MEANINGFUL ENGAGEMENT: PROCEDURALISING SOCIO-ECONOMIC RIGHTS FURTHER OR INFUSING ADMINISTRATIVE LAW WITH SUBSTANCE?

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ABSTRACT

This article focuses on a point of interaction between socio-economic rights and administrative justice, namely meaningful engagement. Meaningful engagement has developed into both a requirement for a reasonable government policy in socio-economic rights cases as well as a remedy where inadequate engagement occurred prior to litigation. It has been alternately praised as an innovative remedy and criticised as a further proceduralisation of socio-economic rights adjudication. However, in cases where socio-economic rights and administrative law overlap, the value of meaningful engagement may lie in recognising it as potentially infusing administrative justice’s requirement for procedural fairness with normative substance rather than as a further watering down or proceduralisation of socio-economic rights jurisprudence. For the benefits of such a conceptualisation to be exploited, courts must display a greater willingness to recognise and develop the important link that exists between administrative justice and the realisation of socio-economic rights in many cases.

Keywords: administrative law, socio-economic rights

I  INTRODUCTION

This article focuses on a point of interaction between socio-economic rights and administrative justice, namely meaningful engagement. Meaningful engagement has developed into both a requirement for a reasonable government policy in socio-economic rights cases as well as a remedy where inadequate engagement occurred prior to litigation. It has been alternately praised as an
innovative development that overcomes certain problems related to judicial
deference and criticised as an abdication and further proceduralisation of
socio-economic rights adjudication. In cases where socio-economic rights and
administrative law intersect, the value of meaningful engagement may lie, however, in recognising it as potentially infusing administrative justice's requirement for procedural fairness with normative substance rather than as a further watering down or proceduralisation of socio-economic rights jurisprudence.

In addition to contributing to the rich development of administrative
justice, such a conceptualisation of meaningful engagement potentially holds
a further two-fold advantage. First, it widens the ambit of this requirement
and remedy beyond the scope of socio-economic rights disputes. Second, it
simultaneously leaves room for the substantive interpretation of rights and the
issuing of tangible remedies in socio-economic rights adjudication. However,
for this to occur, courts must display a greater willingness to recognise and
develop the important link that exists between administrative justice and the
realisation of socio-economic rights in many cases.

In addition, recognition must be given to concerns that situating meaningful
engagement within the sphere of administrative justice may limit its use
only to those matters capable of classification as ‘administrative action’. The
rationality element of the principle of legality may, however, present a
sufficiently fluid concept to accommodate the substantive evolution of
meaningful engagement.

In this article I first contextualise the discussion with reference to the
remedies provided for by the Promotion of Administrative Justice Act 3 of
2000 (PAJA). Next, I briefly trace the origin and development of meaningful
engagement and I outline what has been called the proceduralisation of
socio-economic rights adjudication. Thereafter, I comment on the apparent
unwillingness of the courts to recognise and develop the interaction between
administrative law and socio-economic rights with reference to the judgment
in Joseph v City of Johannesburg. Finally, I propose how meaningful
engagement can be developed to achieve a valuable synergy between
administrative law’s procedural requirements and substantive socio-economic
rights adjudication and remedies.

2 See, for example, K McLean ‘Meaningful Engagement: One Step Forward or Two Back? Some Thoughts on Joe Slovo’ (2010) 3 CCR 223, 239; Chenwi Ibid 389–90.
4 2010 (4) SA 55 (CC).
II Administrative Law Remedies

Procedural fairness constitutes a vitally important component of administrative justice.\footnote{Constitution s 33(1) provides that ‘[E]veryone has the right to administrative action that is lawful, reasonable and procedurally fair’.} Although the Constitutional Court in \textit{Bel Porto School Governing Body v Premier, Western Cape}\footnote{2002 (3) SA 265 (CC).} confirmed that procedural fairness should be distinguished from substantive fairness, especially in cases involving complex policy choices,\footnote{Ibid para 88.} the principle nevertheless remains a flexible, far-reaching and context-sensitive one. Cora Hoexter notes in this regard:

\begin{quote}
Procedural fairness in the form of \textit{audi alteram partem} is concerned with giving people an opportunity to participate in the decisions that will affect them, and – crucially – a chance of influencing the outcome of those decisions.\footnote{C Hoexter \textit{Administrative Law in South Africa} 2 ed (2012) 363.}
\end{quote}

Thus, given the importance of this principle to the attainment of administrative justice, it has been enshrined in s 33 of the Constitution of the Republic of South Africa, 1996. Furthermore, courts are empowered to review administrative action in terms of s 6(2)(c) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) on the ground that such action was procedurally unfair. Pursuant to s 3 of PAJA, procedural fairness is required where administrative action materially and adversely affects the rights or legitimate expectations of any person. The section promotes a broad and context-sensitive enquiry as to procedural fairness by recognising that what is ‘procedurally fair’ depends on the circumstances of the case at hand.\footnote{PAJA s 3(2)(a).} Section 3 goes on to prescribe mandatory minimum requirements that must be followed for administrative action to be ‘procedurally fair’, and also provides for exceptions to these procedures. It is noteworthy that even the minimum requirements are capable of a broad construction whereby procedural fairness can be tailored to the demands of diverse circumstances. In cases where administrative action ‘materially and adversely affects the rights of the public’, s 4 of the Act provides for different procedures that can be followed to ensure procedural fairness. It should be noted that any decision regarding which procedure to adopt in terms of s 4(1) is explicitly excluded from the ambit of ‘administrative action’ and is thus not reviewable under PAJA.\footnote{Ibid s 4(1)(a)-(e).} However, once the administrator selects a procedure through which to give effect to the right to procedural fairness where administrative action has a general effect, that procedure itself must comply with the tenets of administrative justice. In addition, there exists some ambiguity regarding the relationship of s 4 to s 3. Despite its susceptibility to criticism,\footnote{For example, criticism based on this section’s exclusion from the definition of administrative action and thus from judicial review; the drafting ambiguity inherent in s 4(1)(e) or the various exemptions provided for in s 4(4).} s 4 remains important for its potential to enhance and facilitate
The section is capable of a broad interpretation in that an administrator may ‘follow another appropriate procedure which gives effect to section 3’. Although there is some debate regarding how the reference to s 3 should be interpreted, it could be read as merely signalling that an alternative procedure should remain in compliance with the precepts of procedural fairness. In addition, both sections allow for the observance of a procedure that is ‘fair but different’ when such is prescribed by an empowering provision. Furthermore, in order to avoid the perplexing formulation of s 4 and the consequences of its partial non-reviewability, it will in many cases remain possible to place reliance on s 3. In *Earthlife Africa (Cape Town) v Director General: Department of Environmental Affairs and Tourism*, the court noted that in this case ‘the administrative action in question affects the rights not only of individual persons but of the public in general’ and that both ss 3 and 4 should thus apply.

