

Bringing Freire to Socio-economic Rights: A Pedagogy for Meaningful Engagement

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Abstract

This article considers what it is that makes meaningful engagement meaningful in the adjudication of socio-economic rights. The pursuit of socio-economic transformation relies on citizen participation, as recognised by the South African Constitution and mandated by the Constitutional Court. This article relies on Paulo Freire's *Pedagogy of the Oppressed* to substantiate an understanding of and motivation for meaningful engagement as a concept. This academic venture is premised on the notion that meaningful engagement (akin to Freire's education and liberation theories) should occur with, not for, the afflicted. The article examines what is conceptually necessary for engagement to be truly meaningful and empowering and not to entrench power dynamics. Strong emphasis is placed on the fact that the afflicted need to be involved in changing their circumstances (as they need to be involved in their liberation and education) and that the source of the problem—in this case socio-economic inequality, deprivation or violation—cannot also be the sole source of the solution. Meaningful engagement with the afflicted circumvents a perpetual entrenchment of oppression, to use Freire's own terminology. A Freirean approach to meaningful engagement could potentially result in effective socio-economic transformation and the disruption of patterns of socio-economic inequality and disempowerment. The relationship between the afflicted and those in power is questioned for its intention—an intention that is also disrupted

¹ This article is inspired by and dedicated to my fellow Azanian Tekano Atlantic Fellows—who have taught me what I don't know and who epitomise meaningful engagement. My thanks go to the two anonymous reviewers for their insightful comments and critiques, which are much appreciated. Any remaining errors are my own.

by a Freirean approach to empowering the afflicted and recognising their agency, political capacity and human dignity.

Keywords: socio-economic rights; meaningful engagement; Freire; *Pedagogy of the Oppressed*; transformation; participatory democracy; human dignity; political capacity

Introduction

To the oppressed,

And to those who suffer with them

And fight at their side:²

South Africa is plagued with socio-economic inequalities inherited from its colonial and apartheid past. Despite more than two decades having passed since the enactment of the Constitution of the Republic of South Africa, 1996, which provides socio-economic rights to all and seeks to '[h]eal the divisions of the past', stark inequalities still exist. Because of the colonial and apartheid past which haunts present-day South Africa, these socio-economic inequalities exist in entrenched racial determination, with the black African majority still burdened by the atrocities of white supremacy. Socio-economic transformation is necessary to achieve the constitutional aim to '[i]mprove the quality of life of all citizens and free the potential of each person.'³

In pursuit of transformation, the Constitution recognises socio-economic rights and subscribes to the principles of democracy, which necessitates citizen participation. South African socio-economic rights jurisprudence recognises the need for meaningful engagement both as a facet of reasonableness and as a remedial procedure.⁴ Participation and engagement are a means of providing a voice to affected parties in matters concerning their interests. Academic debate has increasingly focused on meaningful engagement as a procedure and *how* it can contribute to the context-sensitive adjudication of socio-economic rights.⁵ However, there is a lack of clarity about what

² Paulo Freire, *Pedagogy of the Oppressed* (Continuum 1973) Dedication.

³ Preamble to the Constitution.

⁴ Lilian Chenwi, "'Meaningful Engagement" in the Realisation of Socio-Economic Rights: The South African Experience' (2011) 26 *SAPL* 128 at 135. See also *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg* 2008 (2) SA 208 (CC) para 17; *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC) at para 378; *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC) at paras 133–134.

⁵ See Shanelle van der Berg, 'Meaningful Engagement: Proceduralising Socio-Economic Rights Further or Infusing Administrative Law with Substance?' (2013) 29 SA J on Human Rights 377; Sandra Liebenberg, 'Engaging the Paradoxes of Universal and Particular in Rights Adjudication: The Possibilities and Pitfalls of Meaningful Engagement' (2012) 12 *African Human Rights LJ* 1 26; Chenwi (n 4) 129.

makes engagement *meaningful*.⁶ This article seeks to contribute to the understanding of what *meaningful* as a concept means in the context of meaningful engagement. Meaningful engagement is necessary in order to realise the promise the Constitution makes to '[l]ay the foundations for a democratic and open society in which government is based on the will of the people.'⁷

It argues that the work of Paulo Freire⁸ can and should influence our understanding of meaningful engagement regarding socio-economic rights. Freire's *Pedagogy of the Oppressed*⁹ focuses on the relationship between the oppressor and the oppressed. His work is premised on the idea that dialogue must occur '*with, not for*'¹⁰ those affected. He contends that those who find themselves in an oppressed situation possess an understanding and knowledge that enables them to contribute to the dialogue and problem-solving process.¹¹ It is argued that reliance on Freire's *Pedagogy of the Oppressed* would contribute to the normative understanding of meaningful engagement. A Freirean approach arguably facilitates the goals of meaningful engagement as encapsulated in the jurisprudence and in academic debate and ensures that it is not a mere procedural step. Further, a Freirean approach could empower those affected by making them part of the decision-making process, enhancing their political capability and reducing the existing power imbalances by recognising the problem through top-down approaches to problem-solving, and by showing respect for the inherent human dignity of those affected.

To do so, it is first necessary to contextualise meaningful engagement in South African law and the jurisprudence pertaining to socio-economic rights. A full engagement with the academic commentaries and jurisprudence is beyond the scope of this article, which merely provides an overview as a foundation for arguing in favour of a Freirean approach. Freire's theory is accordingly examined to ascertain how and why it can and should influence the conceptual understanding of meaningful engagement. The argument is that, in order to achieve the participatory democracy South Africa subscribes to, under its transformative Constitution,¹² the afflicted need to exercise power and weight in the decision-making processes. This is especially necessary when

⁶ Chenwi and Tissington also raise this question, but rely solely on jurisprudence, in Lilian Chenwi and Kate Tissington, 'Engaging Meaningfully with Government on Socio-Economic Rights: A Focus on the Right to Housing' (Community Law Centre, UWC 2010).

⁷ Preamble to the Constitution.

