

REPORT ON THE ROUNDTABLE DISCUSSION ON MEANINGFUL ENGAGEMENT IN THE REALISATION OF SOCIO-ECONOMIC RIGHTS

Hosted by the Socio-Economic Rights Project of the Community Law Centre and the Socio-Economic Rights Institute of South Africa

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1 Introduction

Meaningful engagement is an important development in the approach of South African courts to enforce socio-economic rights and promote active participation in service provision. The roundtable discussion on meaningful engagement in the realisation of socio-economic rights was an initiative of the Socio-Economic Rights Project (SERP) of the Community Law Centre (CLC), which it hosted together with the Socio-Economic Rights Institute of South Africa (SERI). It was held on 04 March 2010 with 43 participants from government and civil society (including social movements). The roundtable discussion was funded by the Norwegian Centre for Human Rights.

2 Background and objectives of the roundtable discussion

Meaningful engagement is an innovative mechanism for realising socio-economic rights and could become central to their enforcement. It is important to promote it, especially as it recognises the core importance of fostering participation and gives content to the right of participation of the poor. Discussions that would help delineate the concept and identify ways of making it effective are therefore relevant. In addition, on 27 July 2009, a workshop on meaningful engagement with civil society (community, community organisations, lawyers and NGO's) was held in which the need for a separate discussion with government on meaningful engagement was highlighted as an appropriate next step.¹ The civil society workshop discussed, among other things, the concept of meaningful engagement and the challenges communities faced when engaging with government. It is against this background that the roundtable discussion was held. It thus addressed the need identified in the civil society workshop by bringing together civil society and government to discuss challenges around meaningful engagement and finding a way make it more effective.

The objectives of the roundtable discussion were therefore:

- to promote dialogue on meaningful engagement and how it can be made more effective, including identifying challenges in making meaningful engagement a reality;

¹ This civil society workshop was organised by the Centre for Applied Legal Studies (CALS) at the University of Witwatersrand. The workshop report is available at www.law.wits.ac.za/cals.

- to present findings of the civil society workshop on meaningful engagement hosted by CALS;
- to gain insight into current attitudes and practices regarding meaningful engagement;
- to consider what the key questions are for decision/policy makers;
- to discuss the need and feasibility of a housing indaba in 2010; and
- to introduce the booklet on meaningful engagement.

Key individuals from government, civil society including community organisations and social movements were invited to share their experiences and practices around meaningful engagement. Based on the concept of meaningful engagement, the roundtable discussion was more of a dialogue on finding ways to make meaningful engagement more effective as opposed to formal lectures or presentations on the subject. The rules of engagement were to speak and listen to each other and respect one another's perspectives in order to achieve the above objectives. Participants were invited to highlight challenges and make proposals or suggestions as to how to address issues identified.

The subsequent paragraphs of this report summarises some of the key points of the discussion. The seminar was divided into four main parts. Part one focussed on the background to meaningful engagement and the recent constitutional cases that deal with the concept. Part two provided insight on the current approaches and practices of government on meaningful engagement in relation to policy development and service delivery. Part three focussed on the experiences of civil society organisations and social movements in relation to engaging with government and the challenges faced. Part four considered the feasibility of a housing indaba and the way forward in view of the issues raised during the discussions as well as provided an introduction to the meaningful engagement booklet that was being developed.

3 Introduction to meaningful engagement: Locating it within the Constitution and South Africa's democracy

Lilian Chenwi² started the roundtable discussion by welcoming the participants and stating the objectives of the roundtable discussion. Chenwi stated that meaningful engagement is an important development in South African courts that is capable of promoting social change on the ground by creating a voice for the marginalised and the poor. She referred to the *Olivia Road*³ case that further defined meaningful engagement as a two-way process in which the state and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives. She elaborated that it is a process in which communities or right-holders and government talk and listen to each other and try to understand each other's perspectives so as to achieve a particular goal. It is a 'neutral' space where citizens

² Coordinator and Senior Researcher, Socio-Economic Rights Project, Community Law Centre (CLC).

³ *Occupiers of 51 Olivia Road and Others v City of Johannesburg and Others* 2008 (3) SA 208 (CC), para 16.

(and non-citizens) and the state can discuss and shape options and solutions around contested issues.

