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Roadblocks to Access: Perceptions of Law and Socioeconomic Problems in South Africa

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ROADBLOCKS TO ACCESS: PERCEPTIONS OF LAW AND SOCIOECONOMIC
PROBLEMS IN SOUTH AFRICA

A Dissertation Presented

By

KIRA TAIT

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial fulfillment
of the requirements for the degree of

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May 2021

Political Science

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ABSTRACT

ROADBLOCKS TO ACCESS: PERCEPTIONS OF LAW AND SOCIOECONOMIC PROBLEMS IN SOUTH AFRICA.

MAY 2021

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My dissertation explores ordinary Black South Africans' perceptions of the law and how these perceptions impact their views of the desirability and appropriateness of appealing to courts when they have problems accessing constitutionally guaranteed services. Specifically, I study why people choose *not* to use courts to secure access to water, healthcare, education, and housing when it is both legal and possible to do so. Since it transitioned to democracy, South Africa has become one of the leaders of socioeconomic rights protection through courts. It is globally recognized for its progressive constitution buttressed by an expansive system of rights and a powerful Constitutional Court empowered to enforce them. The post-apartheid Constitution granted everyone the right to have access to adequate housing, health care services, sufficient food and water, and basic education to remedy the inequalities created by apartheid. Since its adoption, the Constitutional Court has been active in enforcing these rights. Considering this context, we might expect a high demand for justice and an inclination to turn to courts for basic services among ordinary South Africans, especially after twenty-five years of democracy.

Despite the central place of rights in post-apartheid democracy, my dissertation shows that ordinary Black South Africans have developed doubts about the utility of rights and the law as meaningful institutions. And even though South Africa is commonly hailed for its record of aggressive socioeconomic rights protection, my interviewees rarely expressed willingness to use courts to lay claims to these rights—even when they were in dire need. I argue that an individual's choice to litigate depends on how they interpret the lack of access, the alternative solutions they believe are possible, and the perceived risks of turning to courts given South Africa's political and legal corruption. These findings are derived from multi-sited fieldwork across the KwaZulu-Natal province and Johannesburg. My findings help move scholarship away from the assumption that litigation is a desirable, feasible, and even thinkable way to solve rights problems and towards a focus on how perceptions of the legal and political system's inner workings can impact legal mobilization.

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Chapter 1

INTRODUCTION

A. Introduction

This project started with a simple question posed by my Introduction to Comparative Politics professor at John Jay College of Criminal Justice. Knowing that I recently took Introduction to Constitutional Law, she asked me, “how can we use courts to solve poverty?” I replied, “if there were a set of rights against poverty issues and a court where people could sue to protect these rights.” She then gave me one of the most influential books on socioeconomic rights litigation, Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World by Daniel Brinks and Varun Gauri. Through reading, I discovered South African courts’ work in addressing poverty by protecting the right to access basic services.¹ I was mesmerized by the idea of the marginalized poor suing the government to challenge poverty, forcing the government to respond to people’s everyday needs.

From my reading of the book, socioeconomic rights seemed like the solution to the long-standing problem of gross poverty and inequality worldwide, or at least that is how the landmark cases from South Africa, Colombia, and India made it seem. There was an allure about the possibility that people, like the homeless I passed every day on busy New York City streets or economic migrants like my family, could sue the state to better their conditions if only they had the right to do so. What I overlooked was the extent to which ordinary people could believe such action was possible. After all, growing up in America where legal ideas and rights talk is part of life’s everyday rhythm,

¹By basic services I am referring to the constitutionally guaranteed services, adequate housing (which includes electricity), healthcare, water, social security, and education.

it was easy to expect the same from people in countries with seemingly more progressive constitutions and institutions. I soon learned that was not the case.

During my first trip to Johannesburg in August 2015, I spent the majority of my time at Constitutional Hill (The Hill), the home of the Constitutional Court and the Old Fort Prison Complex.² As a celebrated beacon for constitutionalism, human rights, and democracy, I expected to hear praise of the work of rights and the Court from everyday Black South Africans. Instead, I heard grave skepticism and cynicism in my conversations with Black street vendors, craftsmen, maintenance workers, and daily visitors to the Court. Unlike de Tocqueville in the 1830s, who found that law and legal discourse permeated American society “right down to the lowest ranks,” I found serious doubt in the law and, more surprisingly, in rights (de Tocqueville 2012). The people I interviewed stated things like “rights, now they aren’t serving any purpose. They are a disguise so our country can be open for investments” (Trader 2) and “the Court is just a mirage, it is not a place for me” (Trader 1). Some people further questioned the role of courts and rights in addressing socioeconomic inequality– the very problem scholars said they could solve. A particular conversation was the most surprising. One afternoon, I stumbled upon a protest at the Hill for land rights. With harmonious singing of songs of struggle in the background, the protest organizer argued:

Rights only exist on paper. People are still oppressed here, but they can’t talk about it. There is a myth of this rainbow nation, yet majority of Blacks still live in the townships they were sent [to] by the apartheid government. Blacks still have the worst healthcare. Schools for Black kids are the worst. We still find some Black bodies treated the same way they were in apartheid. There is a right here to housing, but what kind of housing? Water and sanitation, we don’t have water for

²The prison housed many anti-apartheid activists including Mahatma Gandhi and Nelson Mandela while he awaited his Rivonia Trial for treason in the early 1960s. The Court also functions as a museum where international tourists and local South Africans are encouraged to visit to learn about South Africa’s dark past and celebrate its achievements and promising future.

all people. There are some places without sewage, like in Squatter Camps in Diepsloot, places near Grahamstown (now called Makhanda) in the Eastern Cape only have a bucket system.³

I was shocked by these responses, given the lauded work of South African legal institutions since 1994 and the elaborate monuments I visited that celebrated the country's commitment to rights, justice, and equality. What was even more perplexing was people made these statements directly in front of the Court, which donned the words "Constitutional Court" with rainbow letters in all 11 official languages symbolizing the move to equality and justice. The contradiction between what I read about South Africa, socioeconomic rights, and the Court and what people felt became apparent. I began to ask just how far *has* South Africa come. The promise of a rainbow nation seemed to be failing. There was a disparity between what the international community credited South Africa for and what Black South Africans thought of their everyday reality. Conversations with legal professionals further confirmed this paradox. One explained, "the U.S. perspective of the [South African] Constitution is a lot more positive than it is here. It is less ideal here. One big problem is the Constitution isn't really embedded here." I began to ask the following questions: 1) if rights and courts have a problematic presence (or for some no presence at all), how else do people think about the lack of access to basic services and how to solve it?; 2) why do people have this perception of rights given the struggle against apartheid in which they were hard-won?; and 3) to what extent did these perceptions limit the way people thought about using legal institutions to solve their everyday problems with services?

³ Diepsloot is one of the poorest townships in South Africa.

My dissertation offers an answer to these questions by examining Black South Africans' perceptions of law, rights, and courts and how they impact people's willingness to use courts as a means to access basic services. In particular, I investigate the ways people perceive and experience problems with services and the law and how those perceptions discourage the use of legal strategies to mobilize around issues of access. In doing so, I assess when it is "thinkable" for citizens to make rights claims in the formal legal sphere and when it is not. As Michael Schatzberg describes, thinkability is a literal term: "Can we, do we think these thoughts?" My findings uncover a series of what I call "roadblocks to access," factors that inhibit the thinkability of using legal intervention to access basic services. I argue that ordinary citizens' thinkability of making rights claims in court depends on their perceptions of the lack of access, the solutions they find possible, and the act of suing the government given corruption at various parts of the state. I find that it is the way people perceive and make sense of the existing roadblocks of legal mobilization and what new ones that may emerge because of how they perceive the act of going to court for these problems, that hinder people from being willing to go to courts.

Despite the central place of rights in the post-apartheid reconciliation, this project shows that ordinary Black South Africans have developed doubts about the utility of rights and the law as meaningful institutions. And though South Africa is globally recognized as the poster child for social rights litigation, my interviewees rarely expressed willingness to use courts to lay claims to these rights—even when they were in dire need. My findings help move scholarship away from the assumption that litigation is a desirable, feasible, and even thinkable way to solve rights problems and towards a focus

on how perceptions of problems and the legal and political system's inner workings can impact legal mobilization. In the remainder of this chapter, I describe the case of South Africa, the research I conducted, and the implications of my findings.

B. The South African Case

Legal mobilization for socioeconomic rights is a new kind of struggle for rights made possible by social rights constitutionalism—the widespread inclusion of rights to access basic necessities like healthcare, housing, water, food, social security, and education in constitutions, and the consequent state obligation to ensure access. This style of constitutionalism made judicialization of socioeconomic challenges possible, giving citizens another arena to mobilize against deprivation, in addition to democratic participatory institutions like elections and protests. The 1996 South African Constitution was designed in this spirit, making it the most progressive constitution in the world.

The inclusion of socioeconomic rights in the South African Constitution, as Sandra Liebenberg, South Africa's leading scholar on socioeconomic rights, asserts, “must be viewed in the context of the fundamental changes to South Africa's legal system which facilitated the transition to democracy” (2010, 1). Apartheid's racist system institutionalized white privilege in all aspects of life. The prioritization of white South Africans came at the expense of the native Black population, who were subjected to systematic discrimination in their access to vital socioeconomic goods and services. Apartheid's white minority rule regulated all aspects of socioeconomic life such as housing, healthcare, and work through racially discriminatory laws. The apartheid-era legal system provided few legal mechanisms to challenge these blatant socioeconomic

rights violations. The system of parliamentary sovereignty inherited from the British allowed the state “to ride roughshod over individual liberty without fear of judicial obstruction” (Dugard 1986, 20; Meierhenrich 2008). Unconstrained by judicial review, parliament had the authority to create the legal construction for racial segregation without legal opposition, further entrenching the Black population's socioeconomic marginalization. The British common law system also had no tradition of recognizing socioeconomic entitlement claims.

The Apartheid government also used courts as an instrument of social hegemony and political repression (Brown 2015). To continue its domination over both politics and the law, the apartheid state wanted to end the struggle with legal practitioners against apartheid. While some lawyers used procedural protections to articulate political claims against the regime, this action was never entirely successful. It was met with significant backlash (Brown 2015). To quell any further rejection of apartheid legislation, the National Party redesigned the legal system to be autonomous, prohibiting courts from engaging in politics. The 1953 Reservation of Separate Amenities Act prohibited courts from voiding subordinate legislation on the grounds of substantive inequality (Meierhenrich 2008). Therefore, judges, who were still committed to the rule of law, were only allowed to decide case facts, not question the law's content concerning discrimination claims. Judges who did not conform risked being removed and even being declared terrorists for siding with the resistance. Some legal practitioners, who were vocal about their political position in favor of ending apartheid, like Albie Sachs, were met with violence. By separating law and politics, the National Party isolated the South African legal system from the everyday struggle for equality (van Huyssteen 1995; Abel

1995). Ultimately, the legal system during this period was incredibly weak in protecting the Black population's rights, but effective in cementing their socioeconomic deprivation. Apartheid's collapse marked a new beginning, one that was supposed to be non-racial, equal, and free. The African National Congress's (ANC) 1994 election victory was met with hopes that poverty and inequality would be abolished. The pro-black and pro-poor party promised "a better life for all," declaring that alleviating poverty and deprivation would be the first and top priority of the new democratic government. Months after the election, the government handed down its Reconstruction and Development Programme (RDP). As a part of this push to alleviate poverty, constitutional drafters included socioeconomic rights in the 1996 Constitution's Bill of Rights in Section 26-29 in Chapter 2 of the Constitution (i.e., see Table 1). The Constitution also guarantees socioeconomic rights to detained persons in Section 35.

Table 1: List of socioeconomic rights provisions in the 1996 Constitution.

Socioeconomic Rights	Constitutional Provisions
Housing	Section 26: (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 realization 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."
Health care, food, water, and social security	Section 27: (1) "Everyone has the right to have access to— (a) health care services, including reproductive health care. (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. (3) No one may be refused emergency medical treatment."
Children Rights	Section 28 (1)(c): "Every child has the right to basic nutrition, shelter, basic health care services, and social services"
Education	Section 29: (1) "Everyone has the right – (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

Rights of arrested, detained, and accused persons	Section 35 (2)(e): “Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material, and medical treatment.”
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The construction of socioeconomic rights in South Africa imposes both positive and negative duties on the state. The dominant narrative of the philosophy of fundamental rights holds “that rights impose exclusively or primarily negative obligations on the state, and that rights operate only between a citizen and his government, not between private citizens” (Möller 2012, 2). Under this narrative, constitutional rights were seen as individual protections against the aggressive state, not as entitlements to be provided by the state. Early constitutional designs, like that of the 18th century, were consistent with this narrative. By the 1970s, constitutional rights law abandoned this construction of rights when positive obligations or “protective duties” became established (Möller 2012, 5). Rights are no longer regarded as exclusively imposing negative obligations on the state. Instead, they also imposed positive duties, which mandate that the state must act in particular ways. The South African Constitution explicitly embraces a positive obligations framework. In the introduction of the Bill of Rights, Section 7(2) places an obligation on the State to “respect, protect, promote and fulfill the rights in the Bill of Rights.” Also, each right is accompanied by a clause that outlines the state’s obligation to fulfill its duties, “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of these rights.” Under this legal framework, not only must the government not infringe on people’s ability to access socioeconomic goods and services, but the government is required to promote and protect access to goods and services. This dual construction gave socioeconomic rights teeth.

Instead of mere aspiration goals, the state is constitutionally required to address service delivery to carry out its constitutional mandates effectively.

Despite the constitutional mandates and the ANC's promise to alleviate poverty and class inequality, successive presidents did little to further this goal after Nelson Mandela's presidency. According to Seekings and Nattrass (2016), neither Thabo Mbeki nor Jacob Zuma showed any significant proclivity to use their power to address poverty or class inequality (206). Instead, the new democratic South Africa experienced growing corruption, anti-poor policies, and woeful neglect and mismanagement with service delivery in Black communities— a reality that closely resembled life under apartheid.⁴ With new legal tools, a newly active civil society turned to courts for help with the growing socioeconomic challenges. By the late 1990s, the South African Constitutional Court had started to play a prominent role in socioeconomic justice activism, which garnered global recognition (Gauri and Brinks 2008; Langford 2008; Langford et al. 2014). Landmark cases such as *Government of the Republic of South Africa v. Grootboom* (2000), *Minister of Health v. Treatment Action Campaign* (2002), and *Khosa v. Minister of Social Development* (2004) laid the foundations of socioeconomic rights jurisprudence, strengthening the realization of the right to access services.⁵ Through the legal victories in early socioeconomic rights cases, South Africa earned the title as one of “the oft-touted leaders of socioeconomic rights protection through courts” (Gauri and Brinks 2008, 1).

⁴ For example, shortly after the adoption of RDP, the government adopted the Growth, Employment and Redistribution (GEAR) a macro-economic policy that prioritized big business leading to significant economic losses for the poor (Bond 2000; Ngcamu 2019).

⁵ *Government of the Republic of South Africa v. Grootboom* (2000) “the right to housing”; *Minister of Health v. Treatment Action Campaign* (2002) “right to health”; *Khosa v. Minister of Social Development* (2004) “right to social security.”

C. The Landscape of Justiciable Socioeconomic Problems

Despite the government's proposed commitment to poverty reduction and the available institutions to address socioeconomic problems, poverty and inequality of access is still a growing problem in South Africa. The country is more unequal now than it was before apartheid (Wilson and Dugard 2014). As of 2014, approximately half of the population (about 30.3 million people) is living at or below the national poverty line (R992) (World Bank 2020). An estimated 18.9 percent of the population lives at or below the international poverty line of \$1.90 per person per day (World Bank 2020). The disparity in service delivery reflects the high-income inequality. "South Africa's poor remain unemployed, and without access to adequate health care, education, housing, and basic municipal services" (Wilson and Dugard 2014, 35). With regard to inequity in basic services, class and race intersect. The majority of the poor population who experience severe challenges with services are Black. The remainder of this section overviews common challenges with basic services experienced by South Africa's largely Black poor population. These problems are issues that people have mobilized through courts, which the courts have recognized as violations of socioeconomic rights. To assess people's perception of socioeconomic problems, I relied on these problems in my hypothetical scenario questions.

1. Shack Evictions

Access to adequate housing is a human development challenge experienced by many developing populations. On the African continent, adequate housing has a complicated policy history largely shaped by discriminatory colonial policies. With growing mass urbanization, adequate urban housing has become a pressing issue in

African countries. Apartheid's decades of forced removals and spatial segregation left the Black population out of urban centers, which today are areas of high economic activity and job opportunities. Because of this, many Blacks have chosen to leave rural areas and live in informal settlements close to urban areas with the hopes of finding employment. Unfortunately, with the rise of a Black middle class, these settlements have become the source of contention between local government structures, the middle class, and the poor. The middle class finds the settlements unsightly and the source of trouble. As a result, they rely on local government officials (councilors) to do something about the erection of shacks. Because councilors rely on the upper- and middle-class for support during elections, they order evictions. These evictions are usually violent, destroying shacks, dwellers' belongings, and sometimes involving physical harm. Shack dwellers have successfully pursued legal action to stop impending evictions and hold municipalities accountable for damages. Shack dwellers who are part of Abahlali baseMjondolo (the shack dwellers' movement) have also sued municipalities to challenge their plans designed to "clean up" cities that would eradicate informal settlements, which has also been successful.

Inner-city informal settlers also live in dilapidated buildings in the central business district in Johannesburg. These buildings are a hallmark of the city's housing problems. The buildings were abandoned by owners who either died, left the country during the sanctions in the 1980s, or retreated to the suburbs north of the city after waves of urbanization in central Johannesburg. Others abandoned the properties after giving up hope of ever collecting rental income. People who came to the city seeking employment took refuge in the empty buildings. They face eviction from either the City of

Johannesburg or what they refer to as “hijackers,” people who attempt to take over the buildings for personal economic gains without having any legal rights to the properties. Hijackers masquerading as the rightful owners of the building attempt to collect rent from settlers with the threat of eviction and violence. My respondents report that “hijackers” are usually foreign nationals from neighboring African states.

South African courts have protected the right to housing against evictions. Two of the most notable cases are *Government of South Africa. & Others v. Grootboom* (2000) and *Occupiers Of 51 Olivia Road, Berea Township And 197 Main Street Johannesburg v. City of Johannesburg* (2008). In *Grootboom*, a community of shack dwellers in Wallacedene, an informal settlement in Cape Town was evicted. The settlement was on private land that the city earmarked for the development of formal low-cost housing. Upon vacating, the residents created shelters out of plastic at a sports center next to Wallacedene. The shelters lacked basic sanitation and electricity. They were evicted again from the sports center. The group brought the case to court under the constitutional right to adequate housing. The Court ordered the various governments to “devise, fund, implement and supervise measures to provide relief to those in desperate need.” The government provided applicants with basic amenities as a result of a settlement.

In *Occupiers*, the City of Johannesburg ordered the eviction of more than 400 residents in two buildings that were deemed hazardous and unhealthy. The city ordered the evictions as a part of its “Inner City Regeneration Strategy,” which aimed at cleaning up central Johannesburg by destroying 235 “bad” buildings. The municipality regarded these buildings as “development sinkholes” that needed to be removed to make way for private investment in the city. The Johannesburg City Council obtained urgent eviction

orders. With the order, the city would carry out the evictions in the middle of the night and without advance prior notice or the offer of alternative accommodations (UN-Habitat 2007). Under threat of eviction, the residents filed a claim against the city. The lower court judge dismissed the city's eviction applications and issued an interdict, stopping the evictions until the residents received alternative accommodations. On appeal, the Constitutional Court ordered that the city engage with the residents to find a mutual solution. The two reached an agreement that provided the occupiers with affordable and safe accommodation in the city to live free of the fear of future eviction. The Court also invoked the Constitution's language, arguing that if the residents remain after a court order of eviction is granted only then is an eviction is valid. Despite the wealth of jurisprudence protecting the right to housing, evictions still regularly occur in South Africa.

2. School Infrastructure

Since the end of apartheid, there has been a considerable improvement in access to education. More children are enrolled in schools every year to receive basic education due to the established right to education. However, the lack of proper school infrastructure constrains the actualization of this right. There is a significant difference between the quality of education accessible to the Black poor in South Africa and their more affluent counterparts regardless of their race. Although more affluent Black families have chosen to send their children to formerly all-white private schools, most Black Children in South Africa's primary source of education is through a government school (public school). Children in government schools face overcrowded classrooms, limited resources, and poor infrastructure, especially in rural areas. At present, around 3,600

schools operate without electricity. In 3,898 schools, pit latrines are the only form of sanitation for students and faculty as oppose to standard toilets (Equal Education). Equal Education reports that 92% of schools do not have proper libraries (Butana 2012). The learning challenges these conditions create are acute.

South Africa's poor infrastructure problem in government schools is a product of government neglect and corruption. As Mark Heywood, the former director of Section 27, stated of the tragic death of Michael Komape – a six-year-old boy who drowned after falling into a dilapidated pit latrine at his school in Limpopo, “Michael Komape died because of corruption and state capture. The failure to build toilets in schools is a result of corruption and state capture” (Postman 2019, 1). In some instances, government officials' egregious looting of public funds enables underspending of their province's allocated budget on education. In other cases where there are funds, the funds never actually get to the schools due to various actors' mismanagement, from state officials down to the principal. Civil society organizations like Equal Education and Section 27 work towards keeping local and provincial government structures accountable for addressing infrastructure problems in schools and accessibility to learning materials. They have petitioned the courts on behalf of parents to address these issues.

Equal Education's #FixTheNorms case inspired the school infrastructure hypothetical scenario. For over two years, the organization campaigned to get the Minister of Basic Education, Angie Motshekga, to publish minimum norms and standards for school infrastructure. These standards would have helped address the problem of underspending on education in the Eastern Cape province, eradicating pit latrines and classrooms made of mud or corrugated iron shacks. At the time, the provincial

government only spent 28% of its R1.45 billion annual school budget because the minister refused to set the standards the province must meet. After failing to publish the standards, the organization filed a claim against the minister, all nine members of the Executive Council, and the Minister of Finance in the Bhisho High Court. Four days before the case was heard in 2012 the Minister Motshekga agreed to create binding standards in an out-of-court settlement. When the minister failed to meet the deadlines agreed upon in the settlement, Equal Education reopened the case in June 2013. In another out of court settlement, recorded by the Court, Minister Motshekga agreed to work on regulations to create binding minimum norms and school infrastructure standards. Since then, the organization has pursued further legal action to address the norms and standards' vague language and force the minister to establish a monitoring mechanism. The #FixTheNorms case is one example of how state neglect results in the continuation of poor infrastructure and also shows the courts' role in holding state actors accountable. Despite the use of legal institutions in this way, improvements in school infrastructure remain slow and non-existent in some regions in the country.

3. Government Hospital Lacking Resources and Denying Treatment

The right to health in the 1996 Constitution entails access to health care services, including reproductive health care. The right also mandates that no one may be refused emergency medical treatment. Lower income blacks rely on government (public) hospitals and clinics for medical services. These facilities often serve a large number of people with limited resources. During my time in field, people complained about government hospitals and clinics not having resources and hearing that people have been denied treatment at some of the hospitals because of this. The availability of resources

and what constitutes an emergency can impact how one is treated at government facilities and the means of recourse. This scenario was inspired by the first socioeconomic rights case, *Soobramoney v. Minister of Health, KwaZulu-Natal* (1997). Soobramoney, who had chronic renal failure and needed regular renal dialysis, was refused admission for treatment at the state hospital because he did not meet the admissions criteria. The admission guidelines were put in place because the hospital had a shortage of resources. The guidelines stated only those who could be cured within a short period and those with chronic renal failure who are eligible for a kidney transplant could be admitted for treatment. Upon the admissions denial Soobramoney applied to the High Court to order the hospital to provide him with ongoing dialysis treatment without charge and that the state should make additional funds available to the hospital. When the application was dismissed, Soobramoney appealed to the Constitutional Court claiming his right to health and right to life, as lack of dialysis posed a considerable threat to his life. Even though the court's decision was unfavorable for Soobramoney due to concerns over the state's budget, the case was the first instance in which someone attempted to mobilize law for socioeconomic rights and in which the Constitutional Court acknowledge the justiciability of the right to health claims.

4. Water & Electricity Shutoffs or Lack of Proper Connection

Like most developing countries with growing populations, South Africa experiences incredible stress on its vital resources like water and electricity. In addition to establishing the right to health, Section 27 of the Constitution lays out the right to water. Although the right to electricity is not explicitly in the Constitution, the Constitutional Court has established the right is implied through the right to adequate housing in cases

like *Grootboom*. Water and electricity shutoffs are sometimes caused by landlords not paying municipal rates that cover water and electrical bills even though their tenants have paid them for these services. Disconnections are also caused by vandalized equipment or mismanagement from the municipality due to corruption of sorts. In other situations, people who reside in informal housing structures like shacks, dilapidated buildings, or one-room cinder block structures lack formal access to these services. They either rely on illegal connections from neighbors or live without access like the residents in *Grootboom*.

Since *Grootboom*, the courts have continued to uphold the right to electricity and water services. The most notable cases are *Joseph v. the City of Johannesburg* (2009) and *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council* (2002). In *Joseph*, tenants paid their electricity bill to the property owner regularly, yet the owner failed to pay the city's electric company, City Power. As a result, City Power disconnected the property giving the owner notice, but not the tenants. The tenants argued that the disconnection without notice violated their constitutional right to access adequate housing, implying a right to electricity. In challenging the disconnection, the tenants also challenged the constitutional validity of City Power's by-laws that allowed termination without giving notice to the tenants. Similarly, in *Residents*, the Court found that the local council unlawfully disconnected the water supply, establishing that the disconnection of water supply for non-payment was illegal as it arbitrarily deprived people of their rights. Despite the Court's established jurisprudence on the right to water and electricity services, poor communities in South Africa still face challenges with these services.

D. The Research

My investigation of Black South Africans' perceptions of socioeconomic problems and the law is an exploration into ordinary South Africans rights and legal consciousnesses. Rights consciousness refers to "the understandings of law and the social practices through which individuals and groups come to embrace, ignore, manipulate, remain unaware of, or consciously reject rights in relation to their everyday experiences" (Engel 2012, 424). These understandings also include what Wasby (2005) calls "the general awareness of rights to be claimed or asserted against others" (459). While different scholars have proposed various definitions of legal consciousness, in this project, legal consciousness refers to the way people experience and think about the law and its related institutions, mainly courts (see, e.g., Albiston 2006, Ewick & Silbey 1998, McCann 1994, Merry 1990, Nielsen 2000).

People's perceptions of legal institutions are critical factors in understanding their legal behaviors (or the lack thereof) when problems strike. There are three necessary perceptions for litigation for access to services to become a thinkable strategy. Firstly, people must have a rights consciousness that frames everyday service delivery challenges as justiciable rights issues they can lay claims to. Framing service delivery problems as rights issues helps transform the nature of the problem from a matter of circumstance or a consequence of being poor to a rights issue with legal standing where the state could provide a legal remedy. Secondly, people must also believe that the state is responsible for solving the problem. Making rights claims to the state requires that people blame the state for the lack of services. People will seldom turn to the state for help if they do not believe the state is responsible for service delivery. As Gauri and Brinks (2008) assert,

“before some aspect of the human predicament can become a need—particularly a need to be satisfied by the state—it must appear to reasonable people that the state can satisfy this need” (309). And finally, mobilizing through the courts for services requires that people view courts as a place to protect their rights and a resource they can access. They must also believe that the law is fair, accessible and can hold other state actors accountable for failure to fulfill their legal duties in providing services. Legally codified rights and functioning courts may help disadvantaged groups develop this consciousness, encouraging legal mobilization. However, I show that people’s everyday encounters with the law, the state, and socioeconomic problems can prevent this consciousness’s development by casting doubt on legal institutions’ utility in solving problems in everyday Black lives. Collectively, these perceptions make up what I call the “thinkability of legal mobilization.”

1. The Fieldwork

To uncover ordinary Black South Africans’ perceptions, I conducted multi-sited fieldwork in the KwaZulu-Natal (KZN) province and Johannesburg. I interviewed 146 ordinary Black South Africans from August 2018 to April 2019. My participants included 71 residents from the semi-rural town of Empangeni, 39 residents from Umlazi Township, 20 members of Abahlali baseMjondolo (the shack dwellers’ movement), ten members of The Inner City Federation, four housing claimants from the Legal Resource Centre, and two Johannesburg residents. I also interviewed ten lawyers and activists from socioeconomic rights oriented civil society organizations, the Centre for Applied Legal Studies (CALS), The Socio-Economic Rights Institute of South Africa (SERI), The Legal Resource Centre (LRC), Black Sash, Pro Bono, and Section 27.

Figure 1: Map of field sites



KwaZulu-Natal is the second most populous and the third poorest province in South Africa (Stats SA). It is the home of seven million Zulu-speakers and prominent civil society organizations that advocate for socioeconomic rights, like Abahlali baseMjondolo and the Unemployed People’s Movement. During apartheid, KZN was an epicenter of conflict. Like Johannesburg it was a place of mass public protest and a push for rights. Since then, the province continues to be a site for political action in response to poor or unstable socioeconomic goods and services provided by municipalities, particularly those related to housing. State-led evictions are prevalent in KZN. This situation is exacerbated by unresponsive local councilors elected to represent residents. In addition to issues of access to housing, some residents of KZN have mobilized against poor municipal service delivery like electricity and water. I chose two field sites in KwaZulu-Natal to provide contrast. Although I am interested in meanings generated among one racial group, no single racial group is homogenous. Differences within a

racial group are deepened when its members live in vastly different areas, with their own political histories and institutional structures.

Empangeni is a semi-rural town located in the City of uMhlathuze. The city is mainly composed of rural areas that are also under traditional authority. Empangeni is one of four business districts in uMhlathuze. As a semi-rural town, residents of Empangeni have access to both formal government institutions and traditional councils.⁶ In Empangeni, participants consisted of adult (18 and older) non-elites of different genders. Individuals were chosen using respondent-driven sampling (Heckathron 1997). Respondent-driven sampling is a network sampling method mainly used for studying hard-to find or hard-to-study populations, like the socioeconomically marginalized or people who are more conservative in disposition. Respondent-driven sampling relies on initial informants who act as “seeds” to recruit up to three members in their network to participate (Bernard 2006,194). Prior to this fieldwork trip, I lived in Empangeni for two months in 2017, where I established connections with twelve Zulu families who facilitated access to other families in their networks. I had also immersed myself in their family life, which granted me access to the families’ other social networks like church groups, neighbors, and workplace colleagues.

Umlazi is the second largest urban township in South Africa. It is located on the outskirts of metropolitan Durban. As a township, this area experiences problems typically associated with township living inherited by apartheid’s spatial and economic isolation

⁶ Although residents of Empangeni do have access to traditional institutions, traditional courts do not have jurisdiction over constitutional matters, like socioeconomic rights. While traditional courts cannot hand down a decision on socioeconomic rights, people may see them as an avenue to address problems with municipal service delivery, as they can act as intermediaries between the formal state and the rural population.

policies. Today, there is a mix of slums and formal houses built by the post-apartheid government. Some residents in Umlazi live without access to sufficient housing and stable access to basic electrical services. Umlazi residents have been vocal about issues of access to municipal services. Duncan (2016) notes of her observations “as early as 2009, Umlazi appeared to be a particularly unhappy place, with several wards marching about dissatisfaction with service delivery and their ward councilor” (64). In 2014, Abahlali baseMjondolo launched a branch in Umlazi igniting activism for the rights of informal dwellers. While there is no direct access to traditional courts in Umlazi, residents do have access to formal courts in the broader Durban area, approximately thirty minutes north. Like my participants in Empangeni, participants in Umlazi consisted of adult (18 and older) non-elites of different genders. However, unlike the residents in Empangeni, the majority of my participants in Umlazi were unemployed. I relied on my connections with one Umlazi family to access my interviewees. Instead of living in Umlazi, I lived in Musgrave, a Durban suburb north of Umlazi and commuted daily to conduct interviews.