⁸ Paulo Freire (1921–1997) was a Brazilian educator and philosopher who advocated the liberation of the working classes through a co-operative education model. See also Freire Institute <<http://www.freire.org/paulo-freire/>> accessed 14 February 2018.

⁹ Freire (n 2).

¹⁰ Freire (n 2) 22 [emphasis added].

¹¹ *ibid* 37.

¹² Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 SA J on Human Rights 150.

vindicating socio-economic rights, if the Constitution is to serve to ‘establish a society based on democratic values, social justice and fundamental human rights.’¹³

Meaningful Engagement

Meaningful Engagement under the Constitution

South Africa’s socio-economic rights jurisprudence has developed the concept of meaningful engagement, predominantly in cases concerning housing rights and evictions.¹⁴ However, the idea of meaningful engagement finds its basis in the Constitution and its commitment to democratic processes and values.¹⁵ Section 152 of the Constitution obliges the State, inter alia, to ‘encourage the involvement of communities and community organisations in the matters of local government.’¹⁶ Moreover, the Preamble to the Constitution emphasises that South Africa is to be ‘a democratic and open society in which government is based on the *will of the people*.’¹⁷

Section 7(1) affirms this commitment to the democratic values of human dignity, equality and freedom. Meaningful engagement is also implicit in the obligation of reasonableness in sections 26 and 27 of the Constitution.¹⁸ Section 26(3) provides constitutional protection against evictions in that ‘[n]o one may be evicted from their home, or have their home demolished, without an order of court made *after considering all the relevant circumstances*.’¹⁹ Arguably, all the relevant circumstances cannot be determined without meaningful engagement.²⁰ Similarly, engagement is also implicit in section 33, which provides for procedural fairness under the right to just administrative action.²¹ Section 195 furthermore provides for the democratic values that must govern public administration, providing explicitly that ‘[p]eople’s needs must be responded to, and the public must be encouraged to participate in policy-making.’²² It is on this basis that a failure to engage meaningfully would arguably be in conflict with

¹³ Preamble to the Constitution.

¹⁴ *PE Municipality v Various Occupiers* 2005 (1) SA 217 (CC); *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg* 2008 (2) SA 208 (CC) para 17; *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC) para 378; *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC) paras 133–134.

¹⁵ *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg* 2008 (2) SA 208 (CC) para 16.

¹⁶ Section 152(1)(e) of the Constitution.

¹⁷ Preamble to the Constitution [emphasis added].

¹⁸ Sections 26(2) and 27(2) provide: ‘The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.’

¹⁹ [Emphasis added].

²⁰ See also Chenwi (n 4) 134.

²¹ Section 33(1) of the Constitution provides: ‘Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.’

²² Section 195(1)(e) of the Constitution.

the spirit and purport of the Constitution.²³ The ‘will of the people’²⁴ can hardly be determined without the people’s input.

Meaningful Engagement in Socio-economic Rights Jurisprudence

The focal source for understanding the concept of meaningful engagement regarding socio-economic rights is found in the socio-economic rights jurisprudence of the South African Constitutional Court.²⁵ The first reference in this regard occurred in *Government of the Republic of South Africa v Grootboom* (‘*Grootboom*’),²⁶ which concerned the right of access to adequate housing.²⁷ The matter concerned a group of people who had illegally occupied private land to escape the intolerable conditions they had been living in.²⁸ They were then evicted from the private property and left homeless.²⁹ The Court found the State’s housing policy unreasonable as it did not provide immediate relief for the vulnerable.³⁰ Yacoob J held that there is an expectation on officials to engage with people unlawfully occupying land and to investigate their circumstances.³¹ This notion was then slightly elaborated on in *Minister of Public Works v Kyalami Ridge Environmental Association*,³² where the State made a decision to house a group of people affected by floods in a transit camp until permanent housing became available.³³ The Court relied on the obligations imposed on the State by section 26 of the Constitution to justify the government’s decision.³⁴ Engagement was considered to form part of good governance, especially regarding such problem-solving.³⁵ However, despite the lack of such engagement in this case, the government decision was upheld.³⁶

The normative meaning of ‘meaningful engagement’ was developed (though not defined) significantly in *Port Elizabeth Municipality v Various Occupiers* (‘*PE Municipality*’).³⁷ This case also concerned the eviction of people illegally occupying private land. The municipality sought a ruling from the Constitutional Court that it is not constitutionally bound to provide alternative accommodation or land when evicting

²³ Chenwi (n 4) 134.

²⁴ Preamble to the Constitution.

²⁵ See (n 3).

²⁶ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

²⁷ Constitution, s 26(1) provides: ‘Everyone has the right to have access to adequate housing.’

²⁸ *Grootboom* para 3.

²⁹ *ibid.*

³⁰ *Id* para 43.

³¹ *Id* para 87.

³² 2001 (3) SA 1151 (CC).

³³ *Id* paras 2–4.

³⁴ *Id* paras 110 and 115.

³⁵ *Id* para 11.

³⁶ *Id* para 110.

³⁷ 2005 (1) SA 217 (CC).

unlawful occupiers.³⁸ The issues were centred on the interpretation and applications of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act ('PIE')³⁹ and the obligations imposed specifically by section 26(2). The municipality's lack of engagement with the affected group of persons was found to be unconstitutional.⁴⁰ It was held that such engagement was necessary in this case in order to determine the specific circumstances and needs of the affected group.⁴¹ The Court further noted the 'tenacity and ingenuity' demonstrated by these people to create homes in the face of poverty and suggested that this resourcefulness could add value in seeking a solution to the unlawful occupation and homelessness.⁴² Sachs J held:

In South Africa, where communities have long been divided and placed in hostile camps, mediation has a particularly significant role to play. The process enables parties to relate to each other in pragmatic and sensible ways, building up prospects of respectful good neighbourliness for the future.⁴³

*Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg*⁴⁴ is considered to be the leading case on meaningful engagement in South African jurisprudence.⁴⁵ Similarly to the *ratio* in *PE Municipality*, the Court considered the lack of engagement to implicate the lawfulness of the eviction proceedings.⁴⁶ The crux of the case was a challenge to the City of Johannesburg's practice of evicting people from buildings deemed unsafe or a threat to health.⁴⁷ The City's authorities were authorised by the provisions of the National Building Regulations and Building Standards Act⁴⁸ simply to issue a notice to occupiers who were required to evacuate premises.⁴⁹ The Constitutional Court issued an interim order requiring the parties to engage meaningfully with one another.⁵⁰ The interim order provided that the parties engage in an effort to resolve their differences and to try to 'alleviate the plight of the applicants',⁵¹ all in consideration of the constitutional values,

³⁸ Id para 6.