As has been the case with the development of a contextual test for reasonableness in administrative law, there is thus undoubtedly scope to infuse the already context-dependent requirement for procedural fairness with normative content or substance. In fact, prior to the advent of constitutional democracy and the adoption of the Constitution, some courts were willing to give candid recognition to the influence of normative considerations in the sphere of administrative law. In *Union of Teachers’ Associations of South Africa v Minister of Education and Culture, House of Representatives; Isaacs v Minister of Education and Culture, House of Representatives*, the High Court stated in its discussion of the duty to act fairly that arises from the legitimate expectation doctrine:

> What is or is not fair depends on the facts of each case, including the nature of the decision and the relationship of those involved prior to the decision. Ultimately, however, the decision as to what is fair or not is a normative one, reached after an evaluation of all the facts.

However, despite the contextual latitude inherent in an enquiry as to procedural fairness, courts’ remedial powers are circumscribed in the sphere of administrative law by the long-standing principle that a court should be

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12 Hoexter (note 8 above) 84–7.
13 For an exposition of authors’ varying views regarding the possible link between ss 3 & 4 of PAJA, see G Muller ‘Conceptualising “Meaningful Engagement” as a Deliberative Democratic Partnership’ (2011) 22 Stellenbosch LR 742, 746–8.
14 PAJA ss 3(5) & 4(1)(d).
15 2005 (3) SA 156 (C).
16 Ibid para 48.
17 Hoexter (note 8 above) 441.
18 *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) para 45. For the contextual nature of procedural fairness see, for example, *Administrator, Transvaal v Traub* 1989 4 SA 731 (A) 741E-G; *Premier, Mpumalanga v Executive Committee, Association of State-aided Schools, Eastern Transvaal* 1999 (2) SA 91 (CC) para 39.
19 1993 (2) SA 828 (C).
20 Ibid 847 B-C.
loath to substitute its own decision for that of an administrator.\textsuperscript{21} Pursuant to common-law principles and subsequently confirmed in PAJA and various post-constitutional judgments, the court may substitute an administrator’s decision for its own, or order compensation, in ‘exceptional cases’.\textsuperscript{22} According to the court in \textit{Johannesburg City Council v Administrator, Transvaal}\textsuperscript{23} the court’s decision may be substituted for that of the administrator only (i) where the result is a foregone conclusion and it would be a waste of time to remit the matter to the administrator; (ii) where delay would cause unjustifiable prejudice; or (iii) where the decision-maker showed bias or serious incompetence.\textsuperscript{24} The Appellate Division subsequently added in \textit{THERON v Ring van Wellington van die NG Sendingkerk in Suid Afrika}\textsuperscript{25} that (iv) where the court considers itself as well-qualified as the original decision-maker, the decision may likewise be replaced by that of the court.\textsuperscript{26} It thus appears that in cases where administrative action affects claimants’ socio-economic rights, it will not always be easy to obtain a substantive remedy under PAJA. Where basic needs are at stake, tangible, immediate relief will usually be desirable – although the Constitutional Court has been criticised for failing to provide direct relief to litigants before it in socio-economic rights disputes.\textsuperscript{27}

Considering the ‘exceptional’ instances referred to above, in complex, polycentric disputes involving socio-economic interests the result of a decision will only rarely amount to ‘a foregone conclusion’. Nevertheless, it remains possible to envisage manifold situations of socio-economic need where delay would cause unjustifiable prejudice. In addition, given widespread maladministration in South Africa, a claim based in administrative law could also possibly warrant a substantive remedy on the basis of the incompetence of the administrator. Whereas courts are constitutionally mandated to give content to socio-economic rights, they are rightly unwilling to regard themselves as being ‘as qualified’ as administrators to implement socio-economic policy. However, foundations nonetheless exist upon which an administrative law claim for direct, substantive socio-economic relief can be fashioned in limited instances.

Of greater significance to the enforcement of socio-economic rights at its intersection with administrative justice at remedial level is the court’s ability to direct the administrator to act in the manner the court requires.\textsuperscript{28}

Such remedy could potentially amount to a mandatory or even a structural interdict. In terms of such interdicts, a court could compel the administrator to take positive steps to fulfil its administrative duties and could even retain

\begin{itemize}
\item \textsuperscript{21} See, for example, \textit{Premier, Mpumalanga} (note 18 above) para 50.
\item \textsuperscript{22} PAJA s 8(1)(e)(ii).
\item \textsuperscript{23} 1969 (2) SA 72 (T).
\item \textsuperscript{24} Ibid 76.
\item \textsuperscript{25} 1976 (2) SA 1 (A).
\item \textsuperscript{26} Ibid 31B-E; \textit{Darson Construction (Pty) Ltd v City of Cape Town} 2007 (4) SA 488 (C) 502.
\item \textsuperscript{28} PAJA s 8(1)(a)(ii).
\end{itemize}
jurisdiction until the administrative action meets the requirements found to have been lacking in the initial, flawed decision. Moreover, the court’s power to set aside the administrative act and remit the matter to the administrator for reconsideration with or without directions is likewise significant for the interaction between socio-economic rights and administrative law at remedial level. Importantly, substance could be lent to a procedural remedy by remitting the matter with detailed directions that include normative or substantive guidelines.

It thus appears as though there is plenty of room in requirements and remedies of administrative justice for the creative infusion of substance into certain areas of administrative law. In addition, the flexible nature of the requirement for procedural fairness and the ability of courts to issue structural interdicts or normative directions under administrative law, make the fusion between administrative law and socio-economic rights particularly attractive. However, before this potential synergy is further explored, I will provide a brief exposition of the origin, development and nature of meaningful engagement in socio-economic rights adjudication.

