

CONSTITUTIONALLY GUARANTEED ECONOMIC AND SOCIAL RIGHTS  
REALIZATION IN SOUTH AFRICA

by

Kate Gunby

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A Dissertation Submitted to the Faculty of the

SCHOOL OF SOCIOLOGY

In Partial Fulfillment of the Requirements

For the Degree of

DOCTOR OF PHILOSOPHY

In the Graduate College

THE UNIVERSITY OF ARIZONA

2019

THE UNIVERSITY OF ARIZONA  
GRADUATE COLLEGE

As members of the Dissertation Committee, we certify that we have read the dissertation prepared by *Kate Gunby*, titled *Constitutionally Guaranteed Economic and Social Rights Realization in South Africa* and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

*Robin Stryker*

Date: *April 8, 2019*

*Robin Stryker*

*Joseph Galaskiewicz*

Date: *April 8, 2019*

*Joseph Galaskiewicz*

*Kathleen Schwartzman*

Date: *April 8, 2019*

*Kathleen Schwartzman*

Final approval and acceptance of this dissertation is contingent upon the candidate's submission of the final copies of the dissertation to the Graduate College.

I hereby certify that I have read this dissertation prepared under my direction and recommend that it be accepted as fulfilling the dissertation requirement.

*Robin Stryker*

Date: *April 8, 2019*

*Robin Stryker*

*Professor*

*School of Sociology*

## ACKNOWLEDGEMENTS

First and foremost, thank you to everyone in South Africa who was involved in any way with my research and travels. Thank you to everyone who took the time to share their insights and experiences with me in interviews and conversations; to everyone who brought me along to an event, meeting, or tour; to the grad students and academics who graciously hosted me and introduced me to their networks; to all of the friends I made; and to all of the kind strangers who helped me travel safely. My fieldwork exceeded all my expectations thanks to the warmth and generosity of so many people in South Africa, and I am forever grateful.

Thank you to my committee. Robin Stryker, over the past ten years you have been a constant cheerleader throughout the ups and downs and I would not have made it to this point without your unwavering belief in me. Thank you for everything! Joe Galaskiewicz, Kathleen Schwartzman, and Jenn Earl, thank you all for your wisdom, advice, and candor throughout the years. I have had the uncommon privilege of spending several years working outside of academia while finishing my dissertation, and this committee's collective mentorship has and will continue to inform my work daily.

I am forever grateful to the 13 undergraduate research assistants who assisted me over four semesters from Fall 2013 through Spring 2015 with data review, coding, and interview transcription. Thank you to Jeff Beebe, Tim Clark, Joshua Dudas, Regan Fitzgerald, Angela Huizar, Alex Huynen, Hannah LaMarca, Carla Loury, Hannah McClain, Chloe Paskin, Cherisse Patnode, Allison Ramirez, and Gina Walsh.

Thank you to all my colleagues and friends at the University of Arizona who have informed my research and provided encouragement throughout this journey. Thank you especially to Tracy Bacon, Sondra Barringer, Eliza Benites, J. Taylor Danielson, Jess Epstein, Jessie K. Finch, Krista Frederico, Kate Freeman Anderson, Michael Gibson-Light, Xóchitl Mota, Kyle Puetz, Simone Rambotti, Heidi Reynolds-Stenson, Misty Ring-Ramirez, Eric Schoon, Christina Sciabarra, Lisa Thiebaud Nicoli, Luis Vila-Henninger, and Seth Wright.

I would like to thank the grantors who helped fund my research: the Social and Behavioral Sciences Research Institute at the University of Arizona and the Graduate and Professional Student Council at the University of Arizona. Robin, thank you for choosing me to help coordinate the Rights and Their Translation into Practice Conferences, which provided me opportunities to get to know many of the scholars who I cite in this dissertation and helped fund my research. Thank you also to my PRR coworkers—particularly the research team—and clients who have cheered me along to the finish line and helped me stay optimistic.

Special thanks to my family for their lifelong support, and especially to my Mom, Janet, who has consistently gone above and beyond. Thank you to so many friends and neighbors for their encouragement and understanding. I am humbled by how many people have been rooting for me over the years. I also would be remiss to not thank my dog and cats (past and present) for their companionship throughout this process.

Finally, thank you to my wonderful husband, Dave, who has enthusiastically supported me and this endeavor since before my first trip to South Africa in 2007. Through this process he has endured more unexpected moves, Tucson summers, and stints of solo pet parenting than either of us ever imagined. I could not ask for a better partner and am so lucky to have him by my side.

## DEDICATION

To all who lack basic economic and social rights  
and to all who work to make these rights a reality.

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## ABSTRACT

What drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa? I pose three puzzling patterns of rights realization that are inconsistent with the literature: Why do a larger percent of households live in shacks now than at the end of apartheid despite the government and activists prioritizing housing? Why has utility progress been slow despite a mix of for-profit and public providers? Why does the government play a large role in indirectly feeding people despite a lack of awareness of and pressure for realizing the right to food? I analyze a combination of interviews, ethnographic observations, national survey data, and primary documents to understand the patterns of rights realization of education, electricity, food, housing, sanitation, social security, and water. By examining the patterns of rights realization for these seven rights in tandem, I find that the materiality of rights results in both synergistic and gatekeeper relationships between economic and social rights. These complex relationships both exacerbate and are compounded by the limited ability of litigation and the courts to enforce rights realization. Using a field-level approach, this research shows that there are relationships between economic and social rights based on their material characteristics, and that these gatekeeper and synergistic relationships between economic and social rights must be taken into account to understand complex patterns of rights realization.

## **CHAPTER 1 INTRODUCTION**

South Africa has one of the most progressive constitutions in the world. The Constitution of the Republic of South Africa was approved in 1996, two years into the new democracy after the end of apartheid. Apartheid was a system of institutionalized racial segregation in all aspects of life in South Africa (Sparks 1995). The Constitution was created with the intent of not just setting up a new, fully democratic government system, but also to enshrine many social and economic goods and services as rights to help correct for systemic racial inequalities that were created and perpetuated under decades of colonial rule and then apartheid (Sparks 1995, 2003).

### **The Constitutional Promise of Economic and Social Rights in South Africa**

South Africa's Constitution grants rights to: housing, food, water, education, and social security (Constitution of the Republic of South Africa 1996). Few constitutions explicitly guarantee economic rights - and guarantee these rights for everyone, not just citizens (Klug 2015b). Moreover, promising this set of economic and social rights is unique because it promises both "standard social rights" that are included in many constitutions (including education, social security, and health care) and "non-standard social rights" that are rarer (including food, housing, and water) (Kaletski et al. 2016). These non-standard social rights are seldom included in constitutions because they can be identified as subsidies or goods that should be provided through the market rather than state intervention, and they are the least likely rights to be justiciable (subject to trial in a court of law), so the fact that they are guaranteed and justiciable in South Africa is unique (Jung, Hirschl, and Rosevear 2014; Kaletski et al. 2016).

The constitutional promise of these economic and social rights (ESR) in South Africa is also unique because they are not limited by a floor or basic minimum, but rather the constitution promises equal *access* to these rights. Most of the sections of the South African Constitution

about ESR include clauses about progressive realization, reasonable measures, and appropriate social assistance that can complicate interpretations of whether these rights are upheld. This puts the responsibility on government to provide these rights while also being sensitive to the government's resource constraints (Berger 2008; Kaletski et al. 2016). Since these rights are justiciable, this language can become the focus of how the courts interpret these legal promises. Ultimately, this progressive Constitution lays the foundation for ESR realization in South Africa, but it does not guarantee that government follows through on implementation or provides a basic minimum of ESR for all. Instead, it promises that the government's work is focused on ensuring equal access.

This dissertation is focused on understanding the realization of the ESR enshrined in sections 26 through 29 of the Bill of Rights: housing, electricity, sanitation, food, water, social security, and education. Section 26 guarantees the right to housing, which includes electricity and sanitation. It reads:

1. Everyone has the right to have access to adequate housing.
  2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
  3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
- (Constitution of the Republic of South Africa 1996).

While the Bill of Rights does not explicitly mention the provision of utilities within the household, the Constitutional Court (the highest court in the country) has determined that electricity and sanitation are part of the right to housing established in Section 26 (*Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]). Additionally, Section 26 is considered progressive because the state takes the unique position of protecting the rights of

people who are occupying a home over the rights of the landowners (Interview Simon Delaney). While the right to housing for *everyone*—even if they are occupying someone else’s property—is indeed progressive, the language in the Constitution weakens the stance on the provision of housing. This language puts the focus on taking “reasonable” measures to providing housing that are within the state’s “available resources”. This language can be interpreted in a way that tempers the onus on the government to provide housing for all.

Section 27 of the Bill of Rights covers health care, food, water, and social security. It reads:

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 dependants, appropriate social assistance.
  2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (Constitution of the Republic of South Africa 1996).

While this dissertation looks at most of the rights included in Section 27—food, water, and social assistance—this research does not include the right to health care. I chose to exclude health care from this research largely because there are no national data that show how many South Africans are receiving adequate health care, so evaluating national access is not possible.

Section 27, much like Section 26, includes language that moderates how progressive it is. In many ways, the Bill of Rights approaches these ESR in the same way that it addresses political and civil rights (Berger 2008). Yet the focus on “progressive realization,” “reasonable” measures, and “appropriate” social assistance is unique to economic and social rights (Berger 2008). These words are the subject of ongoing interpretation and case law. Discussion of the word “reasonable” often results in weighing costs and benefits (Haglund and Stryker 2015) and “progressive realisation” leads to debates about whether scarce resources are available for

increased provision. The inclusion of these terms in the Bill of Rights has important implications for legal interpretation and, ultimately, rights realization in South Africa.

The one major exception to this moderating legal language is Section 28, which includes language that repeats the importance of providing these rights for children *without* a reasonableness clause. Section 28 says, “1. Every child [person under the age of 18] has the right... to basic nutrition, shelter, basic health care services and social services” (Constitution of the Republic of South Africa 1996). However, Section 28 does use the word “basic,” which is also open to substantial legal interpretation.

Section 29 establishes the right to both basic and further education for both children and adults. It states:

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.
 (Constitution of the Republic of South Africa 1996).

Here we see that the right to basic education is *not* subject to limitations based on the state’s resources, reasonableness, or budgetary commitments. The Constitutional Court confirmed in the Juma Masjid Case, “Unlike some of the other socio-economic rights, this right is immediately realizable” (Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others (CCT 29/10) [2011]). However, the right to further education is accompanied with language about reasonable and progressive realization, which leaves the realization of higher education open to more legal interpretation.

### **Mixed Outcomes**

The reality in South Africa is that while there has been substantial constitutionally promised rights realization, progress has been uneven and incomplete. Two decades after the end

of apartheid, many South Africans still lack access to adequate basic services. While it is well accepted in South Africa that there is a substantial need to improve ESR realization and service delivery<sup>1</sup> is a top priority for many organizations, there is very little research about differences in ESR realization across rights areas in South Africa. Additionally, due to a lack of basic guaranteed minimums or standards for some rights, and disagreements about the adequacy of basic minimums or standards for other rights, the act of deciding which rights have and have not been realized is challenging. For many of these economic and social rights, there are ongoing debates about their material attributes, quality, and outcomes. While both litigation and legislation have sought to clarify these standards, South Africa's vibrant civil society<sup>2</sup> continues to push for higher standards of what counts as ESR realization.

Looking at the variable rights realization outcomes for each ESR, it becomes clearer how there can be multiple standards or definitions of what counts as rights realization. Here is a quick summary of the mixed outcomes for each right. Using the most basic measures of access, I present these rights in the order from quantitatively most realized to least realized, while also providing evidence of mixed outcomes that complicate those assessments of realization:

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<sup>1</sup> Service delivery is the common terminology for the government provision of goods and services in South Africa. Most of these expected services are economic and social rights by international standards and are constitutionally guaranteed in South Africa. In this dissertation I mainly use the terminology of ESR (economic and social rights) realization, rather than service delivery, to match the legally-focused terminology used in the international literature on ESR realization.

<sup>2</sup> "Civil society" is the common terminology used in South Africa to describe all stakeholders that operate outside of the state and the market (The South African Civil Society Information Service 2019). Civil society includes a wide variety of organizations including nonprofits, social movement organizations, unions, interest groups, and faith-based organizations. Less organized protests and activism are also considered to be part of civil society. While the term civil society is certainly a catch-all term for a wide variety of actors within this "third sector," it holds particular utility in South Africa where the distinctions between these various stakeholders and organization types are often quite blurred. For example, it is quite common in South Africa for communities to engage in activism that is not coordinated by a specific organization and also for a variety of organization types to form coalitions around specific issues (Alexander et al. 2016; Dugard and Tissington 2012; Fleming, Herzenberg, and Africa 2003; Sinwell et al. 2009). While I strive to be specific about distinct types of actors in this dissertation, I use the term civil society when referring to this broad third sector of actors who are outside of the state and the market. Moreover, this term appears often when I quote or paraphrase research respondents.

### ***Education***

As of 2014, 97.8% of children age 5 to 17 attended school, indicating almost universal realization of the right to education among children (Statistics South Africa 2015a). Yet many students are held back or drop out in their final years of school, and so in 2014 only 36.4% of students who should have graduated both took and passed their matriculation exam (Equal Education 2016). This indicates a troubling gap between access to education and educational quality and outcomes.

### ***Water***

In 2014, 90% of households had access to piped or tapped water and 10% did not (Statistics South Africa 2015a). The location of the water varied: 46.3% of households had piped water in the dwelling, 27% of households had piped water on site, and 2.7% of households used a neighbor's tap (Statistics South Africa 2015a). Fourteen percent of households relied on communal taps, which typically provide a free basic minimum of water and then shut off after that minimum is used each month (Hall, Leatt, and Monson 2006) and may be far from the home, so these households are likely to experience intermittent access to water (Statistics South Africa 2015a). Moreover, about 9% of households with municipal water have problems with water quality, and many households' connections are tenuous because the water will be shut off for the remainder of month if they exceed their free basic minimum and are unable to prepay for additional water (Statistics South Africa 2015a).

### ***Food***

In 2014, 88.6% of individuals had not experienced hunger within the past year, indicating a relatively high level of realization of the right to food in South Africa (Statistics South Africa 2015a). Additionally, 75.6% of public school students were fed through school feeding schemes

(Statistics South Africa 2015a). Yet, while only 11.4% had experienced hunger, 26.2% of people had limited access to food and even more were considered food insecure because of their volatile financial or farming situation even if they were not currently changing their eating behavior (Statistics South Africa 2015a).

### ***Electricity***

As of 2014, 86% of households were connected to electricity (Statistics South Africa 2015a). Somehow 89% of households indicated that electricity is their primary energy source for lighting, which may reveal the estimated 3% or 4% of households that are informally or illegally connected to electricity (Statistics South Africa 2013a, 2015a). Eighty percent of households used electricity as their primary source of energy for cooking (Statistics South Africa 2015a). However, only 35% of households used electricity as their primary source of heating, which is a decline from the consistent 52% to 53% of households that used electricity for heating between 2002 and 2008 (Statistics South Africa 2015a).

### ***Sanitation***

In 2014, 79.5% of households had Reconstruction and Development Programme (RDP) approved sanitation (Statistics South Africa 2015a). RDP-approved sanitation includes primarily a flush toilet connected to either sewer or septic (63.1% of households), a pit latrine with a ventilation pipe (16.3% of households), or very rarely a chemical toilet (0.1% of households) (also known in the US as a portable toilet) (Statistics South Africa 2015a). Households without proper sanitation were most likely to have a pit latrine without a ventilation pipe (14.8% of households), but some reported using “the bucket system” where people urinate and defecate in a bucket and then empty the bucket elsewhere (1.3% of households) (Statistics South Africa 2015a). Only 3.6% of households did not have any form of toilet, and the remaining 0.8%

households reported an ‘other’ option or did not specify their primary sanitation (Statistics South Africa 2015a).

### ***Housing***

In 2014 79.4% of South Africans lived in formal dwellings, 13.1% of households lived in informal housing (mostly shacks), and 6.8% lived in traditional dwellings (mostly huts) (Statistics South Africa 2015a). In 2014, 15.3% of all South African households (or 19.1% of households living in formal housing) were either in RDP housing or received a subsidy to fund part of their rent (Statistics South Africa 2015a). The constitution guarantees “adequate” housing, and while the definition of adequate is complicated, formal housing is generally adequate, informal housing is not adequate, and traditional dwellings’ adequacy depends on their size, insulation, and shelter from the weather (Hall 2014). This means that in 2014, the government was involved in providing housing accommodations to 15.3% of the population, while roughly the same percent of the population did not have adequate housing (Statistics South Africa 2015a). The percent of households living in informal housing was higher in 2014 than it was at the end of apartheid (Statistics South Africa 2015a).

### ***Social Grants***

As of 2014, 29% of individuals consistently received a social grant, and 44.5% of households had at least one member who received a grant (Statistics South Africa 2015a). In 2014, social grants were the main source of income in 21.5% of households (Statistics South Africa 2015a). This right appears last in the list because most individuals and households in South Africa do not receive a social grant and thus this right is realized for the smallest percent of all households in South Africa. Nevertheless, social grants are also considered to be a standout success as one of the most realized ESR because the rates of realization among those who should

receive grants are now quite high and these statistics represent an extremely high level of government financial support.

It is worth noting that the high prevalence of social grants does not mean that grants are effectively eliminating poverty. In 2015, 55.5% of households were at the upper-bound poverty line (R992 or \$78 USD per person per month (pppm) in 2015 prices), 40% of households were at the lower-bound poverty line (R647 or \$51 USD pppm in 2015 prices), and 25.2% of households were at the food poverty line (R441 or \$35 USD pppm in 2015 prices) (Statistics South Africa 2017b). This poverty persists in large part because most households do not qualify for social grants; additionally, receiving the most common grant – the child support grant - is not enough to lift a household above the poverty line.

In sum, when looking at who has their rights realized based on a crude measure of the percent of the population that had access in 2014, we see that education for children has the highest rate of realization with 97.8% of children attending school (Statistics South Africa 2015a). Water is in second place with 90% of households with access to piped or tapped water (Statistics South Africa 2015a). Food and electricity are practically tied for third, with 88.6% of individuals not experiencing hunger within the past year and 86% of households connected to electricity, yet somehow 89% using electricity for lighting (Statistics South Africa 2015a). Sanitation and housing are tied for fifth place—79.5% of households had RDP-approved sanitation and 79.4% of households lived in formal dwellings (Statistics South Africa 2015a). Finally, 44.5% of households and 29% of individuals received a social grant, which puts grant realization in last place in terms of the percent of the population that receives it (Statistics South Africa 2015a).

It bears repeating that this ranking lacks important nuances that impact how we can interpret whether rights are truly being realized. In practice, the right to social grants applies only to people who are demographically unable to provide for themselves—such as the elderly, disabled, and children—not simply people who practically are unable to provide, and thus the rate of social grant realization is incredibly high for the households that qualify (Statistics South Africa 2015a). While school attendance is quite high, graduation rates are quite low and the quality of education in South Africa is among the worst globally (The Economist 2017; World Economic Forum 2015). As later chapters will show, many of these nuances reveal that there are some substantial gaps in the quality or consistency of access to rights that may technically count as being realized, thus further complicating our understanding of unequal ESR realization.

### **Research Question**

Overall, the South African Constitution guarantees the right to a host of economic and social rights, the national government dedicates the majority of its budget towards realizing these rights, and there are both government and civil actors working towards and/or fighting for the realization of these rights. Yet progress is unequal both across and within these different rights. Moreover, it is debatable whether rights are truly realized when the services are of poor quality or are intermittent. As I will show in the upcoming chapters, the extant perspectives and studies help to explain some of these differences either very generally by focusing on socio-legal variables or type of actor, or in a very specific way by focusing on specific actors and their capacity. Yet these extant explanations cannot fully explain the unequal progress of ESR realization.