³⁹ Act 19 of 1998.

⁴⁰ 2005 (1) SA 217 (CC) para 41.

⁴¹ Id para 43.

⁴² Id para 41; Sachs J held: 'The tenacity and ingenuity they show in making homes out of discarded material, in finding work and sending their children to school, are a tribute to their capacity for survival and adaptation., Justice and equality oblige them to rely on this resourcefulness in seeking a solution to their plight and to explore all reasonable possibilities of securing suitable alternative accommodation or land.'

⁴³ Id para 43.

⁴⁴ 2008 (2) SA 208 (CC) [hereinafter *Olivia Road*].

⁴⁵ Chenwi (n 4) 140.

⁴⁶ 2005 (1) SA 217 (CC) para 22. See also Chenwi (n 4) 140–141.

⁴⁷ 2005 (1) SA 217 (CC) para 25.

⁴⁸ Act 103 of 1977.

⁴⁹ Section 12(4)(b) and 12(6).

⁵⁰ Interim order, dated 30 August 2007, reproduced in *Olivia Road* 2008 (2) SA 208 (CC) para 5.

⁵¹ *Olivia Road* (n 44).

rights and duties concerned.⁵² Through this engagement process the parties reached a settlement, which was then endorsed by the Court.⁵³

The socio-economic rights jurisprudence since *Olivia Road* has arguably failed to prioritise and effectively develop the potential of meaningful engagement. In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* ('*Joe Slovo*')⁵⁴ the recognition of the need to use the democratic tools of engagement and participation was outweighed, in the Court's opinion, by the objectives of the housing project.⁵⁵ The case concerned the eviction and relocation of a large community in order to make possible a housing development plan in the area.⁵⁶ The Court placed much emphasis on the role of engagement and the manner of engagement. Yacoob J held that '[e]qually relevant is whether the government respondents made an effort to engage the community rather than imposing its decisions taken at a political level.'⁵⁷ Similarly, Ngcobo J stated:

In my view, the key requirement in the implementation of a programme is engagement. There must be meaningful engagement between the government and the residents. The requirement of engagement flows from the need to treat residents with respect and care for their dignity. Where, as here, the government is seeking the relocation of a number of households, there is a duty to engage meaningfully with residents both individually and collectively. Individual engagement shows respect and care for the dignity of the individuals. It enables the government to understand the needs and concerns of individual households so that, where possible, it can take steps to meet their concerns.⁵⁸

It was recognised that many parties had *addressed* the residents,⁵⁹ but that *engagement* requires more than just providing residents with the details of the programme.⁶⁰ The Court held that the decisions taken must be informed by the concerns of the affected parties, and that this can happen only through the process of engagement.⁶¹ Sachs J articulated this point:

The evidence suggests the frequent employment of a top-down approach where the purpose of reporting back to the community was seen as being to pass on information about decisions already taken rather than to involve the residents.⁶²

⁵² 2005 (1) SA 217 (CC) para 5.

⁵³ *ibid.*

⁵⁴ 2010 (3) SA 454 (CC).

⁵⁵ *Id* paras 112, 113, 117.

⁵⁶ *Id* para 24: 'the Joe Slovo settlement was targeted for reconstruction in terms of this policy, no doubt because of the deplorable and inhuman conditions under which people live.'

⁵⁷ *Id* para 165.

⁵⁸ *Id* para 238.

⁵⁹ *Id* para 244.

⁶⁰ *Id* para 141.

⁶¹ *Id* para 243.

⁶² *Id* para 387.

However, despite the shortcomings of the engagement process being explicitly recognised, the Court confirmed the eviction order, considering the objectives of the housing project.⁶³ In effect, preference was given to developing a plan for low-income housing over meaningful engagement, when in fact developing a plan for low-income housing requires engagement. As Chenwi explains:

The Court was thus willing to condone the inadequate consultation process merely on the basis that the objectives of the housing development project in question outweighed the defects in the consultation process.⁶⁴

The Court in this instance therefore failed to prioritise the importance of the consultation process in the eviction proceedings and as being integral to developing a plan for low-income housing.

Mazibuko v City of Johannesburg ('Mazibuko')⁶⁵ concerned a challenge to the City of Johannesburg Free Basic Water Policy and the lawfulness of installing prepaid meters. The City's policy was found to be reasonable and the prepaid meters to be lawful.⁶⁶ The Court considered evidence of the consultation process, which amounted to public meetings twice a month at which the project was explained to the Phiri residents.⁶⁷ It disregarded the applicant's argument that this engagement was insufficient in the process leading to the City's making its decision.⁶⁸ Arguably, this is similar to the top-down approach identified in *Joe Slovo* and does not amount to meaningful engagement.

In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* ('Blue Moonlight'),⁶⁹ a group of adults and children faced eviction by a private landowner who wanted to develop the occupied property.⁷⁰ The Constitutional Court grappled with issues regarding private property rights, housing rights, the government's obligations pertaining to these rights and the relationships between them. Although the case, through its reliance on PIE, did provide protections for those facing eviction who would be left homeless, it also marks a retreat from the Court's consideration of meaningful engagement in *Olivia Road*.⁷¹ Following the order, an urgent application was made to the Constitutional Court seeking to compel the City to engage meaningfully with the occupiers in the process of executing the order.⁷² The Constitutional Court dismissed

⁶³ Id para 7(11).

⁶⁴ Chenwi (n 4) 134.