III MEANINGFUL ENGAGEMENT AND/AS THE PROCEDURALISATION OF SOCIO-ECONOMIC RIGHTS ADJUDICATION

(a) Origin of meaningful engagement and the charge of proceduralisation

Meaningful engagement – whether as a prerequisite for an order of eviction or as a remedy – constitutes an important development in socio-economic rights jurisprudence. The duty to engage meaningfully was first foreshadowed in the judgments of Government of the Republic of South Africa v Grootboom and Port Elizabeth Municipality v Various Occupiers. In the latter case, Sachs J stated:

[T]he procedural and substantive aspects of justice and equity cannot always be separated. The managerial role of the courts may need to find expression in innovative ways. Thus, one potentially dignified and effective mode of achieving sustainable reconciliations of the different interests involved is to encourage and require the parties to engage with each other in a pro-active and honest endeavour to find mutually acceptable solutions. Wherever possible, respectful face-to-face engagement or mediation through a third party should replace arms-length combat by intransigent opponents.

The above-quoted statement contemplates engagement as a procedural response to socio-economic rights claims and remedies. Proceduralisation has to date exhibited a trend towards mirroring an administrative-law type of review that encroaches minimally on the terrain of other branches of government. In line with established critique of the Constitutional Court’s method of review in socio-economic rights adjudication, the procedural nature

29 Ibid s 8(1)(c)(i).
30 2001 (1) SA 46 (CC) para 87.
31 2005 (1) SA 217 (CC).
32 Ibid para 39.
of engagement is thus prima facie capable of being viewed as a manifestation of the requirement of procedural fairness in a socio-economic rights guise.

Indeed, criticism to the effect that the Constitutional Court’s approach to the adjudication of socio-economic rights reflects a procedural, administrative-law model of review is by now familiar. This criticism is in the first instance levelled at the reasonableness review model that, according to some commentators, has been used by the Court as a mechanism to obfuscate and even replace the need to give content to socio-economic rights. Criticism similarly applies to the ostensible reluctance of the Court to retain supervisory jurisdiction by issuing structural interdicts, most notably in *Minister of Health v Treatment Action Campaign (No 2)*. Just as the model of review itself is ‘watered down’ to a procedural, administrative-law level, remedies are ‘watered down’ to encroach as little as possible onto the terrain of the executive, thereby escaping any possible accusation that the Court is breaching the separation of powers doctrine. In addition, the Court’s approach postulates a managerial role for the judiciary in the sense that courts should serve as a catalyst for the executive to rectify deficient policies rather than substantively correct those policies themselves. This role is, in turn, consonant with Sachs J’s statement regarding engagement in *Port Elizabeth Municipality*. Yet, the same objectives could very well be achieved by utilising a flexible approach to procedural fairness, and combining it with the administrative-law remedy of remitting a matter to an administrator with directions. In cases that call for the retention of supervision, administrative law similarly leaves room for creative use of structural interdicts and the creation of an ostensibly sui generis remedy is therefore unnecessary.


35 2002 (5) SA 721 (CC).

36 Davis (note 33 above) 311.

37 For an incisive conceptualisation of the catalytic function that courts can serve, see generally KG Young ‘A Typology of Economic and Social Rights Adjudication: Exploring the Catalytic Function of Judicial Review’ (2010) 8 *I Con* 385. However, the reference in this article to the ‘managerial’ role of the court should not be construed as bearing the same meaning that Young ascribes to ‘managerial review’, which she defines as ‘heightened review of government action and a structured and/or mandatory form of relief’ (402). The Constitutional Court has arguably largely fallen into Young’s categories of deferential (392–5) and conversational review (395–8), with the advent of meaningful engagement pushing it into the sphere of experimentalist review (398–01).
The serious detrimental impact that formal proceduralisation could have on the lives of vulnerable groups should not be overlooked. As Ray notes ‘[t]his triumph of proceduralisation undeniably restricts the direct transformative potential of these rights’. Ray goes on to argue that engagement, if properly developed and institutionalised, can constitute an effective and valuable tool for the poor with which to vindicate their socio-economic rights. Once institutionalised, engagement may however be relegated to the sole role of a prerequisite in eviction cases, much as procedural fairness is a prerequisite where administrative action that materially and adversely affects rights is concerned, rather than as additionally constituting a remedy. This conceptualisation further supports the acknowledgment of the influence of administrative law on the development of meaningful engagement as well as the recognition of the suitability of principles of administrative law to fulfil this role. Perhaps then, meaningful engagement should not be perceived as a development that further proceduralises socio-economic rights, but rather as one that infuses quasi-administrative law procedural fairness with substance.

### (b) Development of meaningful engagement

Meaningful engagement was first employed in lieu of a substantive remedy in *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg*, when the Constitutional Court issued an interim order for the City of Johannesburg to engage meaningfully with potential evictees from ‘bad buildings’. The Court stated that meaningful engagement was ‘in some sense foreshadowed by [the occupiers’] contention that the City was obliged to give the occupiers a hearing before taking the decision to evict on the basis that the decision was an administrative one’.

In addition, the Court went on to situate meaningful engagement among constitutional duties owed to occupiers that are closely linked to fundamental values such as dignity. The Court subsequently stated that meaningful engagement is ‘also’ squarely grounded in s 26(2) of the Constitution. Furthermore, the Court elevated meaningful engagement to the status of one

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40 2008 (3) SA 208 (CC).
41 Ibid para 9. See also the later decision of *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC) para 297.
42 Ibid para 16.
43 Constitution s 26 states:
(1) Everyone has the right to have access to adequate housing.
(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
of the considerations that will be taken into account in terms of s 26(3) when a court is asked to grant an eviction order.\textsuperscript{44}