When looking at larger patterns of ESR realization in South Africa, unexplored patterns of rights realization *across* sectors begin to emerge. One set of puzzles is around rights provided in the home:

*Puzzle 1: Why, despite the government making housing a top priority and despite plentiful activism, do a larger percentage of households live in shacks now than at the end of apartheid?*

*Puzzle 2: Why, despite a mix of public and for-profit providers, has utility progress been so slow?*

Different patterns and relationships emerge for other ESRs, which pose this puzzle:

*Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food?*

I develop and subsequently answer these three puzzles over the course of this dissertation. The context and literature review chapters further set up these puzzles, and ultimately the chapters focused on explaining ESR realization are structured to answer these puzzles. Moreover, these puzzles set up my overarching research question:

*Research Question: What drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa?*

This question is not why these inequities exist, but rather how we can explain the different patterns within and across these different economic and social rights. I seek to answer this question by exploring across-sector phenomena and unearthing linkages and relationships between different economic and social rights. To answer the first two puzzles, I analyze how and why the patterns of housing and utility realization are quite similar, and where and why they diverge. To answer the third puzzle, I analyze the relationships between three seemingly unrelated rights: social grants, education, and food.

## **Contribution**

While extant perspectives play an important role in answering the research question, I argue that they cannot fully explain the observed patterns of ESR realization in South Africa because each focuses on specific rights, mechanisms, actors, pathways, and outcomes without looking at the broader field of action around rights realization. I build on these perspectives by explaining the patterns of ESR realization spanning seven different constitutionally guaranteed rights through a field-level lens, exploring how they are operating within a similar national context and how the actors and rights within this field of ESR realization interact with each other.

By looking at rights realization as a field, I expand our understanding of the importance of the “materiality of rights” in determining how, when, and by whom rights are realized. Materiality is a term coined by Heinz Klug (2015a) which I build on in my research. Klug uses the phrase “materiality of rights” in his chapter about constitutional rights in South Africa to refer to the physical characteristics of economic and social rights that shape how they emerge and are institutionalized (Klug 2015a). More specifically, he says that the materiality of rights includes their “physical attributes—location, material, and organizational factors—that are characteristic of the particular resources involved” (Klug 2015a). In a conference presentation, Stryker (2015) added that materiality is also important for understanding the actualization process and outcomes of rights. Yet the concept of materiality has yet to be fully explored by scholars - the chapters in the edited book that introduced the term “materiality of rights” only provide a cursory and relatively ambiguous overview of the concept (Klug 2015a; Stryker and Haglund 2015). Additionally, the term “materiality” has not been adopted by other scholars looking at economic and social rights realization.

In this dissertation, I develop our understanding of the materiality of rights by emphasizing and adding more specificity to the 1) location, 2) material, and 3) organizational factors of rights mentioned by Klug (2015a), in addition to their material 4) implementation, 5) maintenance, and 6) quality that are key to both the actualization process and tangible outcomes introduced by Stryker (2015). I draw out the full explanatory implications of the concept of materiality and apply the concept of materiality to explain comparative outcomes of rights realization in South Africa. Improving the specificity of the concept of materiality and providing the first comprehensive summary of ESR realization in South Africa are contributions in themselves.

Yet my perspective deviates from Klug's (2015a) because I contend that instead of viewing materiality as one of several independent variables that influence rights realization, materiality is an antecedent variable that often shapes or influences the other independent variables that influence ESR realization. More specifically, Klug (2015a) suggests that legal interpretation, politics, and activism are other important independent variables that influence rights realization, and other scholars of ESR realization have well established that there are a variety of mechanisms, actors, and pathways to ESR realization (Haglund and Aggarwal 2011; Haglund and Stryker 2015). Rather than find that materiality is yet another independent variable or factor that can influence the outcomes of rights realization, I find that materiality is a variable that is relatively fixed and generally occurs before the other variables in an explanatory model. Throughout the dissertation, I show how the materiality of each ESR is relatively static, limited, and universal and thus shapes the mechanisms, actors, and pathways—including the legal

interpretation, politics, and activism—involved in the realization of these rights<sup>3</sup>. This understanding of materiality as an antecedent variable is theoretically important because it provides a framework for understanding which mechanisms, actors, and pathways can realistically play a direct role in the realization of a specific economic and social right based on its material characteristics.

Additionally, my perspective goes beyond Klug's (2015) and Stryker's (2015) because I argue that not only does the materiality of a right influence its own realization process and outcomes, the materiality of some rights influences the realization of other economic and social rights. One of the central contributions of this dissertation is showing how the material attributes or outcomes of certain social and economic rights can impact the ability to materially realize other rights through gatekeeper or synergistic relationships. I find that some rights—especially housing and utilities, which are fundamentally located in the domain of the home—have material requirements that can create gatekeeper relationships where the realization of some rights (utilities) are dependent on the realization of others (housing). I find that other rights have material attributes that allow for them to have mutually beneficial or synergistic relationships—specifically social grants, education, and food, which can all be realized outside of the home. These gatekeeper and synergistic relationships can be enabled or limited by the actors involved in the realization of ESR. However, given the antecedent nature of the materiality of the rights, I contend that these relationships between rights can exist regardless of actor relationships, and that these linkages exist between the rights themselves.

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<sup>3</sup> This dissertation does not compare ESR realization in South Africa to international patterns of the provision of the same goods and services, regardless of whether a nation regards them as rights. Nevertheless, the universal material attributes of economic and social rights are likely why readers will notice parallels or common patterns of the realization of the same ESR in different countries with distinct legal, political, and historical contexts.

After establishing this new perspective and through the process of exploring the materiality of and relationships between economic and social rights, clear answers to the three puzzles posed at the outset emerge:

*Puzzle 1: Why, despite the government making housing a top priority and despite plentiful activism, do a larger percentage of households live in shacks now than at the end of apartheid?*

*Answer 1: Housing must be located on land, yet there is limited available residential land. Additionally, even if residential land were plentiful, complete houses are resource-intensive to build. Those material constraints, combined with population growth, migration from rural to urban areas, and protections of squatters on land that is scheduled to be built on, have resulted in a situation where the government has not been able to build houses fast enough to keep up with the demand.*

*Puzzle 2: Why, despite a mix of public and for-profit providers, has utility progress been so slow?*

*Answer 2: Utilities are ideally located in or very near homes, and thus the slow pace of housing progress has limited the installation of permanent utilities – housing has been a gatekeeper for utilities. Additionally, the actors responsible for installing utilities have been reluctant to install temporary utilities, and thus reinforced that gatekeeper relationship.*

*Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food?*

*Answer 3: The right to food is not a driving force for the actors that work to improve food security or that provide food. Moreover, many South Africans are not even aware that they have a right to food. Yet the material qualities of food make it the ESR that is easiest to realize through social grants and an important tool for increasing school attendance and learning outcomes. These synergistic relationships between the rights are the reasons why both the government and so many other organizations devote substantial resources towards providing food without being motivated to realize the right to food or even necessarily trying to prevent hunger.*

The answers to these three puzzles all center around the fundamental answer to my overarching research question: *What drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa?* I argue that understanding economic and social rights as essentially grounded in their material characteristics and material requirements for their realization is key to understanding how their realization plays out

differently. While extant perspectives about the role of the state, law and the courts, and organizations all certainly factor into and shape ESR realization, throughout this dissertation I explain how the materiality of rights shapes the possible pathways to their realization. While looking at the material attributes and requirements for each specific economic and social right is quite basic, it also provides a useful framework for understanding why different rights are realized in different ways. Through this lens, I show how the materiality of rights also influences which actors can fulfill which roles in realizing those rights and that materiality can also lead to relationships between the rights themselves, regardless of the relationships between different organizations involved.

My findings and conclusions are practically important for practitioners who seek to ensure the actualization of economic and social goods and services (rights-based or otherwise). My findings can be used to help develop and strengthen strategic cooperation and partnerships both within and across rights, and efficiently allocate resources to maximize effectiveness. Using the materiality of rights to theoretically define a realm of possible mechanisms, actors, and pathways to rights realization can also reveal potential mechanisms, actors, and pathways to increase rights realization.

Additionally, my findings improve our understanding of where current strategies to maximize efficiencies create all-or-nothing scenarios that create further distance between “haves” and “have nots”. The downsides of being too efficient reveal the importance of the currently under-utilized options of providing temporary services and *in situ* upgrading—improving shacks and informal housing where they are, rather than waiting to replace them with formal housing and permanent services. The South African government has largely avoided temporary services and *in situ* upgrading, thus maintaining an incredibly slow pace of improving

access to utilities and reinforcing the reality of all-or-nothing ESR realization (Republic of South Africa 2014). While temporary and *in situ* solutions are not of the highest quality nor the most resource efficient, they can help ensure that everyone has access rather than waiting for more permanent infrastructure to provide services.

### **Organization of Chapters**

In chapter 2, I draw from secondary research to provide a historical and contextual foundation for understanding rights realization in South Africa. I show and explain the political, governmental, and economic landscape of South Africa to provide context for the many systems and organizations that are directly or indirectly involved in the field of social and economic rights realization in South Africa. This chapter concludes with a discussion of why I chose South Africa as the site for this research on ESR realization.

Chapter 3 is the literature review and sets up the theoretical context for this research. I contend that we must combine several perspectives within sociology and the social sciences, and then use them to look at the realization of economic and social rights at the field level. This chapter first highlights key contributions from the socio-legal, political-institutional, and neo-institutional perspectives to establish what systemic conditions and actor attributes and behaviors are *already* known to be likely to improve or constrain rights realization. These literatures collectively establish the importance of looking at actors that both provide ESR and apply pressure to increase and improve provision. These perspectives, combined with the rights, activities and outcomes discussed earlier in this chapter, set up my research question and three specific puzzles about rights realization in South Africa. I contend that answering these puzzles requires a new approach to understanding ESR realization. To answer these puzzles, I conduct a field-level analysis of ESR realization coupled with a focus on how the material attributes of—

and material requirements for—the realization of economic and social rights shapes their realization. This novel approach leads to the finding that there are relationships between the rights themselves that influence patterns of their realization, and that these gatekeeper and synergistic relationships between ESR ultimately provide the answers to the three puzzles.

Chapter 4 details the data and methodologies I used to conduct this research. I first discuss the multi-method research design for the study and the quantitative data included in this dissertation and how I analyzed it. Then I discuss the variety of qualitative data I collected—including interviews, ethnographic observations, and primary documents—and the coding scheme and process I used to analyze this wealth of information. Next, I detail the key sensitizing constructs that I use throughout the dissertation and that create the overall hierarchy of the coding scheme. These sensitizing constructs are drawn directly from the historical context in chapter 2, theories explained and synthesized in chapter 3, and my own contributions regarding materiality, gatekeepers, and synergies. I conclude the chapter by discussing five examples of how I employed the coding scheme and my analytic process for determining the relationships between the field, actors, and rights based on my qualitative data.

Chapter 5 analyzes how the law plays both a lesser role and a different role than what the socio-legal perspective predicts. I use the framework made explicit in chapter 4 to analyze the roles of legal mobilization, litigation, and enforcement in the work of ESR realization, specifically determining whether and how the reality in South Africa lives up to the theoretical predictions specified in chapter 3. This chapter brings the real experiences of actors involved in ESR realization in South Africa to bear on the literature discussed in chapter 3. I explain why there have been many barriers to using litigation and legal pressure for ESR realization, how the constitutional promise of ESR realization combined with the high level of trust in the ANC party

has led many people to be patient rather than mobilize, and the many barriers to the law being used as a tool of the people. By the end of chapter 5, it is clear that while the mechanisms, actors, and pathways that should be helpful for realizing rights are present in the South African context, they are severely and systemically constrained. After understanding why legal mobilization is so handicapped in South Africa, I then turn to look at the economic and social rights themselves to see what is specific to each right that shapes the extent to which it is realized.

Chapter 6 reveals how housing serves as a gatekeeper for improving utilities—electricity, water, and sanitation—because these socio-economic rights should be accessed in or near the home. Water is guaranteed in the Bill of Rights without any mention of housing, while both electricity and sanitation are not guaranteed explicitly in the constitution, but both litigation and legislation have confirmed that adequate housing includes electricity and sanitation (Constitution of the Republic of South Africa 1996; *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]). People often protest housing and service delivery as a group of rights rather than protest for each specific right, and the government often creates plans to install these different rights in tandem when it provides housing. Respondents told me that people need a structure to live in before they can receive utilities, and the statistics reveal that people who live in shacks (at least 10% of the population) are far more likely to have either no or inadequate electricity, sanitation, and water (Statistics South Africa 2015a). This chapter looks through a lens of materiality to detail how a person's housing status influences the quality of their water, sanitation, and electricity or other sources of heat and light, regardless of how outside actors are involved. Exploring these relationships allows me to answer puzzles 1 and 2 about housing and utility progress. This chapter also combines quantitative and qualitative findings to show when

and how organizational decisions and partnerships have acknowledged or ignored the materiality of these rights, and the resulting changes in access to housing and utilities. I show that when actors acknowledge the gatekeeper relationship between housing and utilities and focus on installing high-quality permanent services once to ensure efficiency, it can create the unintended consequence of all-or-nothing home-based ESR realization for households.

Chapter 7 focuses on social security, education, and food, and is where I show that there are synergies in the realization of these socioeconomic rights. This mixed methods chapter draws on the quantitative data from the General Household Survey as well as my interviews and fieldwork in South Africa, and again takes a field-level approach with a focus on materiality to answer Puzzle 3. I explain how social grants are the primary way that the South African government supports poor people, and that most households spend most of their social grant income on food. There have been major improvements in access to education since the end of apartheid, and much of that progress has been linked to the provision of free meals at the schools that serve the poorest 60% of households. After discussing these synergies, this chapter details how the fulfillment of the constitutional right to food occurs mostly in conjunction with the provision of other socioeconomic rights, but is rarely prioritized as a right on its own. I discuss how relying on the synergistic relationships between rights rather than prioritizing each right can allow some people to fall through the cracks, and has effectively reduced hunger without improving food security.

Chapter 8 re-articulates the answer to the research question and my three guiding puzzles. In doing so it reiterates my main contributions: developing our understanding of the materiality of economic and social rights, and the gatekeeper and synergistic relationships between different ESR. I tie together what we learned about the realization of rights in chapters 6 and 7 with the

lessons about the limits to using legal resources for ESR realization from chapter 5 to show how these new contributions, combined with well-established perspectives, can paint a more complete picture of ESR realization in South Africa. I discuss the implications for rights realization in South Africa, the theoretical and practical significance of these findings beyond South Africa, and opportunities for future research.

## **CHAPTER 2 SOUTH AFRICA AS A CASE**

The Economic and Social Rights realization field in South Africa has some common opportunities and constraints that are a result of the country's history and economy. This national context impacts all the actors operating within the field of ESR realization. This chapter begins by discussing historical elements that have shaped the current ESR realization field. Next, it provides a general overview of how different types of actors—political, civil servants, contractors, judicial, activist, and nonprofit—have fared since the end of apartheid. Finally, it provides an overview of economic opportunities and constraints—national policies, economic sectors, and patterns of (un)employment—that similarly impact most of the actors and help to demonstrate the need for the public provision of ESR.

### **Pre-Apartheid**

South Africa has a complex history spanning many centuries (see Sparks 1990, 1995, 2003). To understand the modern landscape of ESR realization, what is most important to know about South Africa's pre-apartheid history is that South Africa has a complicated and violent history of land ownership, and that the law was used as a tool of oppression even before the start of apartheid.

The history of land ownership and rights, both formal and informal, is long and complicated. Before colonization, South Africa was home to many different tribes and African peoples (Sparks 1990). Dutch colonization of South Africa began in the mid-1600s, and British colonization in the early 1800s (Sparks 1990). During these centuries, there were many wars and battles between the native tribes, the British, and the Dutch descendants who became known as the Boers (meaning farmers) or Afrikaners (Sparks 1990). Underlying most of this violent

history were conflicts about land and power (Sparks 1990). This provides the backdrop for a very complicated history of land ownership spanning many centuries.

De facto racial segregation was prominent throughout South Africa's history, and laws were a tool of racial oppression even before apartheid began (Mandela 1994). In the early 1900s, while South Africa was a British colony, a suite of segregationist legislation began to formalize segregation. These pre-apartheid laws created deeper inequalities between South Africans on the basis of race, and created systemic inequalities that would eventually be difficult to overcome roughly a century later. These laws denied black people the right to vote (1905 General Pass Regulations Bill), required that Indians—who were originally brought to South Africa by the British as indentured slaves—register and carry identification passes (1906 Asiatic Registration Act), restricted black ownership of land (1913 Natives' Land Act), moved black people out of white living areas (1918 Natives in Urban Areas Bill), and banned land sales to Indians (1946 Asiatic Land Tenure Bill). Similar legislation advantaged whites for work (Mines and Work Act 1911) and later privileged Coloured (mixed race people, who usually spoke Afrikaans) workers as well (Colour Bar Act 1926). Some of the most prominent pieces of legislation were the Pass Laws that required that non-whites carry identification passes that granted them access to white areas for work purposes (Sparks 1990). This legislation originally restricted the access of black men (Urban Areas Act 1923), and later expanded to restrict the movement of all non-whites during apartheid. The law also banned extramarital sex between white and black people (Immorality Act of 1927). These many laws to ensure racial segregation were the first steps towards more systematic changes.

## **Apartheid**

In 1948, the Afrikaans-led National Party (NP) won the national election, signaling a change from British rule to Afrikaans rule and a move towards more formalized segregation. The NP had campaigned on a policy of apartheid—an Afrikaans word meaning apart-hood—which promoted even more extreme racial segregation, and after its election the National Party swiftly expanded de jure segregation. Some of the first pieces of apartheid law made it increasingly difficult for interracial couples and families to remain intact because they prohibited marriages between white people and people of other races (Prohibition of Mixed Marriages Act, Act No 55 of 1949) and further banned extramarital sex between white people and people of other races (Immorality Amendment Act, Act No 21 of 1950). Soon, legislation racially classified every South African into a “population group”: black, white, Coloured (mixed race), or Indian (Population Registration Act, Act No 30 of 1950) and divided urban areas so that ownership and residence was restricted to specific population groups (Group Areas Act, Act No 41 of 1950). The next step was segregating public locations, services, and vehicles (Reservation of Separate Amenities Act, Act No 49 of 1953). The segregation of jobs, public spaces, and education was further formalized (1951 Native Building Workers Act; 1953 Native Labour Act; 1956 Industrial Conciliation Act; Bantu Education Act, Act No 7 of 1953; Extension of University Education Act, Act No 45 of 1959; 1963 Coloured Persons Education Act; 1965 Indians Education Act). These apartheid laws systematically institutionalized white dominance over the non-white majority.

### ***Civil Society During Apartheid***

Actors within civil society were important in the fight for equality throughout this period. Resistance to white rule began well before apartheid and grew under this system of oppression – with segregation codified by law, it was increasingly clear who and what to oppose (Mandela

1994). Once apartheid was established, internal resistance to it came from a variety of groups with a myriad of goals, including but not limited to the African National Congress (ANC), African National Congress Youth League, and the ANC's military wing called Umkhonto we Sizwe (Spear of the Nation); an ANC breakaway group called the Pan Africanist Congress; the South African Communist Party; the Inkatha Freedom Party; the Black Consciousness Movement; and the Democratic Party. Activism during apartheid was almost entirely focused on ending apartheid (Ballard, Habib, and Valodia 2006; Mandela 1994; Sparks 1995). Despite massive state repression and bans on anti-apartheid protests and organizations, both formal social movements and large public protests were common and the anti-apartheid struggle grew throughout the 1970s and 80s (Ballard et al. 2006; Mandela 1994; Sparks 1995). There was also increasing international pressure to end apartheid from social movements, corporations, and many governments around the world (Schwartzman and Taylor 1999).