Chenwi stated that this concept had been referred to in previous cases⁴ and has a longstanding legal basis within South Africa's Constitution, as was also pointed out in the *Olivia Road* case:

- the preamble requires the government to improve the quality of life of all citizens and free the potential of each person;
- section 152 states that local government has a duty to provide services to the community in a sustainable way, promote social and economic development and encourage community and community organizations to be involved in local government matters;
- section 7(2) places a duty on the state to respect, protect, promote and fulfil the rights in the Bill of Rights;
- section 26(2) requires the state to act reasonably to realise the right to access to housing;
- section 26(3) states that no person may be evicted without a court order after considering all relevant circumstances and meaningful engagement falls squarely into relevant circumstances;
- section 33 requires a government to adhere to procedural fairness before taking an administrative action that affects peoples' rights;
- section 195 encourages public engagement in the policy-making process as part of the values and principles of governing public administration.

Acknowledgement was also given to South Africa's international law obligation and various laws and policies that mandate meaningful engagement.

Chenwi further emphasised that meaningful engagement fits squarely into South Africa's vision of democracy, which is representative and participatory democracy. Lack of public participation would render our representative democracy meaningless and continuous participation is vital for the proper functioning of a representative democracy. Meaningful engagement encourages public participation in policy making process and service delivery on a continuous basis. A participatory democracy is one that is accountable, transparent, responsive, and open and makes provision for society's participation in decision-making process. She quoted the following from the *New Clicks* case: '[t]he principle of consultation and involvement has become a distinctive part of our national ethos.'⁵ She said that meaningful engagement is not something we can shift aside; we must deal with meaningful engagement as it is part of our democracy.

⁴ Such as *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) [*PE Municipality*] and *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) [*Grootboom*].

⁵ *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others* 2006 8 BCLR 872 (CC), para 625.

4 Civil society workshop report

4.1 Key issues

Kate Tissington⁶ provided a brief background to, and highlighted key issues in, three recent Constitutional Court cases that dealt with meaningful engagement: *Olivia Road*; *Joe Slovo*;⁷ and *Abahlali*.⁸ These cases further developed the jurisprudence on meaningful engagement.

The *Olivia Road* case ran over a period of three years and was a challenge by the residence of two buildings in the inner city of Johannesburg of a decision by the City of Johannesburg to evict them on the grounds that the buildings they occupied were unsafe and unhealthy in terms of section 12 the National Building Regulations and Building Standards Act 103 of 1977 (NBRA). The Constitutional Court ordered the parties to engage around the alleviation of the plight of the residence and also on alternative temporary accommodation as well as permanent housing, prior to the Court making a decision on the eviction. The parties went ahead and engaged, reaching a settlement agreement, which the Court subsequently endorsed. In its judgment, the Constitutional Court held that the municipality must meaningfully engage if they are about to render the residence homeless through an eviction order. A municipality also has a constitutional obligation apart from considering whether a building is unsafe or unhealthy to provide alternative housing to vulnerable people before evicting them. Section 12 of the NBRA makes it a crime for people to remain in a building after the municipality has issues a notice to vacate the premises and before a court order is granted. The Court found this to be contradictory to section 26(3) of the Constitution which prohibits arbitrary evictions. The City of Johannesburg in *Olivia Road* provided alternative accommodation to those evicted. However, other issues have arisen in the relocation phase, which were later discussed by participants.

The *Joe Slovo* case concerned the eviction of residents of the Joe Slovo informal settlement to make way for the N2 Gateway housing project, which is part of government's pilot project to test its Breaking New Ground (BNG) policy. The Cape High Court ordered the eviction and the Constitutional Court endorsed the eviction order. The Constitutional Court, however, gave requirements on how meaningful engagement should be conducted. The Court held that in order to render the eviction 'just and equitable' the parties have to continuously engage on the relocation; and there should be consultation with every individual on the nature of the relocation. The eviction order was subsequently suspended as there was not enough land or finances to enforce the eviction order. Tissington observed that an issue raised in this case was whether there was meaningful engagement and the Court accepted the government's version that there was meaningful engagement. However, there were strong doubts on the quality of this meaningful engagement. She further observed that meaningful engagement does not mean that the two parties should

⁶ Research and Advocacy Officer, Socio-Economic Rights Institute of South Africa (SERI).

⁷ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* 2009 (9) BCLR 847 (CC)

⁸ *Abahlali baseMjondolo Movement of South Africa and Another v Premier of the Province of KwaZulu-Natal and Others* CCT 12/09, 2009 ZACC 31

reach an agreement. However, the parties should strive towards reaching consensus.