In addition to these two sites in KZN, I also conducted interviews in Johannesburg. Johannesburg is the largest city in South Africa, located in the wealthiest province, Gauteng. Johannesburg is also South Africa’s legal hub. It is the home to the Constitutional Court, the South African Human Rights Commission’s Head Office, and many legal advocacy organizations (LAOS) which advocate for socioeconomic rights protection. Like most growing urban centers, Johannesburg has areas of economic stability and areas of great hardship. Inequality in access to land, housing and basic services has been a recurring theme in the city’s history. Like the Durban municipality, the Johannesburg municipality has been criticized for its treatment of informal settlers

and over-priced service delivery, which is often inadequate. Urban development plans have enabled mass evictions of those living informally in dilapidated high-rise buildings, apartments, houses, rooms, parts of rooms, and balconies, a problem the courts have tackled on a case by case basis with the help of LAOs. In Johannesburg, I interview past claimants at SERI and Section 27. I also interviewed lawyers and advocacy personnel from CALS, Black Sash, SERI, and The Inner City Federation.

2. Interviewing Technique

I asked my participants three types of questions to assess the thinkability of legal mobilization for socioeconomic rights (see appendix A). The first set of questions asked broad questions about rights: whether people believed rights existed in South Africa; if they felt they personally had rights; whether they believed that constitutionally guaranteed services were rights; and what having rights meant and how they had come to have rights.

The second set of questions examined people's perception of socioeconomic problems and possible ways to overcome them. I asked participants to respond to five hypothetical scenarios: shack evictions, poor infrastructure in government schools, government hospitals not having enough resources and refusing to treat sick persons, and water and electricity disconnection or lack of formal connections, like water coming through the taps and stand-alone electrical connection. I first asked respondents to determine if the issue in the scenario was a problem. I intentionally did not ask participants what kind of problem (legal, personal, or political) they thought the scenarios were, so I did not lead them to what they thought the "right" response was. Unlike civil and political rights, socioeconomic rights issues straddle two planes, legal/political and

personal. Before the codification of socioeconomic rights, not having access to services was a personal problem, one that was a matter of misfortune and a result of being black under apartheid. Although the Constitution establishes legal entitlements to basic services in the form of rights, it is through the courts that access issues have become legal problems, at least in theory. While it seems evident that these scenarios' issues are problems, I wanted to assess whether the shift from “daily misfortunes” to “justiciable problems” has transcended to ordinary citizens. In the third group of questions, I explored people’s legal consciousness by asking what they thought about law and courts, and their experiences with the law. These questions also included follow-up questions to the hypothetical scenarios. In this section of the interviews, I asked participants if they believed they could sue the government for the scenarios they identified as problems.

E. Broader Implications

1. Contributions to Legal Mobilization

This project is poised to make several contributions. First, this project marries two important literatures: legal mobilization and legal consciousness. A persistent question law and society and public policy scholarship focus on is the courts' role in creating policy and social change. Much of the debate concerning the effectiveness of legal mobilization surrounds perspectives on the courts (Butt 2006; Edelman 1994; Rajamani 2007; Hamilton 1788; Rosenberg 1991; Vanberg 2001; Scheingold 1974; Gabel and Kennedy 1984; Epp 1998; Whittington 2005). While these assessments of courts help us understand how activists and ordinary people might choose strategies to address problems, how people understand their problems and their rights are equally as important.

What is absent from the existing canon on legal mobilization is an assessment of how people perceive their rights related to specific problems and the impact of this interpretation on their approach to problem-solving. This dearth is in part due to rights-based problems being pre-determined as a legible grievance. Foundational texts on legal mobilization mainly explore political and civil rights-based problems, problems which we have come to accept as clear rights violations. The separation of racial groups and the unequal treatment based on race, gender, and sexual orientation are issues where we (mostly) no longer question if an injury has occurred. As a relatively “new” set of rights protections, there is an additional challenge with legal mobilization for socioeconomic rights, one that concerns the framing of poverty issues as rights violations.

Before the inclusion of socioeconomic rights in formal documents, there was no legal requirement for governments to protect against poverty and deprivation. Likewise, governments also had no obligation to address the inequality in access to public goods and its consequences for the poor. And thus, poverty and its related challenges were personal problems, ones that only could be addressed by the capitalist formula of hard work. The advent of socioeconomic rights shifted the problem of poverty from the personal to the legal. With codified rights against poverty, everyday socioeconomic challenges are now justiciable legal problems. But as with any new concept, these frames take time to take root in society. Legal mobilization for socioeconomic rights is unique because it requires that one see their current conditions as a problem, and in particular, a problem that the state and courts can resolve.

Unlike political and civil rights, legal mobilization for socioeconomic rights requires a particular kind of imagination. Such imagination involves individuals seeing

themselves as “worthy” of mobilizing their poverty issues and a belief in the capacity of courts to deliver access to socioeconomic goods and services. As Gaventa (1982) writes, deprived groups must go through a process of “issue and action formulation by which they develop consciousness of the needs, possibilities, and strategies of challenge” (24). The development of this kind of consciousness is complicated by many factors, including the way people perceive the law as an approach to problem-solving. If an injured person does not think the courts can solve their problems and facilitate change in their immediate circumstance, they may choose different advocacy strategies (protests, legislative lobbying, trying to change public opinion, etc.), but if they believe the courts can have a meaningful impact, they will develop an ongoing legal mobilization strategy. Thus, this project broadens the literature on legal mobilization by examining people’s perceptions and experiences of the law as an additional constraint on courts.

2. Contributions to Legal Consciousness

My investigation into how ordinary Black South Africans perceive the law and socioeconomic problems builds on legal consciousness scholarship. Legal consciousness scholars have documented law’s variable and complex character in various contexts ((McCann 1994; Nader 1990; Nader 1997; Ewick and Silbey 1998; Engel and Engel 2010; Massoud 2013; Chua 2014; Hendley 2017; and many others). According to this line of research, people regularly assert their own meanings of law and legal institutions, even in contexts with official written laws and formal legal institutions (McCann 1994). These meanings and resulting legal behavior are sometimes shaped by social networks, organizational resources, and local cultures (Nader 1990; Nader 1997; Ewick and Silbey 1998; Engel and Engel 2010; Massoud 2013; Chua 2014; Hendley 2017). People's

various meanings about the law result in the law having varying relevance in people's lives (Glesson 2010, 564). For example, Kathryn Hendley (2017) argues that ordinary Russians are reluctant to take the state or a powerful individual to court while being willing to sue insurance companies for failure to pay damages following an accident. Engel and Engel (2010,153) find that in Thailand, for some, the formal law has become disconnected from custom and from "the unofficial system of village-level injury remediation" that has been passed down from their ancestors. As a result, people are less likely than before to turn to the law or even conceptualize personal injuries in legal terms.

Regarding human rights, legal anthropologists like Merry (2006) note that the legal framework of the human rights enshrined by international treaties is not static, but instead, is constructed. Even after crossing a certain threshold of democratic governance and human rights awareness, which is understood to be an important prerequisite for mobilizing the law, people's interpretation of legal institutions can still vary. Especially since linguistic, temporal, and political context can strongly influence localized understandings of "universal" rights (Langford 2014, 18). To highlight the importance of people's interpretation and experiences with the law, legal consciousness scholars have primarily focused on everyday life experiences rather than legal institutions. This project brings institutions back in. Instead of focusing just on everyday life experiences, I explore how everyday experiences shape people's interpretation of institutions and people's willingness to engage with them.

F. Political Implications

This research also has significant political and social implications. In uncovering how the meanings of rights and courts affect people's choice in using them to solve their

problems, this project puts the aspirations associated with legal institutions to the test. Since the end of World War II, there has been overwhelming faith placed on courts, progressive constitutionalism, and the rule of law to achieving the material well-being and liberty of society (Friedman 2006, Tate and Vallinder 1995). Since then, more and more countries have turned to judicial review and independent courts to play an important role in protecting human rights and establishing legitimacy on the world stage. Scholars and policy analysts have supported the belief that well-functioning legal systems (those that invoke the rule of law) are necessary for economic growth (Mahoney 2001). Despite these institutions' theoretical benefits, their theorized aspirations may only come to fruition if they are interpreted as such. The benefits of legal institutions have been taken as a given. Few question whether the ideals associated with democratic legal institutions have taken root in society, in that the ideas and norms related to these institutions have seeped into people's consciousness.

This study uncovers the extent to which the principles and ideals of a newly adopted constitution are embedded in society and the factors that hinder these principles from being entrenched even after decades after political change. For new and transitioning democracies, there are still significant questions about what I call “constitutional embeddedness”—the extent to which the ideals and the guarantees of newly adopted constitutions are embedded in society. Scholars and practitioners of comparative law disagree about what happens to borrowed laws and institutions once they are planted in foreign contexts (Markovits 1993). For some, the law is the ideas of experts, the creation of clever lawyers, that is easily transplanted and useable by even more clever lawyers elsewhere (Watson 1993). Others reject the notion that legal

transplants can successfully take root in foreign soil because the law is socially determined. Even when it appears that legal transplants have flourished in another legal culture, they may change shape, meaning and even may not survive the journey from one context to another. When new institutions enter diverse contexts with deep histories and cultures, we must study how the broader society understands these institutions in light of their past and present lived experiences. South Africa is one place we can begin to grapple with this question. By elucidating the meanings people make about these institutions and their subsequent behavior, my research shows how citizens' perceptions of turning to rights and law pose a challenge to the scaling down of democracy's grand promises to the everyday such that they are meaningful in practice. My findings speak to critical questions like "Do constitutions, or more specifically, a bill of rights matter?" Or, as Friedman (2006, 261) asks, "Are [courts and rights], so commonly bandied about, even meaningful concepts?", Or to put it simply, does law matter?

My dissertation's empirical chapters develop distinct yet complementary arguments about the various perceptions that prevent people from turning to law for socioeconomic rights. In Chapter 2, I review the roadblocks to socioeconomic rights litigation the literature identifies (e.g., resources, institutional constraints that courts face, and jurisprudence changes in socioeconomic rights cases). I then introduced my concept of thinkability and its relationship to the existing roadblocks. In Chapters 3-5, I describe the various perceptions that make up the thinkability of legal mobilization in South Africa. In Chapter 3, I show that while NGOs, legal aid, and lawyers working pro bono have successfully litigated for socioeconomic services, ordinary people still believe going to court is risky. I argue that people's perception of how the legal system works has

generated mistrust in courts and casts doubt on the broader legal system's ability to administer justice and the promises of post-apartheid democracy as a whole. Chapter 4 addresses the following question: when people experience an injury that could form the basis for legal action, like the lack of access to services, what strategies have they pursued instead? In this chapter I show that people are more willing to use non-legal strategies to address service delivery problems. People will choose these alternative strategies because they see access problems as just problems and not legal issues. As a result, they believe going to court is an inappropriate way to solve service delivery problems. In Chapter 5, I outline under what conditions will people turn to courts for services in light of the perceived mistrust and available alternatives. I demonstrate civil society's importance in increasing awareness about rights and motivating people to pursue litigation for services. This chapter shows how informal settlers' alliances with civil society organizations have increased their understanding of informal settlement evictions' justiciability. I also show people's participation in these organizations has also improved people's trust in the law as a resource to solve socioeconomic problems making litigation more thinkable.

Chapter 2

TRADITIONAL ROADBLOCKS TO LEGAL MOBILIZATION

A. Introduction

There is little question that legal mobilization has been integral to the global achievement of social, economic, and political change. Since World War II, judges have increasingly been involved in national and international policy-making (Tate and Vallinder 1995; Hirschl 2004; Hirschl 2008). In the U.S., courts and rights-based frameworks helped advance the Women's movement, the Civil Rights Movement, the push to protect the rights of the LGBTQ community, and more recently, immigrants. Abroad, these institutions have also been the driving force behind marginalized groups' political liberation and development. Since the early 1990s, adjudicatory bodies across the globe have intervened to protect a wide range of socioeconomic rights from intrusion and inaction by the state and increasingly non-state actors. By 2008, twenty-nine national and international courts handed down over 2,000 decisions on socioeconomic rights (Langford 2008). Courts have halted forced evictions, reinstated social security benefits, ordered reconnections to municipal water supplies, and demanded the enrollment of poor minority children in schools.

As political activity, legal mobilization requires that courts are both the agent and arena where people can mobilize change. Because of this dual role of courts in legal mobilization, potential litigants face two sets of roadblocks. The first set of roadblocks concern the supply-side of legal mobilization. These roadblocks are the limitations for those who can aid in legal mobilization, like courts and lawyers. The second set of roadblocks impact the demand for law by potential claimants. The literature on legal

mobilization, especially from the U.S. perspective, has concentrated primarily on the first set of challenges—those experienced by legal institutions, who act as agents of change, mainly courts.

B. The Literature on Supply-side and Demand-side Constraints

Despite the prominent role of courts in human rights protection, scholars have fiercely debated the role of litigation as a mobilization strategy and whether courts can be agents of change since Robert Dahl declared the U.S. Supreme Court a “national policy-maker” in 1957. Much of this debate concerns the capacity of courts. On the one hand, scholars argue that judicial decisions inevitably create policy, and thus courts can affect change (Butt 2006; Edelman 1994; Rajamani 2007). On the other hand, scholars have argued that courts are constrained in that they face various limitations that hinder them from making policy, and thus, legal mobilization cannot bring about change (Hamilton 1788; Bickel 1962; Horowitz 1977; Scheingold 1974; Rosenberg 1991; Vanberg 2001).

The most cited argument regarding courts’ limitations in affecting change is Gerald Rosenberg’s Hollow Hope (1991). For Rosenberg, courts face several unavoidable constraints that prevent them from affecting significant social change. These constraints include limitations set by the law and politics. As arbiters of the law, judges must remain within the realm of law and legal precedent when deciding cases. Judges’ decisions are bound by legal rules and precedent, which set parameters for their decision-making. While there is room for creative adjudication, judges cannot hand down decisions overly out of bounds of the constitution's principles and existing precedent. Without specific formal legal rules which enable judges to decide particular types of cases, courts are constrained. With rights violations, lawyers can only bring claims based

on rights enshrined in or implied by the constitution. Although there is room for legal innovation, a lawyer may face rejection when trying to mobilize claims for a rights issue without the law and existing precedent to support those claims' justiciability.

Courts also face roadblocks because they lack the ability implement their decisions (Rosenberg 1991; Horowitz 1977). Judges are unlikely to assert themselves in cases unless they have structural independence and institutional freedom to decide cases. However, courts, especially in democracies, are highly dependent institutions. With democracy's decentralized approach to governance, courts' ability to create policy is contingent on cooperation from the other branches of government. This dependency presents a "hollow" hope for those looking to advance change through the courts. A judge's limitations in handing-down and implementing progressive decisions in support of rights claims can pose significant challenges to legal mobilization. However, these are not the only roadblocks. These constraints mainly concern judges' and lawyers' capacity as agents of change in the legal mobilization process. For judges and lawyers to even encounter the challenges they face in the process, everyday potential claimants must first decide to approach the law for a resolution. Legal mobilization begins with claimants' demand for law, which only occurs once people believe a justiciable problem exists and that the law is an accessible arena to mobilize their rights claims.

The goal of this project is to shift the study on roadblocks to legal mobilization from the examination of the supply-side constraints (e.g., constraints experienced by courts and legal practitioners) to a focus on the impact of how people experience the demand-side constraints. Specifically, this project focuses on the role of people's perceptions of the law and socioeconomic problems in whether people believe everyday

problems are rights violations, and whether courts are the place to solve them in light of other available strategies. Citizens' demand for law has long been an interest of legal scholars and practitioners (Miller and Sarat 1980; Zemans 1982; Genn 1999; Michelson 2007; Albiston et al. 2014). To assess people's demand for law scholars have explored the extent to which people's grievances become legal claims (Miller and Sarat 1980; Felstiner et al. 1980; Albiston et al. 2014). This project builds on this literature by uncovering the various perceptions people have about rights, the law, and problems and how they impact people's thoughts about legal mobilization to solve those problems.

In the remainder of the chapter, I argue that while the challenges covered by existing literature are present in South Africa, these roadblocks are only a fraction of the difficulties people face when trying to legally mobilize their issues of access to services through courts. This chapter begins with an overview of ways people can mobilize the law to address their problems. I then outline the various institutional constraints to mobilizing for socioeconomic rights in South Africa given these opportunities. And finally, I introduce my concept of thinkability and its impact on citizens' demand for legal mobilization for socioeconomic rights.

C. Explaining Opportunities for Legal Mobilization for Socioeconomic Problems

South Africa's constitutional transformation established a legal infrastructure favorable to legal mobilization for socioeconomic rights. Under apartheid's system of parliamentary sovereignty, there were few opportunities for ordinary people to use the law to hold the state accountable let alone make rights claims. In a system predicated on legalized racial discrimination, the law was difficult to access and particularly hostile to the non-white population. While courts were supposed to be a means of recourse, the

apartheid state used courts as an instrument of social hegemony and political repression during apartheid (Brown 2015). Despite the existence of a national high court, the principle of parliamentary sovereignty inherited by the British granted the National Party (NP) government license to implement discriminatory policies (Meierhenrich 2008). The principle of parliamentary sovereignty meant that legislation enacted by parliament was final and could not be contested in court by those who opposed it. This enabled the state “to ride roughshod over individual liberty without fear of judicial obstruction” (Dugard 1986, 20). Unconstrained by judicial review, parliament created the legal construction of racial domination without legal opposition, rendering courts relatively weak.

Despite this, some legal practitioners did use courts to mobilize against apartheid. Such activities laid the foundation for the robust public interest litigation we see today in South Africa. Litigation against colonialism and apartheid date back to the nineteenth century. Like Anton Lembede and Pixley kaIsaka Seme, many of the early activists were lawyers who turned to courts to address issues of land dispossession, racial classifications, and disenfranchisement (Brickhill 2018). By the 1970s, many lawyers, especially from small black law firms like the Mandela and Tambo Attorneys, used the law to defend political activists (Brickhill 2018). For practitioners, legal mobilization was a way of contesting apartheid politics. According to Brown (2015), “some litigants and lawyers used procedural protections to articulate political claims against the interest of the state” (131). Despite some victories, legal mobilization during apartheid was never entirely successful. Instead, legal activists were met with significant backlash.

To continue its domination over both politics and the law, the apartheid regime needed to end the struggle with legal practitioners against apartheid. To quell any further

legal opposition, the NP government moved to redesign the legal system to prohibit courts' engagement in politics entirely. The 1953 Reservation of Separate Amenities Act prohibited courts from voiding subordinate legislation on the grounds of substantive inequality (Meierhenrich 2008). Therefore, judges, who were still committed to the rule of law, were only allowed to decide case facts, not question the law's content when it came to inequality. Those that did risked being disbarred and even being declared terrorists for siding with the anti-apartheid struggle. The state retaliated with violence against some legal practitioners who were vocal about their political position in favor of ending apartheid, like Albie Sachs.¹ By separating law and politics, the NP government insulated the South African legal system from the daily struggle for equality (van Huyssteen 1995; Abel 1995). Ultimately, the legal system during this period was incredibly weak in protecting the needs of the majority of the population, but effective in cementing the perpetration of injustice under the apartheid regime.

After the 1994 election, instead of following African states' tendencies to create parliamentary sovereign democracies, communist-party states, and socialist military `The 1996 Constitution was largely imbued with a liberal style of legalism (van Huyssteen 1995; Nonet and Selznick 2001; Langford 2014; Sachs 2016). This new system included a new commitment to the power of judicial review, the rule of law, independent institutions, and individual rights, strongly reflecting rights declarations in international treaties. In constructing a free South Africa, increased faith was placed in courts and progressive constitutionalism by constitutional drafters and negotiators. The adoption of a new constitution reshaped "the possibilities of politics in the courts" (Brown 2015, 131).

¹ In 1988, Sachs was blown up by a car bomb placed by South African security agents, while in exile in Maputo, Mozambique. Sachs lost an arm and sight in one eye.

The Constitution revolutionized South Africa's procedural and substantive legal environment (Brickhill 2018). Of the many transformations, the most significant included the shift from parliamentary supremacy to constitutional supremacy, new legal institutions, and expansive justiciable human rights. Procedurally, the Constitution also expanded rules of standing, broadened courts' powers to remedy problems, and established what Brickhill (2018) calls "a protective regime relating to the cost of constitutional litigation" (5). Through these changes, opportunities for legal mobilization for rights became possible, and courts became important sites for politics in the post-apartheid era.

Today, once individuals decide to use legal institutions to address their rights-based problems, they have three ways to legally mobilize (see figure 2.1). The first is to lodge complaints with public interest law organizations, referred to as legal advocacy organizations (LAOs). LAOs were created during the late seventies by anti-apartheid legal advocates like John Dugard to provide legal services to the disadvantaged. Due to resources constraints, these organizations have to make strategic choices about which people to represent. If a complaint is found to be a violation of rights and fits the organization's specific cause, the LAO will then approach the courts on behalf of the complainants.

Changes to pre-constitutional common law rules of standing enhanced ordinary people's ability to access justice through LAOs. Prior to the new constitution, only persons who had been impacted directly by the alleged wrong had standing in court. This restriction limited the chances of accessing justice for groups of people, which is often the nature of rights-based litigation. Section 38 of the Constitution extended standing to

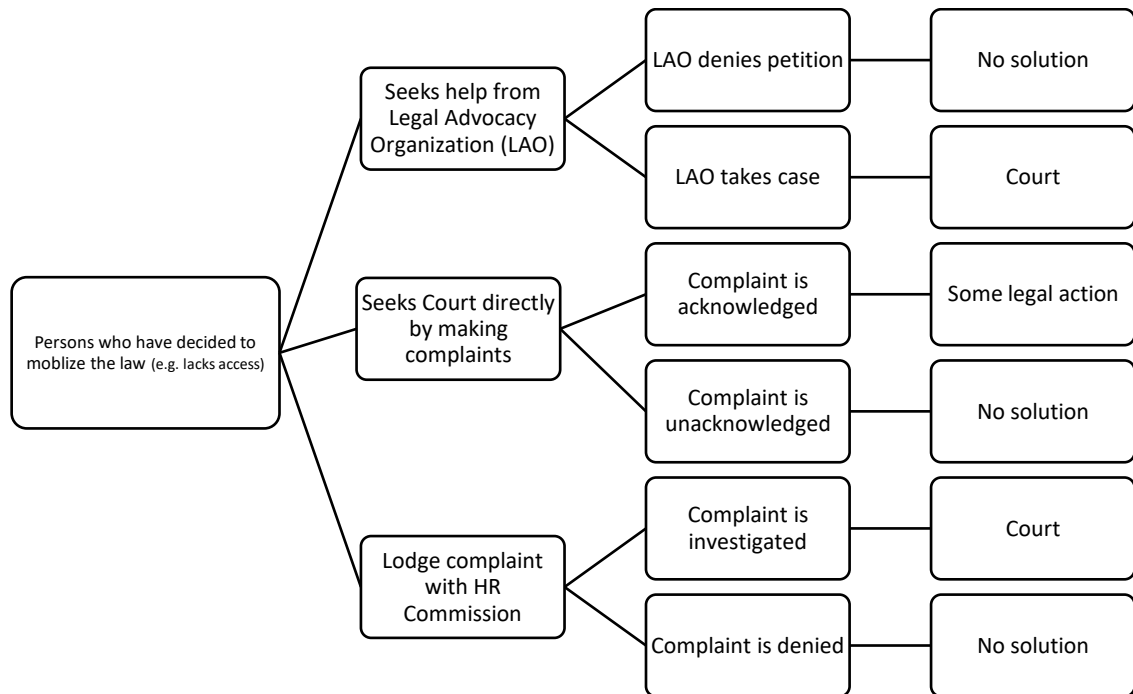
anyone alleging that a right in the Bill of Rights has been infringed. It includes: 1) Anyone acting on behalf of another person who cannot act in their own name; 2) Anyone acting as a member of, or in the interests of, a group or class of persons; 3) Anyone acting in the public interest; and 4) An association acting in the interest of its members. This expansion of standing allowed claims to be brought by persons and organizations with more resources on behalf of the marginalized poor, increasing the possibility of legal mobilization.

The Constitution also established a Constitutional Court and made it the country's highest court in all constitutional matters. In addition to regulating disputes between the various spheres of government, the Constitution granted the Court exclusive jurisdiction in determining whether the President and/or Parliament has failed to fulfill its constitutional obligation. In terms of increasing access to courts, Section 167(6)(a) of the Constitution also empowered the Constitutional Court to function as a court of first instance, allowing citizens to directly access the court "when it is in the interests of justice and with leave of the Constitutional Court." Under this provision, individuals can access the courts directly by lodging a complaint through the Court's Registry. This is the second way people can make rights claims for services. This mode of action is usually chosen by the socioeconomically disempowered, who have failed to secure legal assistance elsewhere and lack the resources to hire a lawyer (Dugard 2006).

The third way of making a rights complaint is through the South African Human Rights Commission (SAHRC) Chapter 9 of the Constitution established SAHRC. The Commission has the authority to "investigate and report on the observance of human rights" and provide appropriate redress for rights that have been violated. As an

additional arena to legally mobilize rights claims, people can report rights violations to the Commission in writing online and orally in person or on the phone. Complaints must be made at the Provincial Office where the violation took place. People can lodge complaints on behalf of another person or an organization. Once a person lodges a complaint, the Provincial Manager and the Head of Legal Services will investigate whether a rights violation has occurred. The Commission may then begin to conduct legal proceedings in its own name, or on behalf of the complainant.

Figure 2.1: Pathways to legal mobilization in South Africa



These new legal institutions, constitutional design, and persistent socioeconomic conditions make South Africa a most-likely site for mass legal mobilization for socioeconomic rights, at least in theory. However, since the Constitution's inception, scholars have documented the various roadblocks in achieving socioeconomic justice

through the law. Much of this work echoes the argument made by American socio-legal scholars, like Rosenberg (1991), who argue against courts' ability to effect social change.

D. Institutional Roadblocks to Legal Mobilization

1. Roadblocks faced and created by Legal Practitioners

Although the new Constitution extended standing, allowing LAOs to advocate for marginalized groups, these legal practitioners also face roadblocks in their efforts to legally mobilize socioeconomic rights claims on behalf of claimants. Scholars highlight three major challenges South African public interest litigation organizations face: 1) The lack of funding; 2) Lack of experienced and skilled staff; and 3) The oppositional attitude from the government (Marcus and Budlender 2008; Cote and Van Garderen 2011).

Unlike private firms, which can generate revenue to sustain themselves, LAOs depend on private donor funding for support. Consequently, they have limited available resources which plays a decisive role in how many cases they can litigate. All LAOs must be strategic in the types of cases they take to ensure their resources go towards the cases with the greatest impact, materially and jurisprudentially. After all, funders are invested in how organizations spend their resources. As one lawyer noted,

There was an issue before where funders were looking at and considering impact litigation? Is it *really* working? Because sometimes, it takes up to five to ten years to come up with a successful judgment, and it's not guaranteed. So, you spend five to ten years on a matter, and you don't know what the outcome is going to be. And in the meantime, there are cost implications with litigations. So even funders have been grappling with impact litigation as a mechanism to secure socioeconomic rights or any rights for that matter (L1).

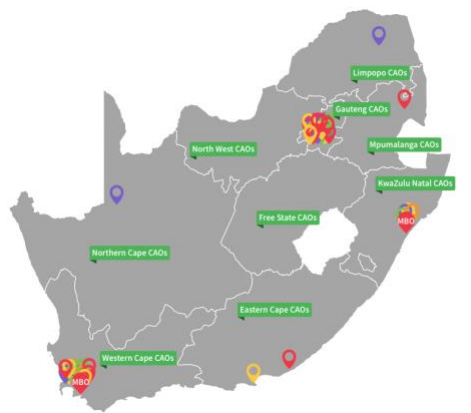
Resource constraints pose a challenge to LAOs' capacity. Many organizations have turned away more cases than they take on due to the availability of resources. One LAO lawyer stated of his experience turning away claimants,

It's not a nice thing to experience because I always see some type of facial expression when I tell people I can't take on their case. I mean, some would even think that, so you are trying to say that their case doesn't have merits, or it is not strong enough to be successful or not. But the problem is I don't have the capacity to do it. I have to refer it to someone else (L2).

Organizational resource constraints also impact their ability to reach potential claimants, further limiting the possibility for legal mobilization, especially in more rural areas.

While South Africa is home to nineteen LAOs, most of these organizations are concentrated in major cities in the country's three most populous and wealthy provinces, Gauteng, Western Cape, and KwaZulu-Natal (see figure 2.2).

Figure 2.2: Map of LAOs and civil society organizations



Although LAOs are willing to take cases from across the country, limited resources pose a roadblock to who the organizations can access. When I asked Section 27 lawyers Sipho and Thembi if they felt confined by their geographical location, they explained:

Sipho: Yes, we do. At the same time, we are compensating. We do because we would consult with someone at the end of the line and say we need a document they are complaining about. They don't have WhatsApp. They don't have any other means to send them to you. They are in the rural areas. We do have field researchers in specific provinces, Limpopo, Mpumalanga, Eastern Cape, that we can depend on them to reach out to those people. But what happens if we get a court form? You remember the woman, the one I just told you about? Our field researchers are not based there, and when I listen to this client, that says, "I'm in

Kuruman.² Will you be able to get to me?” We think as an organization, “we don’t have necessary resources to even go there.” So, that frustrates you. It’s an access issue. They know that Section 27 can help get their child in school. But the principal is like, “I know, they sent this letter, but I’ll wait for them [the lawyers] to get here,” knowing that the chances of us getting there, because of where they are, are slim.

So, you guys face your own roadblock when you trying to help others access justice because of geography.?

Sipho and Thembi: Yes

Thembi: (*interjecting*) Or language barrier. The lady who was scheduled for an operation³, the one I was telling you about. She can’t speak any other language. She only speaks French. She came here on the 27th, and she tried her best to say I can’t speak any other language. Luckily, I knew a translator who’s just on the 6th floor. They came to translate. She came by herself, and luckily, she found someone to understand her. Now imagine, even in this space, you speak, but people can’t hear you. We want to, but because of this barrier, and the resources to get that barrier cut down like every other organization, having an interpreter, is something we should consider, seriously, but it is not easy (L3).

The lack of funding poses additional challenges to the staffing of LAOs, which impacts their capacity to take on many cases. Cote and Van Garderen (2011) note,

The endemic skills shortage in the South African market affects the NGO sector as well. It is difficult to recruit skilled, experienced lawyers with the limited salaries and benefits, which are offered by most NGOs due to limitations in funding. Funding agreements restrict the use of money and incentive programmes are difficult to create and implement (176).

And so, while LAOs usually attract many recent law graduates, they struggle to retain their staff. LAOs often suffer from a high turnover rate as lawyers in entry-level positions move on to other opportunities, leaving the LAOs with the task of hiring and retraining new staff rather frequently. As an example, two of the lawyers that I interviewed in 2015

² Kuruman is a town in Northern Cape located over 400 km (297 miles) from Johannesburg, where Section 27 is located.

³ This claimant was a migrant from the Democratic Republic of Congo, who had painful fibroids and needed to have them removed. When she went to the public hospital, the staff told her to come back later and then failed to schedule the surgery. She turned to Section 27 for help.

during my preliminary research in Johannesburg no longer worked for the organizations when I returned to the field in 2018/2019.