By the mid-1980s, it was becoming increasingly apparent to the National Party leaders that the apartheid system could not be maintained indefinitely (Sparks 1995). They decided that a negotiated transition was preferable to trying to maintain the system by force or to a violent overthrow by the anti-apartheid opposition (Sparks 1995). Some of the first steps toward the transition began in the 1980s with secret meetings between the NP and imprisoned ANC leaders, especially Nelson Mandela (Mandela 1994; Sparks 1995). Though the anti-apartheid struggle was diverse and legally banned, the ANC had managed to construct a "broad church". The ANC had become the central anti-apartheid movement, which was why imprisoned ANC leaders were the main negotiators at the table (Butler 2005; Mandela 1994; Sparks 1995).

### ***Transition to Democracy***

In February 1989, the Afrikaner-led National Party elected a new party president, F. W. de Klerk, and in August 1989 de Klerk became the state president. While most people assumed president de Klerk would be no different than his predecessor P. W. Botha, de Klerk removed the ban on the ANC and other anti-apartheid organizations in February 1990, legalized anti-apartheid marches, and released Nelson Mandela from prison (Mandela 1994; Sparks 1995). The official negotiations for the transition to democracy began in May 1990 (Mandela 1994). After many compromises, negotiation breakdowns, and violent protests that continued up to the very end, on April 27, 1994 South Africa had its first fully democratic election and Nelson Mandela became president on May 10, 1994.

### **A New Democratic System and the Actors Within It**

The post-apartheid landscape in South Africa is heavily influenced by the country's past. While some systems were largely overhauled and there has been a flourishing of new actors throughout the field of ESR realization, there are also many systems that remain much the same and actors that are heavily informed by their past.

Perhaps the system that has changed most gradually and still has major remnants of the apartheid state is the government's bureaucracies. Though South Africa had a new president, ruling party, and electoral process, the bureaucratic transition from apartheid was rather moderate. The change in power did not lead to overhauling the government's administrative system. Instead there were limited systemic changes under the new administration. Many of the civil servants and military leaders who had served during apartheid stayed on in the new government (Sparks 2003). Part of this gradual change was due to the practical reality of needing qualified government employees, and part of it was because "the nation's economy was in virtual free fall. National debt stood at more than 8 percent; 40 percent of South African workers were

unable to find jobs in the formal sector” (Foster 2012). The reality that the new government maintained the bureaucratic apparatus and kept many of the staff of the apartheid regime is problematic from a political institutionalist perspective because the organizational structures, procedures, roles, and even many of the social dynamics did not substantially change in the transition from apartheid to democracy. Not overhauling the system and staff meant that the new government was limited to more incremental changes than it had envisioned.

### *Political Parties*

Though ANC rule provided new opportunities for former revolutionaries to take leadership positions, the realities of this regime change were rather mundane due to bureaucratic and economic limitations. “On the street, and in the townships, people remarked on this double-sided nature of the 1994 liberation by saying that the ANC was in office but not in power—implying that Mandela and Mbeki had simply become the black faces superimposed on an old and unjust system” (Foster 2012). The new leadership had grand goals and plans for change, and their vision was especially reflected in the new Constitution that guarantees economic and social rights. Yet while the new leaders’ goals, interests, and Constitution were progressive, the reality of the national economy meant they had limited capacity to deliver, especially while working with many of the constraints of the previous system. As one Mandela advisor explained, “There was simply no money to do what we had planned. We had to dump our blueprints and start from the beginning” (Sparks 2003). This tempering of tactics from the original promises is now particularly obvious when looking at how the country’s economic policies have changed since the transition to democracy.

There also have been relatively slow changes in terms of political leadership in South Africa since the end of apartheid. South Africa has a multi-party system, yet the African National

Congress has dominated the political field in South Africa since 1994. In any given year since 1994, there have been between 7 and 13 political parties represented by members in parliament, but this plurality of parties does not indicate shared power (Electoral Commission of South Africa 2018). The ANC has had a Parliament majority since 1994, and has consistently had the majority in seven or eight of the nine provinces as well (Electoral Commission of South Africa 2018). South Africa has a party-list proportional representation system where each political party picks its leader, and then the public votes for the party they want their president to come from (Louw 2014). Since 1994, the ANC has always won about two-thirds of the vote in general elections and thus the president has always been the leader of the ANC (Electoral Commission of South Africa 2018).

The first ANC president was Nelson Mandela from 1994-1999, followed by Thabo Mbeki from 1999-2008, Kgalema Motlanthe from 2008-2009, Jacob Zuma from 2009-2018, and Cyril Ramaposa from 2018-present. National elections occur every 5 years, but the ANC elects its leader about a year preceding the national election. Both Mbeki and Zuma stepped down before the end of their second terms as president of South Africa, yet after the ANC had elected its new leader, who was the presumed next president of South Africa. Thus, the reason for Motlanthe's short presidency is that after Zuma was elected to be president of the ANC party in 2008 and a High Court judge said that Mbeki may have interfered in a court case that accused Zuma of corruption, the ANC National Executive Committee (ANC NEC) called on Mbeki to resign the presidency (BBC 2008; Political Bureau 2018). Motlanthe was President for the remaining nine months of Mbeki's term until the general election, when Zuma became president and Mothlanthe became deputy president (Political Bureau 2018). Mothlanthe served as deputy president for President Zuma's first term, and then retired (Mertern and SAPA 2014). Cyril

Ramaposa was deputy president for President Zuma's second term, and was elected president of the ANC in December 2017 (Bauer 2014). In February 2018, the ANC NEC asked Zuma to resign as president of South Africa due to corruption charges, and Cyril Ramaposa became the country's president (Political Bureau 2018). Given that Ramaposa is ANC president and the ANC is likely to win the 2019 national election, Ramaposa is assumed to remain president of South Africa for years to come.

This history of the presidency since 1994 demonstrates the immense power of the ANC party, despite tensions within the party and changes in the individuals in power. The ANC NEC's decision to recall the two second-term presidents before the conclusion of their second terms demonstrates the party's commitment to having the person who is best for the party in the presidency. Again, this is possible due to the party-list proportional representation system which renders the party more powerful than the politicians in the political offices (Louw 2014). There have been major shifts in power and underlying tensions within the ANC party for the past several decades, and these have played out in part through the changes in the presidency (Bonner 2012; Butler and Southall 2015). Yet despite these internal changes and tensions, the ANC has maintained power in all branches of government.

The landscape of oppositional parties has changed over time, but they have never substantially constrained or checked the ANC's power. In 1994 there were 19 parties on the ballot, including most of the liberation movements such as the Inkatha Freedom Party, Pan Africanist Congress, and South African Communist Party (Electoral Commission of South Africa 2018). However, the main opposition to the ANC was in the Western Cape province—which has the largest non-black population in South Africa—and came from the National Party (NP), which was the ruling party during apartheid (Electoral Commission of South Africa 2018).

In the 1999 election, opposition in the Western Cape came from the New National Party, which was the NP's attempt to distance itself from its apartheid past (Electoral Commission of South Africa 2018). The second largest opposition party in the 1994, 1999, and 2004 elections was the Inkatha Freedom Party (IFP), which broke away from the ANC in 1975 (Electoral Commission of South Africa 2018, Sparks 1995). The IFP was founded in what is now the KwaZulu-Natal province and is largely a Zulu party. More recently, opposition to the ANC has come from the Democratic Alliance (DA, renamed in 2000, previously called the Democratic Party) mostly in the Western Cape; The Congress of the People (COPE), which broke away from the ANC leading up to the 2009 election but whose popularity faded by the 2014 election; and the Economic Freedom Fighters (EFF), led by Julius Malema who is the former ANC Youth League President (Electoral Commission of South Africa 2018). None of the opposition parties have ever earned even a quarter of the votes in a national election, and most receive far fewer votes and very few parliamentary seats (Electoral Commission of South Africa 2018).

### ***Departments and Local Government***

While the party politics in South Africa provide the backdrop for ESR realization, it is largely government agencies and departments at various levels of government that are actively involved in the realization of ESR. The responsibility for the administration and provision of service delivery is divided up across a variety of national agencies, provincial agencies, and municipal and local governments. This means there is a complex landscape of government actors responsible for ESR realization. In South Africa, “the national, provincial and local levels of government all have legislative and executive authority in their own spheres, and are defined in the Constitution as ‘distinctive, interdependent and interrelated’” (South African Government 2018a). The responsibility of budgeting for and providing goods and services is spread

throughout the government, with much of the responsibility filtering down to the municipal level (Treasury 2003).

As of 2018, the national government has grown to have 47 national departments with specific responsibilities, some involving the provision of constitutionally guaranteed economic and social rights (South African Government 2018a). There are nine provinces, each with its own legislative and executive authority. The provinces have diverse attributes and sizes, much like the states in the US (Constitution of the Republic of South Africa 1996). These provinces are: the Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, and Western Cape (Constitution of the Republic of South Africa 1996). Local powers were extremely diffuse immediately following the transition to democracy. Prior to 2000, there were 843 municipalities in South Africa and in 2000, there were 284 municipalities (Chitiga-Mabugu and Monkam 2013). As of the boundary reform of 2016, there are 257 municipalities, as well as other local government structures and traditional leadership institutions that are responsible for ESR realization (Electoral Commission 2016). Municipal governments ultimately have most of the responsibility for service delivery, and thus the differences in municipalities' capacities result in differences in ESR realization in different locations (Chitiga-Mabugu and Monkam 2013). Putting the onus of most forms of service delivery on municipal governments means that there are substantial local differences in available resources, capacity, and allocations based on the spatial nature of inequality (Chitiga-Mabugu and Monkam 2013).

Figure 2.2.1 Map of South Africa Provinces



Wikimedia 2010.

### ***Government Contracting***

The main way that the government acquires goods and services is by procuring work from private or nonprofit agencies (Chipkin 2016; SABC Digital News 2014). Government contracting, also known as the tender system, is a system whereby government agencies pay for contractors or vendors to provide goods and/or services rather than having government employees do that work. Government agencies determine their needs and write a Request for Proposals (RFP) detailing the work needed. Both for-profit and nonprofit organizations can

submit proposals to bid for government contracts, and most contracts are awarded to for-profit firms (National Treasury 2018). The tender process is the main way that for-profit firms are involved with service delivery in South Africa. Since 2000, the government contracting process has grown dramatically (Bhorat et al. 2017; Brunette et al. 2014; Chipkin 2016, 2017), which mirrors an international trend of an increased reliance on contractors (Haglund 2010). Ivor Chipkin is the Executive Director of the Public Affairs Research Institute and has extensively researched the tender system; I saw his presentation on the tender system in South Africa at the South African Sociological Association's Annual Conference, which I attended during my fieldwork. According to Chipkin, as of 2014, forty-two percent of South Africa's national budget was spent on contracted goods and services, which is a much higher percentage than other countries spend on the provision of goods and services (Chipkin presentation 7/6/14 at SASA). The contracting system has grown so large that South Africans commonly call people who have gotten wealthy by winning contracts "tenderpreneurs," a portmanteau of "tender" and "entrepreneurs" (Marishanee 2017; personal conversations and observations).

The tender system in South Africa is widely criticized for its role in limiting state capacity and even allowing for state capture, lowering the quality of service provision while increasing the price, and decreasing accountability and thus increasing opportunities for corruption (Chipkin 2016). This contracting process is also highly decentralized, which can enable corruption. Most requests for proposals are administered by municipalities and thus most contractors are chosen and contracts are administered at the municipal level (Chipkin presentation 7/6/14 at SASA). Having the tender process occur at the municipal level creates a diffusion of authority that allows for increased collusion and corruption (Chipkin presentation 7/6/14 at SASA). This decentralization combined with the dependence on contractors, creates

opportunities for corruption and state capture (Chipkin 2016, 2017). The public perception in South Africa is that corruption is rampant, especially in government contracting (Transparency International 2016).

### ***Judicial System***

The South African court system is relatively static compared to other actors in the field of ESR realization. “South Africa is a Constitutional Democracy with a three-tier system of government and an independent judiciary” (South African Government 2018a). South Africa is a common-law context and the courts are responsible for administering legal justice in their jurisdiction (Klug 2000). The highest court in all constitutional matters is the Constitutional Court. The Constitutional Court hears cases that have come through the Supreme Court of Appeals and usually originated in a Provincial High Court, Land Claims Court, or one of the lower courts (Communications 2017). In the decades since the creation of the system, there have been typical changes and progress—new judges replaced retired judges, courts were renamed to match the new names of geographic areas for their jurisdictions, and new decisions have created precedent. However, in the realm of ESR actors, the legal system has been relatively stable in terms of goals, interests, capacity, and tactics.

Legal progress in ESR realization through the South African court system has largely been procedures-based and not impact-based. The Constitutional Court has repeatedly defended economic and social rights. Yet the Constitutional Court has been reluctant to establish a minimum core (basic amounts or standards for adequacy) for ESR realization (Klug 2010). Thus, court decisions about ESR often hinge on whether reasonable measures are being taken, not

whether a minimum core is being provided<sup>4</sup> (Klug 2010; *Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]). The result is that incomplete rights realization is still often ruled to be constitutional, as long as the correct procedures are followed (this is discussed in depth in chapter 5).

### *Social Movements and Activism*

The end of apartheid was largely regarded as a success of the people through their activism, and proof of the power of civil society (Ballard et al. 2006; Mandela 1994), yet the transition to democracy resulted in an immediate weakening of civil society. This happened in part because most of the movements that had led the struggle became the formal political parties. Many people who had put their faith in the ANC as a liberation movement now put their faith in the new government, which was led by leaders of the struggle (Ballard et al. 2006; Mandela 1994; Sparks 1995). While the ANC had made grand promises about ending poverty and providing services, the dominant message to the public in the years following the transition was that they must be patient (Ballard et al. 2006; Gibson 2007). Most people acknowledged that change would take time, so throughout the 1990s the consensus was to be patient rather than critical of the social problems that remained, and even grew, during Mandela's presidency (Ballard et al. 2006). This trust in government was perpetuated by the ANC, which believes that given the party's past, it can speak for oppressed people and represent civil society actors, even though the ANC is now the ruling political party (Butler 2005; Southall 2003b, 2003a).

It was only around the turn of the century that South Africans started to realize that the government was not, by itself, going to fix their problems (Ballard et al. 2006). Some people

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<sup>4</sup> In the Mazibuko decision, the Constitutional Court decided that the current policy's basic minimum for free water was constitutional, but the decision clearly stated that it was not setting a minimum core in precedent.

began to organize, leading to a rebirth of activism and increased contention between the ANC government and civil society. During the late 1990s and early 2000s, there was a quick growth of several dozen large and formal social movement organizations (SMOs) with varying levels of anti-ANC sentiment, largely focused on pressuring the state to provide constitutionally guaranteed services, especially housing, and health care (Ballard et al. 2006). As Dale McKinley, co-founder of the now defunct Anti-Privatization Forum told me, while many SMOs were not inherently anti-ANC, many social movements in the 1990s and 2000s tried to link service delivery issues to larger macroeconomic policies and the consequences of neoliberalism (Interview Dale McKinley; Ballard et al. 2006). The ruling party was not pleased to be publicly criticized by these new social movements, and so rather than engaging with activists, the ANC often sought to silence them (Ballard et al. 2006). During this time, protests increased and by the mid aughts, South Africa became known as the “protest capital of the world” (Bianco 2013; Rodrigues 2010).

These new South African social movements celebrated some major successes for ESR realization, but these successes were not representative. The most celebrated and material success from one of these new SMOs was the Treatment Action Campaign’s (TAC) 2002 Constitutional Court victory, which ruled that the government must make anti-retroviral (ARV) drugs widely available to stop the transmission of HIV/AIDS from mothers to children (Minister of Health and Others v Treatment Action Campaign and Others (No 1) (CCT9/02) [2002]; Ballard et al. 2005; Heywood 2003, 2009; Jones and Stokke 2005; Klug 2010). Since then, TAC’s various campaigns have been instrumental in increasing the government provision of ARVs to South Africans, creating the world’s largest government-provided AIDS treatment program (TAC website). However, many South African SMOs have faced crippling constraints

in recent decades. Most of the new SMOs founded at the turn of the century died within five to ten years, and most organizations that remain active underwent substantial changes (Ballard et al. 2006). At a very general level, repression, resource limitations, and cooptation constrained these movements (Earl 2011; Edwards and McCarthy 2004; Jenkins 1983; McAdam 1982; McCarthy and Zald 1977; Piven and Cloward 1977), but the specific causes and pathways were diverse.

The TAC's success is anomalous in that it achieved its Constitutional Court victory and that it remains very much alive and well. Yet as the law and society literature would predict, the enforcement and implementation of these ARV programs has been inconsistent, and thus TAC continues to work hard to hold the government accountable and ensure that ARVs are provided as promised (Rosenberg 1991; Treatment Action Campaign 2018). Additionally, while the TAC still appeals to its activist roots from its founding in 1998, TAC has been registered as a nonprofit organization since 2000, and largely operates as a nonprofit rather than as a social movement (Boulle and Avafia 2005; *Treatment Action Campaign v Rath and Others* (2807/05) [2006] ZAWCHC 8; [2007]).

The other major SMO Constitutional Court success during the aughts was achieved by Abahlali baseMjondolo (AbM, translation: people who live in shacks), the largest shack dwellers movement in South Africa (Abahlali baseMjondolo 2018). Throughout its fight against evictions and for public housing, AbM has faced many constraints while managing to stay radical. The Constitutional Court ruled that section 16 of the KwaZulu Natal Province's Slums Act—which allowed municipalities and landowners to evict shack dwellers—was unconstitutional and that suitable alternative accommodations must be provided (*Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009]). Abahlali's legal victory was accompanied by an increase in repression and continued evictions,

and so the legal success was very mixed for the movement. Throughout the court process, AbM faced massive repression and, in the month before the Constitutional Court decision, a mob of about 40 people attacked the Kennedy Road shack settlement outside of Durban, where the national movement is based (Kennedy Road Development Committee 2009). AbM believes that the mob was affiliated with the ANC (Kennedy Road Development Committee 2009). The mob demolished shacks and threatened to kill specific AbM-associated individuals. The mob threatened death to the movement's founder and president at the time, S'bu Zikode, and destroyed his shack<sup>5</sup> (Tolsi 2009). As a result, Zikode and his family went into hiding (Tolsi 2009). Many Kennedy Road residents were injured and hundreds or thousands of Kennedy Road residents fled the settlement (Chance 2010; Vartak 2009). According to an AbM press statement, two of the attackers were killed in self-defense (Kennedy Road Development Committee 2009). In 2014, Lindela (Mashumi) Figlan, a former Deputy President of AbM, and Dr. Richard Pithouse, a longtime friend of the movement, told me Abahlali has persisted as a social movement since its 2009 Constitutional Court victory, but not without continued repression, including shack fires, arrests, evictions, and assassinations of movement leaders (Gibson 2011; Interview Lindela (Mashumi) Figlan; Interview Richard Pithouse). Figlan and Pithouse said that this massive repression resulted in fundamental changes in the leadership and ideology of the movement, and resulted in a lot of paranoia<sup>6</sup> (Interview Lindela (Mashumi) Figlan; Interview Richard Pithouse). In 2015, two local councilors and a hitman were arrested and subsequently

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<sup>5</sup> I conducted one of my 2007 interviews in S'bu Zikode's shack.

<sup>6</sup> I interviewed several AbM leaders and attended AbM meetings when I was in South Africa in 2007, but nobody who was still with the movement would return my emails or texts in June or July 2014. This was understandable since one of their leaders was killed that June. Only one former AbM leader (Lindela 'Mashumi' Figlan) was willing to meet and talk to me and introduce me to another former leader (Mnikelo Ndabankulu), and they had both just formally left AbM. At the time they told me they were in the process of starting a new social movement.

sentenced for the murder of an AbM chairperson, supporting the movement's claims that the repression has come from corrupt local ANC officials (ESRC 2002; Stolley 2016).