The *Abahlali* case was a challenge brought by Abahlali baseMjondolo, a shack dwellers' movement based in Durban, on the constitutionality of the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007.⁹ The Slums Act aims to eliminate slums. Section 12 of the Slums Act stated that should land owners or persons in charge not evict unlawful occupiers, then the municipalities may evict such unlawful occupiers. Section 12 of the Slums Act was declared unconstitutional and invalid as it gave too much power to the MEC to evict and undermined section 26 of the Constitution, especially as it did not make provision for meaningful engagement. Tissington stated that engagement should be incorporated in every eviction case prior to an eviction order.

Lauren Royston¹⁰ then addressed the implications of the cases and expanded on the key issues from the civil society workshop, which included: illuminating on what meaningful engagement is from an activist and legal perspective; implications of meaningful engagement for communities, community organisations, lawyers and non-governmental organisations (NGOs); and the role of state. With regard to the latter, she stated that there is insufficient emphasis on the role of the state. Reiterating what Chenwi said, Royston stated that section 16 of the *Olivia Road* case is the heart of what is meaningful engagement. It is an explicit obligation on municipalities to engage meaningfully and *ad hoc* engagement is inappropriate. Hence, municipalities can no longer only be concerned with making unsafe buildings safe but should consider their broader obligation towards the people who will be affected by an eviction. She further observed that in Joe Slovo, the Constitutional Court seems to shift backwards from the *Olivia Road* case as meaningful engagement had not occurred before the eviction order was granted, yet the Court found it reasonable to evict. She again drew attention to the fact that engagement is a two way process and that there is no close list of the objectives of engagement. That it is also an elusive concept, and is easier to identify when it is lacking. She stated further that theoretical aspects of meaningful engagement and concepts such as consultation, mediation, engagement and procedural fairness required more clarification as they overlap. She stated further that concerns were raised at the civil society workshop that meaningful engagement might become a procedural requirement. The workshop also considered the implications of meaningful engagement for the work of lawyers - whether lawyers should facilitate where possible the conditions necessary for engagement in order to truly render it meaningful or should have a more limited role in the engagement process.

She also pointed out the implications of NGOs acting as intermediaries in order to create the conditions for meaningful engagement. At the civil society workshop, it was felt that the Court was placing too much responsibility on NGOs and communities with insufficient emphasis on the role the state (government) should perform. She also considered the importance of personalities and capacities of the persons involved in the negotiation as critical in defining and implementing the substantive rights that come from meaningful engagement and the importance of

⁹ Hereinafter referred to as the Slums Act.

¹⁰ Principal at Development Works and advisor to Centre for Applied Legal Studies (CALs).

senior officials to manage the process in a reasonable and flexible way. She cited the *Olivia Road* case, which demonstrates how the outcome of negotiations can be navigated by personalities. She argued that the issue of relationships between various personalities might be the hardest challenge to overcome; however it remains the most central way to achieve consensus when engaging meaningfully. She then stressed the importance of civil society to develop meaningful engagement and to engage with government officials (which is being address by this roundtable discussion). She also emphasised that the question of alternative accommodation needs to be discussed further.

4.2 General discussion and responses to key issues

In response to the key issues, Chenwi stated that lack of cohesion and its impact on meaningful engagement is one of the issues that stood out. Chenwi cited a research conducted by SERP in 2008 on the City of Cape Town hostel redevelopment project in Gugulethu where the project was stopped as a result of infighting between the community leaders. The pertinent question in that situation was whether the municipality could not then directly engage with the community rather than suspending the whole project as a result of a lack of cohesion.

Mzwanele Zulu¹¹ posed a critical question – the difference between ‘engagement’ and ‘negotiation’. Gustav Muller¹² in response to the question provided a basic difference between negotiation and meaningful engagement - negotiation is a function that is reserved for rule making and rule making is where you create subsidiary legislation for local government; and engagement is a broader term relating to substantive constitutional rights.

Steve Kahanovitz¹³ cautioned against defining meaningful engagement in a restrictive manner and to also look at it in relation to other constitutional cases and not just the three recent cases discussed above. He added that the Constitutional Court is grappling with something new, which necessitates caution in explaining the concept. He also stated that the aim of meaningful engagement is to reach consensus but that does not necessarily mean agreement. He then emphasised that participants should look at other areas where the courts grapple with participatory democracy.

John Williams¹⁴ stated that the condition of meaningful engagement by government goes way beyond the preconditions stipulated in the civil society report presented by Tissington and Royston. He cautioned against focussing largely on legal interpretations of meaningful engagement. Research conducted by him revealed that governments are more careful and accountable to communities in their service delivery if they are appointed by that particular community. However, in South Africa, the ruling party deploys government officials and being a municipality officer is quite lucrative. He also stated that the linkage between socio-economic rights and

¹¹ Chairperson of the Joe Slovo Task Team, who was also representing Slum Dwellers International (SDI) / Community Organisation Resource Centre (CORC) at the roundtable discussion.