No further mention of administrative law is made in the judgment. One is thus left with the theoretically amorphous concept of ‘meaningful engagement’ as constituting a relevant circumstance in terms of s 26(3) that is grounded in s 26(2) but to some extent stems from a contention that the requirement of procedural fairness was not met.\textsuperscript{45} The judgment has been commended by some as striking a suitable balance between remedial control and an appropriate level of judicial deference by avoiding the need for the interpretation of socio-economic rights.\textsuperscript{46} It has, however, also been heavily criticised as an abdication of judicial responsibility in that the Court failed to deal with many of the substantive issues placed before it.\textsuperscript{47} In addition to its avoidance of a reasonableness enquiry as to the constitutional sufficiency of the City’s housing programme, the Court failed to capitalise on the important relationship between administrative law and the realisation of socio-economic rights. In his criticism of the court a quo’s failure to engage with a rich conception of procedural fairness\textsuperscript{48} that ensures the consideration of all relevant factors as well as the promotion of agency and dignity, Geo Quinot argues that such approach ‘undermines the development of a potentially constructive alliance between specific socio-economic rights and administrative justice provisions in the Constitution’.\textsuperscript{49} This concern is equally applicable to the subsequent judgment of the Constitutional Court. Rather than developing the fluid concept of procedural fairness by infusing it with the normative substance provided by the socio-economic rights at stake, the Court instead reverted to a proceduralisation of socio-economic rights adjudication, thus ‘moving more firmly into a role that avoids direct interpretation at all costs’.\textsuperscript{50} There lies a danger in conceptualising meaningful engagement as a procedural alternative to substantive interpretative engagement with socio-economic rights while simultaneously conflating the distinction between meaningful engagement as a requirement and a remedy. This was subsequently demonstrated in \textit{Mamba v Minister of Social Development},\textsuperscript{51} in which the Constitutional Court ordered meaningful engagement with a view to resolving differences that arose between the state and refugees when the state attempted to close camps that had been established to safeguard the refugees from xenophobic violence. The Court provided no additional normative guidance and the state responded

\begin{itemize}
\item \textsuperscript{44} \textit{Olivia Road} (note 40 above) paras 18 & 20.
\item \textsuperscript{46} Ray (note 1 above) 707–10.
\item \textsuperscript{47} See in this regard L Chenwi & S Liebenberg ‘The Constitutional Protection of those Facing Eviction from “Bad Buildings”’ (2008) 9 \textit{ESR Review} 12, 16; Chenwi (note 1 above) 389–93.
\item \textsuperscript{48} Referring to the Supreme Court of Appeal’s preceding judgment in \textit{City of Johannesburg v Rand Properties (Pty) Ltd} 2007 (6) SA 417 (SCA).
\item \textsuperscript{49} G Quinot ‘An Administrative Law Perspective on “Bad Building” Evictions in the Johannesburg Inner City’ (2007) 8 \textit{ESR Review} 25, 28.
\item \textsuperscript{50} Ray (note 1 above) 709.
\item \textsuperscript{51} CCT 65/08 (21 August 2008).
\end{itemize}
by largely ignoring the order and proceeding with closure of the camps.\(^{52}\) ‘Meaningful engagement’ was therefore a remedy of little or no value to the refugees in this case, and did not even rise to the minimum level of procedural fairness demanded by PAJA.

Nevertheless, in *Olivia Road*, engagement was conceptualised as a prerequisite for the granting of an eviction order while paradoxically being used as a remedy,\(^{53}\) much like procedural fairness is a prerequisite for an administratively just decision. Where a court finds that the requirement of meaningful engagement (or procedural fairness) has not been adhered to, one could thus expect a remedy whereby the decision is remitted to the decision-maker with directions to engage (or observe procedural fairness) within certain judicially defined normative parameters.

In *Joe Slovo*\(^{54}\) the Constitutional Court apparently ignored its own preceding jurisprudence – which characterised meaningful engagement as a prerequisite for evictions – and granted an eviction order even though meaningful engagement had not taken place. Kirsty McLean states in this regard that ‘the Court found that provided the government policy is found to be sufficiently laudable, it is permissible for the state to ride rough-shod over the requirement of meaningful engagement’.\(^{55}\) Meaningful engagement in socio-economic rights cases can thus potentially represent a weaker and less meaningful requirement than procedural fairness constitutes in administrative law, where failure to observe can prove fatal to the valid administrative action in question.\(^{56}\)

Categorising meaningful engagement as a more robust embodiment of procedural fairness could have led to stricter observance of this norm. This serves to illustrate that a positive conceptualisation of meaningful engagement as substance-infused procedural fairness may serve administrative justice and socio-economic rights better than a negative conceptualisation of meaningful engagement as yet another instance of the proceduralisation of socio-economic rights.

An accompanying order to meaningfully engage was moreover combined with a detailed supervisory order that set out the standards that government had to comply with if it were to relocate residents of the Joe Slovo community while upgrading the settlement.\(^{57}\) The detailed guidelines that the Court imposed ultimately led to the government reconsidering its position. In the

\(^{52}\) Liebenberg (note 27 above) 422.
\(^{53}\) *Olivia Road* (note 40 above) para 30.
\(^{54}\) Note 41 above.
\(^{55}\) McLean (note 2 above) 237.
\(^{56}\) PAJA ss 6(2)(b) & 8. See also for an example of a case where effectively substantive relief was granted where the requirement of procedural fairness was not complied with, *Premier, Mpumalanga* (note 18 above).
\(^{57}\) *Joe Slovo* (note 41 above) para 7.
end, it was decided to upgrade the settlement in situ, as had originally been requested by the applicants. Brian Ray notes that:

courts after Joe Slovo have the authority to control the engagement agenda and to order engagement with non-parties. Courts can also combine engagement with partial or complete substantive determinations of the legal issues in the case.

The impact that the retention of supervision had in this case – in contrast to the position in Mamba – illustrates that engagement on its own lacks the ingredients of a substantively effective remedy. Normative content and supervisory control by the courts are necessary both to realise the transformative potential of socio-economic rights for citizens at large as well as to ensure that poor claimants do not litigate their rights in vain. Normative content and supervisory control can also be accommodated within the administrative-law remedial competence of the courts.

In congruence with recognising meaningful engagement’s resonance with procedural fairness, it should in the first instance be conceived of as a requirement rather than as a remedy. Where the primary requirement has not been met, meaningful engagement could then be ordered as a remedy. In cases where meaningful engagement or procedural fairness was not initially adhered to, the appropriate remedy could thus be formulated as an administrative-law based one whereby the matter is referred back to the decision-maker with directions to meaningfully engage or observe procedural fairness. Alternatively, a structural interdict may be more appropriate where meaningful engagement was initially unsuccessful and where substantive relief is desirable. Indeed, if it is accepted that meaningful engagement ‘creates some of the benefits of a structural injunction’, then it is unclear why a court should have to shroud the nature of a remedy in obfuscating terms. One could argue that such an approach would constitute a formalistic retreat into unwarranted judicial deference and that explicit attention should instead be given to the development of a legal framework for the appropriate application of structural remedies.