Yet massive repression and the downfall of most organized SMOs have not resulted in a lack of activism. Instead, service delivery protests that call for housing and utilities have become increasingly common since 2004, with more than 2 million South Africans protesting each year since 2008 (Plaut 2012). Through these protests, as well as legal action and other forms of mobilization, the people of South Africa have continued to keep the pressure on government to provide housing and basic services.

### *Nonprofits*

The nonprofit<sup>7</sup> sector in South Africa was quite vibrant toward the end of apartheid, as it was one of the main sites of opposition to the government (Habib and Taylor 1999). There was a massive influx of international funding to anti-apartheid nonprofits during the 1980s and early 1990s (Habib and Taylor 1999). About 5,000 development nonprofits were operating by about 1990, and most had been formed to support the struggle (Bernstein 1994). Towards the end of apartheid, thousands of nonprofit organizations were exerting pressure on the apartheid government to end the system of white supremacy and were working to directly provide services to people of color.

The end of apartheid and transition to democracy created profound constraints on the nonprofit sector. In many ways, these changes in the nonprofit sector paralleled the experience of other civil society organizations, especially SMOs. Many nonprofits ceased to exist, and much of the international funding that had been going to nonprofits was diverted into the new government

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<sup>7</sup> In South Africa, the terms nonprofits and NGOs are often viewed as synonymous. In this dissertation I typically use the term nonprofit except in cases in which the source or respondent used the term NGO.

(Habib and Taylor 1999). While the nonprofit sector was largely gutted by this transition, some of the remaining nonprofits remained active in a watchdog role in the 1990s (Habib and Taylor 1999).

The nonprofit sector began to grow again in the aughts, again paralleling the growth of social movements. This led to both an increase in capacity at the nonprofits that had remained intact after the end of apartheid and the emergence of new nonprofits (Kumaran, Samuel, and Winston 2012). The number of registered nonprofits grew by 573% between 2000 and 2011 (Department of Social Development, South African Social Security Agency 2011). Yet, this growth in the nonprofit sector does not necessarily reflect an increased capacity within many of the organizations. The Department of Social Development complained that in 2010, while many nonprofits were registered within the country, about two-thirds of those nonprofits were non-compliant because they did not regularly send the required updates, and about a third of registered nonprofits had never submitted any reports since registering their organizations (Department of Social Development, South African Social Security Agency 2011). At best, this shows that many nonprofits have limited bureaucratic capabilities and, at worst, it shows that many NPOs die a quick death and simply do not fill out the paperwork to deregister.

The main reason to assume many of these nonprofits died without deregistering is that, despite this growth in registered nonprofit organizations since 2000, the sector has struggled to secure funding, which continues to be a major constraint. The global economic crisis was not kind to nonprofits in South Africa (Habib and Taylor 1999). Additionally, as nonprofit director Mark Walker told me, funding became even harder to come by as South Africa was classified as a middle-income country by the World Bank and after South Africa hosted the FIFA World Cup in 2010; many donors and potential donors got the impression that South Africa was doing well

without fully understanding the extent of inequality and extreme poverty in the country (Interview Mark Walker). Walker said, “People saw that we could build stadiums, organize international events, [so now] people do not think we need as much help anymore” (Interview Mark Walker). The specific implications of the funding environment are discussed more in chapters 5, 6, and 7 as I analyze the role of nonprofits in ESR realization.

### *Summary of Actor Context*

Thus far, it should be clear that ESR realization is a shared goal for many different types of actors and organizations in South Africa. However, this landscape of actors is also shaped by the ANC’s expansive power and bureaucratic limitations, and also by constraints and limited capacity for many other types of actors to hold the ANC accountable or pressure the ANC to act differently. The information I shared thus far about these various actors’ history and context is summarized in Table 2.1. This information both presupposes which actors are relevant to ESR realization in South Africa and provides useful background information. In later chapters, I use this context and the theoretical implications from chapter 3 to analyze the goals, capacities, tactics, and opportunities and constraints for different actors who are or could be involved in ESR realization.

Table 2.1 Actors and Their Context that Influence the ESR Realization Field

<b>Sector</b>	<b>Actor</b>	<b>Relevant Context</b>
Government	Political Parties	<ul style="list-style-type: none"> <li>• The ANC has been the dominant political party since the 1994 transition, with no strong national challengers.</li> <li>• The ANC began as a liberation movement and continues to try to speak for civil society.</li> </ul>
	Departments and Local Government	<ul style="list-style-type: none"> <li>• Responsibility for ESR realization is spread across hundreds of agencies and governments, and is mostly the responsibility of municipal governments.</li> <li>• Bureaucrats and government systems did not change after apartheid.</li> <li>• Contractors are the main providers of ESR, and the government is increasingly reliant on contractors to deliver ESR.</li> </ul>
	Courts and Judges	<ul style="list-style-type: none"> <li>• South Africa has an independent judiciary, common-law context, and courts are responsible for administering legal justice in their jurisdiction.</li> <li>• The Constitutional Court is the highest court in all constitutional matters.</li> <li>• The Constitutional Court has defended ESR but has resisted establishing a minimum core.</li> <li>• Court decisions about ESR are largely procedures-based, not impact-based.</li> </ul>
Civil Society	Activism	<ul style="list-style-type: none"> <li>• High levels of activism during apartheid despite state repression.</li> <li>• Activism during apartheid was almost entirely focused on ending apartheid.</li> <li>• End of apartheid regarded as success of activism.</li> <li>• People put faith in ANC government, were patient with new democracy rather than involved in activism in the 1990s.</li> <li>• Rebirth of activism and protest in the aughts.</li> <li>• ANC represses activism and protest.</li> <li>• TAC's Constitutional Court victory an anomaly among SMOs.</li> <li>• AbM's Constitutional Court victory was mixed, resulted in increased repression and member paranoia, and enforcement has been minimal so illegal evictions continue.</li> </ul>
	Nonprofit Sector	<ul style="list-style-type: none"> <li>• The nonprofit sector was vibrant with ample funding at the end of apartheid and was large part of opposition to apartheid.</li> <li>• There has been a nonprofit funding crisis since the end of apartheid and many nonprofits ceased to exist. The sector grew in the aughts, but most are young and low-capacity nonprofits.</li> </ul>

## **Economic Context**

Trends in the South African economy provide important context for understanding the field of ESR realization, and particularly financial opportunities and constraints for individuals to pay to fulfill their own basic needs. I begin this section by discussing the state's economy and resources devoted to ESR realization. Then, I discuss the increased inequalities since the end of apartheid, particularly focusing on the vast divide between the formal and informal economies and the extremely high rates of unemployment. This economic situation helps to explain the massive need for ESR realization in South Africa. Finally, I trace South Africa's national economic policies since 1994 and the discrepancies between their names and goals, and their tactics and results, and why these policies have kept so many South Africans dependent on the state to provide basic goods and services.

### ***South African Economy and Resources***

Given the presence of the qualifying language about the realization of social and economic rights in sections 26 through 29 of the Constitution, it is important to consider the state's resources, economy, and budget commitments to better gauge what is reasonable (refer to chapter 1 for a discussion of sections 26 through 29). South Africa is an interesting case for understanding government service provision because its progressive Constitution guarantees ESR even though it is a middle-income developing country (Seekings and Natrass 2005). Many South African institutions try to operate like their counterparts in advanced capitalist countries, despite the limitations of being a middle-income developing country with extensive inequality and extremely high rates of unemployment (Seekings and Natrass 2005; Statistics South Africa 2017b). Essentially, the South African government has moderate resources to realize rights and spends roughly two-thirds of the national budget on rights realization to fulfill these

constitutional promises (National Treasury 2015). This demonstrates a high level of financial commitment to realizing economic and social rights.

### ***Economic Need for Government-Funded ESR Realization***

It is impossible to discuss the state's role in the realization of economic and social rights without also acknowledging the role of the economy in equipping people with the means to pay for basic goods and services. Generally, when people are employed and earning adequate money, they are more likely to be able to pay for goods and services that are constitutionally guaranteed rather than rely on the government to provide them. This is especially true for “non-standard social rights,” including food, housing, and water that are typically provided by the market rather than by the government (Jung et al. 2014). The massive scope of the need for government-funded ESR in South Africa is closely related to the extremely high rates of unemployment and the weak and siloed informal sector, both of which are largely influenced by economic policies. There is a tension between the tenets of neo-liberal capitalism vs. socialism that underlies the somewhat socialist promise of providing these economic and social rights to all South Africans in a neo-liberal capitalist country. Interestingly, different ESR can be considered more or less capitalist. For example, social grants are the most capitalist because they give people money to buy goods and services in the free market rather than building up the government infrastructure. There is a tension here between building the government capacity necessary to keep the government's promises and keeping government small as is the neoliberal ideal.

### ***Economy and Businesses***

South Africa's economy has a flourishing formal sector, struggling informal sector, and a large unemployed population. This situation is a result of the country's history of economic inequality, and now that cycle of inequality is perpetuated by inadequate policies and rights

realization. Since the end of apartheid, overall wealth in the country has increased, yet the country is still plagued with massive inequality.

Much of the formal sector is highly skilled, international, and thriving, largely as a result of the country's neo-liberal economic policies. The annual GDP in South Africa has almost tripled since the end of apartheid. South Africa has the second largest economy and the largest port in Africa. South African finance, manufacturing, transport, and mining industries are particularly strong (Statistics South Africa 2013b). There are many large multinational businesses that operate in South Africa and there is a vibrant upper class. This transition began before apartheid ended: while privilege was mostly based on race during the early years of apartheid, the regime transitioned to privileging class during the final decades of apartheid and into post-apartheid South Africa (Seekings and Natrass 2005). This transition was accompanied by intense neo-liberal privatization, which now allows upper class South Africans to pay for private access to these constitutionally guaranteed rights. More specifically, South Africans with means can pay for private education, housing, food, health care, and sometimes utilities rather than relying on the state provision of these economic and social rights.

South Africa's informal sector is larger than in most developed countries, but relatively small for a middle-income developing country (Seekings and Natrass 2005). Informal sector jobs in South Africa tend to pay poorly and there is little movement of employees between sectors, so an informal sector job is rarely a stepping stone to better employment. Most people who have worked in the formal sector or received a higher education are unlikely to work in the informal sector (Seekings and Natrass 2005). The small and siloed state of the informal economy contributes to the persistent inequalities.

Even more relevant to how inequality is perpetuated, unemployment in South Africa has been consistently high, which constrains individuals' abilities to provide for themselves and their households. Official unemployment in South Africa was about 20% in 1994, peaked at just over 31% in 2003, and has ranged between 21% and 28% since 2004 (Statistics South Africa 2017b). As of 2014, the expanded unemployment rate was 35% and unemployment among 15 to 24-year-olds was above 50%, which was the third highest rate of youth unemployment in the world (Schwab 2014; Statistics South Africa 2017b). Unemployment has consistently been higher for black South Africans than other races, higher for women than men, and higher in rural than urban areas (Seekings and Natrass 2005, GHS 2014).

### ***Economic Policies***

Though improving the economy for all could provide people with the means to pay for their own goods and services, South Africa has gone through five different national economic policies post-apartheid and all have fallen short of their stated goals of reducing unemployment (see Langford et al. 2014; Seekings and Natrass 2005). Knowing how these policies have perpetuated massive economic inequalities in South Africa helps us understand the continuing great need for ESR realization.

The first of these economic systems was the Reconstruction and Development Programme (RDP), and was the center of the ANC's development policy when the party first came into power. The RDP acknowledged that alleviating poverty was crucial to strengthening the economy, and thus was highly redistributive. RDP created a strong welfare system, but it was criticized for limiting economic growth (Bond and Khosa 1999; Lodge 2002). This was by far the most redistributive economic policy that South Africa has ever had, and it was replaced by a

series of more neo-liberal policies with tactics that helped to grow overall national wealth and government wealth but exacerbated inequality.

In 1996, the Minister of Finance opted for a more neo-liberal system of Growth, Employment, and Redistribution (GEAR) that effectively replaced RDP (Seekings and Natrass 2005). GEAR successfully increased capital flows and reduced the size of government but, despite its name, it did not improve employment or reduce poverty for most South Africans. GEAR contributed to the increasing divide between the two South African economies: one that is global, skilled, and booming, and another that is informal and marginalized (Mbeki 2003). GEAR created the “Growth” of its name but did not deliver when it came to “Employment and Redistribution”.

During the 2000s, the ANC also instituted economic empowerment initiatives to increase the employment of non-white South Africans. These initiatives do not replace the national economic policies, but instead seek to work alongside the other national policies. In 2003, a racially selective policy of Black Economic Empowerment (BEE) was established with the goal of providing economic advantages to historically disadvantaged groups (Republic of South Africa 2004). BEE was focused on equity ownership and management positions, and thus was criticized for mostly improving the situation for blacks at the top rather than growing the middle class, and for possibly hurting small businesses (Seekings and Natrass 2005). In 2007, BEE was updated and rebranded as Broad-Based Black Economic Empowerment (B-BBEE) which provides broader measures for the indirect empowerment of non-white workers through employment equity, skills development, preferential procurement, enterprise development, and socio-economic development (Republic of South Africa 2007). These policies have helped non-white workers in the formal sector and contributed to a society where inequality is more class-

based than race-based, though there are still racial patterns of inequality (Seekings and Natrass 2005).

In 2005, GEAR was replaced by the Accelerated and Shared Growth Initiative for South Africa (AsgiSA), which focused on employing women and youth, and using microfinance to increase entrepreneurship (O'Malley 2018). The goal of AsgiSA was to halve poverty and inequality by 2014 (O'Malley 2018). Yet in the 4 years of AsgiSA policy before it was replaced, the gap between the rich and the poor grew, and overall poverty did not decrease. Specifically, the percent of South Africans at both the upper bound and lower bound poverty levels decreased slightly and the percent of South Africans living in extreme poverty increased slightly (Statistics South Africa 2017a).

AsgiSA was replaced with the New Growth Path (NGP) in 2010 by new president Jacob Zuma (Economic Development Department 2011). The goal of NGP was to create 5 million jobs and reduce unemployment from 28% to 15% by 2020 (University of South Africa 2011) but the plan did not offer an economic strategy for how to improve employment (Natrass 2011). Unsurprisingly, the unemployment rate did not decrease in the years following the implementation of the NGP (Statistics South Africa 2015b).

In 2013, Zuma replaced the NGP with the National Development Plan 2030 (NDP). The NDP calls for expanding government investment in infrastructure, microeconomic reforms to benefit businesses and industrialization, and expanding local procurement with contractors (Zarenda 2013). One of the central goals of the NDP is to eliminate poverty by 2030, but that goal is still extremely unrealistic (Davis 2017; South African Government 2018b).

Throughout this history of economic policies, we see that the names and stated goals of the policies indicate potential for progress, but their tactics have not been effective at reducing

poverty or inequality. This mismatch between the stated goals and the realities of these policies is not surprising for scholars of neoliberalism or economic sociology (see Amable 2011; Centeno and Cohen 2012; Fourcade-Gourinchas and Babb 2002; Mudge 2008). It is outside of the scope of this dissertation to analyze the intention behind these policies—whether the rise of neo-liberal policy in South Africa is purely the result of elite self-interest, is honestly well-intended but poorly-informed, or somewhere in between. Similarly, I do not enter the debate as to whether policy names and goals that claim to prioritize reducing poverty and increasing employment are genuine, or simply a way of appealing to the public. Nevertheless, these neoliberal policies have not successfully reduced poverty in South Africa, and thus many residents remain unemployed or extremely poor. The result is that many households are unable to pay for the provision of their basic economic and social rights. This leaves the government in a position of needing to realize rights by directly providing goods and services.

### ***Summary of Historical, Policy, and Economic Context***

By tracing the history of racial segregation and oppression in South Africa, this chapter has offered important context for understanding why there has long been a need for adequate economic and social rights in South Africa. Though South Africa has a progressive constitution, the national economic policies and disparate economic sectors have not realized progressive change for many people of color in South Africa. While some people of color in South Africa have benefitted financially since the end of apartheid, millions remain impoverished, unable to purchase basic goods and services, and reliant on the government for ESR realization. This context is summarized in Table 2.2. Elements from this table will be referenced again throughout the dissertation to show how this context provides opportunities and constraints for ESR realization in South Africa.

Table 2.2 South African Context for ESR Realization

<b>Realm</b>	<b>Relevant Historical, Policy, and Economic Factors</b>
Historical Context	South Africa was colonized several times before the start of apartheid.
	South Africa had segregated land ownership both before and during apartheid.
	The law was used as a tool of racial oppression before and during apartheid.
	South Africa had a negotiated transition from minority rule and apartheid to multiracial democracy in the late 1980s and early 1990s.
	The current multiracial democracy began in 1994.
National Policies, Rules, Regulations, or Procedures	South Africa has a progressive constitution that promises ESR realization.
	South Africa has had five national economic policies since 1994. The four most recent policies were all neo-liberal and perpetuated class inequalities despite their stated goals of increasing employment and reducing poverty.
	South Africa's economic empowerment initiatives have helped non-white workers in the formal sector and contributed to a society where inequality is more class-based than race based, though racial patterns of inequality persist.
Economy/Market	South Africa is a middle-income developing country.
	South Africa has high levels of inequality and a high rate of unemployment.
	South Africa's has two distinct economic sectors. The formal economy is flourishing but the informal economy is struggling, and there is little movement between sectors.
	Millions of people in South Africa do not have the means to purchase their own basic goods and services, and thus rely on government provision of ESR.

### Case Selection

I was drawn to research economic and social rights realization after spending time in South Africa and understanding the substantial need for basic goods and services in the country. The country's ambitious goals and massive inequalities also inspired me to ask questions about ESR realization using South Africa as a case because for those living in South Africa, ESR realization has major implications for life and quality of life. Moreover, the realities of ESR realization in South Africa have theoretical and practical implications for the realization of economic and social rights in any country. While South Africa is a unique case, exploring the factors that shape effective ESR realization there can improve our understanding of what can move the needle more generally.

Studying reasons for differences in access to economic and social rights realization required choosing a place where multiple economic and social goods and services were in the

constitution or otherwise guaranteed as rights. South Africa is a prime site for this research largely due to its constitution. First, the Constitution of South Africa is notable because it enshrined rights to education, housing, and health care, “guarantee citizens not individual entitlements bounded by a floor but rather equal *access* to those entitlements available. The corresponding duty on the government is to enact nondiscriminatory policies to maximize the realization of the rights. This constitutional formulation is thus sensitive to governmental resource constraints” (Kaletski et al. 2016; see also Berger 2008). This focus on equal access within the constitution makes South Africa a particularly good place to explore why rights realization is still so unequal.

Second, South Africa’s constitution promises a mix of both “standard social rights” that are included in many constitutions (including education, social security, and health care) and “non-standard social rights” that are rarely specified as rights (including food, housing, and water) because they can be identified as subsidies<sup>8</sup> or goods that should be provided through the market rather than state intervention (Jung et al. 2014). This makes South Africa a good case for exploring whether and how there are differences between more standard and non-standard social rights. Studying reasons for differences in access to economic and social rights realization required choosing a place where multiple economic and social goods and services were in the constitution or otherwise guaranteed as rights.

Third, South Africa has a formal commitment to justiciability of ESR - which means that courts can adjudicate on issues of ESR. South Africa’s case law demonstrates evidence of that commitment, especially in the areas of housing and health (Jung et al. 2014). If these ESR were

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<sup>8</sup> However, Jung et al. (2014) note that “Varun Gauri, an economist at the World Bank, notes that economists tend to view all ESRs as subsidies (personal communication).”

only included as aspirational rights, it would be easy to explain major deficits and inequalities in their realization due to the lack of a structural mechanism for ensuring enforcement. Thus, the formal commitment to justiciability makes South Africa a good place to examine differences in access to economic and social rights.