¹² ISP Project Manager, Faculty of Law, University of Stellenbosch.

¹³ Attorney, Legal Resources Centre (LRC).

¹⁴ Professor, School of Government, University of the Western Cape.

economics needs to be acknowledged in order to make the realisation of these rights effective.

Dale McKinley¹⁵ referred to the narrowness of the conceptualisation of meaningful engagement and the gap in the civil society report in relation to its elaboration of 'meaningful'. He explained that democracy is a two-way process, where the state takes its communities seriously, respects and gives recognition to the communities. He emphasised that meaningful engagement should take place before an action and not after the action has already been taken. For instance, meaningful engagement after an eviction order is granted is impractical and could result in conflict as this defeats the purpose of democracy. Currently, he added, there is an increase in the conflict between the state and the indigent because government does not take people seriously and does not respect their views.

Tissington pointed out, based on experience from the *Olivia Road* case, that government addresses only the issues they are ordered to address. Government is forced into the meaningful engagement process and when other issues arise at a later stage, it becomes difficult to get government to address these issues.

Royston stated that one should use the recent judgments as opportunities for meaningful engagement between government and those about to be evicted. However, though the Constitutional Court grants the community an opportunity to engage, it is evident from the San Jose experience that communities have to deal with a largely unresponsive state. She also emphasised that these cases are a critical link to having a bigger impact on the realisation of socio-economic rights and achieving the aims of our democracy.

Zulu agreed with Royston's previous point that there are always various personalities involved in the negotiation process. He also agreed with the view that engagement is a two-way process and people should be allowed to air their views. But that allowing such a space should not be the end - the people must be allowed to make the actual decisions. He cited his experience in the Joe Slovo community where several meetings with government are held and concerns raised but each and every time their requests are denied. He also stated that government should be held more accountable and recommended that bodies should be appointed to monitor the engagement process to see if it is fair to all the parties concern.

Samantha Naidu¹⁶ stated that there is still confusion regarding the concept of meaningful engagement, as there are various perspectives on it as seen from the views of participants. She added that government is still trying to understand the meaning of the concept, especially as the court cases seem to contradict each other. She observed that meaningful engagement provides a space in terms of creating a dialogue and understanding between the parties and does not necessarily mean there should be consensus or an agreement. She stated further that the interpretations given in the judgements are not necessarily a true reflection of the two-way process, as what government is grappling with is absent in the judgments. Also, there are budget implications for a specific communities and looking at

¹⁵ Executive Member, Anti-Privatisation Forum (APF)

¹⁶ Director: Management Support, Department of Housing, City of Johannesburg

citizenship as a whole is missing, which could provide consistency amongst government and civil society's approach to meaningful engagement.

McKinley clarified that a distinction must be drawn between what comes out of a court judgment and translating the judgment into a conceptual political framework. In response to Naidu, he referred to the *Mazibuko*¹⁷ case in which government expected the people to understand what they are doing without any kind of engagement on what government's decision is based on. He reiterated that it is government's job to listen to the views of the people and that is why we have a democracy.

Chenwi agreed with Zulu and McKinley that meaningful engagement after an action is taken is ineffective, as communities are not given the space to make decisions in such instances. On the question of policy development, she agreed that an outreach programme to communities needs to be established to give them the necessary information and concerns regarding a particular policy in order for them to raise their views when policies are being developed. She also stated that meaningful engagement does not mean that there should be an agreement but that when one aims at consensus, one would tend to listen to every one's view in order to arrive at a particular decision. Royston added that meaningful engagement should have the view of reaching an agreement otherwise the point of meaningful engagement becomes unclear.

Mzonki Poni¹⁸ stated that he understands meaningful engagement as a means to facilitate eviction processes - to ensure that an eviction runs smoothly. He quoted from the civil society workshop report that stated that the people to be rendered homeless must not make unreasonable demands, questioning how to ascertain that demands are unreasonable. He further pointed to one of the challenges in making the meaningful engagement process effective - power imbalances, especially as one party has the resources and the other does not. The question then is how to deal with these power imbalances or how to rectify them?

Trevor Mitchell¹⁹ stated that he understands meaningful engagement to include at least consultation, negotiation and, where possible but not always achievable, consensus. He added that from government's perspective, engagement takes place at a project level and it varies based on the nature and the outcome of the project. He supported Naidu's point in relation to resources, stating that local government has to deal with budget and funding - projects are constrained to a specific timeframe and funding. That at some stage in the negotiation process, the state has to make a decision because they have funding that is limited to a certain timeframes and this is where the power imbalances come in.