58 The supervised eviction order was subsequently set aside after the government had delayed in engaging meaningfully or relocating the residents of the community for some 21 months. Residents of Joe Slovo Community, Western Cape v Thebelisha Homes (CCT 22/08) [2011] ZACC 8 (31 March 2011).
59 Ray (note 38 above) 112 (emphasis added).
60 In this article, references to transformative rights or development of the law draws on KE Klare ‘Legal Culture and Transformative Constitutionalism’ (1998) 14 SAJHR 146, 150 where the author coined the term ‘transformative constitutionalism’ as implying ‘a long-term project of constitutional enactment, interpretation, and enforcement committed … to transforming a country’s political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law’.
61 Ray (note 1 above) 710.
Evaluation of meaningful engagement and the pitfalls of procedural requirements and remedies in socio-economic rights litigation

From the above discussion it emerges that the practical and conceptual dangers of replacing substantive interpretation of rights with procedural requirements and the issuing of procedural remedies in general – and meaningful engagement in particular – in socio-economic rights litigation are fourfold.

First, litigants in socio-economic rights cases are vulnerable and disadvantaged members of society. It takes immense commitment and political mobilisation to follow through with litigation all the way to the Constitutional Court. If successful, these litigants should be able to expect a substantive and effective remedy to alleviate their plight instead of the matter merely being referred back to the decision-maker. By retaining jurisdiction and issuing normative guidelines, the courts can ensure that remedies do in fact provide effective individual relief.

Second, as has been noted above, the Constitutional Court’s approach to meaningful engagement has been criticised as constituting an abdication of the Court’s judicial responsibilities. Sandra Liebenberg aptly notes that ‘a substantively reasoned interpretation of the obligations imposed by socio-economic rights’ is critically important for the protection of marginalised communities. Lilian Chenwi, while welcoming the remedy in Olivia Road, notes that the Court displayed a ‘sheer unwillingness’ to consider many of the substantive disputes that came before it. Danie Brand likewise argues that meaningful engagement was originally intended to be issued as a remedy only once the normative and legal parameters of a case had been established by the Court. This applies to meaningful engagement as remedy and requirement; the Court cannot simply cross from the merits to a model of review by replacing normative engagement with and interpretation of rights with procedural requirements. Moreover, by collapsing the substantive and procedural aspects of socio-economic rights and focusing solely on meaningful engagement, ‘the Court has retreated to an even narrower concept of reasonableness in section 26(2) of the Constitution’. By situating meaningful engagement within a substantive conception of administrative justice, a space for substantive interpretation of rights is preserved within socio-economic rights adjudication. The danger that procedural requirements will subsume substantive interpretation can thus be averted.

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62 Liebenberg (note 27 above) 408.
64 Chenwi (note 1 above) 389–93.
66 McLean (note 2 above) 241.
Third, and related to the abdication point, there is a danger in ordering meaningful engagement in a normative vacuum, as Liebenberg pertinently notes in her discussion of the *Mamba* case.\(^67\)

Finally, there is much conceptual and theoretical uncertainty regarding the nature of meaningful engagement. Whereas pursuant to *Olivia Road*, meaningful engagement should be a prerequisite for granting an eviction order (despite being issued as a remedy), the Court in *Joe Slovo* granted an eviction order without this requirement having been fulfilled. McLean argues in this respect that ‘[t]he importance of meaningful engagement appears, in the decision of *Joe Slovo*, to be unravelling, as the Court was prepared to grant an eviction order in the absence of prior meaningful engagement’.\(^68\)

### IV Judicial Unwillingness to Develop the Interaction between Socio-economic Rights and Administrative Law

#### (a) Unwillingness in a socio-economic rights context

The preceding discussion has sought to point out the courts’ persistent refusal to situate meaningful engagement within administrative law or to endeavour to develop both procedural fairness as well as administrative-law remedies. Administrative law can serve as a valuable conduit for the realisation of socio-economic rights. In cases where socio-economic rights and administrative law overlap (as was the case in *Olivia Road*) the interaction between participatory elements of socio-economic rights and administrative law’s procedural fairness as a vehicle for the realisation of these rights could be fruitfully developed. Moreover, it seems unnecessarily artificial not to acknowledge the striking similarities between meaningful engagement and a rich conception of procedural fairness, both as a primary requirement and as a remedy where such requirement has not been met. One would thus have expected at least some judicial effort to take advantage of the interaction between socio-economic rights and administrative justice at this level.

In particular, rather than grounding meaningful engagement in s 26(2) of the Constitution despite the absence of a textual basis for doing so, the Constitutional Court in *Olivia Road*, instead, could have paid greater attention to the various claims rooted in administrative law. This may also have served to ward off criticism subsequently levelled against the Court for resorting to procedural remedies in its adjudication of socio-economic rights claims. Procedural fairness evidently necessitated that the occupiers be afforded some type of opportunity to be heard. In addition, judicial review was merited in terms of s 6 of PAJA in that all relevant considerations – such as the plight of the indigent occupiers after eviction – were not taken into account. Reasonableness could have provided an additional basis for administrative-law review. Quinot argues in this regard that:

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\(^67\) Liebenberg (note 27 above) 422.

\(^68\) McLean (note 2 above) 237. See also Liebenberg (note 63 above) 23.
[b]y focusing on the reasonableness of the assessment of the precondition to ordering eviction (i.e. the necessity of safety) one is able to largely avoid the much more difficult section 26 analysis.69

Regrettably, instead of recognising the potential synergy between socio-economic rights and administrative justice and hence infusing the latter with substance, the Court thus rather chose the route of proceduralising the claim and issuing an administrative-law remedy in a different guise – thereby wholly circumventing its interpretative mandate with minimal theoretical justification.