In addition to having the rights basis for ESR realization, South Africa generally has other fundamental ingredients for ESR realization that the academic perspectives in chapter 3 have established as important. South Africa generally has the state capacity and political will necessary for ESR realization improvements, evidenced in part by the reality that the country spends roughly two-thirds of its national budget on ESR realization (National Treasury 2015). Failures in rights realization in South Africa therefore cannot be attributed to *general* lack of capacity or will. Additionally, if South Africa had an absence of public pressure for ESR realization, that could easily explain differences in progress, yet South Africa has a long history of activism and is known as the protest capital of the world (Bianco 2013; Rodrigues 2010).

In short, the common explanations for lack of access to basic socio-economic rights that are present in most countries: 1) absence of legal guarantees, 2) deficient economic capacity, and 3) an inactive civil society – generally do not apply to South Africa. This makes South Africa a good location for going beyond such commonplace appropriate explanations to understanding remaining deficiencies in ESR realization. Additionally, this allows me to leverage differences between access to different guaranteed services to ground the new explanatory mechanisms of gatekeeping and synergies. As has been previewed in chapter 1, chapter 3 will develop the idea that these mechanisms are themselves rooted in field-level analysis and an elaborated concept of materiality.

## **CHAPTER 3 EXISTING PERSPECTIVES ON RIGHTS REALIZATION**

The first portion of the chapter details what has already been established in the general literature about ESR realization. I draw from three originally distinct yet increasingly cross-pollinated and combined academic perspectives: a socio-legal perspective on rights realization, a political-institutional perspective focused on rights and the state, and an institutional perspective focused on organizations and markets more generally. I summarize findings in these general literatures with reference to their implications for South Africa, given its key empirical features established in chapter 2.

I conclude that while ESR realization is happening at a much slower rate than politicians have promised and people have expected, this slow rate of progress is unsurprising when looking through the lens of the literature on ESR realization. The dominant perspectives around ESR realization provide plenty of reasons why ESR realization is highly constrained and slow moving in South Africa. But these perspectives cannot account for the uneven patterns of progress that have occurred. Against this backdrop, I then sum up what remains unexplained and the three emergent puzzles in the patterns of ESR realization.

In the last portion of the chapter, I explain why answering these puzzles necessitates a general field-level approach to researching ESR realization and why I both rely on and build upon Klug's largely unexplored concept of the materiality of rights. Finally, I preview how using this field-level approach and inductive research about the materiality of rights ultimately leads me to discover relationships between ESR and employ the organizational concepts of gatekeepers and synergies to explain patterns of ESR realization.

### **Explaining Economic and Social Rights Realization**

I draw from three interdisciplinary literatures<sup>9</sup> that have increasingly combined over time to provide a theoretical overview of ESR realization explanations. One of these is the interdisciplinary socio-legal literature which examines the relationships between law, legal phenomena, social practices, and social experiences. Overall, the socio-legal perspective establishes that there are a variety of actors, goals, opportunities, and constraints that play a large role in whether, when, and how rights are realized. This literature finds that a gap between rights on the books and rights in practice should be expected (Pound 1910; Stryker 2007), that there are multiple and combined mechanisms, actors, and pathways to rights realization (Haglund and Aggarwal 2011; Haglund and Stryker 2015), and that various legal factors, the state's level of autonomy from elite influence, and various actors' pressures for or against ESR realization all play an important role in how laws are interpreted and implemented (Epp 1998; Gauri and Brinks 2008; Gauri and Gloppen 2012; Haglund and Stryker 2015; Rosenberg 1991). The socio-legal perspective focuses on the specific role that the law and legal system play in rights realization, and opens the door to understanding the importance of a variety of social actors and factors that play a role in the realization of ESR.

Second, the political-institutional perspective is focused more on the state and its processes, rather than specifically the judicial branch's role in rights realization. Political institutionalism takes a Weberian approach in seeking to understand states as sets of organizations and it reveals important characteristics of the state as an actor (Amenta 2005). It

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<sup>9</sup> My literature review initially included the Political Economy of the World System (PEWS) perspective, and I also compiled data on how South Africa fits into and is influenced by the global political economy. Guided by this perspective, I tried to assess how South Africa's position in the global political economy might shape ESR realization. However, due to the remarkable consistency of South Africa's position in the global political economy, I could not use quantitative indicators of position in the world economy to help explain variability in South African ESR realization. The specific PEWS data I collected and analyzed are detailed in a footnote in chapter 4.

reveals how policy creation and implementation are influenced by organizational structures, procedures, rules, and social dynamics (Amenta 2005; Evans, Rueschemeyer, and Skocpol 1985; March and Olsen 1984; Pedriana and Stryker 2004; Skocpol 1980, 1992; Skocpol and Amenta 1986; Skocpol and Finegold 1982). This political-institutional perspective, also referred to as “the new institutionalism” of politics (March and Olsen 1984), the “state centered” (Gilbert and Howe 1991; Hooks 1990), or a “structured polity” approach (Skocpol 1992) spans multiple literatures within sociology, particularly political sociology and the neo-institutionalist organizations perspective (Meyer and Rowan 1977; Powell and DiMaggio 1991; Tolbert and Zucker 1983), as well as within political science (see discussion in Pedriana and Stryker 2004). The political-institutionalist perspective allows us to better understand the government as an organization with various goals, capacities, and limitations. It reveals the importance of researching the state’s capacity, autonomy, the role of elite influence and resistance, bureaucratic barriers, and the increasingly important role of contractors.

The third literature I mine is that of research on corporate organizations, nonprofit organizations, and economic markets. This perspective focused on the logics that pertain to these specific institutions and their provision of goods and services, but does not directly address issues of rights realization. Nevertheless, there are many contractors and practitioners involved in the provision of goods and services that are defined in the South African Constitution as economic and social rights. These organizations are not state entities, are fundamentally profit or mission oriented, and not bound to doing the work of the state. However, the new or neo-institutionalist perspective within organizational theory posits that such organizations nevertheless react to state structure and bureaucracies by going through a state-dependent process of institutionalization (DiMaggio and Powell 1983; Scott 1995). By using organizational

structures and practices that are already well established by other institutions, organizations undergo a process of institutionalization where they become more similar. The foundational work of DiMaggio and Powell (1983) calls this pressure to conform ‘isomorphism,’ and explains that isomorphism can be ‘coercive’ because it is mandated by government or law, ‘normative’ where it is influenced by professional standards or norms, or ‘mimetic’ when organizations copy other organizations’ structures that are believed to be safe or beneficial. DiMaggio and Powell (1983) explain that the process of institutionalization limits the options that organizations can pursue, and thus makes them less instrumentally rational (DiMaggio and Powell 1983). This chapter particularly focuses on the role of contracting as part of the process of ESR realization and uses a framework of neo-institutionalism to better understand the benefits and constraints of South Africa’s increased reliance on contractors to carry out ESR realization.

While there are some distinctions among these perspectives, exploring them in tandem is not novel nor fundamentally problematic because they have been increasingly combined to more fully understand social and political landscapes, and many of the same scholars have contributed to two or all three of these perspectives. The socio-legal and political institutional perspectives have become increasingly linked as scholars have recognized that state actors beyond the judicial branch play a critical role in the interpretation and implementation of rights. Additionally, the political-institutional perspective is intrinsically linked to the neo-institutional organizational perspective because these developed during the same time period, and were rooted in a similar conceptual apparatus, with one focused on states and the other focused on corporate and nonprofit organizations. Both are institutionalist perspectives that acknowledge the influence of the outside environment on how organizations are structured and what institutional practices they adopt and employ. Looking at these perspectives in tandem reveals that influence can operate in

multiple directions – judicial, executive, and legislative branches of government as well as organizations outside the state can all influence and be influenced by each other.

### ***Gaps Between Law on the Books and Rights Realization***

The socio-legal literature has long established that a gap between laws on the books and rights that are realized in practice exists and should be expected. While laws focused on benefiting the disadvantaged can play an important role in reducing inequality, progressive laws alone are not sufficient to ensure that rights are brought to fruition (Pedriana and Stryker 2004; Stryker and Haglund 2015). To put it another way, while the law can be a key mechanism for reducing inequalities, enacting a law is not sufficient to reduce inequalities (Pedriana and Stryker 2017). The reality is that laws are not realized in every situation, and gaps persist between rights on the books and rights in practice.

There is an interdisciplinary socio-legal tradition that explores gaps between law on the books and law in action, dating back to at least Roscoe Pound's 1910 article "Law in Action", and continuing throughout the past century (Stryker 2007). The broader literature on the gap between legal rights and the actualization of rights spans all realms of law. Yet socio-legal research has increasingly focused on economic and social rights realization, especially since the United Nations adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966 and numerous progressive national constitutions that were instituted around the world, including in South Africa, include ESR (Haglund and Aggarwal 2011). For example, Kaletski et al. (2016) use the multi-national Social and Economic Rights Fulfillment Index to find that the constitutional promise of health care and education is positively correlated with the realization of those rights, but that there is not a correlation between the promise and realization of other ESRs, including food and housing (Kaletski et al. 2016). This dissertation looks not just

at where these gaps exist in South Africa, but seeks to understand why some social and economic rights are more or less likely to be realized.

### ***Multiple Pathways to Rights Realization***

Not only is there often a gap between law on the books and rights in reality, but past research has established that there are multiple pathways to economic and social rights realization, not all of which center on litigation and court enforcement (Haglund and Aggarwal 2011; Stryker and Haglund 2015). This work draws from the “MAPs framework” introduced by Haglund and Aggarwal (2011) and developed in the Haglund and Stryker’s (2015) edited volume. This framework posits that there are multiple Mechanisms, Actors, and Pathways (MAPs) that can be used for ESR realization. For example, while political and civil rights are typically realized through legal and political mechanisms, economic and social goods and services are often realized through economic and market mechanisms, and thus in the realm of the private sector without any explicit consideration of rights. In a free market model, people use their income or wealth to purchase housing, utilities, food, and sometimes education, and the companies providing these goods and services do not consider their work to be economic and social rights realization.

Yet as was explained in chapter 2, in South Africa more than a third of households have no earned income and economic policies have failed to substantially lower unemployment and decrease poverty (GHS 2015). For South Africans who are not able to afford these goods and services on their own, their pathways to ESR realization are somewhat limited because they largely rely on state-funded service provision. There are three state-funded pathways to rights realization: 1) the state can provide services directly, 2) the state can pay or finance other organizations (both for-profit and nonprofit) as vendors, contractors, or grant recipients to

provide services, or 3) the state can transfer funds directly to recipients through cash subsidies that allow individuals to purchase the goods and services themselves (Huber and Stephens 2000). All three of these state-funded pathways are used in South Africa, though not all of these pathways are used for every right and these forms of state-funded rights realization are often piecemeal and unevenly distributed.

Additionally, there are pathways to rights realization that can operate alongside or in place of state-funded rights realization. It is common for nonprofit organizations funded by donors to seek to fill gaps in state service provision by facilitating access to these goods or services (Powell and Steinberg 2006). Nevertheless, nonprofits face many limitations when trying to provide services (Powell and Steinberg 2006). Some nonprofits provide the goods and services themselves, some seek to connect people to the right state-provided services, and others serve as advocates and watchdogs.

Essentially, there is no one way to gain access to economic and social rights like housing, education, or food, and the specific mechanisms used and the frequency with which those mechanisms are used depend on various other factors. It often will be important to examine how multiple types of mechanisms may combine to yield greater effectiveness (Haglund and Stryker 2015). For example, court enforcement combined with gathering more information and persistent monitoring (Alvarado 2015) or litigation combined with political advocacy (Hertel and Randolph 2015; Nelson 2015) can lead to more effective ESR realization.

This research will look at specific and overlapping pathways. Chapter 2 already showed some ways that actors may be constrained – whether it is government agencies limited by their remaining apartheid-era bureaucratic apparatuses, nonprofits struggling to survive in a scarce funding environment, or social movements that have faced both cooptation and repression. This

context provides reasons why actors may be unable to fully utilize some pathways that would otherwise be available to them for working to realize economic and social rights, and the coming pages will detail how the literature predicts that these constraints will limit these actors' effectiveness. Yet through this research I also will find that the material requirements of the rights themselves can also limit the possible pathways to realize different rights. Additionally, these material requirements can further limit which actors are able to utilize the possible pathways for each right.

### ***A Variety of Actors Play a Key Role in How Laws are Interpreted and Implemented***

Laws are interpreted and implemented by both state actors and other organizations, and both legislations and litigation are commonly used on pathways to ESR realization. Legality enables, constrains, and shapes what state actors do (Skrentny 2006). These state actors include all who can take action through executive, legislative, judicial, and/or administrative means (Skrentny 2006). These acts of interpretation and implementation can occur through legal and technocratic modes. Legal activities center around "rule creation, interpretation, and application grounded in common or statutory law" and rely "on manipulating legal rules" (Stryker 1989). On the other hand, technocratic action is more focused on specific policy creation and the organizational implementation of policies, rules, and procedures (Stryker 1989). For example, the US Congress and the courts were involved in legal modes of action to create more equal opportunities in the workplace (Dobbin 2009). However, the realization of equal opportunity in the workplace is filtered through and influenced by the human resources professionals (previously known as personnel professionals) who deal with policies and implementation within the organization (Dobbin 2009). The importance of actors outside the state previews the

importance in South Africa of the many different types of organizations, including contractors, schools and utility companies, involved in the realization of rights.

### *State Capacity*

The capacity of state agencies to realize both policy objectives and specific programs is a key element of the political-institutional perspective (Amenta 1998; Evans et al. 1985; March and Olsen 1984; Pedriana and Stryker 2004; Skocpol 1992; Skocpol and Finegold 1982). This capacity includes the ability of both the state as a whole and individual agencies to meet these objectives (Gilbert and Howe 1991). The political institutionalist perspective posits that key resources—including money, bureaucratic infrastructure, trained and/or skilled personnel, and formal powers—largely determine state capacity (Amenta 1998; Barkey and Parikh 1991; Evans et al. 1985; Skocpol 1992; Skocpol and Finegold 1982).

Understanding state capacity also requires examining the administrative and regulatory functions of state actors. Skowronek (1982) established that the law and the courts, as well as political parties, are foundational for understanding how the American state has developed but also showed that the law and courts may be secondary to the executive branch and civil servants in the work of regulatory implementation (Clemens 2003; Skowronek 1982). Additionally, Skowronek spoke to another weakness of the courts that highlights the importance of focusing on the work of implementation and regulation: the courts are passive and require that others initiate action, whereas executive and regulatory agencies can be proactive (Skowronek 1982; see also Skrentny 2006; Sutton 2001).

It is well established that a state's administrative and regulatory capacity are not static or fixed, and that capacity comes from many sources. Pedriana and Stryker (2004) show that state capacity expands and contracts over time, and that when there is a lack of conventional

administrative resources (money, trained personnel, and administrative power), capacity is influenced by actors both within and outside of the state. Politicians, civil servants, activists, and other actors can use legal resources—particularly legal interpretation and judicial review—to develop or inhibit capacity (Pedriana and Stryker 2004). Additionally, large budgets can make up for limited capacity in other areas. In many countries over the past several decades, states have augmented goods and services that used to be primarily provided by the government by using contractors (Haglund 2010).

We can generally predict that more state capacity will help to improve ESR realization and that less state capacity will hinder progress. Chapter 2 discussed some limits to state capacity in South Africa including the small taxpayer base and large size of the population in need, both of which can be attributed to the high rate of unemployment. Additionally, by maintaining the apartheid era bureaucracy, the state avoided a massive dip in capacity following the end of apartheid, but appears to have handicapped itself long-term. However, the specific pathways—and knowing which pathways will be successful in different contexts—are far more complicated than looking at overall state capacity. Predicting how capacity will influence ESR realization is challenging because capacity is often mixed, a moving target, and depends in large part on how actors use it. The result is that capacity can help us to explain various outcomes of specific past cases, but we cannot simply look at overall state capacity in South Africa and predict the changes and differences in ESR realization among different rights.

### ***Contractors***

One of the three state-funded pathways to rights realization is for the government to select and pay contractors or vendors to provide the goods and services. Contract work makes up a large portion of ESR realization in South Africa (Bhorat et al. 2017). Brinks and Gauri (2008)

explain that the contractors' and vendors' roles are various, depending upon the economic and social rights in question. For example, "in education, they include teachers, private school owners, university faculty, and textbook publishers. For other rights, the groups are perhaps less well-defined, but would include groups such as engineers in the case of housing rights, as well as builders, landlords, and the government agency that supervises building and manages public housing" (Gauri and Brinks 2008). For economic and social rights like education and health care, the providers are skilled and the needs are diverse, so the professionals involved need substantial discretion (Gauri 1998; Gauri and Brinks 2008; Pritchett and Woolcock 2004). Additionally, Haglund (2010) documents the international rise of contractors providing goods and services that were previously provided by the government. Ultimately, for ESR, the necessity of actors outside the state involved in the provision of ESR adds levels of bureaucratic and organizational complexity when compared to rights that do not involve a tangible good or service. Yet these contractors also augment state capacity, and ideally should allow more work to be completed even with a relatively small government. While contractors are involved in realizing all of the ESR in South Africa, the level of contractor involvement varies substantially from right to right. The differences in the level of contractor involvement are especially relevant to Puzzle 2, which asks why the rate of utility progress has been consistently slow for all of the different utilities in spite of different types of actors involved in their provision. This begs the question of whether there are actually different outcomes when rights are realized directly by government agencies compared to when contractors are involved.

Organizations that serve as contractors or vendors for government agencies can be seen as a specific type of organization, given that the work that they do is particularly bound to legal and state requirements, and can be largely dictated by state priorities and funding. The

decentralization of service delivery by the private sector and increase in government contracting paralleled a rise of networks in the private sector (Alter and Hage 1993). A move towards reliance on outside contractors can reflect a need for expertise, adaptive efficiency, greater flexibility, increased penetration of market ideology into the state, or limited government growth (Alter and Hage 1993; Smith and Lipsky 1993). Contracting is especially useful when government agencies need to utilize skilled professionals for specific projects within a set time period. Yet in other cases, the use of contractors is simply a way to avoid creating permanent infrastructure, hiring and training staff, keeping employees long term, and ultimately limits government growth (Smith and Lipsky 1993). While some ESR require skilled or specialized workers for implementation, in South Africa the workers are providing routine goods and services in a context in which both the need and requirement of government provision are certainly not short term (Bhorat et al. 2017). When contractors are involved in the provision of routine goods and services, as they are in South Africa, it can create a new set of problems.

The move towards private and nonprofit contractors has created a mutual dependence between the state and the contracting organizations. The companies and nonprofits depend on the state for funding, and the state relies on them to adequately deliver services (Smith and Lipsky 1993). The contracting system is not as flexible as many hope for because there are a limited number of providers (Smith and Lipsky 1993). This is especially true when providers are dependent on the government for funding; few survive when they do not have a contract and others have a limited capacity that makes it hard for them to quickly scale up if they win a contract (Smith and Lipsky 1993). Ultimately this creates a situation in which the state does not have the internal capacity to provide social services, and relies on contractors with varying levels of competency to provide routine services to the public.

Such long term dependence is troubling from a rights realization perspective, given that state dependence on markets and corporate organizations often leads to leniency, negotiations, and all-around weaker compliance, which limits social impact (Nelson and Bridges 1999; Stone 1975; Yeager 1990). This is especially true in South Africa, which relies so heavily on contractors that it has been declared a “contract state” (Bhorat et al. 2017; Brunette et al. 2014). A dependence on contractors also creates opportunities for corruption and state capture (Chipkin 2016, 2017), and the public perception in South Africa is that corruption is rampant, especially in government contracting (Transparency International 2016).