Zulu re-iterated that government needs to understand the concept of meaningful engagement, as failure to understand the concept would result in negative outcomes. Poni added that meaningful engagement is a key issue and failure on the part of government to understand the concept means failure in the end result. He

¹⁷ *Mazibuko and Others v City of Johannesburg and Others* 2010 (3) BCLR 239 (CC)

¹⁸ Chairperson, Abahlali baseMjondolo of the Western Cape

¹⁹ Head: Housing and Policy Research, City of Cape Town.

also stipulated that civil society should ensure that government understands this concept and has the political will to implement it. Chenwi also agreed that political will is crucial in the engagement process. She cited the *Mamba*²⁰ case in which engagement was not possible as a result the lack of political will.

5 Current approaches and practices of government on meaningful engagement in relation to policy and service delivery

5.1 Approaches and practices of government

Mitchell again clarified that interaction with communities takes place at project level. He stated that meaningful engagement is a process throughout the duration of a project. He explained how housing projects operate. A steering committee is normally established that becomes the beacon of engagement – the committee undertakes most of the engagement. The process of recruiting members to the steering committee involves advertising in the newspapers for people to sign up. The nature of the project determines the level of engagement.

He further stated that Integrated Development Planning (IDP) facilitate engagement between municipalities and communities. He then highlighted the challenges the City of Cape Town faces in relation to engaging with communities. These include:

- How to get communities to speak with a single voice;
- Learning to work together, which is crucial for both parties as meaningful engagement is not one-sided;
- Citing of the City of Cape Town as co-respondent in eviction cases, which interferes with housing development plans;
- Having a common goal in mind – parties have different goals and from government's perspective, service delivery is the goal.

With regard to policy development, Mitchell stated that an opportunity for engagement is provided in relation to all new policies, including providing information on what the policies would be about and the time frames.

Malvern Cupido,²¹ adding on the City of Cape Town's experiences, stated that meaningful engagement is a bottom-up approach and a requirement for any project implementation. He pointed out additional challenges and questions, which include:

- What is the extent or length of meaningful engagement as it cannot occur infinitum;
- What and who is the appropriate body to monitor the process (pointing out the need to have the process monitored); and
- Lack of political will of senior government officials.

²⁰ *Mamba and Others v Minister of Social Development and Others* CCT65/08.

²¹ Project Manager: New Housing, City of Cape Town.

Myrtle Stuurman²² referred to the essential role of local authorities in the meaningful engagement process, and also the role of the provincial government in facilitating the process. Mbongi Gubuza,²³ speaking also on the experiences of the provincial housing department (Western Cape) started by setting the background to the housing issues in the province. He stated that there are 24 municipalities and plus minus 450 000 housing backlog in the province. He stated that transparency is key to the meaningful engagement process, and this does not just involve the issuing of notices. He also acknowledged that the process involves respecting the views of the people. The province's current approach and processes is to first identify areas and priorities (agenda-setting stage) before moving into the planning and implementation stage. At the latter stage, instruments used include the Peoples Housing Process (PHP). Consultations are done during the planning stage and if there are no objections, implementation commences. The key question he did not address was what happens if there are objections? He also referred to the project steering committee, which is responsible for monitoring project implementation, as well as other structures such as the portfolio committees in parliament that are crucial in monitoring and evaluation of a project. A key challenge he raised was that of limited resources, which impacts on the extent of engagement.

Naidu, speaking on the experiences of the City of Johannesburg, acknowledged that meaningful engagement has been the most significant ruling. She stated that there are different levels of engagement, but whether it is meaningful is another question. She also referred to IDP processes that are relevant to engagement; and that engagement happens at the project steering committee level. She stated that a lot of contestations happen during engagement and this needs to be acknowledged. She raised a number of questions, including:

- Are we engaging directly with the people?
- Are the needs and demands representative of the community's views?
- Who gets heard in the process?

She cited the engagement process in *Olivia Road* case as a challenge; and also pointed to the following challenges on meaningful engagement process as a whole:

- Lack of clarity on individual (as opposed to collective) engagement processes;
- Lack of clarity on what takes priority in terms of the judgments (in *Olivia Road*, engagement was ordered before the judgment but in *Joe Slovo*, it was ordered after the judgment); and
- What the role of private developers seeking eviction is.

