



Ballot box a powerful tool on the global stage too

Citizens have a duty to hold government accountable for their international conduct

COMMENT



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ON THURSDAY, 10 September I was honoured to present the 25th University of Pretoria Expert Lecture, which explored whether international law can address the most pressing concerns of society.

The concerns to which I referred during the lecture included a range of security issues and the fight against poverty and inequality, environmental degradation and climate change, in particular.

I concluded that international law, as it stands, is ill-equipped to deal with the most pressing concerns of the international society, mainly because the content and development of international law was determined by narrow national interests that often overrode common interests, social values and solidarity.

The lecture, however, ended with words of modest hope: "While states are abstract entities, they are ultimately accountable to real people. You want international law to change the world and hold your government accountable for the positions it adopts in international forums."

The question asked by some attendees at the lecture, and subsequently on social media, was how the public can hold the government accountable for its actions on the international stage.

One way that the public can hold their governments accountable for their conduct internationally is



LOCALS from Mshenguville near Atteridgeville wait to cast their vote during the elections. The public can hold their government accountable for international law, by voting, the writer says. | Phill Magakoe

through court decisions.

In Ireland and the Netherlands, for example, courts have demanded stronger international action from the government to curb climate change. Under the Paris Agreement, each state is obliged to specify nationally determined targets to address climate change.

The courts of the Netherlands and Ireland determined that the targets specified by the executives of their countries were inadequate.

South Africa is no stranger to courts questioning the international conduct of the executive.

Judgments passed down by the Constitutional Court have, for example, declared decisions of the executive to "render" persons to foreign countries, such as US and Botswana where they were liable to face the death penalties, invalid.

South African courts also overturned the decision of the executive

not to arrest former Sudanese president Omar al-Bashir during his visit to South Africa in 2015; the decision of the executive to withdraw from the Rome Statute; the decisions to participate in the SADC Summit to terminate the Southern African Development Community Tribunal and the failure to prosecute Grace Mugabe during the SADC Summit.

While it might be tempting to place the responsibility for promoting better, more progressive international law on courts, the solution is fraught with problems.

The role of courts is not to make international law but to apply it. The assessment of international law by courts should be constrained by the methodology of international law.

Permitting the courts to simply substitute their vision of morality and public policy raises questions of legitimacy. In most cases, judgments about foreign conduct involve policy

choices, which courts are ill-equipped to make.

Thus, while courts can and should play some role in holding the state to account for its conduct in international forums, the role should be constrained by the methodology of international law and constitutional precepts.

Another possible way to hold governments accountable is through civil society organisations, which are often at the forefront of criticising government actions in many areas of human endeavour.

But the source of national civil society organisations' legitimacy is not always clear. Who funds the organisations? Where do they get their mandate? Who do they represent? To whom are they accountable?

These are important questions if civil society organisations are to be bestowed with the responsibility of holding governments accountable for their conduct on the international stage.

Without a doubt, the organisations have an important role in doing so, including through advocacy and promoting education, but they cannot assume this responsibility.

The responsibility for holding governments accountable for their international conduct, and therefore for making international law, rests on the people and cannot be delegated, whether to courts or civil society organisations.

These structures can help but, ultimately, only the people themselves can carry out this responsibility.

And of course, the one place where the public can hold their government ultimately accountable remains at the ballot box.

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