(b) Unwillingness in an administrative law context

A judgment centred primarily on principles of administrative law – although not expressly relying on the requirement and/or remedy of meaningful engagement – illustrates the flipside of the judiciary’s unwillingness to develop the relationship between socio-economic rights and administrative law. In Joseph70 the applicants were lessees of a building in Johannesburg who had paid their landlord for electricity usage. The landlord was in turn obligated to pay City Power, the City of Johannesburg’s electricity provider, for electricity usage in the building. However, the landlord incurred significant arrears in response to which City Power issued him (but not the lessees) with notice of termination and proceeded to terminate the electricity supply. The applicants approached the High Court – which refused their application – and subsequently the Constitutional Court, seeking an order to the effect that the electricity supply should be reconnected and for a declaration that they were entitled to procedural fairness in the form of notice and an opportunity to make representations. Ultimately, the Court declared the disconnection of the electricity unlawful, ordered its reconnection and severed an unconstitutional exclusion of the requirement of notice from the relevant by-law.71

Of central significance to the case was the question of whether City Power owed the lessees a duty of procedural fairness in the absence of a direct contractual relationship with them. This question fell to be determined in light of the fact that s 3 of PAJA stipulates that ‘[a]dministrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair’.72 In the judgment of the Constitutional Court, Skweyiya J summarised the issue thus:

The difficulties that arise in this case stem from the fact that the applicants are tenants who have no contractual right to receive electricity from … City Power. The crux of this case is therefore whether any legal relationship exists between the applicants and City Power outside the bounds of contractual privity that entitles the applicants to procedural fairness before their household electricity supply is terminated.73

69 Quinot (note 49 above) 28.
70 Joseph (note 4 above).
71 Ibid para 78.
72 PAJA s 3(1) (emphasis added).
73 Joseph (note 4 above) para 2.
In their endeavour to establish such legal relationship and show that their rights were in fact adversely affected by City Power’s actions, the applicants principally relied on their right of access to adequate housing. They averred in this regard that City Power’s actions constituted retrogressive measures, which violated the negative aspect of their right to housing, consequently entitling them to procedural fairness. In addition, the applicants placed reliance on their constitutional right to human dignity and the contractual rights that stemmed from their relationship with their landlord. The Court, however, declined to consider the claim based on the right of access to housing and likewise deemed it unnecessary to consider the other arguments raised by the applicants in this regard. Instead, the Court positioned the applicants’ claim in the rights that flowed from the municipality’s broader constitutional and legislative duty to provide basic services. Ultimately, the Court held that City Power was obliged to meet the requirement of procedural fairness by providing tenants such as the applicants with adequate notice of termination.

Although mindful of the importance of administrative efficiency and the need to avoid the creation of an undue administrative burden, the Court’s approach to administrative law in general and the requirements for the applicability of procedural fairness in particular was generous and purposive. In response, the judgment has been welcomed as ‘inventive’ and as a laudable departure from the formalistic application of administrative law. Quinot points out that the generous, substantive approach to principles of administrative law prevalent in this judgment stands in ‘stark contrast’ to the contemporary Constitutional Court judgment in Mazibuko v City of Johannesburg. In the latter case, the Court withdrew into a formalistic application of administrative law and largely abdicated its interpretative obligations when it refused to assess the ‘sufficiency’ of Johannesburg’s free basic water supply in light of the constitutional right of access to sufficient water. It is interesting to note that in Joseph the Court felt comfortable and institutionally equipped to develop a flexible and wide notion of procedural fairness – having explicitly noted that unlike the socio-economic right of access to sufficient water, electricity is not specifically enumerated in the Constitution – but declining to situate such development within the right of access to adequate housing. Paradoxically, in Mazibuko, when called on to directly pronounce on a socio-economic right,
the Court retreated into formalism that likewise influenced its engagement with administrative law. This on its own signals the conceptual divide that still exists between socio-economic rights adjudication and administrative-law review, even as elements of the latter model of review are transplanted into socio-economic rights jurisprudence.

What is even more telling than this comparative point, however, is the Court’s disinclination in *Joseph* to relate the claim for procedural fairness to the right of access to adequate housing. David Bilchitz argues in this regard that:

> [The Court’s] failure to engage the arguments put before it in relation to fundamental rights is disturbing, particularly given that it is the Court that is responsible for providing definitive interpretations of the Bill of Rights. These rights protect the most important interests that individuals have.  

Bilchitz goes on to criticise the Court’s failure to address the applicants’ socio-economic rights argument as ‘an unacceptable abrogation of the role of the Constitutional Court’ that may be rooted in the Court’s reluctance to elevate rights not enumerated in the Bill of Rights to the status of fundamental rights. Whatever the Court’s rationale, its judicial unwillingness to develop the interaction between socio-economic rights and administrative law is unfortunate.

The broad and flexible interpretation of procedural fairness in this judgment could easily have been extended to the substantive development of meaningful engagement in an administrative-law context with direct impact on a socio-economic interest. In fact, the Court even stated that ‘[i]t is manifestly just that City Power engage with the applicants, and any engagement which would contribute to a sustainable solution is to be wholeheartedly supported’.

Despite individually progressive judgments, it thus seems as if our courts are nevertheless, for whatever reason, determined to keep socio-economic rights separate from administrative justice, even as they transplant administrative-law models of review and remedies into socio-economic rights claims.

V **Creating Synergy between Administrative Law and Socio-economic Rights Requirements and Remedies**

(a) **Rationale for development**

The question remains why a symbiosis between socio-economic rights and administrative justice is desirable. Moreover, can procedural, quasi-administrative-law concepts such as meaningful engagement be fruitfully developed without detracting from the substantive content and remedial effect of socio-economic rights? Furthermore, can this be achieved while the right at stake simultaneously infuses administrative law concepts with substance?

86 Ibid 52.
87 *Joseph* (note 4 above) para 64.
Administrative law serves as a critical conduit for the realisation of socio-economic rights in many cases. Where socio-economic rights and the right to administrative justice overlap, one thus expects the interaction between these two rights to be acknowledged and developed. Quinot and Liebenberg argue that the similarities identified between the administrative-law and socio-economic rights models of review, coupled with the significant extent of overlap between administrative justice and socio-economic rights, justify the development of a coherent standard of reasonableness that interacts without duplication across both fields of law. According to the authors, what makes such development particularly appropriate is the contextual nature of reasonableness review in administrative law and the normative influence that socio-economic rights should play in informing such context.\(^{88}\)

Procedural fairness is by nature a context-sensitive enquiry, and lends itself to similar normative definition. Put differently, just as ‘[a]pplying the contextual reasonableness approach outlined above to cases where administrative action impacts on socio-economic rights requires the relevant socio-economic right to inform the normative context of the analysis’,\(^{89}\) so where socio-economic rights and procedural fairness overlap, the nature of the right or interest at stake should exert normative influence on the nuances and depth of the right to procedural fairness. Meaningful engagement represents an ideal platform on which the interaction between administrative justice and socio-economic rights can be further expanded, both as a requirement where administrative action impacts on socio-economic interests and as a remedy where the requirement was not adhered to.