Ziphora Bogatsu²⁴ emphasised the need for engagement at both the municipal and provincial levels. She also pointed out the importance of communities giving their

²² Assistant Director: Policy, Department of Local Government and Housing (Western Cape).

²³ Deputy Director: Policy and Strategy, Department of Local Government and Housing (Western Cape).

²⁴ Head of Legal Services, Department of Cooperative Governance, Human Settlements and Traditional Affairs (Northern Cape).

consent before a project is implemented. She further referred to IDPs in facilitating engagements between government and communities.

5.2 General discussion on government practices, key questions and challenges and how meaningful engagement can be made more effective

Victor Thabang Mohlamme²⁵ posed the question whether government in fact engages with communities or informs them of its decisions. In response, Gubuza stated that meaningful engagement should be before a project is implemented – it should be from project initiation stage.

Zulu stated that people should be involved in policy making but policies are done in offices and government only goes to the people during elections. Adding to this, Chenwi questioned whether using newspapers alone is the most effective way of disseminating information about policies being developed and inviting submission, as this hardly reaches those in communities.

Royston highlighted a number of issues that impact on meaningful engagement such as lack of political will, resource constraints and identification of the community, among others. She emphasised that what is needed is a strategy on meaningful engagement in eviction cases. She suggested that the City of Johannesburg engages in a discussion on the issues raised in the civil society workshop report.

Williams pointed out that there is scope for the meaningful engagement process to be manipulated to the disadvantage of communities and asked how this can be resolved. He emphasised that the Constitution makes provision for effective participation but there is no effective community empowerment. He also stated that community empowerment is not based on resource allocation. He stated further that to consult with communities does not necessarily mean meaningful engagement. He also asked a number of questions, including:

- How is communication and information sharing done during the engagement process?
- How frequent is participation?
- How does the notion of delegation of power / power relations impact on the meaningful engagement process?

Poni also posed the question of various government departments working together and why that is not happening.

Stuart Wilson²⁶ pointed out that civil society and government are talking past each other as regards what meaningful engagement is and how it is defined. He clarified that meaningful engagement is a set of processes when a particular socio-economic rights programme threatens a particular community. It is highly individualised. That meaningful engagement ensures that state action does not breach rights or cause homelessness. The difficulties with the process, as he stated, is the lack of

²⁵ Federation of the Urban Poor (FEDUP).

²⁶ Director of Litigation, Socio-Economic Rights Institute of South Africa (SERI).

awareness of the defined limits of meaningful engagement on the part of the state. He further stated that unless a coordinated plan is developed, engagement will be meaningless; and that meaningful engagement should not become another strategic instrument used by the state.

Ashraf Cassiem²⁷ was of the view that communities have been misled in terms of engagement and that there is no plan, policy or programme that prevents eviction. He stated that the government approaches the courts during an eviction because it does not want to meaningfully engage. He emphasised that the definition of meaningful engagement is clear. A huge problem identified by him was the fact that meaningful engagement is done when a programme is being implemented, implying that government has already made its decision.

6 Sharing of experiences, discussion of issues arising and how meaningful engagement can be made more effective

Kahanowitz observed that there is scope for policies to be improved and that there have been developments at the level of the City of Cape Town and province (Western Cape) to enhance engagements. He then posed a number of questions:

- To what extent do provinces and municipalities meet standards set by the courts?
- What type of engagement should take place and what are the roles?
- To what extent does meaningful engagement enforce rights and enhance delivery?
- Did Joe Slovo play a role in housing leadership change that subsequently took place?

He stated that budgetary issues are important but less important in relation to identifying roles during an engagement process. He then drew from the Joe Slovo experience,²⁸ which is still not illustrative of meaningful engagement, though the City of Cape Town is now getting involved. He further stated that for the engagement to be meaningful, it has to be about where and how people can go in future. Zulu, also speaking on the Joe Slovo experience, stated that from his experience,²⁹ the consultation processes have been limited and not done accordingly. He emphasised the need for the engagement process in Joe Slovo to be monitored and also the number of people in the steering committee has to be monitored. He also stressed that consultation should be prior to the development and after. From his experience, it seems the provincial government does not want to engage with communities in an open and transparent manner.

Ben Bradlow³⁰ looked beyond the legal framework for meaningful engagement. He pointed out that meaningful engagement is a political process, and that from a civil

²⁷ Coordinator, Western Cape Anti-Eviction Campaign (AEC).

²⁸ He also stated that the next report on the implementation of the Joe Slovo decision is due by the end of April 2010.

²⁹ He indicated that he has lived in Joe Slovo for 10 years now.