⁶⁵ 2010 (4) SA 1 (CC).

⁶⁶ Id paras 9 and 61.

⁶⁷ Id para 133.

⁶⁸ Id paras 133 and 167.

⁶⁹ 2012 (2) SA 104 (CC).

⁷⁰ Id paras 3–5.

⁷¹ Id para 30.

⁷² Unreported order of *Occupiers of Saratoga Avenue & Others v City of Johannesburg & Others* South Gauteng High Court case no 2012/13253 (13 April 2012).

this application, holding that it was inappropriate for the Court to enforce orders given on appeal and that the appropriate forum for such application would be the High Court in which the case was first heard.⁷³ This contrasts with the Court's eager adoption of a supervisory role in the order to engage meaningfully in *Olivia Road*. In this regard, Dugard argues:

While the refusal of the Constitutional Court to exert oversight over *Blue Moonlight* – including the reluctance to ensure meaningful engagement in line with its decision in *Olivia Road* – can be understood as part of the Court's historical reluctance to maintain a supervisory role, the fact that residents were left with such problematic choices of accommodation can be traced to the Court's refusal to provide any substantive content to the right to housing.⁷⁴

While this article is not about the role of the Court in meaningful engagement, but rather about what makes meaningful engagement meaningful, *Blue Moonlight* illustrates the seemingly decreasing power of the afflicted to participate in decisions affecting them, both procedurally and substantively.⁷⁵ In summary, the Constitutional Court's socio-economic rights jurisprudence has created a space for the development of meaningful engagement, although some of the cases included above seem to have restricted this space.

What is relevant to the arguments to be made below is the normative understanding of meaningful engagement that can be extracted from the jurisprudence. Meaningful engagement is necessary for reasonableness; it has mediating potential; it empowers people to have their 'lived experiences' considered; and it enables those afflicted to participate in the decisions that affect them. These cases and their consideration of the concept of meaningful engagement have been the subject of academic debate, which is examined below.

Academic Discourse on Meaningful Engagement

Academic scholars have grappled with the requirements of meaningful engagement, the need for it, and the manner in which it should be facilitated. As the objective of this article is not to restate or debate these insights but rather to rely on such academic insight, a brief overview of the academic commentary on meaningful engagement will suffice.⁷⁶

⁷³ *ibid.*

⁷⁴ John Dugard, 'Beyond *Blue Moonlight*: The implications of Judicial Avoidance in Relation to the Provision of Alternative Housing' (2014) 5 Constitutional Court Review 271.

⁷⁵ By substantively, in this regard, it arguably means that the lack of meaningful engagement could arguably also be a missed opportunity for the substantive content of the right to be developed.

⁷⁶ For more on meaningful engagement see Chenwi (n 4); Van der Berg (n 5); Liebenberg (n 5); Chenwi and Tissington (n 6); Gustav Muller, 'Conceptualising 'Meaningful Engagement' as a Deliberative

Liebenberg considers the open-ended criteria of meaningful engagement as developed by the Court to 'bear many of the hallmarks of a conception of democracy'.⁷⁷ She recognises that meaningful engagement requires parties to approach dialogue on the matter with respect for one another and for the constitutional rights and values involved.⁷⁸ Parties should also be open to persuasion and willing to compromise. According to Liebenberg, this also requires that all relevant information is shared with the parties to enable informed participation.⁷⁹ Facilitating the dialogue must include seeking to empower the marginalised and disadvantaged.⁸⁰ Liebenberg argues further:

Meaningful engagement facilitates participatory democracy in resolving eviction disputes. However, it should constitute a mechanism for protecting and realising rights, and not a vehicle for pressuring marginalised groups to negotiate away their rights.⁸¹

Liebenberg also highlights the point that meaningful engagement does not guarantee the vindication of rights or an appropriate outcome.⁸² Meaningful engagement should be a way of participating in deliberative democracy, not merely settlement negotiations.⁸³

Chenwi similarly argues that meaningful engagement is a way for communities to participate effectively in State service delivery 'in line with the tenets of participatory democracy'.⁸⁴ She holds that through providing a voice to the marginalised, meaningful engagement has the potential to promote social change.⁸⁵ She elaborates that meaningful engagement is necessary, beyond its being a legal requirement: it provides a means by which to ensure that policy development is relevant to local circumstances and needs.⁸⁶

Meaningful engagement is considered to be a two-way process⁸⁷ in that both or all sides bring something to the dialogue and are given the opportunity to contribute. It is not just a means for State entities to inform parties on decisions or policy. At the heart of meaningful engagement lies the opportunity for affected parties to influence decisions and policy developments through dialogical engagement with those taking decisions

Democratic Partnership' (2011) 3 Stellenbosch LR 741; and Brian Ray, *Engaging with Social Rights* (Cambridge University Press 2016) as well as the case law discussed above.

⁷⁷ Sandra Liebenberg, *Socio-Economic Rights Adjudication under a Transformative Constitution* (Juta 2010) 301.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *Id* 314.

⁸¹ *ibid.*

⁸² Liebenberg (n 5) 19.

⁸³ *Id* 29.

⁸⁴ Chenwi (n 4) 129; see also Chenwi and Tissington (n 6) 17.

⁸⁵ Chenwi (n 4) 130.

⁸⁶ *Id* 155.