Despite LAOs' mission to help people achieve socioeconomic justice by protecting key provisions of the constitution, their work is not always socially accepted or well supported. Because LAOs actively help people sue the government for failing to fulfill its constitutional obligations, their work is sometimes seen as an attack on government. Cote and Van Garderen (2011) note of Lawyers for Human Rights' (LHR) experiences with the government,

In LHR's experience repeated litigation over something like immigration detention can quickly become personal with government lawyers attacking the bona fides of NGO lawyers. In more than one case, the state made spurious accusations that LHR lawyers engaged in the litigation were illegal foreigners in their own right, and therefore did not stand to be trusted on affidavit. Judges have explicitly found that such remarks are vexatious and false. But it serves as an example of how personal such attacks can get (175).

Sipho stated similarly, "people would send emails, critical emails, saying "that's how useless you are to me. Also, in the media, we have these opinions in the newspaper, if you were to pay careful attention on those, you find that one that is always criticizing civil society."

Because of these challenges LAOs end up playing a gate-keeping role in the legal mobilization process. When a claim is denied by one organization, it is likely that it will be denied by other organizations due to the lack of resources and the capacity of the organizations, leaving the potential claimant with few options of how else to legally mobilize. One lawyer explained of when a claim is denied,

Our referral system is quite extensive in a sense that now I have to also make sure that the person is helped because it's a question of trust as well...Because in other organizations they simply say I can't take it, go somewhere else or go to this

person and this person. And then the person keeps on going up and down. I mean for a general working-class person, that is a very expensive procedure, to have to go home and come back tomorrow and look for a different organization, go home come back tomorrow different organization, all the time. I don't think it is something very nice for them to go through (L2).

As this lawyer reports, a potential claimant may end up with little knowledge of possible next steps without being referred to another organization, which further decreases their chances of mobilizing their claims through the legal system. In this way, while help from LAOs could lead to successful legal mobilization, these constraints force them to become gatekeepers in the legal mobilization process.

2. Roadblocks faced and created by Courts

South African legal actors and courts face the challenge of government's slow implementation of judicial decisions for socioeconomic rights. As American scholars have noted, courts rely on coordinate branches of government to execute their decisions. This is especially true with socioeconomic rights cases where court decisions include mandating that the state create policies and fund programs to facilitate access. In a 2015 interview with a litigator from one of the LAOs, she explained,

The Con [*sic*] Court is progressive. It is the political side where things get messed up. For example, *Grootboom* was the first case with success. However, the lady [Irene Grootboom] died without a house, still living in a shack. I think the courts got it right. It's the executive and legislature where we don't see the materialization (L4).

When I asked why she thought this was so, she later explained, "it's the respect for the separation of powers that plays a role. The Court can tell them [the government] to come up with a policy, but then nothing happens." This litigator echoed what legal mobilization scholars have noted of the challenges of turning to courts to solve problems, e.g., judges' inability to implement their own decisions.

In South Africa, this “respect” or what some critics call “angst” about separation of powers presents an additional set of roadblocks for legal mobilization (Dugard 2007, 977). South African legal scholars have criticized the Court’s deference to the other government branches, which has led to more conservative (or modest) rulings in protecting socioeconomic rights. While existing South African law and the Constitutional Court’s willingness to rely on international precedent when necessary are favorable to more progressive decision-making on socioeconomic rights cases, the Court has been cautious with its rulings due to separation of powers concerns. Dugard (2007) argues that while the Court accepted the justiciability of socioeconomic rights, “when poor people have secured legal assistance to bring cases through the judicial hierarchy, the Court has interpreted SER in an overly cautious way that has provided few incentives to poor litigants to seek relief through constitutional litigation” (973). Instead of adopting more activist decision-making and hands-on monitoring of government performance concerning these rights, the Court has chosen to mainly inquire into the reasonableness of the socioeconomic policy at hand in light of the state’s resources rather than outlining the state’s obligation to provide direct access to services being denied. This approach has diminished the possibility for innovative socioeconomic rights protection.

While many scholars have argued against the Court’s reasonableness approach and for what has been termed a “minimum core” obligation, in which “the most urgent survival interests” protected by a right is realized without delay (Bilchitz 2003), much of the Court’s record on socioeconomic rights decisions are characterized by what critics have called “jurisprudential conservatism.” (Dugard 2007). Because socioeconomic rights issues concern allocating resources and the state’s budgets, the Court has been

reluctant to hand down substantive relief to claimants. The Court's resistance to more progressive decision-making lies in its concerns about usurping the role of the democratically elected branches of government.

The Court's reserved approach to socioeconomic rights cases was evident in the first socioeconomic rights case, *Soobramoney v. Minister of Health KwaZulu- Natal* (1998). In the decision, the Court expressed its reluctance to intervene with "the rational decisions taken in good faith by the political organs and medical authorities whose responsibility is to deal with such matters," instead of ruling in favor of what would have been life-saving renal dialysis for the claimant (para 29). The Court further indicated that it was hesitant to make orders on how scarce resources, like those of the Department of Health, should be allocated. The Court believed such decisions were best left to those with more expertise and the constitutional authority to do so. Not only are the courts limited in their inability to implement their decisions, but judges are also constrained by what some scholars have called an "oversensitivity" to the institutional roles of the other branches of government as prescribed by the separation of powers doctrine.

E. Roadblocks People Face: Cost and Time

1. Litigation Costs

South Africa's formal legal system makes litigation a costly and lengthy process for most ordinary Black South Africans, for whom poverty and job insecurity are especially acute. Various factors contribute to the high cost of litigation, including the adversarial system of adjudication, with contestation through hired legal representatives, and a formal legal process that includes extensive filing of legal documents (Dugard 2015). Recognizing that the high cost of litigation would limit people's constitutional

right to access courts, constitutional drafters included provisions to expand the poor's possibility of accessing justice.

Section 35 (3) of the constitution outlines the constitutional mandate for government-funded legal services known as Legal Aid South Africa (LASA). LASA's work mainly concerns access to justice for criminal, and to some extent, civil matters. However, there is no constitutional right to legal representation at the state's expense in non-criminal constitutional issues.

As Dugard (2015) notes, "There remains a vast amount of civil litigious matters for which Legal Aid is not available. These matters include key areas for transformation including gender relations, property relations, and socioeconomic rights" (113). Although the expanding of standing allows for representation through university-based law clinics, LAOs, and pro bono lawyers from private firms, there are not enough free legal services to cover all potential socioeconomic rights claims in South Africa due to funding and, by extension, capacity constraints.

Because of the cost and complexities in making claims through the formal court process, potential claimants could attempt to approach the Constitutional Court directly. However, such an attempt is not without significant challenges, mainly the Court's restrictive interpretation of which claims warrant direct access. Unlike national courts in other new democracies, like Colombia, Costa Rica, and India which all have institutional mechanisms to increase access to courts, the South African Constitutional Court is a less accessible institution.⁴ In a study evaluating the Court's role as an institution of first

⁴ While the Indian Supreme Court does not have formal rules enabling direct access. The Supreme Court has creatively interpreted the rules to allow direct access by any means,

instance, Dugard (2006) found that from 1995-2003, the Constitutional Court refused a majority of direct access applications under the grounds that claimants failed to comply with one or more of the criteria (273). As a result, only a handful of claims were granted direct access. In a later study, Dugard (2015) finds that from 1995-2013, only 18 direct access applications were to the Court were granted (127). None of these cases concerned claims from ordinary people to socioeconomic goods and services.

While constitutional mechanisms have attempted to overcome the imposing cost of litigation, as I have outlined in this chapter so far, these provisions are not without their problems, creating additional challenges for ordinary people to legally mobilize against socioeconomic problems. Consequentially, cost and the extensive time commitment of litigation remain as roadblocks. During my interviews, I found that the cost and length of engaging with the court discourage people from thinking about turning to court for help. One lawyer stated of potential litigants:

Legal courts in South Africa are very expensive. So, for them [potential claimants], they can't just come in and say now let's go to court, because for them [potential claimants], they view it as a very expensive procedure. Usually, they [potential claimants] all start with protests and all that stuff before they can even come and think about the legal solution. They first exhaust as much as option and remedies that are there before they take court as a last resort, but if you remember, it is difficult for someone whose very poor, typical working-class person to ever think about court (L2).

Sipho stated similarly,

Generally, they would be like, "oh, court is expensive! I need a lawyer. You're an NGO. Attorneys are paid differently." So, access to court is an issue in South Africa. Apart from your geographical distance, is finances. If you don't have money, generally, it is a universal truth here that you are not going to go to court. And it's a fact that is used everywhere. You go to a director of health, and you tell

including hand-written petitions. In Colombia and Costa Rica, claimants can lay claims through direct access applications, *tutelas* (Colombia) and *amparos* (Costa Rica).

them that, oh I'll take you to court, they will be like, good! Go to court. We'll frustrate you for the next five years (L3).

As the lawyers indicate, litigation costs act as a deterrent to pursuing legal solutions for ordinary people. As a result, people will doubt the possibilities of getting help from LAOs as Sipho revealed, and first seek less costly routes like protest, as the first lawyer stated.

My interviews with people who had not gone to court for access also show that people fear the cost associated with losing the case. In the pre-constitutional era, the losing party would generally be ordered to pay the successful party's costs (Jephson and Mngomezulu 2018). These adverse cost orders not only hindered marginalized groups from approaching the courts, but they also discouraged early public interest litigation organizations from taking cases they believed were challenging to win, given their even more limited resources at that time. In the post-apartheid legal environment, the Constitutional Court recognized the importance of LAOs in developing constitutional jurisprudence. Therefore, they have reasoned that strict adherence to the adverse costs principle would have a devastating impact on these institutions' abilities to litigate on behalf of claimants. As a result, the principle of adverse costs has been relaxed, protecting litigants engaging in constitutional litigation from the risk of adverse cost orders (Jephson and Mngomezulu 2018, 156).

Despite this protection, ordinary people still fear adverse cost orders. When I asked Briton 22, a college student at the University of Zululand if he could take the government to for a shack eviction, he explained:

Briton: No. It is unrealistic

Why is it unrealistic?

Briton: I would not have the power to take the government to court. And if I lose the case, that automatically means that I have to pay for the costs. And therefore, I would not afford those costs (Empangeni 15).

Umlazi residents, Mongisi, 25, and Mthokozisi, 23, argued similarly,

Could you take the municipality to court?

Mongisi: I have a right to that.

Mthokozisi: Yes, you can.

Mongisi: But now our fear is failure...

Mthokozisi: *(interjecting)* Because taking the municipality to court could cost you who you are. It will cost you very much...

Mongisi: *(interjecting)* And secondly, you are challenging someone who is going to provide you with his lawyer. After you've lost your first case, you have to go there again. That will cost you money, it will cost you your time. So, we just complain, gather our people, then march.

So, you'd rather go march?

Mongisi and Mthokozisi: Yes!

Like these respondents, most ordinary people are unaware that there is no adverse cost principle in constitutional matters. The fear of such cost is still present and effective in discouraging people's willingness to turn to courts for help with socioeconomic rights.

2. Lengthy Legal Process

Legal mobilization scholars have noted that in addition to costs, lengthy court proceedings also discourage the use of legal institutions for problem-solving (Galanter 1974; Kritzer 2008; Sandefur 2012; Sandefur 2019). After all, while litigation can provide relief to justiciable problems, such relief is not immediate and could take years to

achieve. The same is true in South Africa. A lawyer, who litigates against shack evictions, where immediate relief is required to address the present homelessness that results from an eviction, stated, “speed, that’s the actual problem that we always have... but that relates to the court system, you know judges. We have the regulatory framework in place to actively defend socioeconomic rights, and we certainly have the cases. It’s just the wheels of justice taking the turn slowly. But that’s the case everywhere.” Siphso explained the impact of time on potential litigants specifically. He stated,

If it’s not an urgent application, normal time applications apply. There’s the pleading process, the exchange of affidavit, which can take months to years, you understand. With that knowledge, some people get frustrated that the court is not gonna [*sic*] solve the issue now. They think we need alternative routes. We need to get their attention. And in most instances where the government has faltered, it has worked because each time there’s interruption [because of protests], the government would act. When people request normally by letter, saying please do this for us, the government ignores them (L3).

According to Siphso, absent an urgent application where immediate relief can be provided, claimants will opt for alternative strategies, like protests, because they believe the government would respond quickly in response to the disruption. My interviews with ordinary people seconded Siphso’s assessment of the impact on time in people’s approach to problem-solving. For example, when I asked Judith if she thought courts could help with access problems in South Africa, she stated,

Judith: Yea, they can. Though it’s a long process you see. If you don’t have a lawyer, your own lawyer, your own anything you just have to follow all the processes. So, it becomes a lengthy process. The process is there to help you, but it won’t help you efficiently (Empangeni 5).

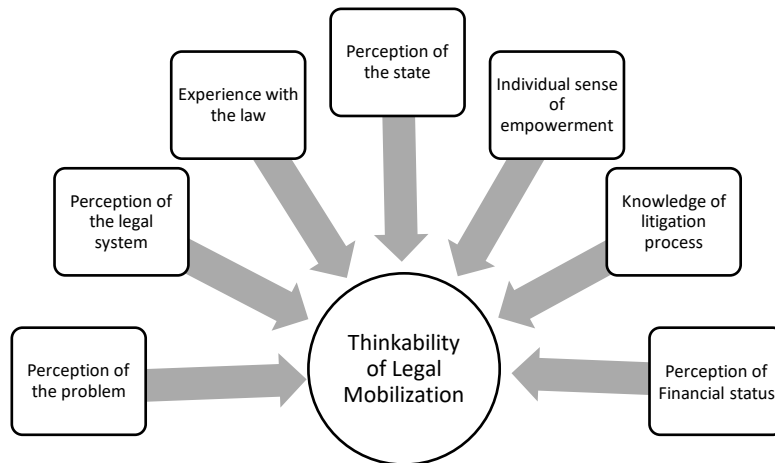
While cost and time were common factors that discouraged my interviewees’ willingness to litigate for services, these roadblocks were only expressed once I introduced the idea of legal intervention as a remedy. In fact, when unprompted people

only stated litigation as a strategy 17 times out of a possible 360 times (72 interviews, 5 issue areas) in Empangeni. In Umlazi, people reported litigation as a strategy only 10 times out of a possible 195 times (39 interviews, 5 issue areas) prior to my probing. This finding suggests that there are other factors that shape the way people think about turning to the law than what scholars have uncovered.

F. Thinkability as a Roadblock

Although the existing roadblocks covered by the literature are present in the South African case, encountering these existing roadblocks only becomes possible once an individual believes they can go to court. To even experience the institutional costs and time constraints to accessing justice through the legal system, one must first conceive of approaching the courts to be the appropriate, desirable, and feasible course of action. The existing roadblocks to legal mobilization mainly concern supply-side limitations, constraints only experienced once a person believes litigation is the appropriate course of action. Scholars who have tried to assess citizens' demand for law as additional roadblocks to legal mobilization have only examined the objective conditions that may hinder people from pursuing legal action, like the cost and lengthiness of the legal process. However, how people perceive and experience these conditions also impacts whether they think they can mobilize their issues through the law. These perceptions and experiences make up what I call "the thinkability of legal mobilization," that is the way people think about going to court for justiciable problems. The thinkability of legal mobilization for socioeconomic rights in South Africa consists of the following factors (see Figure 2.3).

Figure 2.3: Diagram of Thinkability in the South African case.



Thinkability is comprised of all the ways people perceive and understand the law, the justiciable problems in their particular context, and themselves. Thinkability is a literal term, “Can we, do we think these thoughts?” (Schatzberg 2001). Thinkability is dependent on the time, geographic location, and legal environment as people’s perceptions of the law, their problems, and the existing constraints are contingent on their present context. With regards to legal mobilization for constitutional issues, thinkability also includes the ways people see the state and how best to engage with the state to solve their problems. Thinkability or the lack thereof can act as a roadblock to legal mobilization because such perceptions shape what people think about approaching the courts and using the law to solve their problems. In this way, such thoughts can render litigation as a problem-solving strategy undesirable, infeasible, and inappropriate, which can hinder people from thinking about pursuing legal action. As a result, thinkability is the culmination of all the ways people make sense of the conditions that impact their demand for the law. As such it is the pre-condition to the supply-side constraints. And thus, thinkability of litigation, or the lack thereof, is a critical component to legal mobilization process.

G. Conclusion

Legal mobilization scholars are correct that there are various challenges people face when turning to the law to address problems. Existing research on South Africa further confirms some of these challenges especially with socioeconomic rights litigation. However, by focusing on the limitations that occur after one decides to use legal institutions, scholars have eclipsed critical factors in the process of legal mobilization: ordinary people's beliefs in the desirability, appropriateness, or even reasonableness—thinkability—of appealing to legal institutions to solve their problems. To fully understand why even with the existence of codified socioeconomic rights and courts that are willing to hear claims on issues of access, some have chosen to not utilize legal strategies to secure access to basic goods and services, scholars must also assess how people make sense of the challenges of turning to courts.

The subsequent chapters describe the various elements of thinkability that can impact the demand for law for socioeconomic rights problem-solving. Each chapter examines the various perceptions of the law, legal institutions, and problems of access to assess how people think about turning to courts for help. I show these perceptions not only deter people from wanting to pursue legal action, but also encourage people to pursue alternative strategies that do not guarantee success. Through these chapters I show citizens' thinkability of turning to the law is a crucial roadblock for legal mobilization in South Africa.

Chapter 3

EXPERIENCES AND PERCEPTIONS OF THE LAW AS ROADBLOCKS

A. Introduction

When Paralympian Oscar Pistorius was initially sentenced to a meager six years in 2014 for the murder of his girlfriend Reeva Steenkamp, South Africans erupted in uproar. Pistorius' sentence was unusually lenient as murder in South Africa carries typically a 15-year minimum sentence, which can be lowered under mitigating circumstances (Cowell 2017). The ruling was also in stark contrast to South African kwaito artist's treatment, Molemo "Jub Jub" Maarohanye, a few years earlier (Dixon 2015). Maarohanye and his friend Themba Tshabalala were originally sentenced to 25 years in a Soweto Regional Court for the murder and attempted murder after racing on a public road while under the influence of cocaine and morphine in 2012. The accident resulted in the death of four schoolchildren, and two were left permanently brain-damaged. Pistorius' early release after serving a sixth of his six-year sentence in 2015 sparked further anger about what people saw as an unfair justice system. People took to social media to express their outrage. "This is how law works, get a good lawyer, u wont stay long in jail, get a whack lawyer, u gon' rot in jail, e.g., #OscarPistorius & #Jubjub," tweeted one user, Thando Mnguni (Dixon 2015). Another user wrote, "People don't really want jub jub out they just want to see Oscar back in jail *nje* (really)" (Dixon 2015).

Since then, both Pistorius and Maarohanye have had their sentences adjusted. Maarohanye's original sentence was reduced to a 10 -year sentence minus time served (Mabuza 2016). In the Pistorius case, the prosecutor appealed his sentence asking for the prescribed 15-year sentence, which the Supreme Court of Appeal granted. Despite the

adjusted sentences, I found the difference between the men's original sentencing was still a lens through which ordinary Black South Africans perceived the legal system. In what was the third reference to the cases in my interviews in a month's time, Marvelous, 24, a college graduate from Umlazi, stated:

It [the law] can't be fair. Even in the Oscar Pistorius, you saw that, even in the "Jub Jub" case. I don't know if you know the "Jub Jub" case. "Jub Jub" is a kwaito artist. Apparently, him [*sic*] and his friend got high, and then they drove their Mini Coopers fast, you know, along the road that's not normally used at night, in certain areas, so you'd speed. Unfortunately, they hit like four students. One passed away. Three were injured. They got arrested for ten years for that. Oscar Pistorius shot his fiancé, cold blood. You saw the case. But because he had the means, the financial means, he never got arrested. Even when he went to jail, it was only for a few months, and then he was released. That's not fair. I cannot do[*sic*] a mistake under the influence of a substance and be in prison for ten years, and then you have someone committing cold-blooded murder, in his right state of mind, shooting someone he was in bed with saying he thought it was a burglar...And I find it very unfair. It's so sad because now I always try to think, what if Oscar was black. Would it be a different story? Let say he was not an athlete, or just a rich black businessman, or a rich black athlete? What would have been the situation? Is it money, or is it race? What's the problem? Eh but, that's a story for another day. That's why I say I don't trust *umthetho* (the law) (Umlazi 67).

Thabiso, 23, a University of Zululand student, similarly expressed why he didn't trust courts. He argued, "If I have money in South Africa, you can get away with everything, so that's why I don't trust the court. If you have money, you can even get away with murder" (Empangeni 37). When I asked how? He explained, "look at Oscar Pistorius. You know, money is power in South Africa" (Empangeni 37).

Although "Jub Jub" was on parole after serving four years and Oscar Pistorius was serving his new 15-year sentence at the time of these interviews, the differences in their original sentencing still cast doubt on the legal system's ability to administer justice fairly. Experienced or perceived unfairness with all sectors of the legal system has decreased public confidence and public trust in the legal system. Through my interviews,

I found that this mistrust discouraged some people's willingness to turn to the law for help, which influenced their thinkability of turning to courts for socioeconomic problems. This chapter describes the various sources of ordinary Black South Africans' mistrust in the legal system. In doing so, I examine ordinary Black South Africans' perceptions and experiences with the law and how they shape the way people think about the act of going to court for help. I argue that in addition to people's past engagement with the law, perceptions of ineffective lawyers, court corruption, and law enforcement have cast doubt in the legal system's ability to administer justice, which shapes how people think about turning to courts for justiciable service delivery problems. Ultimately, this chapter provides a snapshot of ordinary Black South Africans legal consciousness and its impact on the thinkability of legal mobilization for socioeconomic issues.

B. Existing Literature on People's Perceptions of the Legal System

The first roadblock a person must overcome in any legal system is thinking that justice through that legal system is possible. While much of the legal mobilization literature has been concerned with whether people can access justice systems because of resources and time, the consideration of whether a person can achieve a fair chance at justice is also essential, if not more important. As I have argued in Chapter 2, resource constraints and litigation's perceived expense can discourage people from believing that a legal remedy is obtainable. However, financial and institutional challenges to accessing the legal system can only become a hurdle once a person believes that the court is the right place to solve their problems. In South Africa, the usual challenges of accessing courts exist and are further "exacerbated by gross socioeconomic inequalities and the remoteness of law from most peoples' lives," according to Dugard (2006). However, I

found that another, more pervasive challenge exists, the growing mistrust of the legal system, which is largely influenced by people's perceptions and experiences with local police and government corruption. These perceptions and experiences discouraged my respondents from thinking about litigation as a problem-solving strategy for socioeconomic problems. Instead, they reported that they would generally opt for alternative non-legal strategies, which I discuss in Chapter 4. I also found this mistrust in the law is a critical element of ordinary Black South Africans' legal consciousness, what people do, say, and in my case, think about the law (Ewick and Silbey 1998, 46).

People's perception of the legal system is contextual and relational, intimately tied to people's interactions with legal actors (Hoffmann 2003; Young 2014). It is through these interactions that ordinary people judge the behaviors of legal actors. This informs their opinions on the law's fairness, utility, and legitimacy.¹ When people believe the law is fair, they are more likely to comply with the law and see the law as a method of recourse. However, when people mistrust the law's fairness, they also question the legal system's usefulness and legitimacy. Public trust in courts, in particular, is contingent on a few factors. In their study of judicial trustworthiness in Africa, Boateng and Adjorlolo (2018) argue judicial trust is contingent on courts legitimacy as "strategically independent and nonpartisan institutions with the moral, authoritative, and legal mandate to adjudicate, render verdicts, and make (un)popular decisions in both civil and criminal proceedings" (4). Trust in courts is also dependent on whether people view judges' decisions as fair, just, and appropriate, as Marvelous and Thabiso's assessments of "Jub Jub" and Pistorius' sentencing shows.

¹ I rely on Sunshine and Tyler's (2003) definition of legitimacy as "a property of an authority of institution that leads people to feel that that authority or institution is entitled to be deferred to and obeyed."

While this project investigates the ways, people think about the law and courts regarding solving constitutional problems, ordinary people's perceptions of legal institutions largely stem from their views of the criminal justice system—the sector of law they have the most exposure to. My interviewees' perception of the law is a composite of their views of the police, lawyers, and courts. As a result, people's view of courts' legitimacy is conditioned by their view of the police, lawyers, and to some extent, the state. This is consistent with the existing literature on legal legitimacy. Legal legitimacy research does not distinguish between people's perceptions of the legitimacy of different parts of the legal system (Farrell, Pennington and Cronin 2013; Young 2014). Because people lump their perceptions of various legal authorities together, experience and even the suspicion of corruption in any part of the legal system shapes the way people see the law.

Corruption in Sub-Saharan Africa is a long-standing problem with historical roots, some have argued (Le Vine 1975; Tignor 1993; Lodge 1998; van den Bersselaar and Decker 2011). Although there are differing opinions on the exact causes of corruption, scholars agree that "corruption is an institution in Africa with a long history" (Boateng and Adjorlolo 2018, 5). The literature has also located corruption in various parts of the state and everyday life in Africa. Blundo et al. (2006) find that corruption governed people's daily encounters with health and transportation services and the judicial system in West Africa. Others have found what Boateng and Adjorlolo (2018) call a "pervasive culture" of police corruption on the continent, which has generated mistrust and low confidence in the police (Sayed and Bruce 1998; Tankebe 2010; Debalkie and Snyman 2014; Jonck and Swanepoel 2016; Boateng 2016). In their study of

citizens' level of trust in courts in 33 African countries, Boateng and Adjorlolo (2018) find that "Africans have a greater probability of saying that they have no trust in the court system." The potential for mistrust in courts is linked to institutional corruption they find.

The view that corruption exists permeates every part of life in South Africa and the suspicion that various government actors engage in corrupt practices is commonplace. Officials within the legal system are no exception. Since the early 1990s, scholars have investigated people's perceptions of the state of corruption in democratic South Africa (Bekker 1991; Lodge 1998). Early public opinion surveys reported that South Africans felt public officials engaged in corruption and were guilty of bribery (IDASA 1996). South Africans' view of state corruption has grown in part due to the Presidency of Jacob Zuma, who is facing a series of corruption charges, including racketeering, fraud, and money laundering. Zuma's presidency was mired with political scandals and gross acts of corruption, like the use of taxpayers' money for "security" upgrades to his private residence, including adding a R3.9 million swimming pool that was said to be used to fight fires. Outside of high-profile instances of corruption, dissatisfaction with local government further fuels the narrative that corruption is present in South Africa's governance. While there is a body of literature that explores the state of corruption in South Africa more in-depth, this chapter's goal is not to assess South Africa's political corruption. Instead, my goal is to show how the proliferation and the suspicion of corruption at all levels of the state have shaped how ordinary people think about their chances of turning to the law for help. As Buscaglia (1999) notes, "corruption within the judiciary (e.g., paying a bribe to win a case) has a profound impact on the average citizen's perception of social equity" (3). My interviews provide further evidence of this

in South Africa. The perception of corruption in the legal system has impacted whether ordinary people believe they could have a fair chance at obtaining justice against those with money, powers of the occult, or more status and power.

1. The Importance of Trust and Confidence in the Law

All institutions' legitimacy is dependent on citizens' trust and confidence (Baum 1992; Caldeira 1991; Carp and Stidham 1991, 1993; Marshall 1989; Boateng and Adjorlolo, 2018; Benesh and Howell 2001). Without confidence, it is unlikely that people will comply with the institution's regulations and procedures, which can undermine the institution's performance. In an untrustworthy legal system, people will make attempts at "individualized justice in the form of political connections, bribery, taking the law into one's own hands, and other means to circumvent the system" (Baker 2009; Benesh and Howell 2001, 200). People will make these attempts because, one on hand, they doubt legal institutions' ability to be effective in carrying out their obligations. On the other hand, they believe the legal system is corruptible. Much of the literature on public trust and public confidence focus on the importance of these sentiments for citizens' compliance with the law, while others have argued the role of confidence in the legal system for citizens' participation in the law. Roberts and Stalans (1997) argue that the lack of confidence discourages people's willingness to participate in the democratic aspects of the justice system. Dugard (2006) writes of South Africa, that the lack of confidence in the system may also reduce people's willingness to make claims to court. My findings expand on this line of research. The lack of trust and confidence in the legal system also reduces the thinkability of legal mobilization against justiciable problems. Pursuing a legal intervention becomes less thinkable when a person does not trust the

court's ability to decide their case fairly. Similarly, if a person believes that to win a case, they need to engage in practices they cannot access, like bribing, they will not feel confident enough to want to pursue a legal remedy.

C. Perceptions and Experiences of the Law in South Africa

In my interviews, people frequently reported that they were unwilling to go to court for the scenario problems because they did not trust the legal system to administer justice fairly. On the one hand, their mistrust in the legal system stems from past experiences, including their encounters with local police. On the other hand, ordinary people perceive the legal system's inner workings and the state in ways that suggest fair justice through South Africa's courts is unattainable. Out of the 110 Empangeni and Umlazi respondents, 54 had no exposure with going to court. My respondents with experience with going to court did so in a limited capacity (see Table 3.1). Most respondents who have gone to court went to support a friend or family member who was either a victim or a defendant facing criminal charges, like an assault.

Table 3.1: People's experience with the courts

Experiences with courts	Number of interviewees
Assault	6
Child Support	8
Divorce	1
Domestic Violence	2
Traffic Violation	2
Job Related Experience	2
Witness/Testimony	3
Land Inheritance	1

Land Issue	2
Property Damage	1
To Support Someone	14
To Observe	11
Wrongful Arrest	4

1. Role of bad experiences with the law

People who had positive experiences with the law are more trusting of the legal system and are more willing to go to court again. A person's positive experience includes receiving a favorable outcome and/or useful engagement with the police. Tamera, who was unemployed and mainly surviving on child support from her father after going to court, explained, "yah I do trust, cause if it wasn't for the court, we wouldn't be supported. Like I do have my own kids now, yes. I'm about to get married to somebody, but my father still pay [*sic*] for me. So, it's a very big thanks to the court. They have helped us a lot" (Umlazi 65). Like Tamera, people's trust in courts is contingent on whether they believed the court handed down a decision in their favor. Conversely, people will lose confidence in the legal system when they disagree with a case's outcome, which they interpret as court failure.

A "miscarriage of justice" or court failure can generate mistrust in courts. People's perceptions of court failure are derived from what respondents felt was a negative experience with courts, like receiving an unfavorable outcome or experiencing unfair treatment during the court process. These perceptions further discourage the use of legal institutions as a means of recourse because they cast doubt on the legal system's ability to administer justice (e.g., help). Umlazi resident Nonhlanhla's story illustrates

this. As we sat in the yard of her one-room house, Nonhlanhla, 35, gazed off to look at her daughters as they ran up and down the walkway when I asked her to elaborate on her experience with going to court. She replied, "it's a sensitive story," as she lowered her eyes. I asked if she would be more comfortable if I stopped audio recording. She agreed though she was still willing to share. She explained that her partner was falsely accused of raping a neighbor's child, a friend of her youngest daughter, who was five years old. The child spent a significant amount of time in the yard playing with Nonhlanhla's children. Nonhlanhla suspected the child's grandmother accused her partner of rape, instead of the child accusing the man of rape. Her partner was currently serving his sentence. Yet, the child still wanted to play with her daughters. I asked Nonhlanhla, "given this situation, would you ever go to court again if you had a problem?" She responded harshly, "it's just that when you're speaking of *inkantolo* (court), it raises a lot of things for me because I just recently got to find out that there is no justice in South Africa" (Umlazi 56). For Nonhlanhla, the court failed to provide justice for her partner, and thus, she expressed she would not choose a legal remedy to solve any problems, including the scenario problems which were unrelated to criminal justice. The court's unfavorable decision impacted how she saw courts as a possible way to solve the scenario problems since it did not solve what she interpreted as a problem, her partner's false arrest. Anger and disappointment fueled Nonhlanhla's ways of seeing the law and processed the act of going to court to solve problems.