³⁰ Researcher, Shack / Slum Dwellers International (SDI).

society perspective, a rights-based approach is just a small aspect of the process. He added that meaningful engagement must be sustainable engagement. Further that a legal framework alone is inadequate in addressing the key problems, structural inequalities and poverty. He suggested that a bottom-up approach is crucial and that the state can pursue policies that highlight and promote participation. He added that communities need to be organised to be strong advocates of their own priorities. George Masimba³¹ also stated that community cohesion should be strengthened, so that communities can be more proactive and be able to take up issues with a unified voice.

McKinley shared his experiences in relation to the *Mazibuko* case. He observed that the understanding of socio-economic rights has been individualised and pre-paid meters (PPMs) symbolise the transition from collective to individual. He stated that there were attempts at engagement but has been described as salesmanship and public relations (PR) exercise. He saw *Mazibuko* as a case that says a lot about what is possible in South Africa in terms of realising / enforcing rights.

Royston shared the *Olivia Road/San Jose* experiences, which are illustrative of relocation through deeply participatory processes. She then explained what the people (those affected) are currently experiencing, posing the question – what happened to livelihood opportunities after the engagement and subsequent move? She observed that formalisation is not what policy makers and officials think it is, especially as lives are not better off. The tenant committee in this case struggles to represent people and has lost its authority. There are also problems with livelihood opportunities after the relocation. For instance, women who use to make cushions for a living do not currently have space where they could utilise for making cushions. Hence, there is the possibility of them losing their livelihood activities. Another question she raised was - what happened to the state after engagement and subsequent relocation? She stated that the occupiers no longer have access to the sympathetic officials that were part of the engagement process. This is because the state has retreated and is unresponsive. Consequently, it has taken a year and a half before the question of rents was sorted, despite a commitment from the occupiers to pay rents when they moved into the building. She concluded by pointing out that the occupiers cannot be evicted from where they are currently living and are waiting for permanent housing from the government.

Mary-Anne Munyembate³² also confirmed, in relation to the *Olivia Road/San Jose* experience, that following the engagement and subsequent relocation, the state has not been responsive to the needs of the occupiers and is unwilling to entertain their concerns.

Wilson then asked the questions:

- Why is it that engagement seems to be failing in the post relocation phase?
- Does engagement therefore demand a programmatic response?

³¹ Programme Coordinator, Dialogue on Shelter (Zimbabwe).

³² Head of Litigation, Centre for Applied Legal Studies (CALs).

Wilson added that meaningful engagement should also be about inclusionary policies and plans. Bradlow also questioned why communication with the occupiers got undermined during the relocation phase.

Naidu in response to the *Olivia Road* experience stated that the agreement that was reached is outside current government programmes. She added that there is no national policy or programme in terms of funding for engagement in the relocation phase. That the City of Johannesburg has used its own resources to respond to some of the issues and that instruments to respond to the issues in the relocation phase are not available.

Chenwi stated that these problems highlight the need to strengthen inter-governmental relations so as to bring capacities together from all levels of government to adequately deal with the issues. Williams agreed with this point, stating that the different spheres of government have to work together. He also asked how resources are allocated.

7 Meaningful engagement booklet, feasibility of a housing indaba and way forward

7.1 Introducing the meaningful engagement booklet

Chenwi informed the participants of the booklet on meaningful engagement that is being developed by herself and Tissington, which would be available in English and isiXhosa. Some of the participants provided inputs in the drafting of the booklet prior to the roundtable discussion. The booklet is relevant as it elaborates on some of the issues that have been raised in the course of the discussion. The booklet:

- explains what meaningful engagement is
- tries to show the link between meaningful engagement and consultation and mediation
- explains how meaningful engagement is protected in the Constitution, in legislation and in international law
- gives information on the objectives and subject of meaningful engagement
- explains when engagement should take place
- explains what the engagement should be about
- identifies principles and guidelines that would make engagement 'meaningful'
- suggests what community leaders' role should be in the engagement process
- gives a summary of three important decisions of the Constitutional Court that deal with meaningful engagement
- gives details of some organisations and institutions that could provide advice to people faced with evictions where engagement was not meaningful, or could give general advice on meaningful engagement in accessing socio-economic rights.