⁸⁷ Chenwi and Tissington (n 6) 9.

and formulating policy that affects them.⁸⁸ Meaningful engagement therefore transcends consultation, participation or transparency. It is not just an information-sharing platform, but it is, or at least it should be, a way for affected parties to influence the way in which their socio-economic rights are adjudicated.⁸⁹ Chenwi and Tissington define meaningful engagement as when

[c]ommunities and government talk and listen to each other, and try to understand each other's perspectives, so that they can achieve a particular goal. It is a 'neutral space' where people and the state can discuss and shape options and solutions to difficult issues.⁹⁰

They add that meaningful engagement should 'enable individuals or communities to be treated as partners in the decision-making process.'⁹¹

Muller holds that meaningful engagement can result in 'increased understanding and sympathetic care'.⁹² In distinguishing meaningful engagement from procedural fairness, Muller contends that in order to be meaningful, a relationship must be fostered between the affected parties.⁹³ He argues:

It is only through the fostering of this long-term relationship that unlawful occupiers will be able to rise above the often misconceived perceptions of being helpless, passive and weak recipients of government largesse.⁹⁴

This echoes the Court's contention in *PE Municipality* that the affected parties can contribute to the problem-solving process. Liebenberg cautions against meaningful engagement's becoming a 'normatively-empty' resolution process.⁹⁵ While focusing primarily on the role of the Court in facilitating engagement between parties, Ray highlights a fundamental concern:

The large gap between official community-participation mandates and actual practice at the local level demonstrates that merely creating participation policies and procedures is plainly insufficient to make them effective.⁹⁶

⁸⁸ *ibid.*

⁸⁹ Chenwi (n 4) 129.

⁹⁰ Chenwi and Tissington (n 6) 9.

⁹¹ *ibid.*

⁹² Muller (n 76) 744.

⁹³ *Id* 756.

⁹⁴ *ibid.*

⁹⁵ Liebenberg (n 5) 19.

⁹⁶ Ray (n 76) 302.

This highlights the reality that the mere facilitation of engagement or the creation of dialogue does not make it meaningful. Ray argues further:

Establishing participatory mechanisms that extend beyond individual cases and create leverage for poor communities and social rights advocates to participate directly in policy-making decisions and processes incorporates aspects of both experimentalism and participatory governance that advocate for deepening democracy through direct citizen participation to promote social justice by making government more accountable to poor communities.⁹⁷

Brand similarly argues for *substantive* participation and avers that techniques of engagement can be developed by courts to ensure that ‘the people’ are included in decision-making processes and solutions.⁹⁸ He states:

The use by courts of judicial deference in socio-economic rights cases, so runs my claim, replicates this process of the technicisation of poverty and in the process works to limit the capacity for political action of impoverished people in a particularly powerful way.⁹⁹

This resonates with Ray’s arguments that engagement on issues of socio-economic rights can empower citizens politically as it can make for true participatory democracy. For engagement to be meaningful to policy development, decision-making and the affected parties themselves, it must have the potential to have an impact: it must be effective.¹⁰⁰ This raises the question of what exactly makes engagement meaningful?¹⁰¹ What is required for engagement to transcend beyond a procedural requirement? Before examining Paulo Freire’s *Pedagogy of the Oppressed*, a concise rationale behind meaningful engagement, as informed by the Constitution, the case law and academic commentary, is first summarised.

Meaningful Engagement for Transformation

Four aspects of meaningful engagement can be extracted relative to transformation and addressing socio-economic inequalities, deprivations and violations. First, meaningful engagement coincides with the idea of a participatory democracy. As noted in the academic commentary above, meaningful engagement can increase the political capacity of the afflicted, giving them a means to hold government accountable and to influence the decisions that affect them. It is also important to contextualise meaningful engagement in relation to South Africa’s oppressive past, where the law gave no recognition to the voice, rights, power or human dignity of the majority of the

⁹⁷ Id 304.

⁹⁸ Danie Brand, ‘Judicial Deference and Democracy in Socio-Economic Rights Cases in South Africa’ (2011) 22 Stellenbosch LR 624.

⁹⁹ Id 628.

¹⁰⁰ Ray (n 76) 77; Chenwi and Tissington (n 6) 17.

¹⁰¹ Chenwi and Tissington (n 6) 21, also raise this question.

population—the same majority that still suffers from perpetuated socio-economic inequalities. Meaningful engagement therefore provides a means for people to participate in the decisions that affect them.

Second, meaningful engagement has the potential to disrupt the power imbalances in socio-economic rights cases and conflicts that exist between the socio-economically afflicted and the government. Meaningful engagement, through facilitating political participation for people, creates the potential for stronger government accountability. If, through the increased political capacity mentioned above, people are able to engage and influence decisions, the great power imbalance between the governed and the governors can be reduced. This is what Klare would refer to as an ‘empowered model of democracy’.¹⁰²

Third, respect for human dignity can be fostered through meaningful engagement,¹⁰³ because it requires respect for other parties as well as for the relevant constitutional rights and values.¹⁰⁴

Finally, meaningful engagement has problem-solving value: it promotes better understanding of and insight into the circumstances and needs of the affected parties. As it has been argued by Chenwi and Tissington, meaningful engagement ensures that a government carries out its obligation of realising socio-economic rights.¹⁰⁵ This makes it possible to develop an appropriate solution, echoing the Constitution’s commitment to the ‘will of the people’. Furthermore, the participation of affected parties empowers them and recognises their own potential in vindicating their socio-economic rights.¹⁰⁶

Paulo Freire’s Pedagogy of the Oppressed

Paulo Freire, the Brazilian educational theorist, wrote *Pedagogy of the Oppressed* during his six years of political exile.¹⁰⁷ In it he examines the relationships between

¹⁰² Klare (n 12) 153.

¹⁰³ Muller (n 76) 744; *Olivia Road* 2008 (2) SA 208 (CC) paras 10–11; *Joe Slovo* 2010 (3) SA 454 (CC) paras 238, 261, 406; *Grootboom* 2001 (1) SA 46 (CC) para 83.

¹⁰⁴ *Joe Slovo* 2010 (3) SA 454 (CC) para 244, where the Court held: ‘[M]utual understanding, respect and accommodation of each other’s concerns should be the main focus of meaningful engagement.’

¹⁰⁵ Chenwi and Tissington (n 6) 17.

¹⁰⁶ Liebenberg (n 77) 314.