Feelings of fear and anger can further discourage a person from pursuing legal action to solve problems. As much as law is present in people's complicated lives, so are things like "love, fear, violence, friendship, cooperation, resistance, and politics" (Marshall

and Barclay, 2003, 619). For example, Zethu, 32, went to court for child maintenance (child support). When the judge sided with the father, she was furious. She stated, "it was the first time to be there, and after the results, I was angry, hurt and everything. I saw that the child is growing and I'm not working and the child is now demanding, and the father is roaming around the street and has everything that he wants to have" (Umlazi 69). When I asked her if she would go to court again, given this experience, she stated, "I don't like courts! I don't like courts. I don't like jails and everything. I'm scared of all these places and that part of life. It's hurting. I don't know if I would go to court again" (Umlazi 69). Zethu's disappointment with the court's decision in her first encounter with the law made her apprehensive about considering going to court again.

Some people's perceptions of the legal system are less about court decisions and case outcomes and more about the discrepancies between law on the books and law in practice, especially when it has implications for their everyday life. My interview with Zweli, a 40-year-old disabled father who was facing eviction, provides evidence of this. Zweli lived in a building in Durban built by a non-profit organization for disabled persons, specifically the blind. Until 1992 the building was managed by the organization. After, the government took over property management and eventually decided the building could be put to better use than housing unemployed residents with disabilities. When Zweli and his fellow residents visited their families in the rural areas during the Christmas holiday in 2016, they were told by the municipality not to come back. Zweli explained, "the first time they called us when we were visiting back home. They called us and told us not to come back to the premises" (LRC 88). When the residents returned in January 2017, the government came to the building and ordered them to leave. The

residents refused. The government then turned off the water and electricity connections to the building in an unsuccessful attempt to force the residents out. In February, the government returned with a court order of eviction and the police. The residents subsequently contacted their lawyers. Although the residents' case was pending at the time of my interview with Zweli, I did ask whether he trusts the courts and the law, given his experience so far. He stated the following:

We do trust the I do not trust the law because here in South Africa, things don't go the way they are written down because even when something is so straight forward, and you know it, it is even clear to a little child. But they [government] have their own ways of turning and twisting the law. I can say that I do not trust the law, and I am waiting for whatever outcome. I don't trust it because of the situation I've been in...because there is no law in South Africa that allows this sort of action [an eviction] without the two parties having an agreement, and that is how this matter landed in court and went on. So when the power went off, we didn't know what was happening, only to find out that these people from the government went in and switched it off in their own way. They said that the cables are out in the open and they are a danger hazard, and this was all nonsense because there no cables running around in the open (LRC 88).

Zweli's mistrust of the law stemmed from the government's attempt at an illegal eviction, which Zweli knew was against the law and his right to housing. The government's underhanded behavior influenced how Zweli perceived how the law works, mainly the government's persistent efforts to ignore legal provisions and protections for its citizens.

People also doubt the law's effectiveness in solving problems when the law has proved to be ineffective in the past. In response to whether she trusted the court to help if she had a problem, Nomvula, 67, stated, "I do, but sometimes they don't. Even if I trust them, sometimes they don't work. I've got an incident. Somebody came and steal [*sic*] my chairs here, five chairs. I went and reported it at the police station. Even now, they haven't done anything, and they haven't come. I even got the case number on my phone" (Umlazi 69). At the time of the interview, it had been eight months since she reported the

incident to the police. The police's failure to provide further assistance caused Nomvula to doubt the law's ability to provide a legal remedy to everyday problems with services.

People who were not directly involved in court cases were also impacted by their experiences going to court. In a conversation with college students Malusi and Xolani, I found Malusi's experience going to court to support his friend, who was arrested during a student protest on campus, influenced whether he believed he could go to court for the shack eviction scenario. The men debated the following:

Xolani: I can put [sic] him to court (*laughs*)

Malusi: *Hhayi! Hhayi!*, you can't take the government to court! (*shaking his head*)

Xolani: Yes!

Malusi: How? But I don't think you can win that fight.

Xolani: I can. I have a right. If you take my home, where should I live? Which means the rights of South African citizens are being ignored. It's not apartheid now. We are free.

Malusi: But I don't think so. Because, *ngibuka la* (I'm looking at this), those students who were fighting for our rights, right now they are going to jail. (Empangeni 18)

When I later asked Malusi what he thought of courts and whether he trusted them given his experience, he explained, "Aye, it's not a good place. I saw people cry, and some of them were getting arrested for things they didn't do" (Empangeni 18). Malusi's experience observing his friend's experience made him resistant to the idea of going to court even in a dire situation like a shack eviction.

2. Role of Money as Status

While people's views of the legal system can stem from their first-hand experiences with the law, people without experiences going to court rely on their beliefs

and perceptions of the legal system to determine whether they trust the law and can use it to solve problems. People's perceptions about the legal system stem from what they have seen or heard about the police, lawyers, and courts. From my interviews, I learned that even those who had not had first-hand experiences with the legal system had developed a perspective that engaging with law entails some level of corruption in the form of bribes or the use of occult forces. These perspectives are enhanced by press reports on state corruption, views on high profile cases like "Jub Jub's" and Oscar Pistorius', and community gossip about local crime. In my interviews, when people explained why they did not trust the courts and the broader legal system, their mistrust was grounded in beliefs about inequality experienced by those who could not engage in corrupt practices, like using money to gain an advantage.

Access to money plays a central role in whether people believe they can legally mobilize against socioeconomic problems. As I outlined in Chapter 2, people consider their financial capabilities when they think about pursuing legal actions to solve problems. Primarily people evaluate whether they can afford a lawyer, court fees, and the time off from work to appear in court. However, a person's access to money is an indicator of their status, which people believe grants them an unfair advantage with the law. As Silvia, a 29-year-old shack dweller, explained that while she trusted the courts because of the work of Abahlali, she did not trust the law because "it doesn't do so much for us [poor people]. It favors those that can contribute more to the economy" (ABM 86). Or as Thlogi 27, expressed "with everything that always plays out [in court], it always seems like if you have money everything plays at your advantage" (Johannesburg 97). Sbu, 44 a primary school teacher, who was incarcerated for two months as a teenager for

stabbing his bully in the 11th grade, argued similarly: "ah what I found out in South Africa it depends on your status really. Some people will never go to jail, will never go to jail even against the compelling level of evidence they will never go to jail. I don't have total faith in the justice system" (Empangeni 6). Although Sbu acknowledged that his case was during the apartheid-era, he still believed those with money and status have an unfair advantage when engaging with the law.

Money and status are also tied to race. One reason people were in an uproar about what they perceived was unfair justice in their comparison between the "Jub Jub" and Oscar Pistorius cases is because people believe Pistorius received a better initial outcome because he was white. After all, he made more money as a white Olympic athlete and thus, had more status than the local Black rapper. My interview with Lungile, 24 college student, who had previously studied law, echoed this belief. She stated,

I feel as if the system here creates an advantage to some and a very, very heartbreaking disadvantage for some. And mostly, it's not fair to Black people. Not racist or anything, but when I analyzed judgments, I always felt like in most issues, if you [*sic*] Black, you have an automatic fail. And if you [*sic*] white, there is scrutiny. There is reasoning behind it. It could be that we, most black people they don't have the funds to get a lawyer as good as the white person who will look for other forms of justification for them to walk free (Empangeni 40).

I was curious whether she believed it was race or money, I asked Lungile if she felt the law works mostly for white people. She responded, "yes, it works mostly for white people, and it works mostly for people with money. So, if you have money, you know who to pay and how to pay them, you can get out of unspeakable things" (Empangeni 40).

3. Bribing

Aside from allowing people to afford the costs of going to court and leveraging an advantage due to an elevated status, money also enables people to engage in bribery. My interviewees believed that bribery occurs in every sector of the legal system. As Baba Mthale, 52 expressed, "court exists by law. But I can't trust it with my all. Reasons being 1. The lawyer can be bribed, 2. The investigator can be bribed, 3. The policeman definitely bribed, 4. The magistrate can be bribed, 5. The Judge can be bribed. So now I can't say I trust it with my all, no no no, I can't" (Umlazi 75). Across 110 interviews, there were 55 references to bribery in the justice system. Although none of the participants who cited bribery as a reason why they would not/could not go to court had any first-hand experience with the legal system, they relied on community gossip, the culture of corruption in the government, and the release of a local criminal to support their claims of bribery within the legal system. People cited anecdotes of hearing about a friend, family member, or local criminal whose case was dismissed because the case files went missing or the court made what they interpreted as the wrong decision, which they attributed to the exchange of bribes. People then interpret these occurrences as a sign that their legal system can be bought or manipulated and, thus, is ineffective— at least for those who cannot engage in bribery. Bribery has become an accepted and almost normalized understanding of how the system works and what it takes to engage with legal institutions in South Africa. This understanding generates a mistrust of law for ordinary Black South Africans, which discourages the thinkability of using legal institutions to solve justiciable problems, as evidenced by the multiplicity of non-legal responses to my scenario questions. For example, after initially naming a non-legal strategy to solve a shack

eviction, I later asked a group of young women in Umlazi if they could take the municipality to court for help. The first woman, Nolwazi, stated, "You can, but it's not easy," while others shook their heads in agreement (Umlazi 72). When I asked why not, they explained:

Nolwazi: Corruption!

Manda: Lawyers!

Simmy: They'll [the government] buy the police, they'll buy the judge, bribe *yonke yinto nje* (definitely everything) (Umlazi 72).

The women doubted whether they could get help from the legal system with success because they suspected government would engage in bribing, making pursuing legal actions against the government difficult. Thembi, 40, a street vendor, stated something similar when I asked if she could go to court for the school infrastructure problem. She explained:

Thembi: No, where we live, the court doesn't help.

They can't help?

Thembi: No, the police are corrupt. Even if you arrest someone, they will get out. The court doesn't help. You can't say you get help in that situation. It doesn't help with anything. Because a person gets arrested and they get there [at the court] and bribe, then they get out. It's something we see all the time happening. Someone who has a relation with the police may come, and because the police has a connection on the inside, they will be able to pass on this thing, you will bribe it [the court], and then they will split this money, so that's how you get out. It happens. Let's say you get arrested by a police officer, and you are the suspect. Then the court issues out a warrant of arrest for you. When they get you, it is time for the investigator to do his job. Then the investigator will take a bribe from you and lose all the evidence. The investigator has his own people, to the point that they all working together and even bribe the judge too. The judge ends up making the wrong decision because now they've been bribed anyway (Empangeni 44).

Thembi's belief that those who are wrong can bribe their way through the legal process cast doubt on whether she could go to court to solve a problem with her child's right to

education. Thembi's belief about bribery in the legal system made her see the court as unhelpful because people can use bribes to circumvent the standard legal process where a legal remedy could be afforded justly. The derailing of the legal process rendered legal institutions ineffective in problem-solving for Thembi, especially since she could not engage in bribery. Valentia, 31, echoed a similar sentiment about the law's ineffectiveness due to bribes. When I asked Valentia if she trusted the courts after she stated she was unsure if she could go to court for any of the scenario problems, she said:

Valentia: No.

Why not?

Valentia: These people are bought. So, I don't trust. It [the law] works sometimes yes, sometimes no. It's there but can be broken (Empangeni 33).

Thabiso felt similarly about the police, which he associated with the law in general. He stated,

It's too crooked. It's crooked. The law is too crooked. I'm telling you I've seen it. Being raised in the townships, you find policemen. The policemen are protectors of the law, but they take bribes left, right, and center. Before even marijuana was legalized in South Africa, I used to see all the time the cops will come, they take R50 bribes, and they buy *cool drinks* [soda] from the weed dealer. It's nothing. This guy (the weed dealer) makes 2k a week, but they'll just come every Friday, and he'll give them a R100. Even TRT (Tactical Response Team), it's the high squared of policemen, and they [*sic*] highly trained, but they would just get small bribes and go on like that. So that's the reason why police are no longer respected. Policemen are really, really no longer respected here in South Africa cause [*sic*] they are the ones who tarnished their credibility. Even when you [are] caught driving fast and given a fine, you just give them R50 and off just like that (Empangeni 37).

People also believe that lawyers could be bribed. After Khonzphi, 56, and Sonto, 30, sang praises of the lawyers at SERI for their work in their eviction cases, I questioned what

they thought of lawyers before working with the organization. In response to "did you trust lawyers before working with SERI?" Sonto shared:

Sonto: No...Cause [*sic*] I thought it's human nature. They are humans. There's this thing they [people] say, *abantu bayawa'briber amalawyer* (people bribe lawyers). So, if you don't have money... for me to go to a lawyer for assistance is something else. I won't get the help because I don't have money. But after knowing SERI, I got that hope back (IFC 92).

4. Witchcraft

While some people like Thabiso and others attributed the lapses in South Africa's justice system to the use of bribes, a few people also attributed it to "witchcraft," that is, "forms of occult assault perpetrated by other persons, usually persons disguising their malicious motives while using secret means" (Ashforth 2005, 17). The suspected use of witchcraft is an everyday feature that permeates various parts of ordinary people's lives on the continent (Douglas 1970; Geschiere 1997; Moore and Sanders 2001; Smith 2009). As Ashforth (2005) writes of South Africa, "everyday life in Soweto... is lived more in a mode of suspicion and fear of occult assault rather than open accusation and persecutions of witches" (12). In South Africa, for those who believe, witchcraft has real material consequences in the real world. Within the legal system witchcraft, like bribery, is suspected of being used to interrupt the legal process by making evidence disappear or causing significant delays in court proceedings. My first encounter with the alleged use of witchcraft, known locally in KwaZulu-Natal as *muthi*, was during my interview with Kwanele and Falisha, both 23 and students at the University of Zululand. Kwanele shared that she went to court in support of a mutual friend who's facing murder charges. The friend fatally stabbed an older woman during a fight at a party in 2015 when she was 17

years old. When I asked Kwanele if she knew what the outcome of the case was, she replied,

Kwanele: She is still attending that case till [*sic*] today. The case kept on postponing up until today. Now she is 20. I think at her home they are using *muthi* and all that stuff so that she doesn't get charged.

Falisha: Yeah, witchcraft

What are they using witchcraft for?

Kwanele: To win the case.

Do you think it's working?

Kwanele: At times, cause it [the case] keeps postponing. They [*sic*] still postponing till now... but when time goes on, I think she will be in jail in the future because you can't stab a person and live free and go around free.

Falisha: Yah! the *muthi* will expire (Empangeni 34).

While there are other possible factors that caused the case's postponement, like South Africa's overburdened justice system, the women believed their friend's family's use of witchcraft helped delay the case with success. The case delay is justice denied for the family of the woman who died. When I later asked the women if they trusted courts, they both let out a resounding "*Cha !*", no in isiZulu. When I asked why they explained:

Falisha: Because you can bribe there.

Kwanele: Mhm, you can bribe them. Or maybe the documents are gone. That's why they keep postponing. They use money to bribe their way out.

Falisha: Or even *muthi*. Those that use *muthi* can make things disappear (Empangeni 34).

Eskhaleni couple Vusumuzi, 42, and Rose 36, further confirmed the suspected use of witchcraft to interrupt the legal process. Both first stated they did trust the court. However, when I asked them if they believed the law was fair, they replied:

Vusumuzi: Yah! Sometimes it [the law] is fair, and sometimes it not, but it is fair. But there are some people... if you [*sic*] working there [at the court] I'm buying you. If other ones come, say she comes (*pointing to his wife*), she will fail because I bought you.

Rose: No! *umthetho* [the law] is fair. It is the people who are enforcing the law that do their own thing.

Vusumuzi: Yah! Sometimes I pay you, you [are] working there in *inkantolo* [the court]. If I can talk to you privately and give you the money when she come...

Rose: (*interjecting*) They [the court] will remove some points that will be against me.

Vusumuzi: You see.

Does that happen a lot?

Rose: It does.

Vusumuzi: Yah (Empangeni 30).

I questioned whether they believed it was just the results of bribes that information from a case could go missing. I then asked whether this was also a result of witchcraft. They replied:

Rose: No.

Vusumuzi: Sometimes yes. For example, [if] I kill somebody, but when we go there at *inkantolo* (the court), you find that I use *muthi*, and when we get there, the case just disappears (Empangeni 30).

The perceived use of witchcraft to gain an advantage in the legal system was less present in urban areas. After citing the prevalence of corruption within the legal system as reasons why they would not go to court for a shack eviction, Nolwazi and her friends suggested that the use of witchcraft was also another possible problem with going to court for help. They stated:

Manda: And then documents go missing.

Kwanda: And they'll make your case last for the whole year, till [*sic*] you finally give up.

You mentioned that documents go missing; how?

Manda: Yes, they go missing because someone pays to get them missing (Umlazi 72).

To assess whether the perception of the use of *muthi* to derail legal proceedings was prevalent across the province, I further asked the group if they believed *muthi* could make court documents disappear. They replied:

Nolwazi: Yah, I also heard that. If you go to court, your case will be weak, and the other person [who uses *muthi*] will win the case. But I personally, I don't believe in those things.

Nompilo: Like evidence goes missing, black magic type of vibes.

Kwanda: I do believe in the spiritual world and stuff, but I don't think they have so much power in the physical world (Umlazi 72).

Although there is some disagreement about whether people can use witchcraft to successfully interfere with the administration of justice, for those who do believe, people with powers of the occult can manipulate the legal system to their advantage just like those with money who can exchange bribes.

5. Perceptions of Free Lawyers

Not having access to a good attorney cause also generated ambivalence about the thought of litigating for help with a socioeconomic problem. As I presented in Chapter 2, people believed if they could not afford a "good" lawyer, which is synonymous with an expensive lawyer, they could not win a case, especially one against the government. Many of my respondents believed someone experiencing these kinds of socioeconomic issues could not afford a lawyer, and therefore it would be difficult for them to pursue a legal intervention. After the twentieth interview, I noticed that no one mentioned the

possible use of free legal assistance to alleviate the challenge of affording a good lawyer. While I did not expect the average citizen to be familiar with legal advocacy organizations, I did expect people to reference the possible use of government-funded legal services since they are more widely available in the country and constitutionally mandated. Section 35 (3) of the South African constitution outlines the constitutional mandate for government-funded legal services known as Legal Aid South Africa (LASA). Although a bulk of the matters undertaken by LASA concern criminal cases and civil disputes, even less so, LASA has established an "impact litigation unit" to deal with public interest law cases, like those that concern the socioeconomic rights of the poor (McQuoid-Mason 2013). The unit also refers public interest law cases to legal advocacy organizations (McQuoid-Mason 2013). At present, LASA has 64 justice centers in urban areas and 64 satellite offices. Given the possibility of LASA to hear socioeconomic rights claims or at least enable access to a legal advocacy organization in practice, for ordinary people, LASA could serve as a first step in an attempt to seek justice for a socioeconomic problem – at least theoretically.

Surprised by the absence of legal assistance to overcome the challenge of costs, I also began asking interviewees whether they could go to legal aid for help and whether they trusted it to help with socioeconomic problems. All of my participants could not fathom turning to legal aid for two reasons. Firstly, people believed that legal aid lawyers do not win cases. Some of this perception stems from what people have heard of others' experiences using legal aid. My interview with Abahlali members Bongiwe 39, and Nkululeko 66, provides evidence of this. After sharing disapproval about the denial and delay of services at government hospitals, including Bongiwe's experience with childbirth

the previous year,² I asked if they thought they could take the Department of Health to court for help. After all, both Bongiwe and Nkululeko had successfully gone to court for shack evictions with the help of Abahlali. They replied:

Nkululeko: No. The problem is for you to be able to take the Minister to court, you'd have to have an expensive lawyer for you to be able to match them [the government]. (*Bongiwe nods in agreement*)

What about legal aid?

Bongiwe: They won't be able to help me.

Nkululeko: They always lose cases.

Bongiwe: *ehhe ehhe!*³

Nkululeko: We hear people say that.

Bongiwe: Yes, about legal aid (ABM 83).

Others associate the broader government's corruption and inability to produce successful outcomes with the quality of legal aid's services because it is provided by the same government they perceive as corrupt and ineffective. As to why she would not use legal aid, Thobile 32, stated,

You can take someone to court for raping you. But if they get an expensive lawyer and you get the government one, obviously for you that's a losing case, you won't win. They end up walking scot-free, and you pass them in the streets (Umlazi 71).

Falisha and Kwanele expressed similar opinions about why they did not trust legal aid to help. They shared:

Kwanele: These people are corrupt

² When she arrived at the local government hospital at 9 am in excruciating pain from contractions, Bongiwe was told she needed to wait in the lobby after nurse's evaluation because she would only be ready to give birth at 6 pm. She was not given a room despite being in early stage of labor. As the hours went by Bongiwe's pain increase so much so she said she felt paralyzed. Fellow patients had to alert the nursing staff of the Bongiwe's condition. Bongiwe gave birth shortly after at 2pm instead.

³ An interjection commonly used to express agreement by Black South Africans. It is equivalent to the "mhm."

Falisha: Yah! they too corrupt. We can't trust them (Empangeni 34).

The secondary reason people questioned turning to legal aid for help with suing the government for a service delivery problem concerned whether people could successfully use a government-funded institution to sue the government. For my interviewees, there was something unthinkable about this act. As to why he could not use legal aid, Thlogi 27, explained,

Okay, this is how it is. It's like taking the government to court using government resources. I don't know. It just doesn't play out correct [*sic*] in my head. Because obviously, first scenario, you said if I am poor right. So, obviously, when you go into court, you can't afford any representative, right? So who's going to represent you, state attorneys, right? Hence, I am saying, using government resources against the government... (*sigh*) I don't know how that will play out. I have never actually thought of that (Johannesburg 97).

While Thlogi expressed apprehension about the thought of using legal aid, others expressed fear. Mthokozisi 23, and Mongisi 25 shared the following:

Could you take the municipality to court?

Mongisi: I have a right to that.

Mthokozisi: Yes, you can.

Mongisi: But now our fear is failure...

Mthokozisi: (*interjecting*) Because taking the municipality to court could cost you. Depending on who you are, it will cost you very much.

Mongisi: And secondly, you are challenging someone [the government] who is going to provide you with his lawyer...

Mthokozisi: After you've lost your first case, you have to go there again. That will cost you money. It will cost you your time. So, we just complain. Gather our people, then march (e.g., protest) (Umlazi 63).

For Mthokozisi and Mongisi, because legal aid is a government-funded institution, they believed their case against the government would not be successful and thus, not worth

the risk of the additional cost and time to try to pursue a legal remedy. My interview with Sfuno 30, along with Baba Mthale, who earlier stated he did not trust the legal system, provided similar evidence of the perceived risk of using legal aid. When I asked them if they trusted legal aid attorneys, they explained:

Baba Mthale: Me, I trust him [a legal aid attorney], but in some cases, I do not trust him. Because if I am against the government, I am sure he will not stand up for me because he is already with the government.

Sfuno: Uh... Maybe yes... Maybe no. Yes, because, maybe in the way they express the things that I would've expressed in court, maybe he or she would express it better than I. No, because, (*sigh*) it could be that somehow, someway in cases, where I could be against government or one of the government officials, maybe it would end up quite detrimental for me (Umlazi 75).

Like Mthokozisi and Mongisi, Sfuno and Mthale doubted whether they would achieve justice with legal aid. For ordinary Black South Africans, there is something unthinkable and even risky about turning to legal aid for help with socioeconomic problems.

D. Conclusion

This chapter described the diverse ways ordinary Black South Africans perceive and experience the legal system. My findings show that ordinary people mistrust various, and in some cases, all legal institutions. People's mistrust of legal institutions diminished their confidence in the legal system's ability to administer justice fairly and equally. Therefore, they doubt whether justice through courts is attainable. For others, legal remedies are only possible if you have money, status and can engage in the exchange of bribes, and, to a lesser extent, witchcraft. These findings challenge the literature on the role of trust in people's willingness to make claims through courts. Scholars have argued that formal legal institutions maintain functional legitimacy in the eyes of ordinary people, which still encourages the use of legal strategies, "despite repeated evidence of

law's failure to live up to its ideals" (Hull 2016). However, I found people's beliefs that the law and its institutions are ineffective in solving problems are grounded in their view that the law does not work or works in ways they cannot access. For ordinary Black South Africans, negative experiences with the law and the perceived use of unethical practices are "evidence of the law's failure to live up to its ideals," (Hull 2016). According to my interviews, people doubted the South African legal system's ability to work for them to solve problems because they believed the law worked in ways they deemed unjust.

As I have shown in this chapter, when people think that the law does not work or works in ways they cannot access (like using bribes or occult powers), the possibility of mobilizing everyday service delivery problems through courts is diminished. While courts can solve issues of access to basic services when other branches of government are unable or unwilling, the possibilities, and more importantly, the thinkability of legal mobilization, is weakened by how people perceive and experience how the law works in their respective contexts. If people believe that justice is unattainable or at the very least difficult to achieve in a corrupt system, how else might ordinary people choose to solve socioeconomic problems? The next chapter answers this question by documenting the various ways people first think about solving service delivery problems. Unlike litigation, these solutions seemed more attainable to them, and in some instances, more appropriate to solve socioeconomic problems. As a result, people believe these alternatives are more likely to solve problems of access.

Chapter 4

PERCEPTIONS OF SOCIOECONOMIC PROBLEMS AND SOLUTIONS AS ROADBLOCKS

A. Introduction

In South Africa, where ordinary people have successfully used courts to secure access to basic services, one would expect "litigation" to be a common strategy for people to access such services. However, as the last two chapters illustrate, suing the government for services is often an unthinkable act due to the cost, the lengthiness of the process, and the perceived corruption at various levels of the legal system. Although going to court seems unthinkable, ordinary Black South Africans are not left with nothing. Instead they can conceive of multiple non-legal ways to solve their problems with basic services. Ordinary Black South Africans perceive these alternatives as faster, less risky, and in some cases, more likely to achieve their desired ends – gaining access. Thus, these strategies are more feasible and, therefore, more thinkable ways to solve the issue of access. This chapter addresses the question: when people experience an problem that could form the basis for legal action, what strategies have they pursued instead? In answering this question, I describe the types of strategies people are willing to employ, which reflects how they understand their problems and who they think is responsible for solving them. My findings expand on the legal mobilization literature by identifying how people conceive of potential legal problems in ways that push them further away from the courtroom.

B. From a Dispute Pyramid to a Dispute Tree

The assessment of citizens' access to justice and legal needs has long been of interest to scholars and legal practitioners (Genn 1999, Zeman 1982). Since the 1980s, sociolegal scholars have relied on the "dispute pyramid" metaphor to understand citizen's paths to dispute resolution. The metaphor presents formal legal dispute resolution as a linear process in which only a small proportion of perceived injuries actually proceed to litigation (Miller & Sarat 1980). The pyramid outlines how unperceived injurious experiences (un-PIEs) transform into perceived injurious experiences (PIEs) worth laying claims to, which can later become disputes. The dispute pyramid metaphor is credited for "revolutionizing" how scholars understood legal problems and disputes as they began seeing disputes as social constructs instead of objects in the world (Albiston et al. 2014). The dispute pyramid has since been adapted into the "dispute pagoda," and the "dispute tree," all of which reveal that there are more potential grievances than there are legal disputes (Michelson 2007; Albiston et al. 2014).

Un-PIEs make it to court through a process of naming, blaming, and claiming (Felstiner et al. 1980). At the base of the dispute pyramid, the injured names an experience as injurious. When such injury becomes a grievance, an individual is "blaming" someone for the injury. At this level, only some people will hold another responsible for the perceived injurious experiences. When the person with the grievance expresses it to the person or entity believed to be responsible and asks for a remedy, they are laying a claim (Felstiner et al. 1980, 635). An even smaller number of people will confront the responsible party to lay a claim asking for a remedy. When the responsible party rejects the claim, it then can become a legal dispute. Rejection can take many

forms. Aside from an outright refusal, a delay that the claimant interprets as resistance is a form of rejection. The responsible party offering a "compromised solution," where claimants receive a partial remedy for their grievances, is also a rejection (Felstiner et al. 1980, 636). Even fewer people mobilize their claims through courts. Many claims are either abandoned or resolved through other means. This framework birthed a new field of research that studied the factors that affect whether a dispute progressed through the levels of the pyramid (Bumiller 1987, 1988; Ewick & Silbey 1998; Morgan 1999; Quinn 2000; Albiston 2005, 2010; Morrill et al. 2010).

Although the metaphor has been influential, it is an inadequate depiction of the broad ways people actually think about resolving justiciable problems. The dispute pyramid describes a process where litigation is the end goal, and thus the only remedy. However, critics of the legal path to disputes argue that many problems can and often are solved by non-legal strategies (Zeman 1982; Sandefur 2019). Not all problems are seen as justiciable by ordinary people. In the South African case, not all problems with services are seen as grievances. Moreover, just because a problem is justiciable does not mean legal solutions are the only thinkable option for solving the problem. Similarly, a person's ability to litigate because their issues have standing in court does not necessarily generate an interest in suing for a remedy. More importantly, with adjudication at the top of the pyramid, the metaphor assumes that for ordinary people, litigation is always a thinkable way to obtain "justice."

Traditionally, when we think about justice, we think about "legal justice," one administered by courts that require the help of legal services. This is especially true when the problems we seek to resolve concern legally codified rights. Because of their legal

implications, a fundamental assumption with rights-based problems is that because the law grants a right, that the law is the only place to solve a violation of that right. In this chapter, I argue that this is not always the case. Such assumptions obscure the possibility of alternative ways people can and do think about problem-solving, which are sometimes just as successful, if not more so, than laying a legal claim. Litigation is not always necessary nor, in some cases, sufficient for obtaining just solutions to justice problems.

Instead of a dispute pyramid, I build on the dispute tree metaphor, which argues that people have many branches (legal and non-legal ways) to address grievances. This metaphor depicts a nonlinear process to dispute resolution. The dispute tree framework argues that people have multiple ways to solve the same problem and may employ them simultaneously (Albiston et al. 2014). People may also start with a single solution to a problem and later branch off to another strategy they find more effective or more accessible. The logic behind the dispute pyramid is correct in that people's decision-making about their grievances is shaped by how they categorized the injurious experience and whom they believe is responsible. However, while naming, blaming, and claiming can lead to a legal dispute, it can also lead people to pursue the “myriad disputing channels outside of courts” (Albiston et al. 2014, 105).

Consistent with the dispute tree metaphor, I show that with regards to service provision problems, ordinary Black South Africans name, and blame in ways that lead them away from the courtroom. Instead, they initially turn to alternative forms of rights-based problem solving, which do not take the form of a formal legal dispute. This is partly due to which level of government, if any, they assign blame to and what they believe is the right and most effective way to lay claims to the government. With my

research, to call the lack of access a problem is to *name*. Naming the lack of access as a problem is to acknowledge that such conditions are harmful and unacceptable. People assigning the responsibility to the government, specific state entities, and state actors, like the local councillor, is *blaming*. People *claim* their right to access services by stating they would directly approach the state, report the issue to other responsible people in the chain of command, and protest.¹

People's ability to conceive of multiple solutions to their problems is due to the various ways they process these problems (e.g., how they name and blame). The transformation that problems undergo, which allows naming, blaming, and claiming to occur, is subjective, reactive, and fluid. This fluidity stems from people's changing feelings about their problems, the solutions available, and the anticipated response from the state. The meanings people ascribe to their problems, and the available solutions are not stagnant. For example, people may initially interpret an injurious experience as a matter of misfortune and later interpret it as a grievance that may warrant legal intervention or political action.