### ***Bureaucratic Barriers***

While effective bureaucratic systems are often a key element of state capacity, these rules and structures also can create barriers to progress. Weber’s foundational work on bureaucracy established that it can be a key way of generating efficiencies and fairness, but it also can create an “iron cage” that is overly formalized and rule-based (Weber 1978). Bureaucratic barriers, including limited capacity but also limited flexibility, create substantial limits to the government’s ability to realize rights as a result of judicial progress, even with social movements and other organizations working to promote legal actualization (Handler 1978). Handler (1966; 1978) found that, while social movements are often needed to sustain change after legal victories, there were few cases of social movement success that converted legal victories in rights litigation into social transformation. This often was due to bureaucratic contingencies when it comes to government remedies or implementation. Handler (1978) contended that bureaucrats often stood in the way of legal actualization, either for selfish reasons or simply out of bureaucratic complacency due to the micro-dynamics of administering programs (1978).

Essentially, Handler cautions us that the discretion of individuals who work within these bureaucracies often limits the extent to which legal changes are implemented.

Rosenberg (1991) provides a complementary argument that elite political actors are needed to ensure the necessary government actions to bring about substantial social changes, and goes a step further to argue that the court victories are superfluous since the support of political actors is necessary, regardless of what happens in court. The importance of elite involvement again shows how intrinsically connected these concepts of state capacity, autonomy, elite influence and resistance, and bureaucracy are. Moreover, this literature is linked to the findings on the importance of legal mobilization discussed earlier.

Yet politicians and bureaucrats are not necessarily opposed to rights realization. In many countries, including South Africa, politicians claim to support ESR realization (Klug 2010). Bureaucrats, “might not object at all to rulings that require them to provide more services, if that gives them bigger budgets or allows them to meet client needs that were being frustrated by political decisions. On this account, patterns of legalization will follow the path of least resistance, shifting according to the limits of state and bureaucratic capacity, provider feasibility, and political tolerance” (Brinks and Gauri 2008). As I show in later chapters, there is more at play than simply political will; much of the story involves the practical considerations for the organizations involved.

Overall, we know that the inclinations of bureaucrats as well as bureaucratic capacity matter for how economic and social rights are implemented. Given that South Africa’s bureaucratic apparatus was not overhauled after apartheid, and given that South Africans often point to corruption in the administration of government programs, we can reasonably predict that South Africa’s bureaucracy could be an impediment to ESR realization. It would be simple to

predict that the limits of state capacity in South Africa slows the realization of all ESR. However, the literature also shows that how politicians and civil servants navigate the bureaucracy is also very important for how laws are implemented and whether rights are realized.

### ***State Autonomy and Elite Influence and Resistance***

There is a large literature on state autonomy that is largely focused on the state's ability to have control over—and remain free of influence from—a variety of societal actors. When state bureaucracy is more autonomous, it can implement laws and regulations without influence from other forces (Block 1980; Skocpol 1980). Much like state capacity, state autonomy can also change over time (Block 1980; Quadagno 1992; Skocpol 1980).

When it comes to ESR realization, the level of autonomy's impact on ESR realization depends on who is influencing the state and what their interests are. If the state lacks autonomy from corporate interests, the state will have a difficult time regulating companies or implementing rights to the benefit of the disadvantaged (Skocpol 1980). Elite influence and resistance can lead to regulatory capture, in which a regulatory agency ceases to act in the interest of the public and instead has been “captured” and is serving the interests of the organizations or individuals it is supposed to be regulating (Bernstein 1955). On the other hand, state agencies' autonomy from movements from below or unions determines how permeable these agencies are to rights demands (Quadagno 1992). Here, less autonomy means more permeability to rights demands and the possibility of more rights realization (Pedriana and Stryker 2004).

In the case of South Africa, elites are not likely to support ESR realization, and thus higher levels of elite influence are likely to be detrimental for ESR realization. Most people who lack access to ESR are unemployed or employed informally (Statistics South Africa 2017b). This

means that most people who pay income taxes, or especially property taxes, already have access to their economic and social rights. The result is that there is a lack of both taxpayer pressure and elite pressure for improving access to ESR, and the calls for ESR realization are generally coming from below.

Additionally, the importance of elites and taxpayers factors into legal implementation and regulation when such regulation is intended to police conduct by elite actors including business organizations (Yeager 1990). This focus on serving elites can lead to rules or laws that put the focus on having the proper procedures rather than on producing substantive outcomes that benefit the disadvantaged (Yeager 1990). This distinction between formal law focused on legal rules and procedures and substantive law focused on achieving economic, political, or social goals comes from Weber (1978) and has been developed and refined by many socio-legal scholars (Lempert and Sanders 1986; Pedriana and Stryker 2004, 2017; Savelsberg 1992; Stryker 1989; Stryker, Docka-Filipek, and Wald 2012; Sutton 2001). Given the large rate of unemployment in South Africa, the poor need state involvement to realize key ESR, but economic elites can realize ESR through the market. Also, to the extent economic elites would be required to pay higher taxes or agree to state constraints on business conduct for the poor to realize ESR through pathways involving state provision or subsidy, economic elites may oppose aggressive state action on behalf of disadvantaged or marginalized populations. At the very least, the context from chapter 2 predicts that poor people in South Africa will have few elite champions.

### ***Pressure and Accountability Matter for Rights Realization***

Despite the barriers and limitations discussed in the previous section, pressure and accountability through a variety of pathways from those actors who support and/or benefit from

rights realization can be important for increasing rights realization. Political and legal decision-making is a result of a combination of social structures, public knowledge, and institutionalized decision-making (Savelsberg 1994), and all of these are subject to influence and pressure both from people within political and legal institutions and from outside organizations and the public. This pressure can be applied both through formal legal mechanisms and through mechanisms beyond the formal legal process, such as press coverage or protests.

Before looking at the actors that can apply pressure, it is important to understand that various factors or attributes of the legal system can shape or limit how actors can apply pressure through the legal system. Simply having a legal promise of economic and social rights does not mean that the legal system is set up in a way that is conducive to ESR realization and enforcement. Multiple scholars have recently theorized about the impact of judicialization—using courts and litigation to enforce rights—on ESR realization (Gauri and Brinks 2010; Gloppen 2005, 2006, 2012; Haglund and Stryker 2015). South Africa has a hybrid legal system that draws from civil law, common law, and customary law systems. South Africa has a common-law context for civil and constitutional law and has “embraced judicial review” (Klug 2000). Legal factors that can improve ESR realization through litigation in this context include: flexible rules of standing; available and utilized collective forms of legal mobilization including class actions; a vibrant public interest bar; court-ordered data collection and monitoring of implementation; and strict standards of liability (Gauri and Brinks 2010; Stryker and Haglund 2015; Gloppen 2012; Pedriana and Stryker 2017). Additionally, as Charles Epp (1998) noted with respect to rights more generally, unless later court rulings implement and build on key precedents enunciated by the highest constitutional court in any given jurisdiction, there can be no sustained “rights revolution.” Given the need for continual legal mobilization and building on

key precedents, one particularly important aspect of optimal legal context is plentiful financial and organizational resources for litigation on behalf of the poor – this kind of vibrant support structure is necessary to take on litigation on behalf of people who are disadvantaged (Epp 1998). We need to better understand whether these specific legal factors are present in South Africa in order to understand whether there are opportunities for actors to use litigation as a mechanism to apply pressure for ESR realization (and understanding the presence of these factors is a central focus of chapter 5).

What is most important with respect to liability standards is the degree to which judicial precedent and constitutional and statutory provisions promote more substantive or effects-based standards of liability and remedy, versus being satisfied with formal procedural remedies or standards of liability requiring strong proof of bad intent by particular individuals involved in what typically are more systemic failures of provision (Pedriana and Stryker 2017; Stryker and Haglund 2015). Substantive standards will typically further rights realization, while formal standards will tend to depress rights realization (Pedriana and Stryker 2017). These factors may interact with each other, and also with specific legal constraints and opportunities.

Litigation is one possible pathway for improved ESR realization that many different types of actors can use. In countries with legally promised economic and social rights, including South Africa, social movements have gone to court to help insure ESR realization (Klug 2010; Langford 2008; Pieterse 2008). Yet litigation, including that implemented by lawyers for the disadvantaged, is more likely to end up serving the interests of the already powerful and wealthy rather than serving the interests of the poor. One way this happens is that “repeat players” who have engaged in litigation before and plan to be involved in litigation again—typically organizations, both public and private with “deep pockets”—have an advantage over “one shot

players” in regards to access to lawyers and to capacity for settling cases that would result in precedent favorable to them while pursuing precedent favorable to them through court judgements. These systematic advantages result in situations where the “haves come out ahead” when the disadvantaged pursue litigation against the state or private economic elites in order to realize particular ESR (see Galanter 1974).

Moreover, even when court decisions favor the “have nots,” court orders are often not self-enforcing, and thus less likely to materialize results (Rosenberg 1991). There are also concerns that not only does the system favor those who already have the upper hand, but that “the myth of rights” which implies that court orders will be self-executing and not require further political struggle may be counterproductive for activist outsiders. These movements may not just be wasting resources, but through the process of engaging the courts may legitimize a legal system that tends to solidify the power of economic and political elites and undermine the radical nature of their own struggle (Scheingold 1974). The rarity of the TAC’s legal victory and its transformation into a nonprofit would seem to embody Scheingold’s warning that court successes can create false hopes that legitimize the legal system while undermining the radical nature of the struggle (Scheingold 1974).

Nevertheless, social movements and civil society can play an important role in influencing how laws are interpreted, thus enhancing rights realization. Legal interpretation and enforcement involves framing and packaging of arguments, much as does politics more generally. However, legal framing is subject to rules of legal interpretation and prior precedent pertaining to previously discussed rules of standing, liability and remedy that may either constrain or enable rights realization (Pedriana and Stryker 1997, 2004, 2017). Where social movement pressure from below results in a broader, more substantive interpretation of laws

(Amenta et al. 2005; Pedriana and Stryker 2004; Quadagno 1992), this signals enhanced legal capacity to produce rights realization. Overall, pressure from below is often necessary—though not necessarily sufficient—for progressive legislation and litigation to result in substantive interpretations of law that tend to reduce inequality (Pedriana and Stryker 2017; Stryker 2007).

Litigation is often part of a broader mobilization strategy (Paris 2006; Scheingold 1974). Both positive legal outcomes and the redistributive impacts of litigation are often enhanced when litigation is part of broader activist politics by communities and organizations in civil society (Berger 2008; Gauri and Brinks 2008; Gloppen 2005, 2006; Haglund and Stryker 2015; Langford 2008). Furthermore, legal mobilization can have indirect benefits such as increasing public awareness of rights and encouraging other groups to mobilize (McCann 1994).

This pressure can be applied at a variety of levels by a variety of types of actors. For example, civil society organizations and constituents can serve as watchdogs: preventing regulation slippage by monitoring agency activities, influencing agency decisions, and influencing officials (Sabatier 1975). Sabatier (1975) shows that a social movement or other group of involved constituents who favor aggressive regulation are able to monitor and influence a regulatory agency to ensure that regulation and enforcement occur, even when public concern for the issue is lacking. More recent work establishes that social accountability strategies more generally can be key for ensuring rights realization (Sano 2015). Moreover, NGOs may mobilize alongside social movements to create “hybrid” pathways that combine development missions with the fight for human rights (Nelson 2015). This pressure can also come from outside of the country: international actors may interact with local and national level actors (Alvarado 2015) and rights may be realized through naming and shaming from NGOs either outside or inside the

country (Abouharb et al. 2015). In South Africa, all of these forms of mobilization have happened on their own and in concert with legislative and judicial action.

Finally, pressure from public and private organizations and activists seeking to influence the state can directly or indirectly influence how elected officials or civil servants exert their own pressure from within the state. For example, Stryker (1990) finds that the form of the statutes and the expertise that the different law-implementing organizations relied on diverged in response to whether or not they were attacked by Congress as a result of outside pressure. Once again, this makes the point that the various mechanisms, actors, and pathways involved in ESR realization can combine and overlap to increase or decrease the likelihood of rights realization.

Yet the presumed importance of pressure and accountability for ESR realization does not seem to fit with the reality on the ground in South Africa. As chapter 2 mentioned, there has been substantial and sustained activism to realize the right to housing and utilities, yet utility progress has been slow, and there are now more people living in shacks than there were at the end of apartheid. Puzzle 1 highlights this disconnect between pressure for housing and poor outcomes. Additionally, there has been a complete absence of pressure via protests or litigation to realize the right to food, yet hunger has decreased since the end of apartheid and the state is indirectly involved in providing food. Puzzle 3 asks how this decrease in hunger and increased access to food has occurred despite a complete absence of the pressure that is often considered necessary to hold the state accountable.

### **Summary of Major Theories of ESR Realization**

The socio-legal perspective is clear that we should expect there to be a gap between the law on the books and law in action, that the law is simply a tool which must be used by actors to create changes and that legal pathways are subject to various constraints such that their use often

does not lead to optimal outcomes for disadvantaged or marginalized populations. Nonetheless, there are many possible ways to make rights realization real based on constellations of mechanisms, actors, and pathways (Haglund and Aggarwal 2011; Haglund and Stryker 2015). A common pathway to ESR realization in many countries is for people to simply earn enough money to pay for their own basic goods and services. But as chapter 2 showed us, there is a high rate of unemployment in South Africa and a struggling informal economy, and so many South Africans are unable to pay to realize rights for themselves.

Looking at the context from chapter 2 through the lens of these three perspectives, it is unsurprising that ESR realization has been slow. The ANC's national economic policies have prioritized profits and entrepreneurs over decreasing unemployment and poverty. These policies may indicate high levels of elite influence in policy creation, and may result in elite capture due to government reliance on elites as taxpayers (Bernstein 1955; Yeager 1990). Either way, these economic policies have not created an environment that is conducive to enabling individuals to realize their own rights. This puts the onus for ESR realization largely on the government, resulting in a situation in which legal interpretation and technocratic action are extremely important for actualizing rights realization (Skrentny 2006; Stryker 1989). The ANC is a strong actor with many opportunities to realize rights that the party has promised and claims to prioritize, yet the ANC is likely constrained by its bureaucratic system, which limits the possibilities for progressive realization (Amenta 2005; Evans et al. 1985; March and Olsen 1984; Pedriana and Stryker 2004; Skocpol 1992; Skocpol and Amenta 1986; Skocpol and Finegold 1982). Using contractors for the majority of ESR provision has helped the government to provide economic and social rights despite limited internal capacity, but the use of contractors may limit the government's long-term ability to increase ESR realization (Gauri 1998; Gauri and Brinks

2008; Pritchett and Woolcock 2004). Rather than hiring more employees and creating permanent infrastructure to provide services, it seems that South Africa may have created a mutual dependence between the government and the contractors (Alter and Hage 1993; Smith and Lipsky 1993).

Additionally, the reality of having one ruling party with several weak and diverse oppositional parties is that the ANC's power has been largely unchecked. It is impossible to know whether service delivery would be better if there were a greater challenge to the ANC's power, but this situation reflects Savelsberg's finding that pressure and accountability from both within and outside institutions is important for rights realization (Savelsberg 1994). If there are not other political parties in office able to hold the ANC accountable, and if the ANC is not concerned that the public will elect other parties into positions of power, the burden is on other actors to provide the pressure and accountability necessary for progress.

Pressure for ESR realization can come through many different channels, and many different actors. While nonprofits can provide rights as contractors with government funding or as independent providers using donor funding, they can also serve as watchdogs that pressure the government to do the right thing. South Africa's economy and new democracy have created a constrained environment for nonprofits where they are highly reliant on upper-class South African donors or increasingly scarce international donors. This in turn creates concerns that nonprofits have a limited ability to pressure the government (Powell and Steinberg 2006; Smith and Lipsky 1993). Social movements can provide pressure for ESR realization both through activism and litigation, but it appears that activism is both widespread and highly constrained (Berger 2008; Gauri and Brinks 2008; Gloppen 2005, 2006; Haglund and Stryker 2015; Langford et al. 2014).

Finally, nonprofits, social movements, and individuals are all capable of providing pressure by litigating and thus engaging judges and courts as another actor that can apply pressure (Gauri and Brinks 2010; Gloppen 2005, 2006, 2012; Haglund and Stryker 2015; Klug 2010; Langford 2008; Pieterse 2008). There are many specific legal factors or mechanisms that can make it easier or harder for people or organizations to engage in litigation or for court decisions to be implemented (Epp 1998; Gauri and Brinks 2008; Gauri and Gloppen 2012; Haglund and Stryker 2015; Pedriana and Stryker 2017; Stryker 2015). While realizing rights through litigation is likely to be an uphill battle (Galanter 1974; Rosenberg 1991) and may ultimately undermine radically progressive goals (Scheingold 1974), it can also be effective when it is part of a broader mobilization strategy (Berger 2008; Gauri and Brinks 2008; Gloppen 2005, 2006; Haglund and Stryker 2015; Langford 2008; Paris 2006; Scheingold 1974; Stryker 2007). In South Africa there are a handful of well-known Constitutional Court decisions that rule in favor of ESR realization, but a closer examination is needed to determine whether litigation is commonly a path to ESR realization in South Africa, or is truly exceptional.

### **Guiding Puzzles**

Given the context of these three perspectives, and the extent of constraints in South Africa, the general question is not: ‘why there is not *more* ESR realization in South Africa?’. While South Africa has specific elements that should be beneficial to ESR realization, it is also a highly constrained environment where we can expect progress to be slow. Instead, the literature prompts us to better understand the specific patterns of ESR realization both thanks to and in spite of specific opportunities and constraints. Thus, I ask:

*Research Question: What drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa?*

More specifically, I focus in on three key puzzles where the outcomes addressed in chapter 1, the South African context in chapter 2, and the perspectives addressed thus far in this chapter 3 do not seem to fit together.

First, housing seems to have many of the key ingredients for ESR realization. As chapter 2 demonstrated, there is a high level of political will, major commitment of government funds and extensive use of contractors to build housing, the right to housing has been reaffirmed time and again in the Constitutional Court, and there is substantial public pressure to realize this right. Yet it seems that despite the general alignment of various key actors around prioritizing the provision of housing, there are other elements that are limiting the realization of this right.

Therefore I seek to answer:

*Puzzle 1: Why, despite the government making housing a top priority and despite plentiful activism, do a larger percentage of households live in shacks now than at the end of apartheid?*

Second, the perspectives covered in this chapter have detailed how there are benefits and drawbacks to different types of actors' involvement in ESR realization. While government actors with limited capacity may be slow or ineffective, contractors can be a substitute for state capacity. Yet while contractors may be highly skilled, they can also complicate the process and are motivated by profits, not ESR realization. Overall, reliance on contractors can create a mutual dependence that can be bad for the state in the long run. The nuances to the work performed by different types of actors should predict some ultimate differences in ESR realization depending on which types of actors are involved. Utilities in South Africa have very different landscapes of providers, which should be an ideal arena to observe those differences in action. There are over 400 different public and private water providers, the responsibility for providing sanitation is split between four different government agencies and countless

contractors, and there is just one national public utility that provides electricity (DWA Directorate: Water Services Planning & Information 2013; Eskom 2018; Tissington 2011).