7.2 Housing indaba and way forward

This session of the roundtable discussion was open for suggestions from participants on initiatives to be carried out; and also on any collaborative work between government and civil society in relation to meaningful engagement. Chenwi informed the participants of the CLC project that is starting this year on increasing parliamentary oversight with regard to government meeting its international human rights obligations. She stated that parliament is could be a key monitoring structure – that is increasing its oversight over meaningful engagement between government and communities

The housing indaba was an idea from SERI placed before the participants to get inputs on its feasibility. The question posed to participants by Tissington was how to take this idea forward. She stated that the housing indaba could be a relevant forum for further discussion on the issues raised at this roundtable discussion and other issues affecting housing delivery. It would also be a space for government to actively respond to communities as to why certain practices or policies are in place and for both civil society and government to strategize on alternatives to alleviate the particular grievances. She also asked the question – is the housing indaba something that should be organised by government or by civil society or a joint effort?

Cassiem expressed interest in the housing indaba but also expressed concern that it will not be effective as civil society and government have their own perspectives of what meaningful engagement entails and one needs to get to the root of the housing problem. He proposed that government and civil society must first come into agreement as to what meaningful engagement is. He further suggested that the dismantling of privatisation and outsourcing of service delivery as done by government would alleviate the plight of concerned communities.

Elvis Fokala³³, though supporting the idea of a housing indaba, suggested that an assessment of the efficiency of current housing networks would be relevant in determining the way forward. He also proposed, based on the outcome of the assessment, that a network or another mechanism could be formed where issues arising from meaningful engagement by government and the communities could be addressed. Tissington acknowledged the need to have an audit of what is going on in the housing sector and the need for strong local action. McKinley also supported the idea of a housing indaba but questioned the focus on housing. It was, however, noted that housing is in fact broad and includes other services.

Peter Kimemia³⁴ highlighted the need to revisit the issue of engagement during a housing indaba and the need for further consultation on government's turn-around strategy.

Poni asked what the purpose of the housing indaba would be and who would benefit from it. He suggested that before agreeing on whether or not to proceed with a housing indaba, it would be necessary to first have a follow up discussion probably

³³ Programme Manager, Human Rights Institute of South Africa (HURISA).

³⁴ Programme Manager, Afesis-corporation.

through a meeting for instance to discuss who to invite and how to ensure that there is power balance at the forum.

8 Conclusion

This report has highlighted some of the key discussions and issues from the roundtable discussion on meaningful engagement. The main issues included:

- The need to understand meaningful engagement (in a broader and not restrictive sense) and principles around it, as well as its link with concepts such as consultation and mediation;
- The need to develop clear strategy on meaningful engagement that would also address questions around engagement in the relocation phase;
- Insufficient emphasis on the role of the state, lack of awareness of the defined limits of meaningful engagement on the part of the state, and the importance of political will in the engagement process;
- The need for follow-up discussion within government at all levels and also for intergovernmental relations to be strengthened;
- The need to examine implications in previous cases that deal with meaningful engagement and how to address them;
- The need for engagement processes to be done in a reasonable, transparent and flexible manner, and for these processes to be closely monitored;
- Importance of community cohesion in order to ensure that communities speak with a single voice;
- The need to establish outreach programmes to communities so as to improve awareness of policy developments and service delivery projects, in order to facilitate their participation;
- The need to address power imbalances in the engagement process;
- The inadequacy of the legal framework alone in addressing the key problems, structural inequalities and poverty.

List of organisations and institutions represented

- Abahlali baseMjondolo of the Western Cape (AbM)
- Afesis-corplan
- Anti-Eviction Campaign (AEC)
- Anti-Privatisation Forum (APF)
- Centre for Applied Legal Studies (CALS)
- Center for Constitutional Rights (CCR) (USA)
- City of Cape Town
- City of Johannesburg
- Community Law Centre (CLC)
- Community Organisation Resource Centre (CORC)
- Shack / Slum Dwellers International (SDI)
- Department of Cooperative Governance, Human Settlements and Traditional Affairs (Northern Cape)
- Department of Human Settlements (KwaZulu-Natal)
- Department of Local Government and Housing (Western Cape)
- Department of the Premier (Western Cape)
- Development Action Group (DAG)
- Development Works
- Dialogue on Shelter (Zimbabwe)
- Federation of the Urban and Rural Poor (FEDUP)
- Habitat for Humanity South Africa
- Human Rights Institute of South Africa (HURISA)
- Legal Resources Centre (LRC)
- Matzikama Local Municipality (Western Cape)
- Namibia Housing Action Group
- PAMOJA Trust (Kenya)
- Socio-Economic Rights Institute of South Africa (SERI)
- Stellenbosch University (Law Faculty)
- University of the Western Cape (Law Faculty)
- University of the Western Cape (School of Government)
- West Coast District Municipality (Western Cape)