Courts should thus acknowledge the link between principles of administrative justice and socio-economic rights. In the context of meaningful engagement, the influence that the concept of procedural fairness has had on the creation of the requirement or remedy should be expressly acknowledged instead of cloaking meaningful engagement in ostensibly sui generis nomenclature. Ray argues that in line with *Olivia Road*, meaningful engagement should be institutionalised.\(^{90}\) If and when such institutionalisation is achieved, meaningful engagement will constitute a comprehensive, flexible but mandatory incarnation of the requirement of procedural fairness in eviction cases. Procedural fairness is inherently flexible and context-sensitive and thus easily lends itself to adaption for socio-economic rights cases. Once the links between administrative law’s procedural fairness and meaningful engagement are acknowledged, the requirement or remedy can also be easily altered for contexts other than eviction cases. Meaningful engagement can thus

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89 Ibid 648.

be used in a much wider range of cases where administrative action affects interests other than socio-economic rights, as in cases similar to *Joseph*.

What then about those socio-economic rights cases that do not involve ‘administrative action’? Should socio-economic rights and the requirement for reasonable government action be deprived of the infusion of the duty to adhere to and promote a rich conception of participative democracy? Or does subsuming meaningful engagement into the standard of reasonableness review itself increase the danger of the judiciary’s abdication of its responsibility to engage with the substantive contents of rights?

It is submitted that the principle of legality can be further developed for meaningful engagement to cover all instances where government action impacts on the rights or interests of persons. The inclusion of procedural fairness in legality’s requirement for rationality was illustrated in *Albutt v Centre for the Study of Violence and Reconciliation*, where the Constitutional Court held that in the context of a particular set of presidential pardons, victim-participation was demanded by rationality. Although the question as to whether rationality does require procedural fairness in any given case will depend on the context of the case at hand, Hoexter cogently argues that ‘it is difficult to think of a decision whose rationality would not be enhanced by an impartial hearing of both sides’. The author goes on to note that a ‘huge scope’ for the development of the procedural fairness requirement now exists. It is submitted that the development of the concept could culminate in meaningful engagement in appropriate contexts, especially so where socio-economic rights are at issue.

Focus should be placed on the substantive development of procedural fairness (or rationality) instead of perceiving this development as a ‘procedural loophole’ through which socio-economic rights review can be further normatively weakened. McLean regards meaningful engagement as:

a deferential retreat to procedural fairness considerations, to use the language of administrative law … the Constitutional Court failed to engage with the substantive right,
or even the ‘reasonableness’ of the right (substantive fairness) and has retreated into an even narrower approach to the review of socio-economic rights in focussing on procedural fairness alone.95

By candidly acknowledging the role of procedural fairness in socio-economic rights cases and by consequently developing this principle substantively in the light of the normative impact that socio-economic rights must exert on its application, this negative judicial trend and formalistic perception of administrative law can be countered. Moreover, by acknowledging the procedural roots of meaningful engagement, a space is left intact for judges in socio-economic rights cases to engage with the content of the rights at stake and issue tangible remedies where appropriate. Meaningful engagement and substantive interpretation can thus form a collaborative and symbiotic partnership where the content of the right determines the intensity of engagement rather than presenting an either/or choice where the content of the right is subsumed by procedural considerations. This way, concerns regarding the watering down of socio-economic rights and judicial abdication are alleviated. Administrative law should, in other words, come to connote a positive, substance-infused tool for the realisation of socio-economic rights as opposed to the formalistic review of administrative action that is divorced from the normative and factual context in which such action is situated.

In this way, instead of limiting this innovative concept – that is clearly inspired by administrative justice – to cases where socio-economic rights are at stake, meaningful engagement becomes available in all cases where government action impacts on interests. The richness or intensity of substantive procedural fairness or meaningful engagement in any given case can be determined by evaluating, among other factors, the importance of the right or interest at stake. Simultaneously, a space is preserved in reasonableness review for the substantive interpretation of rights without the risk that the requirement of procedural fairness will obfuscate the need for earnest engagement with the content of rights.

(b) Emphasising development instead of discrepancy

Rather than emphasising a divide between administrative law and socio-economic rights, the differences between procedural fairness and meaningful engagement can be constructively understood as the transformative evolution of administrative law brought about by the normative import of socio-economic rights. For instance, the characteristics of an adequate process of meaningful engagement can be viewed as the amelioration of the negative effects of the wide discretion provided to administrators in s 4(1) of PAJA. Although the decision itself in respect of what procedure should be followed to give effect to procedural fairness affecting the public is not reviewable as administrative action, the importance of socio-economic rights results in its reviewability under socio-economic rights adjudication’s reasonableness

95 McLean (note 2 above) 238.
review. In addition, given that meaningful engagement encompasses engagement on an individual and collective basis, procedural fairness should in any event meet the requirements of both ss 3 and 4 of PAJA. Procedural fairness in cases that impact on socio-economic rights should therefore in certain circumstances entail, inter alia, a two-way process aimed at achieving certain objectives, resolving disputes and creating a relationship characterised by increased understanding and sympathetic care among the parties involved in the engagement.

Furthermore, the fact that administrative action affecting socio-economic rights (such as the right of access to adequate housing) will often involve multi-stage decision-making does not amount to an insurmountable conceptual problem. Certain aspects of PAJA’s definition of administrative action do seem to limit the Act’s application to final decisions. For example, administrative action is a ‘decision’ that has a ‘direct, external legal effect’. Hoexter notes that although both these elements connote a sense of finality, the Supreme Court’s obiter statement in *Grey’s Marine v Minister of Public Works* that administrative action need merely have the capacity to affect rights allowed courts in subsequent decisions to hold that preliminary actions can have such effects. Thus, the author proposes that a multi-stage process should, at least in certain circumstances, be viewed holistically. In *Minister of Health v New Clicks South Africa (Pty) Ltd (Treatment Action Campaign as amicus curiae)*, Chaskalson J opined that ‘to view the two stages of the [administrative] process as unrelated, separate and independent decisions, each on its own having to be subject to PAJA, would be to put form above substance’. A holistic view of a multi-stage process may be particularly important in the socio-economic housing context, where multiple decisions form a continuous process that will ultimately impact heavily on the right of access to adequate housing, as was the case in *Olivia Road*. Meaningful engagement can again be understood as a development of procedural fairness that recognises the importance of procedural fairness as an ongoing process where socio-economic rights are concerned rather than a cursory requirement to be observed exclusively at the stage where a final decision is made.