¹⁰⁷ Freire Institute (n 8); Freire’s first footnote in chapter one resonates with South Africa’s current socio-economic circumstances and unrest, especially regarding decolonisation: ‘The current movements of rebellion, especially those of youth, while they necessarily reflect the peculiarities of their respective settings, manifest in their essence this preoccupation with people as beings in the world and with the world – preoccupation with *what* and *how* they are “being.” As they place consumer civilization in judgment, denounce bureaucracies of all types, demand the transformation of the universities (changing the rigid nature of the teacher-student relationship and placing that relationship within the

oppressors and oppressed, teachers and students, and leadership and the people.¹⁰⁸ Fundamentally, he questions the banking concept of knowledge that sees education as a gift bestowed by the knowledgeable on those they deem to know nothing.¹⁰⁹ He focuses on the role of dialogue both in uncovering oppression and in taking action for liberation.¹¹⁰

Pedagogy of the Oppressed is critical of the banking education system for seeing learners' as 'empty vessels' to be filled with information from teachers.¹¹¹ However, his pedagogy extends beyond the realm of education: it speaks to situations where a power imbalance exists to the detriment of one group. Therefore he refers to oppression and liberation. He argues that the pedagogy for liberation must be developed 'with, not for' the oppressed in order for their humanity to be respected.¹¹² He holds that a person's subjective views and experiences cannot be removed from the liberation process.¹¹³ He defines this pedagogy of the oppressed as:

The pedagogy of the oppressed, animated by authentic, humanist (not humanitarian) generosity, presents itself as a pedagogy of humankind. Pedagogy which begins with the egotistic interests of the oppressors and makes the oppressed the objects of its humanitarianism, itself meanings and embodies oppression. It is an instrument of dehumanization. This is why, as we affirmed earlier, the pedagogy of the oppressed cannot be developed or practiced by the oppressors. It would be a contradiction in terms if the oppressors not only defended but actually implemented a liberating education.¹¹⁴

The crux of Freire's argument is that liberation cannot be imposed on the oppressed by the oppressors. The only way in which the oppressed can be liberated is through their own involvement and participation.¹¹⁵ He argues that as the oppressed begin to recognise themselves as active participants, their involvement in their liberation will not be 'pseudo-participation' but 'committed involvement'.¹¹⁶ He also emphasises that the oppressors' interests fundamentally lie in changing the minds of the oppressed, not their

context of reality), propose the transformation of reality itself so that universities can be renewed, attack old orders and established institutions in the attempt to affirm human beings as the Subjects of decision, all these movements reflect the style of our age, which is more anthropological than anthropocentric' Freire (n 2) 1.

¹⁰⁸ Freire (n 2) 43.

¹⁰⁹ Freire Institute (n 8).

¹¹⁰ Freire (n 2) 43.

¹¹¹ Id 79.

¹¹² Id 22.

¹¹³ Id 24.

¹¹⁴ Id 28.

¹¹⁵ Id 39.

¹¹⁶ Id 43.

circumstances.¹¹⁷ Freire places strong emphasis on the importance of communication,¹¹⁸ viewing dialogue as an ‘existential necessity’,¹¹⁹ and argues that ‘to alienate human beings from their own decision-making is to change them into objects.’¹²⁰

He argues that in seeking to transform the reality of people, they cannot be excluded from the process:¹²¹ the oppressed must participate in the process of transformation.¹²² In undertaking an analysis of theories on antialogical and dialogical actions,¹²³ he stresses the role of dialogue in problem-solving.¹²⁴ Freire holds that ‘[d]ialogue with the people is neither a concession nor a gift, much less a tactic to be used for domination.’¹²⁵ He continues, capturing what he deems is the essence of meaningful dialogue for problem-solving—a presumed equality between participants. There must be mutual trust and respect and the participants must be willing to question their knowledge and recognise that through dialogue new knowledge will be created.¹²⁶ Dialogical action idealises the coming together of understanding to produce action. Freire captures this as follows:

In cultural synthesis – and only in cultural synthesis – it is possible to resolve the contradiction between the world view of the leaders and that of the people, to the enrichment of both.¹²⁷

Despite arguing that ideally in dialogue there should be equality between participants, Freire elaborates on how power dynamics and imbalances can distort the reality of the oppressed into a false sense of power, which remains with the oppressor.¹²⁸ He argues for the need for participation by the oppressed in their liberation to avoid them—through decisions and solutions being imposed on them—‘merely imagin[ing] they have

¹¹⁷ Id 47. This notion of changing the minds of the oppressed reminds me of the instances of deference, not just by the courts but also by the State, deferring to budgets or available resources rather than addressing the structural reasons underlying the inequality, deprivation or violation.

¹¹⁸ Id 50.

¹¹⁹ Id 61.

¹²⁰ Id 58.

¹²¹ Id d 99.

¹²² Id 100.

¹²³ Id 111. Freire considers antialogical and dialogical theoretical framework for cultural action. Antialogical action is oppressive in nature and Freire recognises four facets of it as: conquest, division, manipulation and cultural invasion. Dialogical action, on the other hand, is liberating. It consists of collaboration, union, organisation and cultural synthesis. This article is concerned with the theoretical basis of dialogical action and how these facets and theoretical foundation can influence the conceptual understanding of meaningful engagement in socio-economic rights adjudication.

¹²⁴ Id 141.

¹²⁵ Id 110.

¹²⁶ Freire Institute (n 8).

¹²⁷ Freire (n 2) 54.

¹²⁸ Id 161.

reached power'.¹²⁹ Ultimately, *Pedagogy of the Oppressed* argues for the genuine involvement of the oppressed in their liberation. Freire strongly motivates the need to recognise the individual's humanness and places emphasis on the recognition of humanity in his pedagogy. He advocates the role that must be assigned to the oppressed:¹³⁰

If true commitment to the people, involving the transformation of the reality by which they are oppressed, requires a theory of transforming action, this theory cannot fail to assign the people a fundamental role in the transformation process.¹³¹

This requires recognising the contribution the oppressed themselves make to their own liberation, and that in turn requires, as argued by Freire, communication and respect. Central to Freire's theory is that the oppressed have a valuable role to play in the liberation process as a result of their immediate experience and understanding of oppression.