While the literature would predict that these different constellations of actors would lead to substantially different progress in ESR realization, we see that access to each of these rights has been slow, and access to piped or tapped water appears to have maxed out at about 90% and has plateaued since 2007 (GHS 2002 – 2014). This leads me to ask:

*Puzzle 2: Why, despite a mix of public and for-profit providers, has utility progress been so slow?*

Third, food is the most unknown and undiscussed ESR of the group. There is no litigation or legislation pertaining to the right to food, which reflects the overall lack of both political interest and public pressure for realizing the right to food (Interview Sasha Stevenson; Interview Vinodh Jaichand<sup>10</sup>). Yet hunger has decreased substantially since the end of apartheid, and the government has played a large role in feeding people indirectly through social grants and with the help of many contractors providing food in schools (Statistics South Africa 2015a). Thus, I ask:

*Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food?*

These specific puzzles for different rights prompt the question of what is known to be unique about the realization of different types of economic and social rights, with a focus on the specific ESR as opposed to the actors and context for their realization. Thus far the best explanation we have about the differences between specific types of rights themselves, rather

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<sup>10</sup> Sasha Stevenson is an attorney at Section 27 and as of August 2014 was the only attorney at a nonprofit or public interest legal center in South Africa doing work in the area of the right to food, though her primary focus was the right to health care. Dr. Vinodh Jaichand was the head of the Law Department at the University of Witwatersrand.

than their context, comes from Kaletski et al. (2016). They found that internationally, the “standard social rights” that are included in many constitutions (including education, social security, and health care) are more likely to be realized while “non-standard social rights” that are rarely included in constitutions are less likely to be realized (Kaletski et al. 2016). While Kaletski et al. (2016) do not draw conclusions about why non-standard rights are less likely to be realized when they are constitutionally guaranteed, they do explain that these non-standard rights are typically provided through the market. They also note that these rights are rarely justiciable, but given that all of these ESR are justiciable in South Africa, this explanation cannot predict the differences in rights realization in South Africa. Yet the prediction remains that rights that are typically purchased by individuals from private companies are less likely to be realized.

Thinking about differences in the realization of different rights through the MAPs framework, Kaletski et al.’s (2016) finding implies that when people buying their own goods and services is the most common MAP, other MAPs to realizing the same right may be weak, constrained, or non-viable. We can also reasonably predict that different specific actors are involved with the provision of different ESRs in different locations, and also that there could be a variety of mechanisms and pathways to the realization of different rights. Yet thus far there is not an overarching framework for understanding which MAPs are or are not relevant to which specific ESR. While the literature has talked about various MAPs and the capacities of actors, it does not predict which MAPs or which types of actors’ capacities are more or less likely to translate into different types of rights. To answer these three puzzles, I take a field-level approach to understanding ESR realization and focus on the materiality of ESR in my analysis. I contend that the materiality of each economic and social right provides a framework to understand more and less viable MAPS for realizing each ESR.

### **Previous Explanations of Rights Realization in South Africa**

These puzzles also raise the question of whether comparisons of ESR in South Africa can help explain the differences in the realization patterns for different rights. Given the constitution's limiting language for education, food, water, housing, and social grants, it is difficult to predict if the constitution creates any more or less favorable conditions for each of these rights. However, the rights to electricity and sanitation are not provided in the constitution but instead have a legal basis for realization as part of the right to housing. Thus, we can predict that the realization of these rights is predicated on whether people have adequate shelter, and in turn we could predict that people who lack adequate housing are likely to not have electricity or proper sanitation. This legal relationship between the rights can lead us to predict that a field-level analysis for at least housing, electricity, and sanitation may help uncover the patterns of realization for those three ESR. This dissertation is the first study that looks at these rights together through a field-level lens.

The puzzles also raise the question of what is already known about whether the general literature on ESR realization applies in a South African context. Research focused on explaining patterns of rights realization in South Africa, whether focused on multiple rights or a single right, has largely focused on the various organizational actors involved, the actors' power dynamics, and the historical context of the actors and power dynamics pertaining to these rights. This extant literature in South Africa has generalizable findings that are consistent with the interdisciplinary international literature on ESR realization. Jones and Stokke (2005) take a macro level view of rights realization in South Africa and conclude that rights realization relies on the politics of realizing ESR, which comes down to local and national power dynamics. Klug (2011) does not

focus on the specific ESR that are the focus of this dissertation, but does show the importance of political will and institutions in determining how health care is realized.

Perhaps most comprehensively, the Langford et al. (2014) edited volume *Socio-Economic Rights in South Africa: Symbols or Substance* consists of case-focused chapters by a variety of scholars. However, the introduction and conclusion abstract themes from the case-level chapters to provide some generalizable findings (Langford et al. 2014). The authors contend that there are four conditions for effective rights strategies in South Africa and these four conditions fit well with what socio-legal and political-institutional perspectives have already demonstrated in other counties. First, Langford et al. (2014) find that novel or bold rights claims are less likely to succeed and that most litigation and legislative victories are built on existing frameworks (Langford et al. 2014). This ties into findings from the extant literature that successful litigation is often incremental and part of a broader framework for change (Paris 2006; Scheingold 1974). Second, Langford et al. (2014) contend that the identity of the rights holders matters in terms of their perceived social legitimacy to claim rights *and* their capacity to mobilize. Legitimacy often comes from being highly marginalized, yet marginalized communities typically lack the collective awareness and access to resources that are crucial to having the capacity to mobilize (Langford et al. 2014). This implicates questions of whether litigation is a viable pathway for marginalized people to take their grievances to court, be successful in court, and then for those rights to be successfully implemented (Galanter 1974; Rosenberg 1991; Scheingold 1974). Third, Langford et al. (2014) argue that the sphere of engagement matters, and that elements of the sphere that we should consider are ownership, size of geography, and proximity to state structures. They say that rights realization has been slower in places where corporations have a vested interest, such as land ownership or private goods and services (Langford et al. 2014).

National policies—like social grants and access to ARVs—have been easier to change than local programs and practices (Langford et al. 2014). Urban areas are closer to state structures, have greater access to attorneys and progressive judiciaries, and residents are closer together and thus easier to mobilize (Langford et al. 2014). These findings fit well with the broader literature’s understanding about corporate interests and privatization (Kaletski et al. 2016) and differences in actor capacities (Amenta 1998; Evans et al. 1985; March and Olsen 1984; Pedriana and Stryker 2004; Skocpol 1992; Skocpol and Finegold 1982). Fourth, Langford et al. (2014) find that civil society mobilization, alliances (especially cross-class), and strategic leadership are often correlated with a greater impact (Langford et al. 2014). The promise of cross-class alliances is similar to Stryker and Haglund’s (2015) hypothesis that there is greater ESR realization when marginalized populations and elites mobilize around the same issues. The key distinction is that Stryker and Haglund (2015) do not imply that the people mobilizing must be allies, and instead allow for the possibility of non-cooperative efforts pertaining to shared goals. Overall, Langford et al.’s (2014) findings help to show that many of the extant literature’s findings play out similarly in South Africa.

Much of the scholarship on ESR realization in South Africa has focused on how financial interests, and specifically neoliberal capitalist interests, undergird the challenges to guaranteeing sufficient ESR realization for all South Africans. There is a fundamental tension between the tenets of neoliberal capitalism vs. socialism that underlies ESR realization, and arguably South African society (Bond and Khosa 1999; Bond and Tait 1997; McKinley 2017; Seekings and Natrass 2005). It is inherently not capitalist to promise government provision of goods and services that can be provided by the free market for a cost, which again is why many of the promised ESR in South Africa’s constitution are not standard (Kaletski et al. 2016). In chapter 7,

I will discuss how, of the rights included in this dissertation, social grants are the most consistent with capitalism, and also the most standard, because they provide people with money to assumedly buy goods and services in the market. Providing grants often happens instead of developing the government infrastructure to provide goods and services directly to the people. Thus, there is a tension between building government capacity necessary to keep constitutional promises to guarantee non-standard economic interests and keeping government small as is the neoliberal ideal that typically serves the interests of economic elites.

In South Africa, the reliance on contractors to realize ESR rather than grants in lieu of rights realization, have allowed South Africa to support capitalism and keep the government small. While almost a third of South Africans received grants in 2013, those recipients are exclusively children, elderly, or disabled, and not working age adults who should be able to work (Statistics South Africa 2014a). Ultimately, while the South African government has a promise of ESR realization that can be seen as counter to capitalism, the state generally uses both grants and contractors to ensure that those rights are realized in a way that supports capitalism. The result is that the differences between standard and non-standard rights cannot sufficiently explain the patterns of ESR realization in South Africa. This will be discussed in depth in chapter 7.

While it is reassuring in some ways that the South African literature on ESR realization confirms many of the findings of general perspectives on rights realization, the South African literature does not bring us substantially closer to understanding the patterns of ESR realization and solving the three puzzles. This disconnect between the extant perspectives' logically predicted outcomes based on the South African context versus the actual observed outcomes of ESR realization, led me to look for and build from perspectives that have not previously been used to understand ESR realization. The hints of cross-sector learning, coupled with the high

prevalence of civil society pressure for service delivery generally rather than for specific rights, inspired me to take a broader look at the field of ESR realization as a whole. My hope was that these puzzles could be answered by looking at all of the ESR and various actors in the field of rights realization to see how their interactions shape patterns of realization.

## **Fields**

I use a field-level approach to understand this patchwork system of rights realization in South Africa. A field is a socially constructed space or environment in which there are interactions between actors: individuals, groups, and organizations. For this research, the field of interest is economic and social rights realization and service provision in South Africa. I do not use a theoretically specific notion of fields or seek to expand or refine our theoretical understanding of fields. Instead, I use the general concept of fields to inform how my study looks at the intersection of law, politics, culture and markets. Nevertheless, it is important to understand how the sociological concept of fields has evolved and been employed to provide context for this study.

Bourdieu's foundational work on field theory focused on understanding how actors distinguish themselves within a field by use of cultural and social capital (Bourdieu 1984). The Bourdiesian perspective was developed by many sociologists to show the presence of and landscapes within a variety of fields. This includes establishing the presence of the legal field and power dynamics within it (Dezalay and Garth 1996, 2002) and how social movements operate within political fields (Ray 1998). The concept of fields is particularly useful for sociologists because it simultaneously acknowledges the power of both structure and agency, and both the macro and micro. Rather than seeking to focus on one end of the spectrum while

obscuring the other, field theory allows the researcher to acknowledge the multiplicity of actors and factors that influence our socially constructed reality.

The concept of organizational and institutional fields also developed from the organizational institutionalist literature, especially the work of DiMaggio and Powell (1983). Fields soon became part of how scholars of organizations and social movements conceptualized how these entities and their members interact within markets or around issues of social change (Fligstein 1991; Fligstein and McAdam 2011, 2012; Walker 2012). Organizational institutionalists, and especially Fligstein (1991), established that firms and markets are shaped by the state and its policies, and that organizational practices can spread throughout the field (Fligstein 1991; see also DiMaggio and Powell 1983, Edelman 2016 on patterns of isomorphism within organizational fields

The concept of fields can also be linked to the other literatures discussed here previously. The concept of fields connects to the political-institutionalist notion of the environment influencing the state's capacity, structure, rules, and enforcement, and reflects how many scholars of law, politics, and public policy conceptualize the relationship among different types of organizations and institutions. More specifically, organizations' institutional processes are embedded in fields with many complex interactions (Stryker 2000). Bridging political-institutionalist and new institutionalism of organizations accounts of field level processes Edelman and Stryker (2005) argue that to understand the relationship between legal and economic fields of action, including how law shapes economic change, scholars must consider processes that focus on overt political mobilization and counter-mobilization as well as those that focus on covert processes of cultural and institutional transformation. Scholars more focused on how organizations operate have similarly established that fields impact how organizations and

industries evolve (Scott et al. 2000) and that there are feedback loops between political arenas and markets that evolve into fields that embed both types of actors (Fligstein and Stone Sweet 2002)(Fligstein and Stone Sweet 2002). Additionally, scholars working at the convergence of these perspectives have shown that fields can overlap and that this overlap can provide leverage points for activists even in seemingly unfavorable environments (Evans and Kay 2008; see also Stryker 2000).

### ***Why this Dissertation Takes a Field-Level Approach***

Recent work has established that there is cross-sector learning of legal strategies for ESR realization, which lends support for conducting field-level research. The Treatment Action Campaign (TAC) is one example of a Constitutional Court win spreading a rights discourse to other sectors beyond health care (see Madlingozi chapter in Langford et al. 2014). Yet this rights discourse has not spread to all ESR (Langford et al. 2014; Berger 2010; Klug 2015a). These examples show that there are interactions between the realization of rights and some of the actors involved in the provision of other rights.

Throughout this chapter, I have highlighted examples of cross sector learning and where actors focused on one ESR have benefitted from another ESR's progress. Most notably, the Treatment Action Campaign's success in the Constitutional Court and the subsequent medication rollout informed mobilization for a variety of other rights. This dissertation goes a step further than *comparing* multiple sectors and instead uses a field-level approach that provides additional insights to understanding the *linkages between* economic and social rights themselves.

Comparative studies have shown commonalities and differences in ESR realization, but they do not provide a full explanation for the inequalities in ESR realization because they do not look at the linkages or relationships among the rights. The value of an explicit field-level approach is

that I can uncover and highlight the linkages across rights. By exploring this broader context, I can also determine when the structural and material constraints revealed in these linkages bring about conditions and opportunities for strategic alliances, and can identify strategies that create patterns of rights realization across sectors.

Using a field-level approach allows me to better understand the layout of the constellation of social actors involved in service delivery, and how their choices and interactions impact rights realization. While many different types of organizations are involved, rights realization in South Africa is not understood simply by looking at these actors' particular experiences. I use a field-level approach to better see the patterns across the different actors and settings for rights realization and to link these patterns back to the question of ESR realization. Since previous studies have not taken a field-level approach, they do not allow us to understand the linkages in levels of rights realization among these services through relationships between rights, such as gatekeepers and synergies. Yet researching these linkages is important for developing a fuller understanding of how economic and social rights realization unfold.

After taking this field level approach to conducting my research and through an inductive analysis process (detailed in chapter 4), I found patterns and themes across the ESR. My analysis process led me to return to the literature to incorporate and build upon three concepts that have been peripheral to most past research on ESR realization. While I had expected to find relationships between actors that provided nuance to the dominant perspectives, instead I came to insights into how the materiality of rights matters for their realization. More specifically, I found that the relationships between rights are largely shaped by the materiality of rights, and that only by explicitly studying ESR realization through the lens of materiality can we understand the linkages between economic and social rights.

Taking a field-level approach to identify the meso-level changes in rights realization that are influenced by materiality makes it possible to see that materiality is shaping the field and possible MAPs for each ESR, and that the materiality of rights can result in linkages across rights. When we are limited to researching each specific actor, capacity, tactic, etc. at a micro level, we are able to see patterns post-hoc, but extremely limited in our ability to know how things will play out in different contexts or at the national level. By looking at materiality as an antecedent variable, this study allows us to “zoom out” or “step back” to see what is impacting ESR realization at the national level, rather than needing to explore every possible variable to understand what’s happening in specific individual contexts. To be clear: the specifics are likely unique to each individual case, and there is value to understanding those nuances. But to see what is effective at improving ESR realization at the national level, we need to take a step back and think about what MAPs, constraints, and linkages across rights are impactful or influential on that scale.

### **Materiality of Rights**

This dissertation builds our understanding of the “materiality of rights,” a term coined by Heinz Klug (2015a). Klug uses the phrase “materiality of rights” to refer to the physical characteristics of economic and social rights that shape how they emerge and are institutionalized (Klug 2015a). More specifically, he says that the materiality of rights includes their “physical attributes—location, material, and organizational factors—that are characteristic of the particular resources involved” (Klug 2015a). Klug’s definition of the materiality of rights is a more sociological way of understanding rights than the ways philosophers and lawyers sometimes conceive of rights (Stryker 2015). Klug states that the fundamental material characteristics of different economic and social rights affect how that right is realized (Klug

2015a). Yet the chapters in the edited book that introduced the term “materiality of rights” only provide a cursory overview of the concept (Klug 2015a; Stryker and Haglund 2015)

Stryker, through interaction with Klug’s work in both her co-edited book (Stryker and Haglund 2015) and conference presentation (Stryker 2015), has offered two additional meanings for the materiality of rights. The first interpretation Stryker suggests is that the materiality of rights can be about the process by which rights are realized. As Stryker states, “I’m of the firm belief that for rights to be meaningful, they must be materialized, that is, realized in the world” (Stryker 2015). This interpretation is distinct from how rights can be viewed in an abstract, normative, or disembodied sense when they are examined through a law or philosophical approach, and instead grounds them in the *way* that they are realized (Stryker 2015). This interpretation highlights the importance of not just looking at the physical attributes of each right, but specifically examining *how* they are materialized, and the different organizations and actors that play a role in their realization. For example, when considering the right to water, we should consider not just the material aspects of the water itself, but the plumbing and infrastructure that is necessary to get the water to the household and the water service providers and contractors who maintain and administer the water system to ensure the right is realized.

The second interpretation that Stryker presents is that the materiality of rights can be interpreted as their tangible outcomes. As she explains, “Here the focus is on the nature and extent of the social *outcomes* from rights realization. The outcomes—concrete resources provided—can *literally* be material, such as housing, for example, and they may be more or less progressive or redistributive toward the disadvantaged” (Stryker 2015). Continuing the water example, these outcomes would be that the intended recipients of the water are able to drink and use the water when they need water. Stryker notes that while the tangible outcomes can be linked

to the process by which rights are realized, they are indeed two distinct ways to interpret the materiality of rights (2015). Stryker's interpretation of the materiality of rights supports the importance I place in this dissertation on looking not only at the histories and trajectories of certain economic and social rights, but also exploring their perceptible, and ideally measurable, outcomes to see to what extent they have been made material.

These three interpretations of materiality—physical attributes, the process of realizing, and tangible outcomes—build on much of the socio-legal work previously discussed in this chapter, yet they often occur as an undercurrent or assumption in the research. As Stryker (2015) states, most work pertaining to rights realization is about the materiality of rights, though the concept is not named or made explicit. When scholars research rights realization they are often seeking to explain something about the materiality of rights—physical attributes, process of realization, and tangible outcomes—though they do not acknowledge it this way (see for example: Atapattu 2015; Epp 1998, 2009, Gauri and Brinks 2008, 2015; Goodale 2009; Goodale and Merry 2007; Haglund and Stryker 2015; Merry 2006; Pedriana and Stryker 2017). Essentially any economic or social right has material characteristics, and thus research on rights realization or legal interpretation of ESR is fundamentally about how and whether rights are made material, even though this concept is so basic that it has gone largely undiscussed.

Through this dissertation, I build on all three of these interpretations of the materiality of rights – the simply physical characteristics of rights, the tangible processes by which rights are realized, and the material outcomes of ESR realization. I develop Klug's concept of materiality by taking a deeper look at the material nature of rights. I specifically examine these three attributes of materiality for every ESR in this dissertation:

- 1) Location: the space(s) where the ESR is realized, especially within the home or outside the home, and if the ESR must be in a fixed place or is movable.

- 2) Material: the physical attributes of the goods and services.
- 3) Organizational: the attributes of the different actors that are capable of providing, or influencing the provision of, the right.

Stryker's (2015) interpretations prompt also looking at the material *way* that rights are realized and the material *outcomes* of these rights. In this dissertation, I also specifically look at these attributes for each ESR:

- 4) Implementation: the required natural resources, infrastructure, and labor to provide access to or install an ESR.
- 5) Maintenance: the required natural resources, infrastructure, and labor to ensure ongoing access to and/or provision of an ESR.
- 6) Quality: material differences in the adequacy of an ESR.

These concepts—implementation, maintenance, and quality—touch on both the process of rights realization and the results, acknowledging that the material realities of ESR realization are intertwined. I build on this understanding of the importance of the materiality of rights by specifying how both the material attributes of different rights—the physical attributes of the rights themselves and the physical requirements for their implementation and ongoing maintenance and provision—influence how they are realized and their outcomes.

These six attributes of a right's materiality are often interlinked. The location and material characteristics of rights typically influence these other attributes of materiality. Quality, in particular, is highly dependent on the other five aspects of materiality. Additionally, organizational tactics and technological advances can introduce new methods for implementation and maintenance, and can even change or add more options for the location and material requirements for ESR realization. For example, technological advances in water purification could allow for more alternatives to piped water to still be materially sufficient for having ongoing access to clean drinking water. In this example, adequate access to water may not

require that substantial infrastructure is installed, monitored, and maintained by a water service provider, but instead there may be an increased reliance on consistent rainfall and the ability of the household to acquire and replace, or at least maintain, the filter or purification system.