Similarly, a person may see their injurious experience as a grievance, but not claim a resolution because of how they feel about the solutions available to them as time goes on. Because feelings and interpretations change repeatedly, people are constantly defining and redefining their perceptions of their experiences and the nature of their grievances. This instability allows people to think of and pursue multiple strategies to solve their problems simultaneously. People will also redefine their grievances and alter their perceptions of strategies available in response to various people's communication

¹ By "chain of command," I refer to the presumed hierarchy of people participants stated they must consult when trying to solve problems.

and expectations, including opponents, authority figures, companions, and intimates (Felstiner et al. 1980, 638). Feelings towards people's objectives also change as new information becomes available to them. Before considering filing a claim in court, in other words, there is a constant reinterpretation of the problem, who is responsible, and the best ways to solve it.

With socioeconomic rights problems, there is another element that further contributes to this fluidity. Problems with accessing services straddle the lines of the personal and the political. Before the codification of socioeconomic rights, not having access to services was often seen as a personal problem, one that was a consequence of being Black and poor under apartheid. Challenges with basic services in South Africa are everyday problems that the country's largely Black poor have experienced over several generations. The conditions these problems create are all some Black people have ever known. In some sense, these problems are commonplace happenings in Black lives.

It was not until the anti-apartheid struggle that the right to services became an achievable entitlement, one that must be provided by the state regardless of race. The mobilization efforts of township activists, unions, and apartheid-era civic organizations like the Soweto Civic Association, fused Black people's material realities with political meaning. They stressed the connection between Black people's material struggles and apartheid, "conscientizing" Black communities with a new way of seeing their problems, one that incorporated a discourse about rights (Zuern 2011). Since the codification of socioeconomic rights and the on-going activism by legal advocacy organizations, problems with services now also have legal meaning. Therefore, for ordinary people,

these problems' interpretations can range from a mere inconvenience or a problem they have encountered all their lives, to an injurious experience worthy of laying a legal claim.

This blurred space further complicates whether the harm caused is blameworthy. When people determine that the problem has injured them, they must determine if the injuries are self-inflicted or caused by someone else. While providing services is the state's constitutional duty, people also understand that they are responsible for their own well-being. For example, one respondent argued, "as a citizen of the country... if I fail to do something for myself [that means] someone needs to put a hand in that. If my family fails to do so, [that means] the government should put its hand in that" (Empangeni 7). The result of the flexible nature of socioeconomic problems is that ordinary people have various ways of seeing problems of access and who is responsible, which impacts the strategies they think they can and would employ. In the following sections, I detail how the ordinary Black South Africans I interviewed name the issue of access to services, the various people or entities they blame, which impacts the many ways they believed they would and could claim their socioeconomic right to services.² Unlike in the dispute tree framework where people pursue alternative disputing channels with success, my respondents reported a series of alternatives that lead to unsuccessful outcomes. The set of choices poor South Africans face when they do not consider approaching the courts often results in them being further entangled with an unresponsive state leaving them at a dead end.

² The questions were asked in two forms to elicit interlocutors' understandings of the possibility of remedy and the actual ways they would go about solving problems. In English, "could" is the past tense of "can," which indicates possibility, what action is possible to do. "Would" is the past tense of "will" used to express a desire or inclination. In isiZulu, while "I could" (*benginga-*) and "I would" (*bengizo-*) take different constructions, people often use them interchangeably.

C. How Do People Name the Problem of Access?

1. Is it a problem?

To assess how ordinary Black South Africans name, blame, and lay claims in responses to socioeconomic problems, I relied on five hypothetical scenarios based on constitutional rights issues that people have litigated and made claims to with civil society organizations' help (shack evictions, dilapidated school infrastructure, public hospitals refusing to treat sick persons due to the lack of resources, water, and electricity disconnection or lack of formal connections). To uncover how people interpret the degree to which they might handle a problem on their own outside of the law, I first asked respondents if the issue in the scenario was a problem. A majority of the participants agreed that each scenario was a problem. Because problems of access are poor people's problems, ones experienced by the economically disadvantaged, I found consensus on whether each scenario was a problem among respondents in the same economic position. For example, all shack dwellers in Durban and informal settlers in Johannesburg reported every issue of access as a problem. There was more variation in economic status among the participants in Umlazi and Empangeni which explains the slight disagreement about whether the issues were a problem. Although all the residents in both Umlazi and Empangeni saw the lack of electricity as a problem, there were slight differences among the 72 participants in Empangeni and its surrounding areas and the 39 participants in Umlazi about the other issues of access (see Table 4.1).

Table 4.1: Number of people who said the issue described in the scenario was a problem.

Location	Shack Evictions	School Infrastructure	Government Hospital	Tap Water
Umlazi	35	35	36	39
Empangeni	53	68	65	64

Although these differences are small across participants, the reasons why some people did not see the issue as a problem is important in thinking about the broader context in which these problems occur. My interviews reveal that people are unlikely to call an issue of access a problem if they believed they could live adequately without formal access to the socioeconomic good. As much as the issue of access to basic services is about rights and justice, it is also about one's immediate circumstances and expectations. Because people focus on their immediate circumstances, they also make judgments about what is “good enough” service provision. This judgment is informed by past experiences and what is readily available in their area, shaping what people expect of government services. For example, all the residents of Umlazi named not having access to tap water a problem because Umlazi is an urban area without access to a natural clean water source to enable other ways to access water. In the more rural areas around Empangeni, having access to the river meant the issue was not a problem because there is an alternative means of access. One respondent stated, "yeah, it's a problem to those who are living in towns, but in rural areas we normally understand because there are rivers when the [tapped] water is not available" (Empangeni 7). While tapped water is preferred, just having water is enough for some people, no matter how one accesses it.

The people who did not think children going to a school with poor infrastructure was a problem held a similar perspective. One respondent who never went to school stated, "they [children] should continue to learn there, because we have seen other places where kids learn under a tree because they have no school. They should continue learning because the only thing they are there for is to be educated and get knowledge" (Empangeni 25). For this 52-year-old grandmother, the lack of proper infrastructure is not a problem because the goal is for her kids to be educated no matter the condition, something she did not get a chance to do. As long as a school is available, that is enough.

People also judge what counts as adequate service provision by what results from the quality of service they can access. People may find that the lack of access is not a problem because what they do have access to achieves its intended goal. For example, some respondents did not see their child going to a government school with poor infrastructure as a problem because they believe government schools can still provide quality education. In an interview in Umlazi with Mthokozisi and Mongisi, two men in their early twenties who went to government schools, Mthokozisi explained:

No, there's no problem. What I can say is government schools, it is not like they do not have that education which is rich. There are teachers there, and the province [sic] government do supply money to be given to municipalities to satisfy the resources of the government schools. But there's some corruption...but in government schools I can tell you this, 100 percent sure, most of many doctors, or many wealthy kids come from government schools. Because government school, it is rich when it comes to building a kid (Umlazi 63).

I was surprised by his answer because there is ongoing and very public mobilization to address school infrastructure problems by civil society organizations, parents, and even students. Yearly, there are countless reports of parents and students protesting public school conditions. The recent increase in child deaths by drowning in pit latrines at

schools has led civil society organizations like Equal Education and Section 27 to spearhead campaigns against the school infrastructure problem in South Africa. In addition, as an urban area that receives more services from the government, I suspected people in urban areas would expect more from government services, but that does not seem to be the case, at least not all the time and not among the people I interviewed. Confused by his response and looking for further explanation, I asked whether their parents complained about their school's conditions at the time they went to school. They explained:

Mthokozisi: No, they knew. It was just that, whatever you get, just take it because they knew that education is a right, not the resources, but education.

Mongisi: (*interjecting*) Resources are just a bonus on top of the education. Let me just put it like this, during apartheid, there was a right to education, but their [parents] education was restricted and limited in some certain ways, they didn't do this and that. So, they didn't have rights to education. We do. (Umlazi 63)

For people like Mongisi and Mthokozisi, government schools still educate people enough to be successful. Because today's school infrastructure challenges do not pose a problem to the child's chances of succeeding, unlike during apartheid, the lack of proper infrastructure in schools is not seen as a problem by some.

2. What kind of problem is it?

For those participants who did report an issue as a problem, I intentionally did not ask what kind of problem they thought it was (e.g., legal, personal, or political). This allowed participants to frame the problem as they understood it. I found the issues described in the scenarios were problems for participants not because they were seen as blatant rights violations, but because they were seen as problems of inequality and unfairness in how black people, particularly the poor, experienced service delivery.

None of my participants referred to the issues as a problem with their rights. Moreover, this is not because participants do not know what rights are. In fact, across education levels and age, ordinary Black South Africans have a general sense of having access to socioeconomic goods being a right. Participants cited the constitution, the end of apartheid, and the necessity of socioeconomic goods in their lives as to why having shelter, water, electricity, going to school, and receiving treatment from a hospital were rights. However, for ordinary people, the problem with accessing services was less about their rights being violated and more about what results from the rights violation—unequal conditions. Service delivery problems are only experienced by the poor, further exacerbating the country's inequality.

While activists and post-apartheid civil society organizations mobilize issues of access as human rights violations, this framing is not fully embedded in the Black communities in KwaZulu-Natal. There is a disconnect between people knowing that they have the right to access services and them thinking service delivery problems are violations of their rights. This disconnect has two sources. Black South Africans acknowledge that experiencing poor service delivery, as described in my scenarios, is the result of the inequality created by apartheid and further facilitated by the post-apartheid state. Unlike countries where the entire population experiences poor service delivery due to the state's incapacity, service delivery challenges are mainly experienced by the country's predominately black poor in South Africa. When my participants talked about their service provision experiences, they recognize it is the product of either being black, poor, living in a rural area, or a combination of all three. They relied on comparisons between the conditions of people who had access/better access to services and themselves

to explain why the issue was a problem. In doing so, my respondents framed the issue of access as a problem of inequality and not just rights. For example, Sihle, a primary school teacher at a formerly all-white private school in Empangeni, stated:

Yeah, it's [water] a right but same, same thing. There are some people who have never known a running tap. I have taught up north. I will say next the Mozambican boarder where there [sic] were absolutely no running water. If you were teaching technology there you are talking about taps and everything, they can only imagine what a tap is. They know of...we call it a *waterkan* or water truck that comes periodically to give water. There is this bad tendency by our government. I don't know if it's by default or by design, the citizens that are in deep rural areas are neglected. But they are peasants who generate food for the rest of us but they are neglected. But you come to town you find schools like this; you never find a school like this in a rural area. This is as best as it can be... but there [rural area] you have schools with pit toilets, no electricity, no running water, squashed classes and then you are expected to teach there and the child is expected to excel in as much as a child who lives in the suburbs, it's sad it's sad. (Empangeni 6B).

How he sees the issue of access is grounded in his experiences teaching in areas where students had different degrees of access to services. For Sihle the poor service delivery in rural areas was a problem because children in rural areas are expected to thrive, just as well as children in urban areas, without the means to do so. Although he acknowledges that having access to water is a right, the problem with the quality of access in rural areas was a problem because it was one way rural residents are treated unfairly by the state.

The second source of the disconnect between access to services being a right and poor service delivery being a rights violation is due to ordinary Black South African's doubt in legal institutions. As I argued in the last chapter, perceived political corruption at various levels of government in South Africa casts doubt on the efficacy of rights and the law. This is why some respondents stated, "they say we have rights, but we don't" when I asked whether citizens have rights in South Africa. It also may explain why, when discussing corruption, people would say "this is South Africa" as if corrupt practices are a

characteristic of the country's political reality. To conceive of an issue as a rights violation when it comes to services, one must believe that rights to services have meaning and that relying on legal framing is effective.

Legal frames become even more influential if there is some congruence between the law's ideology and how people perceive their social reality. In the U.S., people have faith in the political efficacy of law as a principle of government because much of American politics is dictated by "rules and of the rights and obligations inherent in rules" (Scheingold 1974, 13). As a result, Americans expect that the political order functions in ways that are consistent with the patterns of rights and obligations as laid out in the Constitution. In turn, ordinary people view social problems in terms of the responsibilities and entitlements established under the law. But if the state's practices run counter to the constitution and the political elite behave as if they are above the law as my interviewees described South Africa, the law loses its credibility as a useful frame to talk about problems despite their legal nature. Thus, while the lack of services and poor service provision are clear rights violations, everyday service delivery problems do not regularly translate as such for ordinary Black South Africans.

However, this does not mean that rights and the law are completely meaningless for ordinary people. Although none of my participants articulated the problems as a problem with rights, their assessment of inequality with services is grounded in their understanding that they are entitled to access each of these services and their expectation of the right to be treated equally. This understanding dates back to the anti-apartheid struggle. The struggle against apartheid was not solely a struggle against white minority rule. It was also a struggle against the material conditions created by apartheid's racist

policies. Apartheid policies systematically removed the Black population from various development schemes set to improve social conditions. This left Black people without formal access to services or severely inadequate access. Consequently, the struggle against apartheid was also a struggle for a better quality of life made possible by equal access to quality basic services. Evidence of these sentiments is reflected in the “freedom demands” collected in townships by 50,000 ANC volunteers in 1955 which became the Freedom Charter. The Charter’s tenets laid foundation for the Bill of Rights. It reads:

All people shall have the right to live where they choose, to be decently housed, and to bring up their families in comfort and security;
Unused housing space to be made available to the people;
Rent and prices shall be lowered, food plentiful and no one shall go hungry;
A preventive health scheme shall be run by the state;
Free medical care and hospitalisation shall be provided for all, with special care for mothers and young children;
Slums shall be demolished, and new suburbs built where all have transport, roads, lighting, playing fields, creches and social centres;
The aged, the orphans, the disabled and the sick shall be cared for by the state;
Rest, leisure and recreation shall be the right of all;
Fenced locations and ghettos shall be abolished, and laws which break up families shall be repealed (Congress of the People 1955).

These demands were made in light of Black people's material conditions compared to the conditions of the White minority. The blatant unequal treatment gave rise to the idea that everyone is entitled to services. South Africa's current issue with services is less about a racist government formally denying access on the basis of race and more about persistent class inequality in how services are delivered.

As I have described in this section, people draw on various knowledge bases when deciding whether an experience is injurious enough to be labeled a problem. In South Africa, these bases include comparisons between experiences under apartheid and the present, information and assumptions about what the law guarantees, and perceptions

of what is needed to live well. Although the disparity among participants' responses is small, they reveal an important observation about how Black South Africans interpret the lack of access. While access to housing, healthcare, water, and education are rights, and the denial of access to these services is technically a violation, it is not always seen as such. What is determined as acceptable "access" varies from person to person and circumstance to circumstance.

How people interpret a socioeconomic challenge is a roadblock to accessing services through courts. If a person does not name an experience as a problem, there is no desire to lay a claim. And therefore, there is no reason to think that they would approach the courts. In sum, people who fail to name an experience in ways that require legal intervention do not enter the road to a legal dispute.

3. Is it blameworthy? If so, who is at fault?

Although the majority of the participants viewed the access problem in each scenario as a problem, there are differences in who/what they believed is to blame for the lack of access. In South Africa, people blame various causes for service delivery problems. The variation is the result of the differences in who people assign responsibility and fault for their problems to. Blaming entails people assigning responsibility *and* fault to the people and process that they believe caused the injurious experience. Responsibility and fault have different meanings. Some people may blame the state for the lack of service provision because it is the state's responsibility to provide services. Even though it is the state's duty to provide basic services, people do not always perceive their everyday challenges accessing services as the government's fault. People only assign fault to the state when people believe the state has directly acted in ways to

deny access to services. For example, shack evictions are the government's fault for informal settlers because the state orders the evictions denying their right to housing. With other service delivery problems, ordinary Black South Africans assign blame to multiple factors contributing to the state's challenges with service provision, absolving the state from fault.

Problems with services are common in countries with developing economies. As such, there are multiple sources for each problem other than the state. For some people, these problems are a consequence of being poor in South Africa or in a specific region of the country. And thus, people blame themselves for living in areas where the problems occur. In other instances, people blame lower-level state employees who aid in delivering services like healthcare professionals and administrative staff in schools. People may simultaneously blame themselves, specific state employees, and the general government. People may also shift blame from themselves to the state as their perception of the problem changes. Without assigning fault to the state, people cannot conceive of laying a claim to the state to solve their problems.

To capture the various people or entities who are to blame, my scenario examples include different roles played by the state. The shack eviction scenario places the state directly as the responsible party. In other scenarios, the state is not obviously present at all. The school infrastructure and government hospital scenarios only suggest that the government is responsible because they are state-run. With both of these scenarios, people believe other actors are responsible because their actions contribute to the challenging conditions. For example, with the government hospital scenario, participants reported that sometimes the nurses or staff steal the needed supplies. Others report the

hospital staff are just too lazy to provide services, and that is why it appears the hospital does not have enough resources to treat the people. Philani, a primary school teacher, explained:

You know what the problem is, you find that sometimes the nurses are lazy, to even go look for the medicine. So, if maybe you ask for the superior, they'll see this person knows their rights, they'll treat you better. But some other people will just go home, come back tomorrow, and still there's no medication, then go and come back some other time. In a long run you might find that that person died (Empangeni 31A).

With government schools, people shared stories of what they saw as their principals mismanaging funds or stealing supplies, which gives the appearance that the government is not providing the school with resources. Philani further argued, "I think it goes back to how they do their supplies. You find that maybe the government will give 250 desks, but we only see 100 desks, we don't know what happens to the rest of the 150. The principal keeps quiet about that" (Empangeni 31A). Thlogi, a driver, shared his experience in high school,

I know my principal was stealing bruh! You know those big printers you see in offices... Every time they would go missing and they would buy a new one. Every time they would claim it was criminals who broke into the school over the weekend to steal the stuff, but we had a caretaker [security guard] at the school. And the only person who would be around was the principal. Three years later I heard that the principal actually owned an internet café (Johannesburg 99).

Although Thlogi had no actual proof that his principal was skimming off supplies to support his side business, his suspicion was enough to assign blame to the principal for the lack of resources at his school instead of the government. In both scenarios, to the respondents, the government did provide resources, but suspected misconduct by the clinic staff and the principal's pilfering caused the lack of resources. This suspicion is not unwarranted. Every year there are news reports of missing government allocated funds or

equipment. In 2019, a report of a “missing” 220 million rand (approximately 12.9 million USD) for drought relief for farmers in KwaZulu-Natal hit the newsstands. The national government gave the money to the provincial government in 2015 after the province was declared a disaster area due to the drought (Makhaye et al. 2019). The provincial officials in charge of the funds stated it was not clear where the money went. The KwaZulu-Natal Agricultural Union representative reported that none of the province's farmers received the funds. As of today, an investigation is still being conducted to locate the missing funds. In the recent pandemic, large quantities of personal protective equipment (PPE) to prepare for schools' reopening "disappeared" in Umlazi, Pinetown, and Zululand (Singh 2020). The PPE, worth millions in rands, disappeared while en route to department offices and schools in these areas. Two days later the PPE mysteriously reappeared, with no indication of who could be held accountable for the disappearance. It is these occurrences that shape people's perception of when services are promised, but not delivered.

Other people do directly blame the state for school infrastructure problems. In explaining why he would write a letter to the Department of Education, Ntokozo, a mine worker, argued:

Because the only people who can resolve this matter is them, because most of the schools here in South Africa if they are lacking facilities it's because of the department, most of the time. Maybe they are not providing in time. Maybe some of the schools don't have sponsors² and government is being negligent to them (Empangeni 2).

For people like Ntokozo, the problem of school infrastructure is a product of government's negligence. For other people they acknowledge the state is responsible for

² Sponsors refer to local businesses and large corporations who may help support a school financially by making monetary donations or education material donations.

providing services, however they do not assign blame to the state for services not being delivered. Instead these respondents assign blame to other structural forces that cause service delivery problems. When I asked if having shelter was a right, Judith a train driver for Transnet explained,

Ilungelo (a right), yes, the government is trying. I will say they are really trying. Shame! they are trying to provide houses for everybody, but yeah, it's not that...I am not in the percentage that say the government has failed the people, I am the percentage that says the government has tried. It is just that there is a lot of corruption happening around everywhere, everywhere in our lives (Empangeni 5).

For Judith, the government does try to provide housing, but there is corruption within process of service provision, which is to blame for the government's failure to deliver housing. Challenges with the South African economy, like the unstable currency, also removes the blame from the state directly. While explaining why the government hospital example was not a problem, Sibho, a security guard at private school argued:

Ah the country needs money to service and to survive. The rand of South Africa is not constant; it has ups and downs. So, if the government says I don't have money to afford that hospital they are going to get help from, ah I can't force him [government] to help even though he [government] doesn't have help (Empangeni 7).

Andiswa, a nurse from Umlazi who worked in the private sector articulated a similar view. She

stated:

It [hospital example] would be a problem, but now as our economy is going downhill. I won't blame them [the hospital staff]. Because being in a hospital in the private sector, seeing what I've seen, they [government] is not to blame. They can't do anything about it. It starts in the head [top] first, then it goes to [hospitals]. So, if the hospital staff is not provided with enough resources, they can't do anything about it. So, I wouldn't be angry at them the hospital staff (Umlazi 76).

The growing number of people in need of government assistance further poses a challenge to the government's ability to provide everyone services. Therefore, people do

not blame the government. Lucky, a head of department at a high school, explained "everyone has a right to shelter, but the government is failing to give everyone shelters due to the number of the population. But they are trying because they are building people RDP houses, but they are still not sufficient" (Empangeni 27). Signs of improvement in socioeconomic conditions also absolves the state from blame. Phumzile a high school teacher, argued of the school infrastructure example:

We are still work-in-progress as South Africans, we come a long way. We know they are trying. They give free stationary to the students. The things we are lacking are the things we can improvise as teachers, not to wait for the government. Because we can see in social media how much the government is trying. We teach with the hope that one day he will come to our schools (Empangeni 29).

These examples show that while people acknowledge that the state is responsible for providing services, they do not always interpret the challenges with service provision as the government's fault. To fully blame someone for the problem, one must find that the responsible person is at fault. However, people view the problems with services as dynamic, and thus multiple things can cause the lack of access. As I have illustrated in this section, some people do not blame the government directly because they believe there are other contributing factors to challenges with services. Although they recognize the state's duty to provide services, they also assign fault to the country's economy and other actors' misconduct.

The multiple ways of seeing who is at fault for poor service delivery does prevent some people from deciding to make claims to the state for services. Disputable grievances are made against a particular person or entity. When people do not assign blame to a particular person they do not have a grievance against someone. As Felstiner et al. (1980) writes, "a grievance must be distinguished from a complaint against no one

in particular (about the weather, or by perhaps inflation)” (635). Without a grievance against someone, claims making in its many forms is unthinkable. Litigation as a means of access is even more unthinkable because there is no one a person could directly take to court for the issue if they do not blame someone directly. Evidence of this is found in the strategies people who did not assign blame to a particular person stated they would employ to solve the problem.

People who did not blame a particular person stated they would either do nothing or rely on self-help strategies. Philani, who faced problems with book shortages at his school, stated “I make copies or write on the board. Sometimes you find that they don’t even have enough papers, or ink, or even electricity, so we just ask from neighboring schools” (Empangeni 31A). In the same interview Philani’s colleague Vusi stated “what I did was, I took my money and bought books, since the government says it doesn’t have money” (Empangeni 31B). Judith, who blamed corruption for the state’s failure in providing houses, stated she would just go home to her mother and start over if she was ever evicted from her shack. Andiswa, who said she could not blame the hospital because the resource problem is a product of South Africa’s troubled economy, stated “there is nothing I can do” in response to the hospital example (Umlazi 76). When I asked her if she could complain to anyone, she replied, “I can’t complain to anyone. I heard it happens at other clinics and government hospitals. They can’t help me. They won’t” (Umlazi 76). Phumzile, the high school teacher, said she would just change schools if her kids went to school with failing infrastructure. She argued “it is my responsibility to provide for my kids” (Empangeni 29). Because these participants did not assign blame to

a particular person, they did not think they could mobilize legally for their issues of access.

While some people exit the road to a dispute when they don't assign blame to a particular person for their grievances, others may find that they can still make claims because they are entitled to the services regardless of whether they see the state at fault or not. While Lucky identified the growing number of people who need houses as the source of the problem with housing, he also stated that he would take the municipality to court if he was evicted from his shack and was not given alternative housing. Lucky explained, "I can take them to court because I have a right to stay somewhere" (Empangeni 27). People like Lucky, who do not entirely blame the government for service delivery problems, still believe they can lay claims to services because they have a right to services that the government is responsible providing. In the next section, I outline how those who named the issue of access as a problem stated they could and would address the problem. I argue that while these alternative strategies are more thinkable than going to court, they are equally as risky, and in some cases, just as expensive as going to court, with little promise of enabling access to services.

D. Alternative Paths to Access

If going to court is risky, complicated, and unthinkable, how else can citizens claim their socioeconomic rights and address the problem of access? The types of strategies participants reported fall into four categories: 1) self-help; 2) confronting the state through the media; 3) appealing to the state; and 4) contentious action. Self-help describes things people can buy to have access to the goods the service was supposed to provide. It also describes alternative forms of accessing the good, like collecting water

from the river when there is no tapped water. These actions are not a form of claiming. Claiming requires that there is someone to express the lack of access to. However, self-help eschews the state and any person people might find responsible for the problem. I treat confronting the state through the media, appealing to the state, and contentious action as forms of claiming because people express their grievances to responsible parties, including non-state actors like principals and clinic managers. Participants often named multiple strategies across these categories. People may employ a self-help strategy to address the immediate problem of access, appeal to the state to draw attention to the problem, and later protest if the state is unresponsive to their initial appeal.

1. Self-Help Strategies

People reported a range of self-help solutions to address the problems in each scenario. These respondents thought these solutions were easier and quicker than going to court or approaching the state to solve their problems. They also assumed responsibility for their service provision needs. "Self-help" participants were formally employed and had friends and family networks they believed they could rely on. Instead of challenging shack evictions in court, participants listed securing alternative accommodation with family, friends or in the community like using the community hall, a shared space for community meetings. Others stated they would just rebuild the shack in a new location. With the school infrastructure and government hospital problem, people assigned responsibility to themselves to secure access. Many participants thought parents should buy the materials missing from their child's school and ban together to fix the school's infrastructure. In accessing health services, people indicated that they would go to a private doctor if they could afford it, buy medicine from the local pharmacy, buy other

materials for home remedies, and ask family and friends for assistance. In rural areas, people stated they would seek help from a traditional doctor, whose services are cheaper than a private doctor and just as effective. For water access, many participants said they would collect water from an alternative water source, the river or the *waterkan*, municipal water trucks ordered by the municipality to deliver water. For electricity, people noted they would use firewood or paraffin stoves for cooking. Candles or LED bulbs would be used as an alternative light source. Respondents also stated they would purchase bread and polony, a deli meat product usually made from pork similar to boloney if they could not cook because they lacked electricity.

Given South Africa's history of legalized racial discrimination, it is not surprising that people said they would solve issues themselves (or with communal help) instead of turning to the state. As the apartheid state steadily removed Black South Africans from its purview, the Black population turned inward creating their own networks to address their problems. In his assessment of civic associations during this period, Lodge (2003) asserts "Black South Africans tended to organize their lives outside of the state rather than around it, and much associational life tended to compensate for the state's inattentiveness to their needs rather than seek control of public resources" (205). Township residents began participating in local civic organizations in an attempt to address their basic material concerns. For many, these organizations were the only place where they could participate in finding solutions to their everyday problems (Zuern 2011, 47). Similar community organizing occurred in rural areas.

Like studies on the role of relational distance in disputes with neighbors, I find people's pursuit of self-help solutions is correlated to their relationships with those they

blame, in this case the state (Black 1984; Merry 1990; Greenhouse et al.1994; Yngvesson 1994; Hendley 2011). In South Africa, Black people's use of self-help stems from their strained relationship with the state due to various experiences with the state's unresponsiveness. Although, a non-racialized democracy was supposed to allow for more engagement with the state, the post-apartheid state's negligence stubbornly persists. This continues to discourage some people from looking to the state to solve service delivery problems. In other instances, the state is not only negligent, but is the direct facilitator of the poor's problems with services. Therefore, for some people turning to the state is not an effective way to deal with poor service provision. Unlike in Hendley's work, which finds that Russians will choose self-help solutions if they had good relationships with fellow neighbors in roof leak disputes, self-help in South Africa should be understood as avoidance of the state. South Africans pursue self-help to avoid engaging with the state which is often time consuming and ineffective. This is the advantage of self-help solutions.

Self-help strategies provide relief that is immediate. These strategies do not require adherence to procedural rules and therefore allow for a timely resolution. In addition, these strategies allow people to evade having to deal with the government's unresponsiveness. Appealing to the state and contentious action may attract the state's attention, but there is no guarantee that such actions will force the state to address the problem at all, let alone immediately. Past experiences with South African bureaucracy also make self-help solutions preferable. South Africa's public administration is slow, unwieldy and wholly inefficient. If a person has the means to bypass relying on the state, they will choose to access the basic good that the service was supposed to provide with

their own resources. For example, Thando, a working mother of two children stated, "Yah! It is a problem, but we accept that... because I need my children to continue with school, that is why if they say there isn't something, I will buy it myself because of my kids" (Empangeni 43). When I asked her if she would complain to the government about this she replied: "No! I don't think so because I think it is a long process to do that, so to make this thing short I will just buy it and let my kids continue" (Empangeni 43).

Aside from self-help solutions being a quicker response, people also see themselves as responsible for solving the problem, at least partially. Some ordinary people believe they must take on the responsibility of getting access for themselves especially if they have the means to do so because the state has failed. This line of thinking was common in response to the school infrastructure scenario. Mandla, a college student explained:

The only solution for my kid is to change the school because that's the fastest and peaceful way of doing it. If I go to the other parents to talk about it, I mean everyone knows this, it's in the news that the government needs to do all these things. These problems are known, yet they [government] not doing anything to solve them. So, the best thing to do is to change the school (Empangeni 32).

When the government falls short, some people believe it is the parents' job to fill in the gap within their capacity. Another respondent argued similarly, "that's why in high schools and even primary schools, they provide parents to play their role. That's why there's something you call a school governing body (SGB). Parents must be represented there, they must evaluate the school, and must report and pressure with the government or the school to provide certain resources" (Umlazi 63). People acknowledge and accept the need to take on some role in securing access to services when the state is unreliable.

If people have a multiplicity of easy and seemingly effective ways they could address their access problems, why should they appeal to the state and pursue legal

action, especially given the risk that the previous chapter details? Although the self-help strategies address the immediate problem of not having the service, they are not easily implementable for everyone. For example, while a shack dweller leaving to stay with relatives may get shelter, it does not address the property lost in the eviction, nor is it a solution that is always available. Some informal settlers leave their families in rural areas to look for employment in an urban area. Returning home would mean giving up access to employment opportunities and settling in poverty. Others leave home because they faced a contentious family situation where returning is not an option. With school infrastructure, while parents contributing to the school does bring some resources to the school, not every parent can consistently support a school while their child is enrolled. In addition, these solutions do not address the consistent underspending of state resources. Complaining to hospital management may allow the sick person to voice their opinion about the lack of service, however, this does not guarantee that the person will get treated after talking to the manager, especially if a lack of resources is the problem. Furthermore, not everyone can afford to buy medicine to cope with their present illness, especially if they have not been formally diagnosed. Using alternative sources of electricity and water does enable people to access these resources, however, such access requires that people have money to purchase the alternative sources, like candles, battery powered LED portable lights, and/or live proximate to the source, like a river or borehole.

More importantly, self-help strategies do not address the broader issue of equality. These solutions address an individual experience with the lack of access. People's ability to pursue self-help strategies can further exacerbate inequality. If a person can afford other forms of access when faced with a problem with services, they will be able improve

their material conditions while millions of others cannot. The challenges with service provision are experienced across the country. As such they require a larger and more comprehensive solution to address the issue of inequality of service provision. Still, self-help solutions' efficiency and practicality make them more thinkable and doable for ordinary people, especially when other solutions like appealing to the state or legal mobilization seem unthinkable.