Amalgamating a Pedagogy for Meaningful Engagement

Introduction

Freire's *Pedagogy of the Oppressed* contains features that are arguably applicable to meaningful engagement for addressing socio-economic rights inequalities, deprivations and violations. It is argued that a Freirean approach to meaningful engagement can increase political participation for those facing deprivations and violations of socio-economic rights; it can reduce the power imbalance between government and citizens, resulting in increased accountability; it promotes human dignity; and has constructive problem-solving value because of the needs of the afflicted being given emphasis.

Having provided an overview of the current normative understanding of meaningful engagement in South Africa, and Freire's theory, in this section it will be argued that for engagement in fact to be meaningful and transformative, it should be informed by a Freirean approach. For engagement on issues of socio-economic rights not to amount to 'pseudo-participation', such an approach is necessary. Furthermore, it will be argued that without such an approach, meaningful engagement cannot adequately empower people or fully emancipate them as the Constitution's transformative mandate envisages or enable them to address socio-economic inequalities, deprivations and violations.

A Freirean Approach to Meaningful Engagement

The starting point for a Freirean approach to meaningful engagement is to genuinely involve those affected by socio-economic inequalities, deprivations and violations.

¹²⁹ Id 127.

¹³⁰ Id 99.

¹³¹ Id 99.

Freire's terminology of the oppressor and the oppressed will be used to refer to the powers that be and those affected by socio-economic inequalities, deprivations and violations. The oppressed need to be involved in addressing the problem because of their subjective experience and understanding, and in recognition of their human dignity. But what does this involvement amount to? In accordance with his theory of dialogical action, Freire would call for collaboration between the oppressed and oppressors, for forming a union of ideas and organising accordingly, and for cultural synthesis. Cultural synthesis requires the coming together of the two views: those of the oppressed and of the oppressor, 'to the enrichment of both'.¹³² The understanding, or even the definition, of a problem is different for the oppressed and the oppressor. A Freirean approach requires bringing together these views in a dialogue in order truly to involve the oppressed.

Perhaps understanding cultural synthesis is made easier by examining the opposite: cultural invasion. Cultural invasion—a feature of antidialogical action, which is oppressive¹³³—places the power to take action not in the hands of the oppressed but in those of the oppressor. Freire states:

[C]ultural invasion further signifies that the ultimate set of decisions regarding the action of those who are invaded lies not with them but with the invaders, and when the power of decision is located outside rather than within the one who should decide, the latter only has the illusion of deciding. This is why there can be no socio-economic development in a dual 'reflex', invaded society.¹³⁴

It follows that those occupying the position or role that inflicted the plight upon the oppressed, or contributed to their plight, cannot also be the ones to achieve transformation—or, in Freire's context, liberate the oppressed.

The 'illusion' of power that this kind of antidialogical approach creates in fact has the potential to disempower *further* the affected people through their failure to achieve meaningful change. This 'illusion' can be created through pseudo-participation.

What, then, is the desired kind of participation? Roark identifies three participation strategies in relation to power and control.¹³⁵ First, in consultation, affected parties are consulted and although they can influence the outcome, the power and control ultimately lie with those managing or facilitating the consultation process.¹³⁶ This illustrates a type of pseudo-participation where the involvement of the 'oppressed'

¹³² Id 154.

¹³³ Id 127.

¹³⁴ Id 133.

¹³⁵ Paula Roark, *Social Justice and Deep Participation* (Palgrave Macmillan 2015) 58.

¹³⁶ *ibid.*

comprises action within a predetermined, top-down structure, which may in itself be part of the problem.

The second kind of participation Roark recognised is collaboration. Collaboration involves negotiations between the parties for shared decision-making, and in that way the sharing of power and control.¹³⁷ Collaboration is much more aligned to a Freirean approach.

The third kind of participation she identifies is that which empowers.¹³⁸ This kind recognises the agency of those affected to make their own decisions and define their own approach to addressing *their* problem.¹³⁹ Such empowering participation is controlled by the participants (the oppressed).¹⁴⁰ This third kind of participation is Freirean in nature because the method of action is not dictated by the oppressors and is not imposed on the oppressed. It recognises the potential of people to deal with their own plight and to determine the action necessary for redress. Freire's concept of a praxis¹⁴¹—the culmination of action and reflection—calls for a collaboration between parties to gain knowledge, to create new knowledge and to act upon it. This requires the actual involvement of the oppressed throughout the engagement process, including the decision-making and the actions taken.

A Freirean approach incorporates both collaboration and empowerment; a Freirean approach to meaningful engagement goes beyond consultation. In fact, it specifically opposes imposing conclusions or solutions on the oppressed. It envisages the coming together of views to create new knowledge. This is more than just listening to the oppressed or considering their voices: it is asking (not just allowing) them to dictate the approach to solving the problem in the light of their subjective understanding and human dignity, and in recognising that the people, structure or institution that created or perpetuates the problem cannot also be the sole source of a solution to that same problem.

Addressing socio-economic transformation cannot happen through those who created the need for such transformation in the first place or those who manifest it through their actions and daily lives, or even those who perpetuate it through institutions and structures of 'oppression'. Meaningful engagement is indeed necessary not only on case-specific issues but also on a larger scale of policy development and implementation if meaningful change and true transformation are to be achieved.

¹³⁷ *ibid.*

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ Freire Institute (n 8).

The cause of a problem cannot also be the solution. This statement is not without exception and certainly issues of socio-economic inequalities, deprivations and violations stem from complex causes involving South Africa's colonial and apartheid history. South Africa is perhaps still too early into its democracy, but, when looking at an issue such as evictions versus housing rights, is the lack of progress perhaps not because we are expecting solutions from the same people who are responsible for the lack of progress? Is the approach to socio-economic rights litigation and policy development not itself a barrier to what Klare expresses as an 'empowered model of democracy'? Those whom solutions are expected from—the lawyers, the politicians, the drafters of policy, legislators and the like—are, at the very least, contributors to the lack of transformative progress and the consequent perpetual plight of the oppressed. In Freire's terms, the oppressor cannot be the liberator of the oppressed.