96 *Olivia Road* (note 40 above) para 13.
97 Ibid paras 14–5.
98 PAJA s 1(i)(b).
100 Hoexter (note 8 above) 441. See also in this regard Oosthuizen’s Transport Pty Ltd v MEC, Road Traffic Matters, Mpumalanga 2008 (2) SA 570 (T) paras 25 & 33.
101 2006 (2) SA 311 (CC).
102 Ibid para 137.
103 For a contrary view, see Muller (note 13 above) 751–2, where the author argues that the inapplicability of procedural fairness to multi-stage decision-making is one factor that should lead to meaningful engagement not being viewed as an incarnation of procedural fairness.
(c) Capitalising on similarities

Next, the shared traits of procedural fairness and meaningful engagement can be beneficially exploited to promote fundamental constitutional values. For instance, both procedural fairness and meaningful engagement are capable of facilitating the realisation of participatory democracy. In *New Clicks*, Sachs J stated that ‘[t]he principle of consultation and involvement has become a distinctive part of our national ethos’. The Constitutional Court has subsequently interpreted various constitutional rights as encompassing elements of `consultation and involvement'. Public participation is thus a broad yet fundamental notion that traverses various areas of our law. The addition of s 4 to PAJA, although not free from interpretative difficulties, was significant for its novel advancement of ‘the core constitutional values of participatory democracy and accountable governance’ where administrative law affects the rights of the public. Meaningful engagement likewise centres on the principle of public participation given that it ‘encourages public participation in policymaking process and service delivery on a continuous basis’. The substantive infusion of administrative law's procedural fairness to reflect the importance of participation on a continuous basis in socio-economic rights and other cases is therefore made possible through the articulation of the duty to engage meaningfully. Participation, in turn, fosters agency and thereby reinforces dignity. This aspect is especially important in cases where administrative law affects the socio-economic interests of poor, vulnerable or marginalised groups. Jennifer Nedelsky aptly underscores the importance of audi alteram partem:

[A] hearing designates recipients as part of the process of collective decision-making rather than as passive, external objects of judgment. Inclusion in the process offers the potential for providing subjects of bureaucratic power with some effective control as well as a sense of dignity, competence and power.

In addition, an administrative-law remedy directing an administrator to act in the manner the court requires or remitting the matter with directions as well as meaningful engagement can be used to allay concerns that courts are institutionally incompetent fora for the adjudication of socio-economic rights or the interpretation of the content of these rights. Both administrative-law remedies and meaningful engagement make provision for the issuing of normative guidelines as well as allowing for the retention of jurisdiction by the court. By retaining jurisdiction, courts can enter into a dialogue with

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104 *New Clicks* (note 101 above) para 625.
108 J Nedelsky ‘Reconceiving Autonomy: Sources, Thoughts and Possibilities’ (1989) 1 *YJLF* 7, 27. See also Quinot (note 49 above) 27.
other branches of government. In addition, the dialogue required between government and other affected parties (pursuant to the order to engage meaningfully) allows courts to step outside the realm of formulating policy in complex and polycentric disputes. As Ray notes, the result of using procedural remedies is a ‘collaborative model of constitutional development in which courts, citizens and the political branches each participate in negotiating the meaning of the Constitution’.\(^\text{109}\) Charles Sabel and William Simon likewise note that at the remedial phase, ‘[t]he judge’s role changes from that of directly determining the merits to facilitating a process of deliberation and negotiation among the stakeholders’.\(^\text{110}\) If a collaborative dialogue can be created within judicially-provided normative parameters, meaningful engagement as a substantive expression of procedural fairness can come full circle by enhancing participatory democracy at the remedial phase. Geoff Budlender notes the democratising effect of structural interdicts, a form of retention of supervisory jurisdiction that can be accommodated within administrative-law remedies as well as within meaningful engagement:

\[\text{[S]structural interdicts can be deeply democratising. They create spaces for a dialogue between the court, the government and civil society actors. In this way, they strengthen and deepen accountability and participation – the key elements of democracy.}\]\(^\text{111}\)

However, the benefits of procedural remedies can only be fully achieved if our courts are willing to fulfil their constitutionally mandated adjudicative responsibilities. Courts should interpret the socio-economic rights at stake and thereby provide guidelines to which procedural requirements should conform. By linking meaningful engagement to its administrative-law origin, a space for substantive interpretation of rights is preserved alongside the rich conception of procedural fairness. This, coupled with retention of jurisdiction, can make meaningful engagement and other procedural remedies valuable tools in the process of transformation to which the judiciary and all spheres of government should be committed.

\section{VI Conclusion}

I have argued that the synergy between administrative law and socio-economic rights can be transformatively developed to enhance the realisation of both administrative justice and socio-economic rights. One apparent point of interaction between these two often-overlapping areas of law is the new judicial creation of meaningful engagement. By acknowledging and further

\(^{109}\) Ray (note 38 above) 114.


developing the interaction between administrative law and socio-economic rights in its new incarnation, administrative law is capable of evolving substantively as opposed to socio-economic rights adjudication being further proceduralised and normatively weakened. In particular, by conceptualising meaningful engagement as a result of substance-infused administrative-law development, a space is preserved for in-depth interpretation of the content of rights. In this way, administrative law evolves fruitfully, fears concerning abdication of judicial responsibility in socio-economic rights cases are allayed and meaningful engagement becomes more widely available in all cases where government action impacts on interest. In cases where such action cannot be classified as ‘administrative’ in nature, the rationality element of the principle of legality can demand the need for (nuanced) procedural fairness.

However, for this to occur, the judiciary must overcome its resistance to recognising and engaging with the symbiosis between administrative justice and socio-economic rights. Such judicial unwillingness is apparent both in jurisprudence primarily focused on socio-economic rights and in cases where administrative-law review was central. Moreover, this unwillingness may perhaps be ascribed to the judiciary’s comfort with an administrative-law model of review in contrast with its ostensibly significant discomfort with its interpretative responsibilities vis-à-vis the adjudication of the content of socio-economic rights. However, the above discussion has highlighted the fact that even administrative-law review can bring about substantive relief, and that concerns of institutional competence are thus often overemphasised or misplaced. Once an integration and symbiosis between administrative justice and socio-economic rights is achieved, the normative influence of socio-economic rights (as well as other rights and interests) can be viewed as infusing procedural fairness with substance. Meaningful engagement results as one manifestation of this potentially vibrant and transformative synergy.