2. Confronting the State through the Media

While not a "solution" in the traditional sense, some respondents said they would report the problem to the media because as one respondent stated, "the media always helps" (Empangeni 12). In South Africa, the media has been integral in highlighting various forms state failure. News agencies like Ground Up report problems vulnerable communities face like shack evictions, water disconnection, and the lack of sanitation. Investigative journalism in more mainstream media outlets like the Daily Maverick track suspected cases of corruption. Investigative journalism not only exposes individual cases of maladministration, but also systemic failures (Malila 2019). The 2020 arrests of eight suspects connected with R2.7 billion theft at VBS Mutual Bank resulted from the country's investigative journalism. The bank held the savings of disadvantaged communities and funds of poor local municipalities. When the bank went bankrupt, journalists followed the story. Their investigation exposed various private corporations and political elites linked to the looting of funds, including the Economic Freedom Fighters' party leader Julius Malema (Van Wyk 2019). The media's ability to tackle powerful elites allows people to perceive the media as an effective and useable strategy for solving everyday problems with sociopolitical implications.

Exposing problems with services can draw attention from the government.

Although social accountability may not be people's exact goal, it is a result of confronting the state through the media. The work of journalists on the everyday problems with service provision formally documents and makes public the state's failure. Every report makes service delivery problems visible in the public sphere. And because the state has a vested interest in maintaining a good reputation, they may respond to the public outcry for services. Simphiwe's turn to the media in response to her school's infrastructure problem is a prime example of the media's effectiveness of going to the media as a strategy.

In her first year of teaching in 2011, Simphiwe taught at a government primary school in Mtubatuba, approximately 60 km north of Empangeni. When she arrived at the start of the school year in January, she was told she did not have a classroom. She explained this was a "strategy" used by the principal to earn better pay. The more children enrolled in a school, the more money the principal earned. Every single day for two of the hottest months of year, Simphiwe instructed her students to get the desks from the school's library and place them in whatever shade was available before noon. When the sun came up the class would look for the biggest tree with shade and move their desks to that tree. As the shade moved so did their desks. Noon, Simphiwe described, "was the worst because then there's no shade. You know the sun would really be beaming down on us. I would wear a sun hat" (Empangeni 6A). The students held their books over their heads to block the sun. Simphiwe relied on a portable chalk board and one textbook per subject to teach 40 seventh graders in their final year at the school. The school was

located near the Umfolozi Sugar Mill and the buzzing and cranking of the sugarcane tractors' daily passing disrupted her teaching.

"I was fed up of having to watch young children sweat in the morning start their day dripping wet, like for me it was unheard of," Simphiwe said, to explain why she chose to contact the local newspaper in response to the problem. A reporter came to the school, took pictures of the conditions, and interviewed Simphiwe. In the article, he wrote "look at what this Department of Education is doing. Our children have no classes." she recalled. Simphiwe's turn to the media yielded positive results. She was later given a mobile classroom, a narrow rectangular structure that resembles a shipping container. Although it was cramped and Simphiwe couldn't control the temperature inside during the scorching heat or cold winter months, her students were no longer learning outside. Simphiwe chose to expose the issue to the media to draw attention to the unequal treatment her students received and the state's negligence in failing to provide enough classrooms to meet the school's needs.

Although exposing the state through the media may encourage the state to fulfill its duties to avoid a bad reputation, it also involves risks. State actors may choose to retaliate against claimants for turning to the media. When BopaSetjhaba Primary School's School Governing Body (SGB) turned to the media, the state responded punitively. The school had shared buildings with Lembethe Primary School since its creation in 1992. The SGB began engaging with the Department of Education for the construction of a new school building. The department proposed building plans and budgeted R600,000 (approximately 35,000 USD) for the project. Construction was scheduled to commence in March 2003. Shortly after the plan was signed, the department unilaterally decided to

delay construction until 2004. This meant the school would not be completed and ready for use until 2-3 years later. The SGB wrote a letter to the Papi Kganare, the provincial governing body for education at the time.

There was no explanation for the delay. To appeal the department's decision the SGB wrote letters to the Office of the State President, the National Department of Education, the Office of the Public Protector, the Education Rights Project at the University of Witwatersrand, and the National Human Rights Commission. They also turned to the media. A brief article was written about the matter in the Sowetan a local newspaper. According to Brown and Wilson (2013), "the article – rather than, it seems, any possible intervention by the Human Rights Commission – stirred an immediate response within the department" (94). Upon the article's release, the department ordered the Department of Public Works to stop the new school's planning and building. The school's principal later received notice of the department's decision to close the BopaSetjhaba Primary School for good without engaging with the SGB. The department even went as far as suspending the principal and the functions of the SGB. The two had no choice but to seek a remedy from the courts.

BopaSetjhaba's story illustrates that the media's documentation of the state behaving badly does not always encourage state actors to provide services. Instead, using the media might result in aggressive and harmful disciplinary actions from the state, where people are punished for making a claim. In this sense, turning to the media, while thinkable, is also a risky strategy, because there is no guarantee of positive results.

3. Appealing to the State

When I realized that people mainly named self-help strategies first, I began inquiring whether people thought they could/would complain to the government (generally) or to the specific government department responsible. There are various ways people stated they could appeal to the state to address the problems. People stated they would write letters to government offices and contact the offices directly. Some reported they would approach the local councillor, the elected official who represents their local community (the ward). Councillors have considerable discretion over service delivery in their ward and they are the closest government actor to the people. In Umlazi, participants stated they would attend the community-wide meetings with a community coordinator who would then relay their concerns to the local councillor.

People will appeal to the councillors or other respective government offices when they assign fault and/or responsibility to the state. As one interviewee who assigned blame to the government asserted “the government has to do something about it, because it’s their negligence. As a taxpayer, as a citizen, we have all the right to get assistance and medication” (Empangeni 12A). Samuel, a professor in education, who assigned responsibility, but not blame, to the state, said he would go to the Department of Education because “it is their basic duty” (Empangeni 26).

However, not everyone appeals to state with the purpose of laying a claim. In South Africa, appealing to the state is also about following protocol. Ordinary South Africans have developed a shared understanding of the “right way” to engage with the state. This understanding stems from experiences dealing with the bureaucracy and various state offices, like the local councillor and entails following a clear chain of

command. Aside from the risks of going to court which often makes litigation unthinkable, suing the government as a first strategy is also unthinkable because it does not follow this internalized procedure. Procedure is taken to mean the chain of command in how people are expected to engage with the state. In South Africa, people believe they must start at the bottom, usually with the local councillor when trying to get help from the government. For example, explaining why she could not take the municipality to court for not having tapped water in the rural areas of Eshowe, Silindle stated, “for that I don’t think I can take them because there is a procedure. We have a councillor to tell them our problems and after the councillor there is someone in charge higher than the councillor. So, I think if you go to them it will be okay, not just to take them straight to the court (Empangeni 43). This understanding is not unique to South Africa. Globally, litigation is seen as a last resort.

Compliance with procedure is also reinforced by civil society organizations who aid people with everyday problem solving for services. In an interview with members of Abahlali BaseMjondolo (ABM) in response to the hospital scenario, Mpumi explains “there are levels to it [problem solving], after the nurse there is the doctor and after the doctor there is someone above them and so on.” I asked her why she thought she had to start at the bottom. Zondo, a fellow member replied:

That’s what they [ABM] teach us, to follow the protocol. That’s what they call it, to follow the protocol. They teach us the correct way of doing things, they teach us to do things the right way—to follow the protocol. So, if let’s say I’m going to school and I’m not happy with something in my class, I have to talk to the teacher, if the teacher doesn’t listen, then HOD [head of department], if they don’t listen then I go to the principal. And then if they don’t listen to my story, I have to see who is above them (ABM 78).

I then asked whether this step by step process was a regular occurrence in South Africa. The interviewees later replied, “yes when it comes to government. It is a must that it is step by step. But when it comes to lower people, we have to force the government without passing the lower level because if we talk to them [higher ups in government] they say we have to wait” (ABM 78). She believed that the poor must force the government by either protesting or going to court, but not without following the chain of command first. When their problems are not addressed by these actors, only then can they pursue other strategies like mobilizing through courts.

Approaching the municipal government as a first step is also outside of perceived proper procedure for some people. Philile indicated she could only go to the councillor’s office and not to the municipality to address the problem. She explained she could not go to the municipality because “the problem is when you go to the municipality, they will ask you where you are from, who’s in charge of the area, and ask why you skipped them [the local councillor] and came directly to them [the municipality]” (Empangeni 23).

This also explains why people do not approach responsible government departments and instead approach other actors in the chain of the command. Because problems with school infrastructure and government hospitals have multiple people involve in providing services, there are many responsible parties that my respondents believed they must appeal to first. One respondent shared, “we have a Department of Education here, but ah you can’t just go and complain. You have to talk to the principal first” (Umlazi 55). Educators facing challenging work environments due to poor school infrastructure and the lack of resources are also expected to follow a lengthy process

which often leads to nowhere. A Head of Department (HOD) at a school in Khandisa stated:

Everything we do, we have to follow the protocol. As HOD, I have to report to my senior manager, the Deputy principal or even the principal. They are supposed to take the matter further to the Chief Education Manager Inspectors. Then it depends on the matter. Sometimes they will attend to the matter and sometimes they won't. If you do report it and it did [sic] not result in how you see fit, you can report it to the union.

I was surprised by his suggestion of turning to the union, especially after hearing from a teacher at his school just moments earlier that the unions are unresponsive to teachers' challenges at times. The teacher's struggles with the union were not unique. Esikhawini teachers Philani and Vusi shared of their experiences with teachers' unions:

Philani: We normally talk about it to the unions that are representing the teachers, National Teachers Union (NATU) or South African Democratic Teachers Union SADTU, because they are the middlemen between the teachers and the government.

Vusi: But they are failing to do what we ask.

So, when you report it to the unions, what happens after that?

Vusi: Nothing.

Philani: They tell us they are engaging [with the government], or that the government doesn't have money (Empangeni 31)

While following procedure is considered the "right way", it is often an ineffective way to solve problems. I encountered this problem first-hand during my time in Umlazi. I wanted to interview the ward councillor for the area I was conducting interviews. I arrived at the councillor's office one hot afternoon with my research assistant, Nhlaka who lived in the ward. We waited in line to speak to the councillor. After about 20 minutes we were greeted by a short middle age woman in a bright yellow ANC shirt. She invited us into her office. Nhlaka introduced us and my research as he had done in

interviews with his neighbors to establish a level of trust. I hoped this would also work in my meeting with the councillor. I was wrong. After the introductions, she looked at Nhlaka and looked at me with a stern expression. She interlocked her fingers and leaned forward against her desk speaking in isiZulu so I would not understand:

You can't just show up here unannounced. You should have called first and asked for a meeting. I am a very busy person. You also need to ask for my permission first before interviewing people in my ward (*with heavy emphasis on the word my*). You are not allowed to go around interviewing people without me knowing.

I immediately apologized and said that I did not know those were the rules. She later informed me that she was unavailable for an interview and her office would be close for festive, the Christmas holiday period. I left her office confused. I had assumed that because this office was a community office, I should be able to drop in to request to speak to the councillor or to make an appointment. Perhaps I should have called. Even so, why would I need her permission first to speak to people in their private homes if they welcomed me? This seemed especially strange because I had already conducted interviews with 71 people in Empangeni and the first 15 took place in her ward. I had encountered no resistance from residents. But for whatever reason, according to her I violated proper procedure, an unwritten code of conduct grounded in the respect she believed she deserved due to her position as the elected local authority of that ward— a set of procedures that I, as an outsider, was unfamiliar with, but that my respondents had been identifying all along.

When I decided to interview the councillors in other townships near Durban that had Abahlali branches, I followed the “procedure” outlined by the Umlazi councillor. I spent two weeks calling seven councillors to no avail. Five of the councillors did not answer my calls. One of them said they would call me back and never did. Another

instructed me to first get permission from the municipal head of councillors. She said “no, I cannot talk to you, you must go down to city hall and speak to the head of councillors. He will tell you what you need to know.” I went to eThekweni City Hall later that week. I filled out the necessary forms and was told I would be contacted. I did not receive a call back and did not interview any other councillors in the Durban area.

Even participants who are a part of the chain of command reported challenges with going to the government, which made them apprehensive about turning to the state for help. Lucky shared the struggles with his high school when we discussed the school infrastructure scenario. He said:

That’s my school you’re talking about. The school is lacking a lot of resources. In fact, I said to the teachers when I got there 8 years ago, since 1994 the school is only getting worse because of lack of resources. The school has no laboratory, no library, no computer center, and there’s no admin block. Everything is falling apart. The department is not providing us with resources (Empangeni 27).

After other respondents stated they would report the issue to an HOD as a part of following protocol, I was curious what Lucky has done to address the problem in his school given his position as an HOD. I was surprised when he stated he asked local businesses to sponsor the school, but all they did was make promises. I further asked if he had gone to the Department of Education about this. He replied:

We’ve been there. The Department of Education has a list of schools to be renovated, I remember when I got [to the school] we were number 3. They gave us these prefabs [prefabricated classrooms] with the hope that they [are] going to renovate the school. It’s been now more than 10 years, and those shack classes are falling apart. We’ve tried even the people who are in the higher positions in the departments. They’ve only promised and have done nothing to help (Empangeni 27).

Ordinary people assume HODs, like principals have more power and thus would be more helpful in addressing challenges with schools. However, as Lucky reveals, people within

the chain of command also face the same government unresponsiveness as parents and teachers.

A citizen's present and in some cases past relationship with the state also dictates whether they view appealing to the government as a feasible and successful way to secure access. People may be hesitant about confronting more powerful state entities directly because this style of approaching the state to voice concerns, especially as an individual, is a relatively new practice in South Africa. For Black South Africans the apartheid state was inaccessible. There were few, if any, state means for Black people to complain about socioeconomic problems. One woman in Umlazi alluded to this when explaining why she could not complain to the Department of Education which was conveniently located next to the councillor's office only ten minutes walking distance from her house. She stated "Ah I don't know, I just... It is not that simple, it is not. We are not used going to the department people, we're not used to going there (Umlazi 55). The apartheid legacy still penetrates citizen-state relations which influences whether people feel confident in approaching the state with their problems.

Complaining to the state is also not feasible because of fear of retaliation and skepticism about state's responsiveness. One group of women detailed this problem in a group interview:

Nolwazi: I would but it will just be a waste of time, because you complain, and nothing happens.

Simi: You just basically become a nuisance.

Nompilo: *Bathi nanguke loyomama.* (They'll be saying, this mother again.)

Why would you be a nuisance?

Mandi: Because black people don't want to be complained to. They'll probably abuse your child afterwards.

Nolwazi: Yes, they'll abuse your child... They'll make sure your child does not pass or everything bad is going to happen to your child.

Would you complain to the department as well?

Nolwazi: Yes, we would, cause we have to, but...

Kwanda: (*interjecting*) You don't trust the system?

Nolwazi: To be honest, I don't.

Nompilo: Yeah! Cause they put these written complaints and suggestion boxes, even at the clinics they have them, but you don't know if they really do read them.

Simi: They probably take them out like trash (Umlazi 72).

The women's perception of how they think state would respond to their complaints made them apprehensive about complaining to the state as a way to solve the problem with school infrastructure. While some of them recognized the importance of reporting the issues to the state, they also have a way of seeing the state that creates a roadblock to appealing to the state when trying to solve problems. The women's perception of the state is in part due to how they view their local councillor. When I later asked if they trusted their councillors, they all let out a resounding "no".

The behavior of local councillors has considerable influence on how ordinary people understand their relationship with the state, as it is the only government entity within their reach. Chapter 7 of the constitution established the local government system which was supposed to increase state responsiveness to service delivery issues all to improve the standard of living for local communities (Reddy 2018). Theoretically, the local government is supposed to be the primary channel for responding to the basic local needs. However, since 1994, local governments have been characterized by their lack of

ethical conduct and by municipal functionaries who people often view as unresponsive, dismissive, and outright corrupt (Mle 2015; Picard and Mogale 2015; Siddle and Koelble 2012). Since the majority of municipalities fail to carry out their basic functions, local communities are rapidly losing confidence in the local government system. This is especially true in the KwaZulu-Natal province where corruption within the local government is rampant.³ The 2018 KwaZulu-Natal Citizen Satisfaction Survey (CSS) reports 46.3% of citizens were outright dissatisfied with the performance of their local municipality. Black citizens were more dissatisfied than citizens of other races (Coloured, Indian/Asian, and Whites). Even though most municipalities in the province are almost exclusively Black, Black citizens experience more problems with municipal services and unresponsive local government. Citizens' dissatisfaction with local government was reflected in my interviews with regard to people's trust in councillors to solve service delivery problems.

My participants had varying levels of trust in councillors due to the varying levels of responsiveness they experienced from their councillor. Empangeni residents generally saw their councillors positively because they either rarely experienced service delivery problems or did get help from their councillor when needed. Residents from more rural areas outside of Empangeni had less trust in their councillors as they received few services from the municipal government given their location. When asked about trust in their councillor, most respondents in the surrounding areas of Durban and Johannesburg either laughed or shot me a look of disapproval when I asked about their councillor. In

³ In 2019, 62 KZN councillors were implicated in a R208 million (approx. 12 million USD) tender fraud (Harper 2019). During the recent pandemic, communities throughout the province accused government officials, including ward councilors, of corruption in the distribution of emergency food parcels meant for poor residents affected by Covid-19 (Nxumalo and Magubane 2020).

particular, Umlazi residents and shack dwellers in other townships outside of Durban viewed the councillor negatively due to their councillors' poor performance in either delivering services or responding to residents' complaints about community issues like crime.

Citizens' experiences with councillors reflected why some of my participants said they would approach their councillors and while others would not (see Table 4.2). For example, when I asked if he could report the issue to his councilor, Mandla stated, "if I'm bored enough, I can go talk to the councilor". Curious as to why he associated talking to the councillor with boredom, I asked why. He explained, "from the past experience of course. If I have to talk to the ward councilor I would, but I won't expect much. Though sometimes talking to them does work, because sometimes they do deliver, but it just politics. For me, I don't like politicians because they come and make promises they do not keep" (Empangeni 32). Mandla's view of the state is characteristic of many Black South African's relationship with the state, a relationship where state actors purport their willingness to respond to citizens needs and citizens vote with that in mind only to be disappointed. With this view of the state it makes sense why so few people would approach the state, whether it is to complain or a seek a remedy, to solve issues of access to services.

Table 4.2 Number of people who stated they would approach the state for the problem.

Service Delivery Problem	Empangeni (out of 72 respondents)	Umlazi (out of 39 respondents)
Shack eviction	13	12
School infrastructure	17	9
Resource strained Government Hospital	3	3
Access to tap water	23	n/a

However, what citizens take as an unresponsive councillor may actually be a councillor who is virtually powerless. Although councillors have discretion over service delivery, some service issues are outside of the local government's power, like those concerning education and healthcare facilities. Also, if a service delivery problem needs finances to address it, there are more state actors involved in the process.

An Esikhawini ward councillor explained the fragmented process of addressing his community's needs. Upon hearing the community's requests, if the issue needs finances, like most service provision problems do, the municipality decides whether they can fund that particular request. Municipal budget constraints pose a big problem in that upon further investigation the municipality may decide that the request from one ward is fundable while a request from another is not. As a consequence, people from one ward may see their councillor as "unresponsive", while people in another ward may see their councillor as helpful. "That's why councillors must be proactive in championing the issue for their ward since the budget is not enough" the councillor stated.

Another problem is the community may request things that are not within the power of the municipality. He stated:

People think we have power over everything, but we don't. You'll find that communities might request something that does not rest at the discretion of the municipality, like for an example they would say in our area there are no clinics, that does not rest with the municipality, but with the provincial government in terms of the Health Department itself. But that does not mean we have to say "no, that's not part of us." We have to take it forward [to the municipality] so that the municipality can also take it forward.

Curious as to why, as a councillor, he would still go to the municipality if the municipality didn't have discretion over the issue, I then asked if he could go to the provincial departments himself to advocate for his community. He explained "it is important to include the municipality, as part of procedure. It's important to include them as part of formal communication and passing through them. So I can't call the MEC and say hey, come and do this. But if it's coming from the Mayor, it can be done. The MEC can listen to the Mayor." According to this councillor, the residents' negative view of their councillor would be unwarranted if the councillor did relay their request to the municipality, but the municipality and the provincial failed to respond.

This councillor also attributed citizens' negative perception of councillors to residents

expecting too much from them, but also the belief that the position is often coveted by people who solely want to benefit from the tender system.⁴

That's one of the challenges whereby people expect us to be everything... you're a social worker (*laughs*), sometimes you're a policeman etc. Someone would ask for something else, which they know that we are not a part of. But they expect you to perform at the same time because we are the councillors. For example, people think we got access to tenders or can give people jobs. And when we explain they think we are lying and are just giving them to our friends. Then they decide they want to become a councillor to have access to the tenders. They run, get the position and realize they don't have those perks and then don't want to work.

⁴ Tenders are government contracts which can be granted to individuals to conduct business in support of public works projects, like trash collection.

When people realize they are unable to manipulate the government tender system to their benefit as a councillor, they become unresponsive to their constituents' needs according to this councillor.

Although appealing to non-legal state actors to address problems with services is thinkable, for some of my participants it is not a feasible or successful way to solve problems. While some people may turn to the state because they recognize the state's duty to provide services or "it is the right way" to solve problems, others have ways of seeing the state that discourage them turning to the state for help. This perception of the state is largely informed by their experiences with a habitually unresponsive state. Methods of appealing to the state often lead people into the constant cycle of state unresponsiveness—the very source of present-day service delivery problems in South Africa. As my interviews show, even people in positions with more power than ordinary citizens face challenges getting through to more powerful state actors when it comes to service delivery. When formal engagement with the state is out of reach and self-help solutions are unfeasible, protest is another way ordinary Black South Africans have tried to gain access to services.

4. Protest

In the "protest capital of the world," which South Africa is sometimes referred to as, protests are so common that it is sometimes called the country's 12th official language (Brown 2015, 13; Twigg 2018). Protest is credited for ending apartheid and bringing democracy and rights. As such it has proven itself as a successful means for ordinary citizens to get what they want from the government. Protest in South Africa takes many forms. They are characterized by peaceful organized marches, mass meetings, *toyi-toyi*

(the rhythmic stomping dance and harmonious singing of songs of struggle), road blockades with boulders, and violent acts of burning tires and property damage. There are thousands of protests in South Africa every year. Of the thousands of protests, hundreds are for services. According to Civic Protest Barometer (CPB), which tracks protests directed at municipalities across South Africa, more than half of the country's protests in 2017 were for service delivery grievances (Civic Protest Barometer 2018). When people dismiss the notion that the source of their problems are general misfortune and instead frame their grievances as problems with government, this opens the door for rights-claiming, especially in the form of protests.

Protest's disruptive power makes it the next best option for ordinary people, when formal communication with government fails or is difficult.⁷ During my interviews, people explained protest's communicative utility when I asked what would they do if the councillor or government department failed to respond to their formal complaints. One respondent explained "We strike! that is how we solve issues here in South Africa. That's how it worked back in the days, so people feel like that's how it must work in nowadays. Because submitting a memorandum, will be like, it'll fall onto deaf ears basically" (Umlazi 61). When I asked why, he responded "because the poor have no authority, unlike the rich" (Umlazi 61). Protests allow people to mobilize their problems when other methods of appealing to the state are rendered infeasible or ineffective because of their class status.

My interviewees also explained protests can help citizens overcome the challenge of lacking formal power to communicate with the state by allowing people to mobilize as

a group. Collective action, even when it is just to complain, is seen as more effective than complaining alone. While participants stated they would not address the state alone, they did believe they could confront the state as a community because the issues with services affect the community and not just the individual. In addition, the validity of one's claims increases with support from other members of the community which in turn increases protest's effectiveness. Nhlanla detailed, "you have to go through the Department of Housing and tell them your story. But I don't think they can help you if you go alone, you have to go as a community and complain" (Empangeni 12A). He further explained "If you go alone, they won't even listen to you, they'll think you're an opportunist." His friend also participating in the interview responded "there are a lot of opportunists here, some of them are looking for the land, and just want the land, and then you find them renting the house" (Empangeni 12C), alluding to the on-going corruption in accessing an RDP house.

Protest's effectiveness as a problem-solving strategy may also depend on the style or form it takes. According to CPB, after 2013 90% of protests have involved some type of violence, including assault, looting, destruction of property, and even death (Civic Protest Barometer 2018). Property damage as a form of protest has become a common occurrence in South Africa, with people setting fires to property owned by the entity responsible for their grievances. Judith, the train driver, recalled how one day at work she found the train tracks that ran between Mtubatuba and Hluhluwe burned. The residents were protesting because Transnet did not hire people from the community and instead employed people from other areas to maintain the train line and work the railway. She explained:

Burning the lines was their way of wanting attention from Transnet and government and then they can say their troubles. They want their rights to be noted that is why they have to protest so the government can check, *ayibo!*⁵ what's happening here? And they [government] go here to see what's the problem, then they [community members] will say we don't have a police station, we don't have a clinic, we don't have this we don't have that, that's all their rights that why they want those things (Empangeni 5).

Because peaceful protests may not allow ordinary people to be heard, protest by fire, while destructive, causes enough alarm for the government to at least listen to the ordinary people's concerns, according to my interviews. Responding to the shack eviction scenario, Nhlahla stated "if the government doesn't build us houses first [before carrying out the eviction], as you know here in South Africa the only solution is to burn something. If you burn something, the government will react" (Empangeni 12A). There is disagreement on this mode of protest's effectiveness in achieving one's aims. For some people such damage actually derails progress by forcing an already resource-constrained state to bear the cost of rebuilding the property destroyed. However, for some people a peaceful strike may not be enough. In the same interview, Nhlahla and his friend Khethelo debated this point:

Khethelo: Okay, uhm... I'm not trying to be rude, but us black people complain a lot, sometimes we have to because the government doesn't listen, but sometimes we use that 'black' card that we have a right to this... people would strike maybe for free education, it's their right to strike. There's a formal strike, then there's an informal strike, now when they vandalizing, that's not being responsible. You have a right to strike, but you have to be responsible.

Nhlahla: But that's the only way the government will hear us...

Khethelo: You see! (*gesturing to Nhlahla*)

Nhlahla: Yes! because the only people that strike peacefully and the government hears them, are white people. Try a peaceful strike as a Black person and see what will happen (Empangeni 12).

⁵ Term used to express surprise, like Oh my god!

Despite the familiarity and assumed effectiveness as a problem-solving strategy, protest is a risky strategy that is not always easy nor effective. The riskiness of protest as a strategy explains why few of my participants said they would protest in response to the scenario problems. Across all the scenarios only five out of the 39 participants in Umlazi said they would strike to solve the problem. In Empangeni, thirteen people stated they would strike in response to the scenarios.

Protest is a high-risk strategy for several reasons. On one hand, protests do not always deliver a meaningful response from the government. Many protests do not result in the delivery of services. For example, as we sat in her dim cold one-room cinderblock shelter Mama Zandile, a sixty-year-old caregiver for her two granddaughters, reported she participated in a protest for electricity years ago, but the municipality never delivered. She said, “they still say it is in process” (Empangeni 51).

On the other hand, protesters are often met with various violent forms of retaliation from the state. The post-apartheid state has grown intolerant of protests especially ones that draw attention to the ANC’s failure in governing the “new” South Africa. According to Ballard (2005), the ANC has historically been intolerant of dissent. He argues, protests are regarded “as impertinent, not showing sufficient respect for the government which believes, somewhat paternalistically, it has a mandate from the majority of the population to proceed the way it feels best” (89). Moreover, movements that mobilize poverty issues target the ANC’s shift to neoliberalism, which are a threat to the vested interests of the ruling elite (Bond 2004, 27). Consequently, they have resorted to repressive tactics to discourage mass protest, and in some cases criminally punish those who choose to mobilize. For example, the state has denied some applications for

protests. The state has also relied on the more egregious tactic of using lethal force to quash mass protests. South African Police Service is known for its use of rubber bullets, stun guns, and water cannons on protesters. In 2011, SAPS killed 33-year-old Andries Tatane during a service delivery protest in the Free State province. When Tatane along with 4,000 other protesters marched to the Setsoto Municipal Offices, they were met by the police with water cannons to disperse the crowd. In an attempt to block the water cannon vehicle, Tatane was first beaten by five officers and later fatally shot in the chest. A year later, 34 mine workers were killed and at least 78 were injured in a protest at the Marikana mine.

On July 16, 2020, SAPS used riot shields and stun grenades to disperse a group of community health workers in the Eastern Cape. The group mostly comprised of women over 50 was targeted for attempting to occupy the Department of Health's head office overnight. Community health workers had been petitioning for permanent employment where they would be provided with a livable wage and safer work equipment since 2002. Prior to protesting, the group met with the superintendent-general on July 6th, where he said he would respond to their request within seven days, but did not. The police used rubber bullets and stun grenades to shoot at the group. SAPS also used riot shields to push them out of the area.

These stories exemplify the challenges ordinary people experience when trying to appeal to the non-legal entities of the state as a way to solve problems. When people identify injurious experience as a problem and blame the government, or when they try to claim a remedy from the state using formal complaints or protests, the state either does not respond or responds punitively. In both situations, people are left without a remedy

and pushed further away from getting access to services. According to the disputing literature the state's unresponsiveness in granting people a remedy is the beginning of a legal claim, however for many ordinary Black South Africans this is where the mobilization of claims for services stops.

E. The Fluidity of Thinkability

Though many people first named a non-legal strategy that they would employ to solve their problem, when I raised the possibility many then added that they would go to court. New information about available strategies can push people to rethink and to consider alternatives to their repertoires of thinkable behavior. Respondents in Empangeni mentioned litigation as a first response 17 times out of a possible 360 times (72 interviews, 5 issue areas).⁶ After my probing, respondents agreed they could and would go to court 77 times. In Umlazi, litigation as a first response happened 10 times out of a possible 195 times (39 interviews, 5 issue areas). Litigation as a strategy was then listed 43 times after my probing on the issue. In interviews conducted with members of Abahlali and clients of the Durban's Legal Resource Centre litigation was listed only ten times out of the 96 possible times (24 interviews, 4 issue areas).⁷ After my probing, however, all 24 respondents agreed they could and would go to court for each problem.

New information from one's peers can also change the way people name, blame and attempt to claim solutions to problems with service provision. People with shared experiences can shed light on new ways to address them. The responses from group

⁶ Going to court, contacting lawyers, or reporting the issue to the Department of Justice were all coded as "litigation."

⁷ These respondents were not asked the shack eviction scenario question because they already had experience going to court for the right to housing.

interviews demonstrates this shift. For example, as two students from University of Zululand discussed the hospital scenario:

Xolani: The problem is, right now I'm sick. It'll depend whether they have a shortage of medication, or a shortage of staff, or things like that. On the shortage of medication, I'll write a letter and put it in the complaint box.

Malusi: Who reads those letters?

Xolani: The management. Remember what happened last year December, the hospital management that was taken to court? The management was taken to court because of their recklessness when it comes to moving *isiguli* (patients). *Bamuvisa abantu ababe* (They were moving people who are) insane from one ward to another because it was packed, and most staff on that day had taken leave. The management wasn't aware that there was a shortage of staff and rooms for patients. The management then wrote a letter to the Department of Health notifying them that there is a space issue. The management had to move patients to other buildings without inspecting the building, whether it's in a good condition for patients. All the patients kept there passed on. They were not taken care of.

(referring to Malusi) He said he would write a letter for the suggestion box, what would you do?