Freire also recognises the importance of historical context and, similarly to meaningful engagement, holds that dialogue is necessary throughout the liberation process:

Critical and liberating dialogue, which presupposes action, must be carried on with the oppressed at whatever the stage of their struggle for liberation. The content of that dialogue can and should vary in accordance with historical conditions and the level at which the oppressed perceive reality.¹⁴²

The oppressor's approach and intention is to change the mind of the oppressed, not the circumstances or the situation. Deference to budgets, policy, implementation measures and other reasons for lack of progress or change, as illustrated in the case law, is in effect a means of changing the minds of the oppressed. It is providing them with a new reason for their oppression and for absolving the oppressor from blame or, in issues of socio-economic rights, accountability. Ray's view on meaningful engagement echoes this idea to some extent when he argues that '[c]ommunities should be treated as partners, not aid recipients.'¹⁴³

South Africa's past adds layers to the cause of present-day socio-economic inequalities, deprivations and violations. These hardships faced by people in South Africa are necessarily racial as a result of the past and the perpetuation of discriminatory practices created by colonialism and manifested by apartheid. The age of constitutional democracy has not eradicated racial inequalities, especially those pertaining to socio-economic circumstances. For this reason, the 'oppressor' includes those who maintain the structural and institutional practices that perpetuate these racial inequalities. Regardless of the racial representation within the structures and institutions, they remain inherently racist and reflective of the past (and present) power imbalances. The structural and institutional racism provides all the more reason to acknowledge the

¹⁴² Freire (n 2) 43.

¹⁴³ Ray (n 76) 289.

voices outside of these to address the consequences of their persistent existence. Again, the cause (albeit indirect) of a problem cannot also be the solution.

Freire's work indicates the importance of engagement and dialogue in liberation. Meaningful engagement in socio-economic rights adjudication seeks to liberate those suffering from their circumstances and, as argued, increase political capacity and reduce power imbalances. Understanding meaningful engagement from the theoretical basis of Freire's *Pedagogy of the Oppressed* adds meaningful value to its role and importance in the pursuit of socio-economic transformation.

A Pedagogy for *Meaningful Engagement*

So what does a pedagogy of meaningful engagement look like? How can a Freirean approach be infused into the approach to meaningful engagement in order to ensure true meaningfulness? Perhaps the biggest question is this: Can a pedagogy of meaningful engagement be defined? Is it the place of academics, lawyers, philosophers, politicians and the State (all of whom are certainly not the 'oppressed') to determine what makes engagement meaningful? On a Freirean understanding, engagement needs to be meaningful to the oppressed, empowering them and recognising their agency in pursuing change and transformation. If the concept, requirement or remedy of meaningful engagement is defined and imposed on the oppressed, is it not self-defeating its goal of being meaningful? Under a Freirean approach the determinants of what makes engagement meaningful lie in the hands of the oppressed. Freire asserts:

[L]eaders who do not act dialogically, but insist on imposing their decisions, do not organize the people – they manipulate them. They do not liberate, nor are they liberated: they oppress.¹⁴⁴

Where does that leave the 'oppressors' who seek to contribute to change and transformation through meaningful engagement? What role is to be assumed by the academics, lawyers, philosophers, politicians and the like to this end? Based on an understanding of Freire's *Pedagogy of the Oppressed*, this assumed power (and assumed superior knowledge) needs to be relinquished to the oppressed. The fact that looking to the cause of the problem for a solution is a flawed approach towards transformation needs to be acknowledged, and ultimately the oppressed's knowledge of their situation and circumstances must be given due weight in 'creating new knowledge' and developing a solution. This is especially the case in South Africa. The socio-economic inequalities, deprivations and violations cannot be resolved by those who caused them or contribute to them. The voices of the afflicted, the oppressed, are the starting point for engagement, empowerment and transformation. Oppressors need to be conscious of the role they play in the problem itself, and the role the oppressed can and

¹⁴⁴ Freire (n 2) 178.

should play in change and transformation. Without such, engagement cannot be meaningful.

Conclusion

This article sought to argue for a Freirean approach to meaningful engagement on issues of socio-economic rights inequalities, deprivations and violations. While some features of meaningful engagement are akin to Freire's attributes of dialogical action, the conceptual understanding of the position of the participants of meaningful engagement has to date been neglected in the academic discourse. A Freirean approach to conceptualising meaningful engagement leads to the empowerment of the oppressed to co-determine and truly contribute to resolving their plight in line with respect for human dignity and an open-mindedness of parties to come together and form 'new knowledge'.

A Freirean approach has the potential to increase government accountability through elevating the political capacity of those afflicted by socio-economic rights inequalities, deprivations and violations. This article has argued that a Freirean approach to meaningful engagement can increase political participation for those facing socio-economic rights deprivations and violations; it can reduce the power imbalance between government and citizens, resulting in increased accountability; it promotes human dignity; and it has constructive problem-solving value owing to the needs of the afflicted emphasis.

The argument is based on the Freirean approach that the cause of the problem cannot also be the source of the solution. While recognising that the causes of socio-economic inequalities, deprivations and violations in South Africa are multi-faceted, it is also necessary to consider how these legacies of the past are perpetuated by structural and institutional racism. The racial demographic adds another power imbalance to the engagement process. It also adds another reason for why the oppressed, with their subjective understanding and 'lived experiences' of inequality, deprivation and rights violations should have a fundamental role to play in ameliorating their plight.

So, again, what does a pedagogy for meaningful engagement look like? What does it mean to resolve such issues 'with, not for' the people affected? Perhaps more questions have been posed than answers provided for infusing Freire's work into the conceptual understanding of meaningful engagement. The approach to socio-economic transformation in South Africa needs to be further examined in the light of the role assumed by the oppressors and denied to the oppressed. Perhaps raising more questions than answers is actually the point—the 'unafflicted' do not, and cannot, have the answers. Attempting to answer what the best approach would be would be acting for, not with the people. The answers to the problems we participate in do not lie with us, the academics, philosophers, lawyers, politicians or the State: they lie with the people, for the people.

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