 333–38
 - support structure for, 339–44, 356
- Socio-Economic Rights Institute (SERI), 341, 342
- Soobramoney v Minister of Health (Kwazulu-Natal) (Soobramoney)*, 48–51
- case overview, 2–5
 - catalytic courts and, 225
 - proceduralization in, 86, 92, 95
 - rationality review in, 87
 - reasonableness review in, 83
 - section 26 and, 48–49
 - section 27 and, 48–49, 50, 53, 66, 95, 98–99
 - section 36 and, 49, 50
 - weak-form review and, 89–91
- South African Human Rights Commission, 52
- South African Schools Act 84 of 1996, 182
- Sunstein, Cass, 15, 207
- support structure, 356
- for social rights, 339–44

- Supreme Court of Appeal (SCA), 70, 77–78, 79, 115, 135, 136, 140–41, 142, 158, 161, 251–52
- Sweden, 23
- TAC. *See* *Minister of Health and Others v Treatment Action Campaign and Others (Treatment Action Campaign or TAC)*
- Tissington, Kate, 123, 124
- Treatment Action Campaign. See Minister of Health and Others v Treatment Action Campaign and Others (Treatment Action Campaign or TAC)*
- Tushnet, Mark, 17, 23, 24
- Ubuntu*, 265
- United Kingdom Human Rights Act, 25, 28
- University of the Western Cape, 120, 341
- Unlawful Occupation of Land Act 19 of 1998, 69
- Van der Westhuizen, Johan, 121, 143–44, 150, 179, 180, 217, 247
- water, right to. *See* Constitution of South Africa (1996), section 26
- Water Services Act 108 of 1997 (WSA), 134, 139, 142, 143
- weak-form review, 17–18, 24–27, 29, 31–33, 41, 209–11
- administrative-law review and, 207–09
 - catalytic courts and, 191, 224–29
 - critiques of, 18, 27, 31–32
 - democratic experimentalism and, 27, 28, 219–24
 - dialogue and, 24–25
 - eviction model and, 237–38, 239, 243
 - first-wave cases and, 46, 56, 81, 84–85, 89–91, 97
 - Grootboom* and, 45, 84–85, 89–91, 107, 135, 144, 188, 196, 209, 210
 - Jaftha* and, 89–91
 - Khosa* and, 45, 89–91
 - Mazibuko* and, 210
 - meaningful engagement and, 42–43
 - Modderklip* and, 89–91
 - objections to social rights and, 2–5, 19–23
 - Port Elizabeth* and, 89–91
 - second-wave cases and, 108, 135, 144, 188, 190, 191, 196, 206, 209–11
 - Soobramoney* and, 89–91
 - strong right/weak remedy, 26, 27
 - Treatment Action Campaign* and, 84–85, 89–91, 209
 - weak remedies, 25–26, 29–30
 - weak rights, 25
- Wesson, Murray, 86
- White Paper on Local Government (1998), 294, 295
- White Paper on Transforming Public Service Delivery (1997), 294
- Wilson, Stuart, 4, 112, 213–14, 215–16, 237, 248, 281
- WSA. *See* Water Services Act (WSA)
- Yacoob, Zak, 52–53, 54–55, 56–57, 121, 162, 169, 170, 171, 246, 268
- Young, Katherine, 31, 191, 224–25, 317, 323
- Zondo, Raymond, 161, 163
- Zulu and Others v eThekweni Municipality and Others (Zulu)*, 146, 174, 180, 198–99, 227
- anti-land invasion units in, 178–79, 217
 - case overview, 179
 - High Court judgment in, 179–80
 - PIE and, 198–99
 - section 26 and, 198, 247
 - substantive implications of eviction mode in, 246