Malusi: I'd do the same thing.

Malusi first doubted the effectiveness of writing a letter in response to the issue. It was not until Xolani shared information about this event where the hospital management advocated on behalf of the patients that Malusi started to believe that writing a letter might lead to some result. As people process the nature of the injurious experience and who is to blame, the solutions available go from unthinkable to thinkable and vice versa. It is through this processing that people see court as a thinkable or unthinkable way to solve problems.

F. Conclusion

In this chapter I argued that regardless of formal declarations of rights and available legal solutions for addressing rights-based problems, people regularly make

their own determinations about what experiences are problems, who is to blame, and the possible paths to a solution. Although pursuing a legal dispute allows a claimant to hold the government accountable for failing to act, that is not always the primary objective, at least not initially. People mobilize their claims of access to address their immediate needs. Whether solutions become thinkable or not depends on whether people perceive the solution as useful and the right way to address the immediate lack of access, in light of the risks. How one decides the usefulness of a strategy further depends on their past experience with the strategy and a person's understanding of how best to get through to the state.

Legal mobilization further loses its thinkability as a problem-solving strategy when people believe they have less risky, more feasible, and effective ways to solve their problems of access. And while none of these strategies are without challenges, litigation and other political tactics should be seen as a part of a coordinated strategy, as opposed to isolated routes to problem solving. As I have demonstrated here, the pursuit of non-legal alternatives can still be filled with roadblocks. Self-help solutions often require that the injured person has the resources to purchase the necessary items to facilitate access to the service. Although, South Africa's political system allows for formal and informal forms of claims-making, citizens' ability to successfully lay claims to the state is complicated by their perception of the state's persistent unresponsiveness and its punitive response. As a result, people are left with few actual avenues to solve the problems with basic services when trying to mobilize outside of the law.

Ultimately, the power of litigation lies in its ability to compel the government and its officials to act. Courts are the only institution that can force the hand of an

unresponsive state, specifically when their behavior is a violation of the law. This is how ordinary people can get around the persistent pattern of government unresponsiveness that leads to poor service delivery.

In fact, being taken to court is sometimes the only reason state officials carry out their duties to deliver basic services.

One recent example demonstrates the power of litigation. In July 2020, The North Gauteng High Court ordered the Minister of Basic Education Angie Motshekga to reinstate the National School Nutrition Programme (NSNP). When schools closed in March due to Covid-19, the program was suspended forcing millions of school children into hunger as many of them relied on school provided meals as their main access to food. With the fear of a nationwide hunger crisis looming, education activists, SGBs, parents and students pleaded with the government to reinstate the program. The Minister responded in late May saying her department would only re-open school for seventh and twelfth graders. In practice this meant that in some schools only 10-15% of children would be fed and nearly a quarter of the already-budgeted R7.6 billion for the program would be unspent all while millions of children went hungry (Broughton 2020). After a lawsuit in North Gauteng High Court on behalf of parents, children, and SGBs, the Court handed down a decision declaring that the Minister and the MECs were in breach of their constitutional and statutory duties and ordered them to restart the program.⁸ Motshekga was also ordered to report to the Court every fifteen days to document the steps she has taken to provide food to all qualifying students without delay (Pikoli 2020).

⁸ “MECs” are members of the Executive Council of a province is the cabinet of the provincial government.

Of course, litigation is not without its own perceived risks, as described in the previous chapter. However, this story demonstrates that courts can help ordinary people confront the very problem that causes the lack of access – government officials failing to act. In the next chapter, I show that in spite of negative perceptions of the law litigation can become thinkable with the help of new information. I use the experience of informal settlers to demonstrate civic organizations' role in increasing the thinkability and feasibility of naming the lack of access and mobilizing their issue of access through courts.

CHAPTER 5

OVERCOMING THE ROADBLOCKS: HOW CAN LITIGATION BECOME THINKABLE?

A. Introduction

"I was in my room washing. Then they threw me outside" Bulelani Qholani describes his traumatic eviction by the city of Cape Town. The 28-year-old was dragged out of his shack naked during one of the city's anti-land invasion procedures on July 1, 2020.¹ He was in the middle of a bath when the officers arrived. He requested to see a court order of eviction and asked the officers to wait until he finished bathing. An officer entered his home. Bulelani was shortly thrown out and his shack was destroyed. While there is some controversy among news reporters, everyday people, and state officials about whether Bulelani was really taking a bath or whether his nudity was a "new strategy" of informal settlers to avoid evictions, the problem was that the city performed what constituted an illegal eviction once again. A court order issued by the Cape Town High Court prevented the city from destroying the 49 structures in the Empolweni site, where Bulelani lived. In addition to the court order, Section 26 of the Constitution states that no one may be evicted from their home without a court order made *after* considering all the circumstances, a clause which South African courts have applied to informal settlements like shack dwellings.²

Given this persistent and dangerous targeting by law enforcement and neglect by elected officials, one would not expect informal settlers to turn to the law for help with

¹ Anti-land invasions procedures are used by municipalities to evict informal settlers. The original purpose of these evictions was to prevent people from occupying land. Instead, law enforcement agencies which make up land invasion units evict dwellers who have occupied areas for years.

² Constitutional Court decisions like *Government of the Republic of South Africa v. Grootboom and others* (2000) and *Port Elizabeth Municipality v. Various Occupiers* (2005), and others established the precedent that informal settlers are entitled to Section 26 provisions.

evictions. This is especially true in a context where ordinary people mistrust legal institutions and question their ability to fairly administer justice, as I detailed in Chapter Three, and yet they do. Out of my 146 interviewees, informal settlers were the most inclined to turn to courts for the scenario problems without my prompting, even for the problems that they did not have first-hand experience suing for like failing school infrastructure and resource shortages at public hospitals. In addition, informal settlers were more likely to confront the responsible state officials about the scenario problems instead of turning to self-help, unlike the participants from Empangeni and Umlazi, who had more resources and were more formally educated. This was surprising especially because during my preliminary interviews in 2015, when I asked participants who they felt did not have rights in South Africa, many responded the poor, in part because they believed the poor were unaware of what their rights were. This led me to question the following: How does one come to think of suing the government after experiencing consistent degrading forms of violence by the state? How do citizens come to see their everyday challenges created by the state and enforced by the law as legible rights issues worthy of legal intervention? Or more simply, when and how does legal mobilization become thinkable in the South African context?

In answering these questions, I argue litigation can become thinkable with the help of new information that redefines the problem of the lack access to services, outlines the available legal solutions people can take, and establishes trust in the law to achieve a favorable outcome. New information can be provided by anyone as I noted in the last chapter. However, through my interviews with informal settlers I learned that it is the work of legal advocacy organizations (LAOs), rights organizations, and grassroots

movements, that helps empower marginalized groups to challenge the state and facilitate trust in the legal system making legal mobilization a thinkable strategy when problems strike.³ This conclusion is drawn from my interviews with informal settlers—twenty members of shack dwellers' movement, Abahlali BaseMjondolo in Durban and ten members of Johannesburg's Inner City Federation—who have sued for the right to housing, and in some cases, water and electricity.

B. The Role of New Information and Civil Society for the Thinkability

Scholars have long shown the importance of organized support for legal mobilization (Tushnet 1987; Epstein and Kobylka 1992; Klarman 1996; Epp 1998, and many others). Charles Epp (1998) famously argued that rights advocacy organizations provide what he calls "the support structure" for litigation. According to Epp (1998), these organizations make litigation possible by providing the material resources necessary to support rights-advocacy litigation. My argument in this chapter builds on this research but goes further. Specifically, I argue that South Africa's "support structure" organizations not only make litigation possible in terms of logistical feasibility, but also *thinkable* in the first place for everyday citizens. As I have argued in the previous chapters, there are various factors that discourage ordinary people from thinking about using legal intervention for socioeconomic problems, like their perception of the problems and overall mistrust of the legal system. In addition to providing marginalized groups with practical knowledge about rights and the legal process, advocacy organizations help reshape people's perceptions of the problems of access and the legal system, making litigation for socioeconomic problems more thinkable to ordinary people.

³ With the exception of the police.

For grievances about socioeconomic problems to transform into legal disputes, potential claimants must know and believe they are entitled to the service, that the state is obligated to provide the service or, at the very least, not impede access to the service, and that they can pursue legal action if the state neglects its duty. In Chapter Four I showed that the perceptions people have of socioeconomic problems and the available solutions push people further away from thinking litigation is possible at least at first. I also demonstrated that such perceptions are fluid, in that people do adjust their perceptions over time and in light of new information. This finding is consistent with the literature on disputes and rights claiming (Felstiner et al. 1980; Miller & Sarat 1980). The dispute literature notes that people will redefine their grievances and alter their perceptions of strategies available in response to various people's communication and expectations, including opponents, authority figures, companions, and intimates (Felstiner et al. 1980, 638). In the South African context, I find it is through this communication with advocacy organizations and activists that challenges with services transform into rights violations for ordinary people.

While all 146 interviewees agreed that the socioeconomic services in the scenarios were rights, there was a disparity regarding whether people believed they could mobilize the law to solve the rights problems. Those who were members and had connections to advocacy organizations had a better sense of their ability to go to court for socioeconomic issues than those who were not. This is primarily due to the rights education and the successful legal mobilization by these groups. In the South African case, organizations are essentially what Felstiner et al. (1980) call "the agents of transformation." Apartheid-era civic organizations like the Soweto Civic Association,

which conscientized Black communities about the rights-based nature of their everyday material challenges. Similarly, post-apartheid rights advocates like human rights lawyers and activist groups help people understand their everyday challenges with services and what solutions are available to solve them. In South Africa, these organizations help reframe everyday challenges with service delivery from a matter of circumstance or a consequence of being poor and Black to a constitutional rights violation. Through this reframing, I found marginalized groups are more equipped to make socioeconomic rights claims and are more empowered to do so in ways they were not before. This reframing helps ordinary people incorporate legal mobilization as a part of their existing tactical repertoires in the struggle against issues of access to services.

C. South Africa's Support Structure Organizations

South Africa is the home of nineteen legal advocacy organizations, several non-litigating civil society organizations, and grassroots movements that champion the right to access basic services. To understand the role that they play in making litigation thinkable for socioeconomic problems, I interviewed lawyers and advocacy personnel from Socio-Economic Rights Institute of South Africa (SERI), Centre for Applied Legal Studies (CALS), Black Sash, Pro-Bono, Section 27, and the Legal Resource Centre (LRC). I also interviewed members from two grassroots organizations Abahlali baseMjondolo (isiZulu for “those that reside in shacks”) and the Inner-City Federation (ICF). SERI was founded in 2009 by Jackie Dugard and Stuart Wilson. The Johannesburg based organization supports the poor with their issues of access through

research, advocacy and litigation.⁴ SERI operates with the understanding that socioeconomic rights are “political tools for accountability, mobilization, and empowerment” (Brickhill 2018, 31). SERI has supported legal mobilization for access to basic services enshrined in Section 27 of the Constitution, housing, including the protection against evictions. With their research and rights advocacy work, SERI has also published resource guides on housing and sanitation laws, government policies, and case law that serve as useful tools to NGOs and grassroots community-based organizations.

CALS was founded in 1978 by John Dugard. It is also based in Johannesburg at the University of the Witwatersrand. The organization’s founding was the birth of public interest litigation in South Africa. During apartheid, attorneys at CALS actively worked to challenge apartheid policies on security, policing, education, and labor law (Brickhill 2018). Since then, CALS’ research, advocacy and litigation efforts focus on five key overlapping areas: basic services, business and human rights, environmental justice, gender, and the rule of law. Like CALS, the LRC has a long history of public interest litigation. The firm was founded in 1979 by Felicia and Sydney Kentridge, Geoff Budlender, and Arthur Chaskalson, the first President of the Constitutional Court. As South Africa’s largest public interest law firm, the LRC has the widest national reach of any legal advocacy organization. The firm has offices in Johannesburg, Cape Town, Durban, and Grahamstown, and satellite offices in more rural areas in Limpopo, KwaZulu-Natal, Mpumalanga, and the Eastern Cape. Since its founding, the LRC has worked on a wide variety of issues. Its work now mainly focuses on constitutional rights covering civil, political, and socioeconomic rights violations.

⁴ Despite its Johannesburg location, SERI is active throughout the country by relying on its network to expand their reach.

Section 27 grew out of the AIDS Law Project and was established in 2010 by co-founders Mark Heywood, Adila Hassim, and Jonathan Berger. Given its origins in AIDS activism, Section 27 is a leader in legal mobilization for the right to health and against socioeconomic challenges that determine health outcomes. As such, the organization helps people litigate primarily on the right to access healthcare services in the public and private sector, food, water, social security, and the right to education. With the right to education, Section 27 has been integral to mobilizing against school infrastructure problems like lack of formal sanitation, inadequate textbook supplies and prescribed learning materials for disabled children. Despite being located in Johannesburg, Section 27 has worked on issues of access in Limpopo and the Eastern Cape provinces with the help of their field researchers.

Unlike SERI, CALS, the LRC, and Section 27 whose legal advocacy work mainly concerns constitutional rights issues, ProBono's work focuses on facilitating access to justice to the marginalized poor. Founded in 2006 by Odette Geldenhuys, ProBono bridged South Africa's private legal sector and the public interest legal needs of the poor. With ProBono's help marginalized groups can secure general legal assistance and representation for strategic impact litigation. In terms of reach, ProBono has offices in Johannesburg, Cape Town, and Durban and has volunteer lawyers from over 100 private firms in the country.

Black Sash was established in 1955 by six middle class white women, Jean Sinclair, Ruth Foley, Elizabeth McLaren, Tertia Pybus, Jean Bosazza, and Helen Newton-Thompson, who mobilized against various apartheid-era injustices like the erosions of civil liberties and racial segregation. The organization remained active in its

mission to secure justice and equality into the post-apartheid period. Black Sash engaged in development of the new Constitution as well as in the debates about the nature of transition and the shape of the new democratic South Africa. Since then, Black Sash has evolved from being member-based organization to an NGO which advocates for the social protection of the most vulnerable groups in South Africa, women and children. They provide right-based information, education, and training on the right to social security and social assistance. Black Sash hosts community workshops to educate social welfare recipients about their rights. While Black Sash is not a legal advocacy organization, the organization has engaged in public interest litigation concerning social welfare grant administration. The organization also offers legal assistance through its help hotline.

Abahlali baseMjondolo (Abahlali) is the largest group of informal settlers that advocate against the landlessness and homelessness perpetrated by severe state negligence.⁵ Their mission is to improve informal settlers' lives by challenging evictions and service delivery gaps to the marginalized poor. The organization has over 55,000 members spanning across five out of the nine provinces, Gauteng, KwaZulu-Natal, Eastern Cape, Western Cape, and Mpumalanga. Abahlali was formed out of the frustrations over the gross negligence on the part of the city of Durban by a group of shack dwellers from Kennedy Road informal settlement. Originally, Durban informal settlements were run by slumlords or self-appointed *indunas*, traditional authorities that held control over the residents (Dugard et al. 2015). In 2001, the residents of the Kennedy

⁵ It should be noted that despite Abahlali's work in human right activism, the movement is resistant to being called a "rights-based organization" or a "human rights organization" as such labels obscure the very political nature of informal settlers' problems and the strategies they use to solve them (Dugard et al. 2015).

Road informal settlement decided to replace the *induna* with an elected Kennedy Road Development Committee. This committee was the beginning of Abahlali, which was officially formed in 2005 in response to the state's false promises of land and formal housing. Under the Durban municipality's Slums Clearance Project, residents of some informal settlements, like Kennedy Road, were supposed to be provided with formal houses. When the residents learned that the city sold the land that it had promised for the housing scheme to a local property developer for the building of a brick factory, approximately 750 community residents took their anger to the streets. This was the beginning of the movement and the residents' lives as grassroots activists.

Since that day, the movement has evolved from relying on mass protest to also engaging in legal mobilization, using the law and rights-claiming as strategic tools to advance their struggle for housing and services. Their reliance on rights discourse Dugard et al. (2015, 29) note, serves as "a primary frame-of reference in constructing [Abahlali's] identity, organizing the movement, and shaping its struggles". Abahlali engages in rights advocacy work by holding rights-based workshops for informal settlers. Upon joining Abahlali, members are informed about what their rights are as they relate to housing.⁶ They learn about the constitutional protections against evictions and what to do when approached by the municipality's land invasion unit and the police. The movement's growth is primarily the result of word of mouth spreading information from one informal settlement to another. All of my interviewees learned of Abahlali from an existing member from another informal settlement. As the movement gained more recognition, its

⁶ Members pay a small annual membership fee upon joining.

leaders have done rights advocacy through South Africa's major broadcasting outlets and print media.

Like Abahlali, Inner City Federation (ICF) relies on media outreach to reach poor communities in Johannesburg. ICF advocates for housing rights and challenges unlawful evictions and water and electricity cut-offs of poor residents in Johannesburg. The organization represents over 2,000 inner-city residents from more than 40 dilapidated buildings in Johannesburg's inner city. As the first self-organized group of low-income residents, the organization was founded in 2015 by a group of low-income inner-city residents that were represented by lawyers at SERI. The group formed the ICF with the aim of addressing housing issues that affected the poor who lived in Johannesburg's abandoned buildings. Its members are made up of low-income tenants and unlawful occupiers, who have either been forcibly evicted or live under the constant threat of eviction. Although the ICF was initiated by SERI's clients, the organization is open to all tenants and unlawful occupiers. The organization works to support inner-city residents through several mechanisms. The group helps tenants develop collaborative problem-solving strategies for dealing with internal building disputes. The ICF also serves as a platform for knowledge sharing on the right to housing and basic services. ICF relies on its connections to a number of partners in their struggle for housing in the inner-city. Throughout the years, the ICF has built relationships with NGOs, community-based organizations, journalists, public interest lawyers, and other activist organizations like Abahlali. Through its partnership with SERI, ICF also facilitates access to legal resources for those facing legal challenges with service delivery. Both the ICF and Abahlali serve as critical resources for rights education, especially for the marginalized poor.

D. South Africa's Housing Terrain

The post-apartheid government has made considerable gains on the issue of housing since the end of apartheid. Despite South Africa's impressive delivery of more than 3 million houses since 1994, the number of informal settlements has increased more than nine-fold in the two decades since the state's housing program's inception. Today, there are more than 2,000 informal settlements. According to conservative estimates in 2011, between 1.1 and 1.4 million households, or between 2.9 and 3.6 million people lived in informal settlements in South Africa (SERI 2018). However, given the continuing movement into cities, the fluidity of residence in these areas, and the rise of migrants from other African states, the current number is likely to be significantly higher. The challenges that hinder the universal enjoyment of the right to adequate housing stem from how the progressive legal framework concerning housing has been implemented in practice. The implementation of the right to adequate housing, has been plagued by poor planning, a failure to adequately monitor the implementation of government policies, and a lack of political will.

Apartheid's legacy of land appropriation coupled with the demands of mass urbanization created a housing terrain primed for the evictions marginalized groups experience today. Apartheid's housing policies sought to control urban settlement along racial lines. The government moved to restrict Blacks to separate urban locations and to exclude them from cities altogether, leaving little urban housing stock available for the Black population. There were two types of policies that governed urban housing during apartheid, "influx control policies" and "housing structure policies" (Parnell 1998). Influx control policies limited where Black people could live across the country, while housing

structure policies determined what types of housing structures were appropriate for urban dwellings. Early examples of these policies include the Natives (Urban Areas) Act of 1923, 1934 Slums Clearance Act, and the Group Areas Act of 1950. The Urban Areas Act classified urban Blacks as “temporary sojourners,” only allowed in urban spaces in the service of the white population. The act allowed local authorities to set aside land for urban Black workers. It was an attempt to prevent the emergence of settlements on the outskirts of urban areas as cities industrialized. By design, the Act was an instrument of controlling the influx of the Black population into urban areas as the land was only granted to people who were employed. Those who were described as “idle” or “habitually unemployed” were forced out. The Langa Township, outside of Cape Town, was the first to be established under the Urban Areas Act.

While the act brought drastic changes to the presence of Blacks in urban areas, it did little to stop the growth of slums. As South African cities industrialized employment opportunities increased encouraging mass migration from rural homelands to buzzing city centers. The Black population in Johannesburg alone rose from 105,000 in 1915 to approximately 240,805 by the start of World War II (Parnell 2003). This influx exacerbated the already existing housing shortage for the working class. Instead, people relied on slum dwellings in the urban periphery for housing. Objections to slums were numerous, ranging from the proximity of Blacks to white areas, concerns about health and safety, labor productivity, and political instability (Parnell 2003). The Slums Clearance Act of 1934 was a legislative response to these concerns. The act enabled municipalities to forcibly remove people from areas they considered slums.

The Group Areas Act of 1950 solidified the state's mission of racial segregation. The act permitted the government to establish separate residential areas based on race. People were prohibited from owning property and living in areas designated to another racial group. The same families who were evicted from the inner-city during the 1930s were once again forcibly removed from burgeoning Black communities in areas like District Six in Cape Town, Sophiatown in Johannesburg, and Cato Manor in Durban, when these areas were claimed for white residents. They were moved to segregated townships, like Soweto in Johannesburg and KwaMashu in KwaZulu-Natal, located on the peripheries of urban areas. Although townships did provide people with some security from the constant state harassment over housing, not everyone who moved to the townships was guaranteed a place of urban residence. It is in this housing landscape that many had to rely on informal housing as an alternative.

To right decades of forced removals and confinement to economically unproductive areas, the constitutional drafters enshrined the right to adequate housing. Section 26 of the Constitution states "everyone has the right to access adequate housing". The provision also establishes the state's duty to take reasonable measures within its available resources to realize this right. In addition to guaranteeing the right to housing, the Constitution also safeguards against arbitrary evictions. Section 26, Clause 3 establishes a negative duty on the state, in that no legislation can be drafted that permits arbitrary evictions. Furthermore, the state cannot legally evict or demolish homes without a court order. To give effect to Section 26, the first democratic parliament enacted the Prevent of Illegal Evictions and Unlawful Occupation of Land Act of 1998 ("The PIE Act"). The act further required that a court consider all relevant circumstances before

ordering an eviction, repealing the Prevention of Illegal Squatting Act of 1951 which gave landowners the right to evict unlawful occupiers regardless of their circumstances. This new provision granted courts discretion on whether to refuse to enforce an owner's common law right to property in cases where protecting the owner's rights would not be just and equitable for the unlawful occupiers (Wilson 2009). The provisions in the Constitution and the PIE Act directly challenged the common law notion of the right to property. Under these new laws, a landowner's exclusive right to property was not absolute, especially when their property is inhabited by vulnerable groups like the disabled, the elderly, and households headed by women and children. The Constitutional Court's judgements on evictions in cases like *Government of the Republic of South Africa v. Grootboom and others* (2000) (Grootboom) and *Port Elizabeth Municipality v. Various Occupiers* (2004) (PE Municipality) further cemented the limitation of landowner's exclusive right to property in light of occupiers' right to housing.

In 1998, the residents of Wallacedene, an informal settlement, occupied private land intended for low-cost housing in an act of anger and desperation. The residents who resided in shacks consisted of 390 adults and 510 children, including the plaintiff named in the case Irene Grootboom. The landowners, a Cape Town-based development company obtained an eviction order and sent bulldozers to demolish their homes leaving them homeless and landless. The residents took refuge in a nearby sports field, where they lacked access to basic sanitation and electricity. The group filed an urgent application in the Cape High Court after the municipality's refusal to provide the community with temporary shelter. The High Court ordered the state to provide temporary shelter under Section 28 of the Constitution, which outlines children's right to shelter. The state

appealed to the Constitutional Court. On appeal, the Constitutional Court found that the state had no obligation to provide housing on demand to those without formal housing. However, the Court did reaffirm the community's right to housing and the state's obligation in realizing the right to housing. The Court argued the state was obligated to adopt and implement a reasonable housing policy that would ensure access to adequate housing over time. The decision was followed by changes in housing policy in South Africa. In 2004, the state adopted Chapter 12 of the National Housing Code, which provided emergency housing assistance to those who are evicted or threatened with eviction from land or unsafe buildings (Wilson 2009). The policy enabled municipalities to apply for funding from their provincial governments to create emergency housing program.

While *Grootboom* (2000) established the right to housing for those living in informal settlements and the justiciability of shack evictions, it was *PE Municipality*, where the Court launched limitations on other courts in ordering evictions. The case was brought in response to a petition to remove 68 shack dwellers who occupied privately owned land in the Lorrain suburb in the Eastern Cape province. The petition was signed by 1,600 suburban residents. The Port Elizabeth Municipality sought an eviction order. When the occupiers successfully appealed to the Supreme Court of Appeals, the municipality decided to approach the Constitutional Court arguing it had no obligation to provide alternative accommodation when seeking an eviction. In a unanimous decision, the Court evoked the language of the PIE Act declaring that no one may be evicted from their home or have their home demolished without a court order made *after* all the relevant circumstances are considered. Thus, eviction orders that would lead to

homelessness were declared unconstitutional, especially for occupiers who are relatively settled on the land they occupy. The Constitution, the PIE Act, and high court decisions have done what Wilson (2009) calls “creating a tie” between property rights and housing rights of illegal occupiers, shifting private landowners’ previously entitled exclusive right to property (282). This tie has led to an increase in legal challenges against evictions in response to the growth of land and housing occupations in urban areas.

1. The Cycle of Evictions

Shack evictions experienced in Durban today have historical roots. Informal settlements in Durban were first constructed following people’s loss of land after the destruction of the Zulu Kingdom by the English in 1884 (Pithouse 2008). Similarly, to post-apartheid municipalities’ approach to informal settlements, colonial authorities sought to remove these settlements in an effort to reduce crime and protect the health and safety of those areas to maintain property values (Maasdorp and Humphreys 1975). The states’ reliance on influx control, slum clearance, and racial segregation policies further increased the removal of informal settlements. Although the end of apartheid significantly extended access to housing, services, and employment opportunities by removing racially discriminatory policies, access is still conditioned on apartheid’s spatial geography. The majority of the Black population remain in townships and peri-rural areas on the outskirts of white suburbs with limited or poor access to basic services and economic advancement opportunities.

With growing competition for access to economically viable neighborhoods in South Africa’s urban cities and the state’s mission to combat urban crime, local municipalities, the government structure closest to the people, have been integral in the

illegal demolition of shacks. Municipalities are faced with two conflicting demands. On one end, municipalities have a vested interest in redeveloping South Africa's cities to provide a safe space primed for foreign investments to boost the country's struggling economy. On the other hand, the state has a constitutional duty to provide access to adequate housing with constrained means to do so. People hoping to capitalize on the opportunities from urban redevelopment but who have limited resources turn to informal settlements for housing. For municipalities, informal settlements conflict with its mission to build "world-class" cities. These settlements are often in the way of municipalities' plans to bring development to an area, whether it is the building of roads or new housing schemes for more affluent residents. As the South African economy declines, municipalities have prioritized city development plans over their duty to provide housing. This is unsurprising given apartheid's legacy of valorizing urban development and private property ownership at the expense of the urban poor's need for housing. Just like apartheid's forced removal policies, municipalities today use evictions as a means to systematically remove South Africa's primarily Black urban poor away from urban centers and opportunities.

The perpetrators of shack evictions include members of the South African police services, the municipal police force, and private security companies. The evictions are spearheaded by municipalities' Anti- Land Invasion Units (AIU) which have the authority to remove people and stop people from building on vacant land owned by the municipality. Once the municipality orders an eviction, the unit is in charge of destroying the informal settlement. My interviewees stated that sometimes these evictions are ordered without the municipality obtaining a court order first, which makes it an illegal

eviction, according to Section 26 of the constitution. These evictions are always violent with entire structures and personal property demolished. Materials used to build the structures, if they are in good condition and deemed useful, are usually taken by the unit. If one attempts to fight back during the eviction, the state administers lethal force. My respondents reported having been shot at, shoved, and beaten while being evicted. In one instance a woman suffered a miscarriage as a result of being shoved to the ground. The people most affected by shack evictions are women and child-headed households, including households headed by young adult children whose parents may have passed on or live in another area for work.

In some cases, the evictions take a more insidious form (see Figure 1). Instead of being evicted just from their home, people are evicted a second time from a transit camp, which they were placed in while waiting for a government-built house as a part of the state's RDP program.⁷ In these cases, people are forcibly removed or heavily encouraged to leave the informal settlement which is usually built on well-located land to temporary housing in transit camps on the periphery. Relocation to the transit camp is often done to make way for infrastructure and housing development projects which the community are told they will benefit from. However, one of three things actually ends up happening: 1) the housing scheme is never built; 2) the space is used to make room for a highway or an

⁷ The Reconstruction and Development Programme (RDP) was created by the Mandela Administration. The ANC's chief aim in developing the program was to address the socioeconomic problems caused by its predecessors, per its new constitutional obligation. The housing program would replace informal settlements with low-cost housing for families whose sole provider is either unemployed or whose household collectively earn less than R3500 (approximately USD 250) per month. The government would rely on tax revenues to finance the program. Half of the houses were built as "rental stock", which meant people had to pay rent to the government. The other half was for the indigent, who could not afford to pay rent. Between 1994 and the start of 2001 over 1.1 million cheap houses eligible for government subsidies were built, accommodating 5 million of the estimated 12.5 million South Africans without proper housing at the time (Parnell 1998).

infrastructure project the settlers cannot take advantage of, or 3) the housing scheme is built, but someone else is given the house. And with nowhere else to go, the evicted often go to another settlement and rebuild their homes with the daily risk of being evicted again. According to this cycle, shack dwellers will experience an eviction more than once in a given year. Some of my respondents stated that they had been evicted more than 10 times in as little as two years.

For communities in Johannesburg's inner-city buildings, evictions take a different form despite sharing the same intended purpose. The city's urban decline between the 1970s and 1980s was the result of white flight from the inner-city to northern suburbs. White residents fled the city in response to the increased presence of Coloured, Indians, and Black South Africans from the outskirts as influx control policies were lifted (SERI 2018). The migrations left many of Johannesburg's inner-city buildings vacant to later be occupied by Black, Coloured, and Indian households. Initially, these households were able to pay the high rents. However, the rise in rent and challenges with employment in the 1980s and early 1990s resulted in the non-payment of rents and utilities. Subsequently, many landlords and/or their property management companies abandoned the buildings leaving them unmanaged and unmaintained. The city responded to the non-payment for utilities by cutting the residents' access to utility services like water, sanitation, and trash removal. Like informal settlements, the buildings become sites of urban blight (SERI 2018). In an attempt to regenerate the inner-city, the government sought initiatives that focused on prompting property investment into the city. These programs encouraged commercial property developers to take over ownership of the buildings and redevelop them as rental properties with higher rents (SERI 2018, 5).

Consequently, since the early 2000s, thousands of inner-city building communities have been forcibly evicted by the state and private developers. Like shack dwellers, the building communities have resisted these evictions through mass protest as well as litigation, which has given rise to a number of landmark housing decisions like *Occupiers of 51 Olivia Road and others v. City of Johannesburg* (2008) and *City of Johannesburg v. Blue Moonlight* (2012). Despite informal settlers' resistance to evictions and the courts' protection of informal housing, housing for informal settlers remains the most contested and frequently litigated socioeconomic right in South Africa. This ongoing contestation is due in part to people's perception of informal settlers and informal housing in light of South Africa's current housing landscape.

E. The Role of Perceptions of Informal Housing

1. The Criminalization of Land Occupation

Although the Constitution provides for protection against arbitrary evictions and the courts established legal precedents protecting informal settlers, among ordinary people, specifically non-informal settlers, there is still some debate about whether informal settlements are valid homes worthy of legal protection and housing rights-claims. The source of this debate is people's varying perceptions of the appropriateness of informal settlements as a home and the perceptions of the residents of informal housing communities. Because of this debate, litigation for an eviction from informal housing is not an automatically thinkable way to solve this problem according to my interviews. In this section I rely on my participants' responses to the shack eviction scenario to argue that people's perceptions about the nature of informal housing and the state's criminalization of informal settlers' attempts to secure their right to housing has

rendered litigation for evictions unthinkable for both non-informal settlers and informal settlers, at least initially.

Almost everyone I interviewed who did not live in informal housing did not consider litigation as a solution to the shack eviction scenario.⁸ Even when prompted to consider it as a strategy, very few respondents entertained the idea that litigation was a possible solution due to their perception of shack dwellers. It is very possible that litigation as a strategy was unthinkable for these participants because they do not face the immediate threat of a shack eviction, and thus such problems are just not relevant to them. After all, all of these respondents resided in a formal house and did not experience the level of economic insecurity experienced by informal settlers. However, further investigation into their responses reveals something else. Many of the non-informal settlers I interviewed held some level of prejudice about shack dwellings and shack dwellers. Because of this prejudice people questioned and even denounced the use of shacks as a home or as a permanent place of residence. As a consequence, for these respondents a shack eviction was not a problem and litigation was an unjustified response to an eviction. To state it differently, people believe shack evictions did not warrant legal intervention.

For example, Peter, 26, a music teacher at a private school, explained, "no personally [I would not go to court]. It's probably not worth it. Because you're *just* fighting to stay in a shack. I don't believe shacks are a permanent place of residence" (Empangeni 11). The suspected impermanence of shack dwellings rendered litigation

⁸ Out of the 72 Empangeni residents, only six stated they would pursue legal action for the eviction scenario before being prompted to consider it as a strategy. In Umlazi, only eight out of the 39 participants said they would go to court.

undesirable for people like Peter, who lived in a formal home. Why spend money and time going to court to protect something that is deemed temporary? In addition to the perception that shacks are temporary, people also did not think they were a “proper” home. Several respondents stated that a shack eviction would not be a problem if they were given a “proper” place to stay as an alternative, implying that a shack is an improper form of housing and such removal is justified.

For these respondents, litigation was also unjustified because non-informal settlers believed that most shack dwellers built shacks in places deemed “inappropriate.” Many of the interviewees in Empangeni and Umlazi complained about shack dwellers building in “the wrong place.” By wrong place, they referred to land that the municipality had earmarked for an infrastructure project like a road expansion or an RDP housing scheme. Under these circumstances, an eviction was justified and litigation seemed unwarranted, as the informal settler is at fault for building in the “wrong place.” As Lucky, the head of the department at a high school in Empangeni, explains:

It's a 2-way fault. You find people occupying a place because it's vacant. They don't try to find out whether they are allowed to build a shack in that open space. Maybe the government has reserved that space for development. So, the best thing for the government to do is make sure people don't build in spaces reserved for development. But there's a problem in our country. People are trying to invade open spaces because of this land claim, which is a challenge for the government (Empangeni 27).⁹

Nokanda, 41 a primary school teacher shared similarly, “yeah, those things [shack evictions] they do happen. So, it depends where is your shack built. Obviously, if it is built in the demarcated area that belongs to the municipality, then obviously you will be

⁹ By “this land claim,” Lucky is referring a 2018 motion in parliament launched by the Economic Freedom Fighters Party to change the Constitution to allow for the expropriation of land without compensation which received some support from the ruling party. Some people have taken the initiative as an indicator of their automatic right to access land.

told to vacate, yes. When I asked her whether it was a problem to be told to vacate she replied, “no it’s not a problem.” For Lucky and many others, shack dwellers not having legal rights to the land shacks are built on justifies a shack eviction and therefore there is no need to go to court. The question of land ownership was a common theme in my Empangeni interviews. All of the respondents conditioned their responses to the shack eviction scenario based on whether they owned the land the shack was built on. If they owned the land and thus built in the "right place," they would go to court. If they did not own the land, they opted for a self-help solution like moving and rebuilding the shack elsewhere or doing nothing. For these respondents, in the scenario the rights of the landowner, including the municipality’s, trumped the right to housing.

2. Prejudice of Informal Settlers

In addition to seeing shack dwellers’ land occupation as illegal, or at the very least “improper,” non-informal settlers also held concerns about who shack dwellers are which also made them believe litigation for a shack eviction was justified. Some people believed those who resided in shacks were either foreigners or South African youth who did bad things and had to leave "home" and, as a consequence, live in a shack. Black South Africans refer to “home” as one of two places. “Home” can be the place where one’s parents or grandparents reside. Even adults who have left their parents' home and live elsewhere still refer to that house as "home." People also refer to their ancestral home in the village where urban families moved from as home or in isiZulu *ekhaya*. And because of this understanding of home, my participants in Empangeni argued that everyone who is South African must have a proper “home” in one of these two places. For example, in response to her statement that a shack eviction was not a problem, I then

asked Nokanda the following, “But what if you don’t have any land? If you don’t have land, where can you build the shack?” She replied:

I for one don’t believe that there is anyone who does not have a land, especially when you are born in this country. Where were you born? The question will be where are you from, if you don’t have a land? Because I for one I was born in at Kwa-Dlangezwa.¹⁰ So, if I was born there, my father was born there, my grandfather was born there. So, I must have a plot of land that belongs to my father. So, if you are native in this land/country you should have your forefathers land unless somebody came and took it from you by force.

While it is true that everyone native to South Africa should have a plot of land that belongs to their ancestors, one’s ability to access and lay claims to that land remains a challenge given the country’s history of forced removals and land expropriation. While Nokanda was able to locate her ancestral lands, she failed to recognize the acute difficulties that most face when trying access land. Sibuyi, 35, explained something similar noting that those without a home living in shacks, in particularly the youth, were there as an unfortunate consequence of bad behavior. He stated:

You've got delinquents that stay in shacks because they don't want to listen at home. I'm sure you see when these people do *toyitoyi*'s. Ask yourself, haven't you seen how young they are? They are in their 20s. What are they doing not at home? What are they doing in the shacks? Where is your mom? Where is your dad? Where is your original home? Government needs to address all those things because I believe government has built so many houses. My good lord the government has built so many houses, but people keep mushrooming everywhere and demanding houses (Empangeni 4).

While Sibuyi is right in that some young adults who left their homes as an act of rebellion reside in informal housing, many informal settlers are fathers, mothers, and the elderly, who left rural and less economically developed areas with the hopes of securing employment opportunities. Many others turned to informal housing because they could not afford to pay rent in their homes anymore.

¹⁰ A neighboring rural town to Empangeni.

While many of these perceptions held by non-informal settlers stem from their lack of first-hand experience with housing insecurity, their responses are indicators that people with formal homes question the basic legality of shacks. Whether a shack is a legal house and whether it is built in the "right" place influences whether going to court for a shack eviction is an appropriate action. This questioning about whether living in a shack is legally protected is in part due to people's prejudiced perceptions about what constitutes an appropriate home and who informal settlers are. The questioning is also due to the absence of informal settlements from the Constitution. These respondents did believe to have shelter was a right in the Constitution, however, when discussing the shack eviction scenario, they did not attribute that right to informal housing. The South African Constitution makes no reference to the various types of informal housing that existed at the time of its drafting. Instead, it vaguely lists protections for "adequate housing" and "home," with no indication of whether such protections included informal structures or not. It was not until landmark decisions like *Grootboom* (2000) that the right to adequate housing included codified protections for informal settlers, where rights claims to housing no longer applied exclusively to those who had legal ownership of the land or property.

Although South Africa's legal community and activists are aware of the protections for informal settlers, as my interviews with non-informal settlers reveal, such awareness has not transcended to ordinary people. My interviews with informal settlers further confirmed that they too lacked the knowledge about the available protections against evictions prior to being involved with their respective organization. However, it was not just that these respondents were uninformed of legal protections available against

evictions. They were often misinformed by key state agents. The local police and councillors facilitate the misinformation about the legal status of shack dwellings that is coated in prejudice, similar to the perceptions held by the non-informal settlers I interviewed. Because of the state's treatment of informal settlers, people perceive informal housing and land occupation as illegal. For example, the shack dwellers I interviewed reported that local councillors refused to offer help after they were evicted because they saw shack dwellers as illegal land invaders, especially in Durban, where many shack dwellers are migrants from other provinces. Much of this framing stems from prejudices based on ethnicity and socioeconomic class held by Durban state actors who are primarily Zulu. Trudie, a pro bono lawyer who helps SERI with eviction cases in Durban explained the following:

There's a misconception of people who are living in informal settlements, and it is a prejudice of people who aren't living in informal settlements. It's prejudice towards them [informal settlers]. And it's also largely community-based. That's another thing that we also find here in KZN. Is that a lot of people who are living in informal settlements are not Zulu. They not from KZN, originally. They might be living in KZN for 12, 15 years, or more, but they are not originally from KZN. They are not Zulu. And there's that aspect that comes into play. For example, in a recent matter where my clients were evicted from the transit camp, in Umlazi. That was just a little fiasco by the municipality purposefully playing into the Zulu crowd in Umlazi. Essentially, they will basically say, cause most of the people evicted were not Zulu; they were from the Eastern Cape area. They were saying these "Mpondo people" get rid of them, which is essentially a prejudice of sorts. You also have people living in the informal settlements who are young and who are there because they've lost everything, and they are drug addicts... so you get that prejudice. It's a complicated issue... so it's a lot of prejudice. People are treated completely unfairly, just because of the fact that they're living in the informal settlement. Particularly more so if they are not Zulu (L6).

Thapelo, the general secretary of Abahlali, explained a similar notion as it pertains to the perceptions held by the middle class. He explained:

If you go to Cato Crest or Cato Manor for that matter, you will see that the middle class don't see that they are equal to those people [shack dwellers] that are living

there. To them [the middle class], those [shack dwellers] are thugs, those are criminals, and those are people who are supposed to be kept in those transit camp or something like that. But funny enough, when we occupied Cato Manor, people built shacks, and the middle class had a problem... we won the fight. Now people started building not shacks but proper houses now with bricks. The middle class has a problem because if these people are building with bricks it means they will be permanent here (*laughs*). They'll say [middle class] "we thought the government will relocate them somewhere else because we do not need them here." I think it's a matter of, if you're poor, this is how you should live [in a shack]... There's still an issue of race and class. People think that shacks belong to Black people, now they feel they [informal settlers] don't have a right to live in cities (ABM 88).

The prejudiced understandings of shack dwellers have shaped how the state has engaged with informal settlers. In addition to refusing to help shack dwellers, councillors also rely on the local police to further reinforce the frame that shacks are illegal. When I asked Mpumi 27, a shack dweller, what her community did prior to joining Abahlali she shared, "we [were] always going to the councillor. We [were] always going to the police station to report what they've done, but they thought we are thieves who want to occupy the land (ABM 78B). When I asked Zondo 39, a shack dweller, what his community did in response to their first eviction, he explained:¹¹

Whoever we tried to complain to would complain back at us and ask us why are we trying to take that land away because that land belongs to the government. The councillor would say, "okay, you are telling us that your shacks are being broken down, and you are being evicted from that place, so that means you are part of the people who are causing all that chaos there. You're part of the people that are always getting evicted and blocking the road, so we have to call the police for you." We go to the councillor, he calls the police. We go to the police station they say "oh you here now, all we need to do is arrest you now, since we don't have to chase you" (ABM 78A).

Nomzamo, 46, stated similarly of her first eviction:

We didn't think of the court, but we went to the police station. The station commander told us that you are the ones who are supposed to be arrested because you are there in that place unlawfully. So, there's nothing I can do for you.

¹¹ By first evictions, I am referring to their evictions prior to joining Abahlali.

Instead, you are the ones who are supposed to be arrested, that's what the station commander said to us (ABM 79).

Similar to the non-informal settlers I interviewed, the police and councillors' prejudiced treatment of shack dwellers made going to court unthinkable for them during their first eviction. Those who had experienced evictions explained that when they tried to access the law through the police and the government through the local councillor, they were turned away and told their land occupation were illegal. Neither the police nor the councillors acknowledged the residents' right to housing. For shack dwellers, it was not just the cost or the lengthiness of litigation that prevented them from pursuing litigation like the pioneering literature on legal mobilization suggests. Instead, it was also how they had come to see shack dwellings and their evictions that made litigation unthinkable.

F. Impact of LAOs and Grassroots Movements on Thinkability

Through their rights education and advocacy work LAOs Abahlali and ICF have been integral to reframing people's perceptions about informal settlements. It is through this reframing that litigation became thinkable for the informal settlers I interviewed. For the twenty shack dwellers I interviewed litigation was an unthinkable strategy during their first eviction prior to joining the organization. They did not think they could go to court because they did not know they could and because they had been told that their land occupation was illegal by the police and councillors since they did not own the land the shack was built on. To assess shack dwellers' thinkability of litigation for an eviction, I asked these participants whether they thought of going to court during their first eviction and what they thought when Abahlali informed them that litigation was not only possible, but justified. Bongiwe, 60 explained, "before we didn't know what to do, we didn't know we can take them to court" (ABM 82). In an exchange with Philile, 33, she stated:

You know for us coming here [to Abahlali] we did not have any hope. I don't wanna [*sic*] lie. The matter of going to court is something we got here [at Abahlali], because we never knew we even had the right to go to court so we could be put back into our houses. But when we got here, we were told that we could go to court and we would be able to get a court order and get back into the houses. On the real, we only came here because we wanted help so that we could have a place to stay (ABM 81).

Like Philile explained, going to court for a shack eviction only became thinkable once they joined Abahlali which is where her community was informed about the legal status of shack dwellings and the legal protections available.

In addition to providing information that helped reframe informal settlements, these organizations increase the thinkability of litigation to solve problems by increasing trust in courts. As I have argued in Chapter 3, mistrust in the law and the legal system has discouraged Black South Africans from turning to the law. Trust in the legal system can be improved once people have gone to court and experienced what they feel is a just outcome. Siyabonga at first had little hope that he would receive a positive outcome for his eviction case with the help of SERI because the community had previously lost the case without the help of SERI.¹² He explained upon meeting SERI:

I was having a little hope. Not much because when we hear and when we look on the news how judges treat people who don't know the law, we thought maybe even SERI would treat us like this. Long ago before the judgement [we received with SERI] we were saying *mxm*! the city won't give us the place [alternative accommodation] that's a joke, but when we went through the constitution and they [SERI] teach us about our rights, we said okay it is a constitutional duty that it has to be done by the city, that means that this thing is a reality (ICF 97).

Siyabonga's trust in the legal system improved upon his engagement with SERI and his case's positive outcome. Like Siyabonga, all of the respondents stated they would go to court again for a problem because of their connections to the organizations and the

¹² Evictions cases from informal housing are usually brought against the entire community that is being evicted from the land instead of individual residents.

positive outcome they yielded. The majority of these respondents also stated that they trusted the court because of the protection they received from the court especially when compared to their hostile engagement with local councillors and law enforcement officers.

In response to the question, do you trust the courts, Mpumi exclaimed, "too much!, it's the only place we feel safe" (ABM 78). Philile explained, "I do trust the court because I am still in my house even now they [the municipality's land invasion unit] do not even come close to it anymore" (ABM 81). Themba 66, stated similarly he trusted the courts because "I've got a guarantee. Because it's so many cases, in so many things that happened. Whenever they [the court] took over, you get the answer. That's why even the municipality doesn't want Abahlali" (ABM 83).

Of course, this trust is not absolute. Even with the help of Abahlali and protective orders from courts, the threat of future evictions is still present for shack dwellers. Some shack dwellers do get evicted even after receiving an interdict order stopping evictions from the court. Because these interviewees' trust lay in case results, the frequency of post interdict evictions caused some shack dwellers to question the strength of the court's decisions against the Durban municipality's actions. Silvia 29, who had not gone to court for an eviction herself, but joined Abahlali for future protection expressed:

I think maybe on cases that Abahlali have won, I'd say yah I do trust [the court]. It's just that sometimes we win cases, but then when we go back to our place's things fall back into that first phase where people are being evicted! Whatever that was said in court doesn't really apply (ABM 86).

From Silvia, we also learn that ordinary people's trust in courts is conditioned not only on whether they received a fair chance at justice, as I noted in Chapter 3, but also on whether other sectors of the state implement their decisions.

G. Thinkability is not transferable

Although the thinkability of litigating for housing problems increased with the help of these organizations, informal settlers connections with the organizations and experiences going to court did not make going to court for other socioeconomic problems in the scenarios thinkable. Out of the 130 possible times, the informal settlers could have listed litigation as a viable strategy to solve the other scenario problems participants only named litigation nine times without my prompting.¹³ Only one shack dweller named turning to the law to solve the other scenario questions out of the twenty interviewed. In response to the dilapidated school infrastructure scenario Norah 51, stated "as poor people our only hope lies on *umthetho* [the law], so that's the only place we can get help. As members of Abahlali baseMjondolo, we would have to come together with our leaders and explain the matter to them, and they will be able to take on the matter with the law" (ABM 80). However, when prompted the majority of the informal settlers agreed they would go to court for the other scenario problems. Only four respondents stated they would not go to court even after my prompting. Mpumi said she would not go to court for the school infrastructure problem because "there are so many primary schools," and her daughter would have an alternative. This was a response similar to ones I received from Empangeni and Umlazi residents. As I noted in Chapter 4, having an alternative form of access to the services can render going to court an unnecessary course of action, especially given the perceived risks I outlined in Chapter 3. With the poorly resourced government hospital scenario, inner-city dwellers Dena, 58, and Daniel, 33 stated:

¹³ 130 represents the following: 20 shack dwellers + four scenarios = 80 possible times, 10 inner-city dwellers + five scenarios = 50 possible times. I did not ask shack dwellers the shack eviction scenario question because they experienced evictions firsthand.

Daniel: I can't face the Minister of Health. You know, in South Africa if you have money, and I don't have money, I don't have weight more than you. So, if I take you to court, I can't win, my case will just vanish.

Dena: (*nodding in agreement*) Like water in sand (IF91).

Despite having both gone to court successfully for housing problems and having had access to legal help through SERI, Daniel and Dena doubted their ability to sue the government because they lacked resources, which they felt would facilitate a better chance at obtaining justice. This is similar to the perception that people who did not have experience going to court also held as I described in Chapter 3. Shack dwellers Eslina and Themba expressed similarly:

Eslina: It's two sided. Firstly, it's difficult because if you're like me, I have no idea where the department is situated. Secondly, maybe I might take them to court since I have Baba Zikode (President of Abahlali). He can tell me where to go or maybe give me a plan on how to get to the right building.

Themba: It's a problem. For you to be able to take the Minister to court, you'd have to have an expensive lawyer for you to be able to match them (ABM 83).

From these responses, it appears that the perceptions of the roadblocks to litigation for socioeconomic rights in South Africa's current political landscape still impacts whether people think they can litigate successfully. Litigation for housing, water and electricity is more thinkable for these participants because they either have first-hand experience with going to court for these issues or received further knowledge about their rights from their respective networks. Thus, one's perception of their lack of knowledge of the possibility of litigating for other basic service problems and resources still play critical factors in whether people think they can litigate.

H. Conclusion

Informal settlers' exposure, albeit limited, to litigation for socioeconomic challenges has increased their awareness of their capabilities as rights bearers and the

state's constitutional obligation. Their ability to challenge their everyday problems with services in court has reshaped the scope of their problems, shifting the meanings behind their grievances. But, as I have outlined in this chapter, such transformation remains limited. While the informal settlers' thinkability of litigation for the right to adequate housing was made possible by LAOs and the work of grassroots activist groups, there is still a gap about the extent to which they can litigate to address other socioeconomic challenges that they are also affected by. As the wheels of justice turn slowly in South Africa, so does the "transformation of outlook" from "I want." to "I am entitled to" and, I can sue if I don't get it (Gauri and Brinks 2008; Pitkin 1981; Tussman 1960). However, if you ask South African human rights lawyers, ordinary South Africans' "litigiousness" for socioeconomic rights is on the rise. I asked Sipho to speak on the budding phenomenon and the force behind it. He stated:

Actually, it is a zygote, and it's something that we've picked up. Political competitors have actually complained that aye!, we are so litigious, we might as well become a "judocracy," that was the new term, a nation that is ruled by your chief justices. So yes, from our side as activists, or paralegals, community-based paralegals, we see this highly litigious nature that's on the rise as a good thing. Firstly, it inspires the realization of rights. When more and more people who hear about it, they want to know why people are going in there? What happens in the court institutions? Cause that's when people start opening up and saying, "oh, I also have this problem. Can I take this to court?" Once there's a realization of rights and access to court because our Constitution in simplicity it speaks of inherent access to all court in South Africa, and that cannot be questionable, or that cannot be a bar, you understand.

If it is something that is a zygote, that is something that is coming, who do you think is fueling it?

Sipho: So I would say that civil society is fueling it, and the fact that it's fueling it, it's a good thing because sometimes you'd hear statements such as, oh civil society is a threat to government. It's actually sad for a politician even say that because without civil society, no one would say anything, no one would say with a much louder voice to say this is this. So, yes, we are fueling it, and it is inevitable,

unfortunately. So, we are glad that, actually, the litigiousness of our nation is on the rise, meaning that access to justice is a possibility (L3).

The several lawyers I interviewed echoed a similar sentiment that through more awareness in part due to LAOs and grassroots organizations' advocacy work, legal mobilization for socioeconomic rights in South Africa is possible. As the oft-repeated cliché goes, knowledge is indeed power for rights claims-making to courts in South Africa.

Chapter 6

CONCLUSION

In this dissertation, I have argued that ordinary Black South Africans have various perceptions about the law, problems with basic services, and the state, impacting how they think about legal mobilization for socioeconomic problems. In Chapter 2, I showed that the limits to legal mobilization as argued by the literature are present in South Africa. I also noted that ordinary Black South Africans do have perceptions about the cost and time of litigation which act as roadblocks in legal mobilization. In Chapter 3, I argued that people's understandings of how the law works in South Africa have generated mistrust in the legal system. People's distrust of the legal system has cast doubt on the legal system's ability to administer justice fairly. In Chapter 4, I showed the ways that people interpret the problems of access to services and who is to blame for such problems impacts what they think of as the best way to solve these problems and get through to the state. These perceptions lead people further away from legal mobilization and towards a series of non-legal strategies that do not guarantee success. People's perceptions stem from their past experiences with the law, their historical and everyday encounters with service delivery problems, and their understanding of the post-apartheid government. In South Africa, these are the roadblocks that people face when they think about going to court for socioeconomic problems, despite its accessible legal infrastructure to support legal mobilization. In Chapter 5, I argued that people's perceptions can be altered with the help of legal advocacy organizations and grassroots movements. These groups help reframe socioeconomic challenges from mere everyday problems to constitutional rights violations and establish citizens' trust in the law to protect their rights.

By investigating the ways people make sense of legal institutions in light of their problems, and whether such meanings affect their willingness to use these institutions as problem-solving strategies, this project makes a key intervention in the study of the limits of legal mobilization. Scholars of judicial impact and legal mobilization have long debated the role and impact of courts in facilitating change, resulting in two viewpoints seeing courts as either “dynamic” or “constrained” (Rosenberg 1991). This literature has outlined the various legal and institutional limits courts face when people mobilize the law for social change (Hamilton 1788; Horowitz 1977; Rosenberg 1991; Vanberg 2001). Scholars of socioeconomic rights litigation specifically outline additional constraints faced by marginalized groups trying to mobilize the law for services (Dugard 2006; Odinkalu 2008; Lehman 2008; Langford 2008; Ferraz 2011). Consistent with this line of argument, other scholars argue that appeals to the law are ideologically biased towards preserving the status quo, and thus, legal mobilization is an ineffective way to achieve *real* social change (Scheingold 1974; Gabel and Kennedy 1984). Some scholars have taken a more nuanced stance and find that while there are limitations in using legal strategies, they can lead to positive indirect outcomes (McCann 1994). Others find that courts are dynamic only when there are conditions that support rights-based litigation (Epp 1998; Whittington 2005).

The challenges this body of literature covers include enforcement and implementation issues that judiciaries face and issues people have getting cases onto courts’ dockets. Despite this depth of knowledge, much of this scholarship only captures a fragment of the legal mobilization process and the potential challenges. The existing scholarship does not pay adequate attention to how potential claimants perceive and

experience the various obstacles they think exist in approaching the law. Judges and legal practitioners indeed face various roadblocks in aiding in people's attempts to legally mobilize. However, scholars' treatment of these challenges assumes that these roadblocks are objectively given and thus are the only roadblocks to legal mobilization. My study on how people interpret the law and justiciable problems and how such meaning affects their choice to legally mobilize argues otherwise. The evidence I provided in the previous chapters shows that despite South Africa's progressive constitution, legal advocates, and active courts, their impact on legal mobilization to advance socioeconomic change is complicated by people's perceptions of the challenges in turning to these institutions. It is how people perceive and experience the challenges of going to court for socioeconomic problems in South Africa's particular legal, social, and political context that act as roadblocks to legal mobilization, not the limitations scholars have claimed affect courts given the nature of the judicial branch. My concept of thinkability shows that it is the ways people make sense of the roadblocks to legal mobilization in their particular context that discourages them from turning to the law. For my participants, it was not the institutional problems scholars have so heavily debated that hindered them from thinking about turning to the law for the problems I presented in my hypothetical scenarios. Instead, it was people's way of seeing themselves, the law, the state, socioeconomic problems, and how these intersect that led them to think legal mobilization was an undesirable, infeasible, and even inappropriate course of action—in other words, it was unthinkable.

This meaning-centered approach to investigating why people do not want to approach the courts takes seriously people's subjective experiences and thoughts about

the law. This project was premised on the assumption that the law and its related institutions are socially constructed in that they do not exist in a vacuum. Instead, they exist in diverse societies with different linguistic, cultural, and historical backgrounds. Also, these institutions are expected to be utilized by people of various cultures, ages, genders, and classes who make their own meanings about the law against these backgrounds. These meanings impact whether people see the law and legal channels as appropriate, legitimate, accessible, and fair means of achieving their desired ends. Like political concepts such as democracy, which have different meanings to different people, legal institutions as I have shown throughout this project do take on different meanings depending on people's interpretation, perception, and lived experiences (Schaffer 1998; Schaffer 2006).

Even after crossing a certain threshold of democratic governance and human rights awareness, which is understood to be an important prerequisite for mobilizing the law, people's interpretation of these institutions can still vary, rendering legal mobilization unthinkable. For example, as I showed in Chapter 3, despite South Africa's commitment to democracy and human rights, people's understanding of how the law works (e.g., with the use of bribes and, in some cases, witchcraft) has discouraged people from wanting to approach the courts for rights-based problems. As I argued in Chapter 2, people's knowledge, understanding, perceptions, and experiences make up the thinkability of legal mobilization. These perceptions shape the way people think about the law and its challenges and thus are the roadblocks to legal mobilization for socioeconomic rights.

I started this project curious about why more people did not go to court for socioeconomic rights in South Africa. I now know that this dearth in socioeconomic rights cases in South Africa is in part due to the various ways people think about the law, socioeconomic problems, the state, and themselves, given South Africa's current age of political and legal corruption. It is only by adopting a meaning-centered approach that I was able to uncover the various ways people think about mobilizing the law and the perceived challenges. Without a meaning-centered approach to studying legal mobilization, we can't really know what really hinders people from going to the court for help with rights-based problems. Thus, we must shift our thinking about the roadblocks to legal mobilization in any and all contexts. After all, law is mobilized when "a desire or want is translated into a demand as an assertion of rights" (Zemans 1983, cited in McCann 1994). This translation is conditioned by people's sense-making of mobilizing the law for particular issues and the obstacles they believe exist given their specific contexts and the problems being mobilized. My concept of thinkability allows us to uncover the various factors that condition the way people interpret and understand the act of legal mobilization in their context. Firstly, thinkability allows us to assess what people believe the costs and the risks are of legal mobilization given their particular circumstances. Secondly, it also allows us to evaluate what problems people think are worthy or not worthy of legal intervention regardless of whether the problems are indeed justiciable. Finally, thinkability enables us to uncover how people make sense of the broader political field in which legal mobilization should occur.

Ultimately, thinkability is a concept that we should take seriously when exploring people's interactions with the law, whether it is shack dwellers in Durban, South Africa,

or residents of Flint, Michigan, suing for clean water. An investigation of people's various perceptions of legal mobilization for rights-based problems allows us to capture their understanding of themselves and the politics around them.

APPENDIX A

INTERVIEW SCRIPT¹⁴

Ordinary Language Questions:

1. Do citizens have rights in South Africa
2. How do you know? What makes you feel citizens have rights in South Africa?
3. Did citizens always have rights in South Africa? like before 1994?
4. So, I know you said citizens have rights, do you have rights here?
5. What makes you feel you have rights in South Africa?
6. is there anyone in South Africa who doesn't have rights?

Scenarios Questions:

Right to Housing:

1. To have shelter is that a right?
2. You live in a shack, and the municipality tells you have to leave you can't stay, is that a problem?
3. What do you do about ? , what can you do?
4. If they don't mention complaining to anyone, Can you complain to someone?
5. To live in an RDP house is that a right?

Right to Education:

For teachers/Teachers in training:

1. To have an education, to go to school is that a right?
2. You teach in a government school that has poor resources, not enough school books, not enough desk, not enough classrooms maybe, is that a problem?
3. What do you about it?, what can you do?
4. If they don't mention complaining to anyone, can you report this to someone?

For Non-teachers:

1. To have an education, to go to school is that a right?
2. Your kids go to a government school that has poor resources, not enough school books, not enough desk, not enough classrooms maybe, is that a problem?
3. What do you about it?, what can you do?
4. If they don't mention complaining to anyone, can you report this to someone?

Right to Health:

1. To be treated at a hospital, to see a doctor, to receive medicine when sick is that a right?
2. You are sick and you go to Umshiyeni, hospital. They tell you there isn't enough resources to treat you today and they send you home? Is that a problem?
3. What do you do about it ?

¹ Questions were translated to English.

4. If they don't mention complaining to anyone, can you report this to someone?

Right to Water and Electricity:

1. to have water is that a right ?
2. to have electricity is that a right?
3. I notice sometimes the water and electricity goes away around here, has this happened to you? is that a problem?
4. What do you do about it?
5. Do you report this to anyone?
6. Does it happened in (deeper rural area, where they are originally from and still have family there)
7. What do you (parents or whoever is still there) do when it happens there?

Right to Social Security:

1. To have social grants is that a right?
2. If one month you didn't receive your grant is that a problem?
3. What do you do about it?
4. If they don't mention complaining to anyone, can you report this to someone?

Life history Questions:

1. Have you ever been to court?

If no:

- Do you know what happens at the court?
- Do you know someone who has been to court?
- Have you had an experience with the law?
- Could you tell me about experience.

If Yes:

- Can you tell me about your experience
- Tell me about the case?
- What did you think of the outcome?
- Did going to court help you?
- Would you go to court again if you had a problem?

Scenarios Revisited:

1. I noticed you said you would do x regarding the situation with your shack, could you take the municipality to court? Would you go to court in the shack situation?
2. I notice you said you would do x regarding the poor resources at the government school example, could you take the Ministry of education or the Dept of Education to court ? would you go to court?
3. I notice you said you would do x regarding being turned away at Umshiyeni, could you take the Minister of Health to court? Would you go to court?

4. I notice you said you would do x regarding the water/electricity being turned off?
Could you take the municipality to court about the water? Would you go to court?
5. Have you ever called the councilor for anything? Do you attend the meetings ?

Ordinary Language Analysis Questions:

1. What is amalungelo?
2. So to have rights means x (x is whatever was previously stated)
3. Are they good or bad? Why?
4. I know you said you have rights, did someone give them to you or you just have them?
5. Can someone, say the government, take your rights away?
6. Is having rights a privilege, a luxury, “a must”?

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