Moreover, both Klug (2015a) and Stryker (2015) present materiality as one of many important variables for understanding the realization of a right. Klug specifically argues that ESR realization is influenced by the materiality of the rights, the national legal interpretation of international human rights, and political and human rights struggles (Klug 2015a). This argument that social histories and legal trajectories of rights are important for understanding the emergence and institutionalization of rights aligns well with the field perspective; that the realization of rights must be understood within their broader and longer history to understand how rights are made material. This approach suggests the need for many of the sensitizing constructs that I outline in chapter 4 and use throughout the dissertation, including legal mobilization, courts, law, administrative capacity, bureaucratic politics, and elite resistance. The importance of understanding the history and context of rights is why chapter 2 was devoted to a history of actors involved with rights realization in South Africa.

Yet my perspective deviates from Klug's (2015a) because I argue that, instead of viewing materiality as one of several independent variables—conditions or factors that separately influence rights realization—materiality should be regarded as an antecedent factor or variable that often shapes or influences the other factors (or independent variables) that influence ESR realization. These other explanatory factors include, as Klug suggests: legal interpretation, politics, and activism. Throughout the dissertation, I show how the materiality of each ESR

shapes the actors and pathways involved in the realization of these rights, yet the materiality of each right is relatively static, limited, and universal<sup>11</sup>.

Additionally, my perspective goes beyond Klug's (2015a) because I argue that not only does the materiality of a right influence its own realization, the materiality of some rights influences the realization of other rights. One of the central contributions of this dissertation is showing how the material attributes or outcomes of certain social and economic rights can impact the ability to materially realize other rights through gatekeeper or synergistic relationships. These relationships can be enabled or limited by the actors involved in the realization of these rights. However, given the antecedent nature of the materiality of the rights, I argue that relationships exist among rights themselves and that these relationships among rights can exist regardless of actor relationships.

### **Synthesis and My Approach to Understanding ESR Realization**

I argue that we cannot fully understand rights realization outcomes without understanding how economic and social rights are provided or impinged upon at a broader field level. By looking at ESR realization as a cohesive field and using the materiality of rights as a framework for understanding the inherent opportunities and constraints of the ESR themselves, we can better understand how and the extent to which they are realized. For example, we miss a large part of the story of ESR realization if we study water or electricity without also understanding how housing impacts these utilities. Similarly, discussions of food security and the government provision of food in South Africa are incomplete without acknowledging how social grants and

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<sup>11</sup> This dissertation does not compare ESR realization in South Africa to international patterns of the provision of the same goods and services, regardless of whether a nation regards them as rights. Nevertheless, the universal material attributes of economic and social rights are likely why readers will notice parallels or common patterns of the realization of the same ESR in different countries with distinct legal, political, and historical contexts.

education play a major role in feeding people experiencing poverty. While these connections are obvious to some practitioners, this material linkage between rights has not yet been fully theorized as a reality of ESR realization. By taking a field-level approach, I reveal the gatekeeping and synergistic relationships between these rights and how some of these relationships are materially linked, regardless of whether or how actors are involved.

Through the conceptual lens of materiality and fields, we can see how there are different recipes for the realization of rights that are provided for place-based vs non place-based rights. The material nature of rights, including the logistical and technical requirements for their provision, result in relationships of gatekeeping or synergies—among groups of economic and social rights. My research provides examples of how different actors' approaches have capitalized on the materially-based synergies or gatekeeper relationships to increase effectiveness, and also reveals some unintended consequences of those choices. It also shows situations where actors have missed opportunities to account for the material nature of rights, to the detriment of rights realization. In short, the concept of materiality combined with a field-level approach provide an essential framework for fully understanding relevant mechanisms, actors, and pathways for each ESR.

In chapter 6, I will show how rights that are place-based are intertwined based on the site of service delivery. The phenomenon of housing serving as a gatekeeper for utilities can be further compounded by the nature of privately-owned land and housing, and by whether private vendors are providing the utilities. The concept of gatekeeping is not new to the organizational perspective: individuals can act as gatekeepers to both economic and cultural capital within organizations, and both individuals and organizations can act as gatekeepers within a field (Broadhead and Rist 1976; Crane 1967; Morrill et al. 1999; Tushman and Katz 1980). Yet, as

previously indicated, this study goes beyond looking at the individuals and organizations within the field and focuses on the gatekeeping relationship between the economic and social rights.

I also find that rights with fewer or easier material requirements—specifically rights that can be provided outside of the home—can take on synergistic relationships as state, nonprofit, and for-profit service providers work to serve the public effectively and efficiently. For example, the provision of education on state-owned property and the flexibility of the provision of food frequently result in a symbiotic relationship where food is used both as a lure for bringing students to school and as a means of improving focus and behavior at school. Thus, in South Africa, the right to food is realized in synergy with the right to education even though the schools are not providing the food for the purpose of rights realization.

As with the concept of gatekeeping, the concept of synergy is not new to organizational scholars. Synergies in marketing, organizational partnerships, acquisitions, and management have all been researched, and synergy is a well-known corporate buzzword (Goold and Campbell 1998; Larsson and Finkelstein 1999). However, in Chapter 7, I go beyond looking at inter-organizational relationships and instead explain how synergies among economic and social rights themselves can occur based on the material basis of the specific goods and services provided by organizations.

## CHAPTER 4 DESIGN, DATA COLLECTION, AND METHODS OF ANALYSIS

As indicated previously, the research question this dissertation seeks to answer is: *what drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa?* The objective is not to explain why there are inequalities, but to explain the different patterns of access both within and across the economic and social rights in South Africa. The process of answering the research question involves an in-depth exploration of three specific puzzles:

*Puzzle 1: Why, despite the government making housing a top priority and despite plentiful activism, do a larger percentage of households live in shacks now than at the end of apartheid?*

*Puzzle 2: Why, despite a mix of public and for-profit providers, has utility progress been so slow?*

*Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food?*

I have argued that previous explanations of ESR realization are piecemeal and incomplete, and that we must look at the realization of multiple economic and social rights as a field so that we can see the relationships that exist between different ESR. Key aspects of these relationships among rights are shaped by the materiality of the rights involved, and I have defined and developed this concept of materiality in prior chapters. Only when we fully understand the consequences of materiality and we see how field-level relationships among rights are shaped by materiality can we answer these puzzles and understand patterns of ESR realization in South Africa.

This chapter details the methods, data collection, and analytical tools that I used throughout this dissertation. I begin with an overview of the research design, reiterating why South Africa is a good case for understanding differences in ESR realization, the specific

questions I asked in support of the overarching research question, and why I chose to look at rights realization in South Africa at the national level. Then, I detail the mixed methods and types of data I used to answer the research questions, including the advantages and limitations of these data. I analyzed these data abductively (that is, using a combination of inductive and deductive reasoning), guided by extant theories while also looking for novel or surprising patterns or themes that emerged from the data. The final section of this chapter builds directly on chapter 3 to make explicit the overarching sensitizing constructs that underlie and organize the remaining chapters. It also details my iterative coding and analysis of the qualitative data within my full conceptual framework.

### **Research Design**

As I have indicated in prior chapters, my overall research design is to use the field of economic and social rights realization in South Africa to explore the discrepancies and patterns of rights realization in a country with the constitutional promise of various social and economic goods and services, and in which there is substantial economic capacity and protest activity. I chose to conduct this research at the national level and collect data throughout the country because of the importance of national actors in the field. Due to the complex landscape of rights provision in South Africa, I conducted this research using a mixed methods design.

I use mostly national quantitative data augmented with some qualitative data to show outcomes—and variability in outcomes—in rights realization over time and across the different rights on which I focus. The use of national quantitative data helps ensure accurate understanding of ESR outcomes throughout the field. It helps us determine the extent of progress since the end of apartheid, as well as the patterns in levels of realization across the different rights examined. The qualitative data provide examples of and exceptions to the quantitative

trends, as well as insights into how public perceptions match or counter these measurable realities.

I use a mix of qualitative data sources to help make sense of what is happening throughout the field. While documentary data help reveal trends in realization and also provide information on many actors involved in the field, their goals, tactics, and capacities, much of what occurs within the ESR realization field is not fully documented. This necessitated fieldwork—in-depth informant interviews and ethnographic observations—to hear from people involved within the field about the dynamics of the organizational and rights sectors involved, and to observe key actors and organizations in action. I sought out diverse actors within different geographic and sector locations throughout the country for my informant interviews.

The observational and in-depth interview data I collected helped show when and how the provision of some rights influences the provision of other rights. It also helped me draw out debates and differing perspectives within the field, and it revealed the import of materiality. In my fieldwork, I was careful to use different data sources to build and validate my interpretive conclusions. When interviewees provided different factual narratives or interpretations of events, I probed, challenged and worked to cross validate.

### **Data Collection and Analysis**

This section first details the quantitative data and analysis, and the primary document collection and analysis. I discuss the quantitative and primary document data first because these played a crucial role in informing my fieldwork, influencing my selection of interviewees, the questions I asked, and on what I focused my observational work. I also sought and used quantitative and primary document data to check and confirm what I heard in my interviews and

observed in my fieldwork. Thus, I continued collecting and analyzing quantitative data and primary documents even after completing my fieldwork.

### *Quantitative Data and Analysis*

Most of the outcomes data that I use throughout this dissertation are descriptive statistics from national quantitative data on individual and household access to economic and social rights. I mostly use the General Household Survey (GHS) 2002 to 2014, to show who has access to the socio-economic rights of interest, with a focus on the 2009 to 2014 data since the survey instrument was consistent for the variables of interest for that time period<sup>12</sup>. For the purpose of acquiring data on ESR, the GHS is the best publicly available annual survey that includes data on households and the people who live in them. This national survey is conducted annually by Statistics South Africa (Stats SA), the country's national statistical service<sup>13</sup>.

I began by looking at all of Stats SA's national datasets on access to ESR from 1994 through 2014, but rather than looking at the entire post-apartheid period, I focused on 2002 through 2014. One of the main reasons for choosing this time period is that the survey sampling method and questionnaire instrument were highly consistent from 2002 through 2008, and then changed and were consistent from 2009 to 2014, yielding more reliable measures over these two time periods. This was a particularly compelling reason *not* to use the GHS's predecessor, the October Household Survey (OHS) (1993 - 1999). The OHS frequently updated its sampling

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<sup>12</sup> While the right to health care is also in the constitution, there are not sufficient quantitative data on health care utilization in the GHS or any other national datasets to allow me to make reasonable claims about who did not have access to health care and who simply had not needed to visit a doctor within the measured time period. The right to health care is fundamentally different than the other ESRs I was considering because different people have different health care needs at different times, and these varying levels of need made it hard to assess the adequacy of care even when there were metrics about the rate or type of care people received. This realization led me to omit health care from the analytic scope of the dissertation because, since I could not adequately determine individuals' access to health care in any national datasets, I had no way of assessing the gap between their needs and their level of care.

<sup>13</sup> The GHS is similar to the American Community Survey (ACS) in the United States.

method and also both changed and added survey questions to improve its accuracy and validity, however these frequent changes to the survey instrument and sampling methods made it difficult to accurately measure changes over time (Fedderke et al. 2003, Seekings and Nattrass 2005). By using GHS survey data, which has consistent sampling methods across years, I am able to accurately reflect changes in living conditions over time. I chose to use the GHS rather than the South African Census because the Census data would only allow me to compare two points in time—2001 and 2011—and thus cannot provide any insights on trends or patterns in intervening years, nor after 2011.

Even when focusing on the GHS data from 2002 through 2014 to overcome the sampling methods and questionnaire changes detailed above, my quantitative dataset still has limitations. I learned during my fieldwork that very few practitioners and academics in South Africa trust the country's existing quantitative data about access to goods and services. While the data show overall trends, there is not the level of reliability and validity that we can depend on from large national datasets in most developed countries (for example, the American Community Survey in the US). Looking into the specific concerns that practitioners and academics mentioned in interviews, I was able to determine that some of the apparently interesting patterns in outcome data in specific places or specific time periods were “statistical noise.” These notable or anomalous patterns were often the result of flukes and errors in data collection or conditions in local contexts that resulted in misinterpretations of survey questions.

To be clear, as chapter 1 already indicated, the national quantitative data *do* show a very real lack of ESR realization that generally reflects the on-the-ground reality. With these data, I can speak to overall trends over time by right, and I do include the quantitative data on outcomes in this dissertation to show trends with a broad brush. To avoid reading too much into the noise

that appears in these datasets when looking at more granular changes over time, I report the findings at a more aggregate level. I use descriptive statistics to show changes in access to ESR at the national level from 2002 through 2014 based on the OHS data. Since the survey data is not panel data, it is not possible to track changes over time for individuals or households, but I do chart the annual changes at the national level.

I also use the OHA quantitative data to provide insights pertaining to the relationships between some of the economic and social rights. For example, I use the OHA 2013 and 2014 data to provide evidence of how housing can be a gatekeeper to utilities. However, I couple quantitative data with qualitative data collection and analysis to inform and validate my answer to both to the overarching research question and my solutions to each of the three puzzles. It is the qualitative data that allow me to further develop relations of gatekeeping and synergies and to show how materiality shapes both types of relationships. Whereas the rights sector comparisons facilitated by available quantitative data are mostly useful for showing the patterns of unequal access and linkages across sectors, they do not explain *why* these inequities exist or when and how ESR realization happens. It is the various types of qualitative data that help me most in constructing my explanation.

### ***Primary Document Collection and Analysis***

Guided by the history and context in chapter 2 and the literatures and theories discussed in chapter 3, I purposively compiled government documents, nonprofit reports, and information about global market forces that were useful for understanding the political landscape and the different organizations that provide economic and social rights. Additionally, I systematically collected and reviewed court decisions, news coverage of protests and activism, and nonprofit databases with registration and partnership information. In this section, I summarize the primary

documents that I collected and reviewed, what I learned from these data, and how these lessons and findings informed both my fieldwork and the sensitizing constructs in this dissertation. All the documents I review in this section were used to help explain patterns of ESR realization in South Africa, not to demonstrate outcomes.

I collected and compiled election data and information about national economic policies from 1994 to 2018 to understand the political landscape in South Africa. This data—some documentary and some quantitative—collection was inspired by a combination of the socio-legal and political-institutional perspectives. Additionally, when I had questions about policies, practices, specific agencies, or programs based on reading other primary documents or on my fieldwork, I purposively searched for, read, and coded various government documents. These documents were important for substantiating claims or filling gaps in the interview and observational data. I used some of these data sources in my summary of the political landscape and national economic policies in chapter 2. Additionally, I mention political changes throughout the dissertation when they help to explain processes, structures, and norms that limit or benefit ESR realization.

I also collected organizational documents and datasets about the different types of organizations that can provide ESR. These include government, nonprofit, and corporate organizations. While there are metrics about government agency outcomes and expenditures, I do not use these data quantitatively because these data do not have the level of detail necessary to see what resources were actually used for ESR realization<sup>14</sup>. Thus, I used this information at a

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<sup>14</sup> Moreover, there were not any reliable data on expenditures and outcomes of nonprofits and corporations involved in ESR, nor their sizes or ages. I got a general sense of the level of involvement and effort from different types of organizations, but mostly I learned that organizational involvement in ESR realization was poorly documented in South Africa. For example, once I looked at the data in the national database of registered nonprofits, I found that most of the organizations in the database had not updated their registration since their

general level in chapter 2 to provide context for the variety of actors involved in ESR realization. In all the chapters that follow, I provide specific context and examples for understanding specific economic and social rights. Once again, this context of the types of organizations involved in service delivery and especially the troubled nonprofit landscape informed my questions and probes with various service providers and was crucial to my analytic interpretations of what I observed or was told by my interviewees.

Driven by the socio-legal literature on the importance of pressure and accountability, as well as by the literature on social movements and activism—and with the help of several undergraduate research assistants—I systematically collected and reviewed 491 media articles on protests published between 2001 and 2013<sup>15</sup>. These articles indicated what activists and social movement scholars in South Africa already knew and told me in my in-depth interviews: formal social movement organizations were on the decline and an increasing percentage of the protests were truly communities taking their grievances to the streets and were not organized by any formal SMO (Alexander 2010). Moreover, I knew from reviewing police counts that there were many protests occurring that were not reported by the media (see also: Alexander 2016). After reviewing the news-reported activism, I had a good sense of what the news reported, but I did not have the full story of service delivery activism happening in South Africa.

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inception. Further research led me to believe this was because many of the nonprofits were now defunct, and others were simply out of compliance and had not updated their information since registering. Prior to conducting my fieldwork, I concluded that there were not good databases on nonprofit and corporate organizations involved in providing economic and social rights in South Africa, and I later confirmed this in my informant interviews. Though it cannot be precisely quantified, the involvement of a variety of different organizations in the provision of ESR is still very important to this dissertation.

<sup>15</sup> While there is documentation that South Africa has the most protests of any country (Bianco 2013; Rodrigues 2010) and there are police counts of protests in the South Africa's Incident Registration Information System (though see Alexander et al. 2016), there was not an existing publicly available dataset that had good protest data. There is the Municipal IQ Hotspots database that tracks protests but this dataset was prohibitively expensive and moreover was insufficient because the variables and coding schemes did not include all of the information I needed (Municipal IQ).

Still, systematic review of primary documents about activism helped me determine which social movements and groups of activists to reach out to for interviews, and pointed me in the direction of scholars who had studied service delivery protests previously and had adjusted their focus based on the changing nature of activism in South Africa. I decided that it made sense to learn from what these scholars had done and interview them as informants rather than replicating the work that they were doing and from which they had moved on. In short, I used South African scholarship alongside in-depth interview and observational data to elucidate the protest landscape in South Africa.

The most substantial primary document collection I undertook was systematically searching the Southern African Legal Information Institute website (SAFLII.org) for every court decision pertaining to ESR in South Africa from 1994 to 2014. Three undergraduate research assistants helped me review 908 court decisions ranging from those of the provincial high courts up to the Constitutional Court. We first extracted those court decisions including key words related to economic and social rights. I then reviewed in more depth details of the 310 decisions that proved to be about ESR realization, and I read all landmark cases in great depth. With respect to the volume of litigation about different economic and social rights, the greatest number of disputes dealt with housing (218). There were fewer decisions pertaining to education (44), water (25), sanitation (21), or social security (11), and almost no litigation pertaining to the right to food (4) or electricity (6). The court decisions also revealed some notable trends of lack of enforcement and implementation; government agencies and police not following the law, especially pertaining to housing and evictions; and lower courts consciously ignoring Constitutional Court precedent (see how the Constitutional Court handled this in *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]);

Mkontwana v Nelson Mandela Metropolitan Municipality (CCT 57/03) Bissett and Others v Buffalo Municipality and Others (CCT 01/04) Transfer Rights Action Campaign and Others v MEC for Local Government and Housing Gauteng and Others (CCT 61/03) [2004] (Justice Yacoob wrote one decision for all three cases); Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another (CCT 23/12) [2012]). All of the Court Decisions that are cited in this dissertation are listed in Appendix A.

All these data on legal context informed who I interviewed and the questions I asked of attorneys and legal scholars, as well as my conversation and personal correspondence with former Constitutional Court Justice Albie Sachs. During and after my fieldwork, I reviewed key decisions that were mentioned in interviews. Overall, reading court decisions informed my understanding of how—and to what extent—law and the courts impact rights realization. Although I discuss pertinent decisions and patterns of litigation in multiple chapters, court decisions figure especially prominently in chapter 5, in which I discuss the limited role of law and courts in South African ESR realization.

Overall, my collection and review of primary documents confirmed that the field of ESR realization could not be understood fully through analysis of existing primary documents or institutional datasets, whether quantitative or qualitative<sup>16</sup>. I needed to hear from people within

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<sup>16</sup> Guided by findings in the Political Economy of the World System literature, I *did* compile data on how South Africa fits into and is influenced by the global political economy. I collected and tracked data on foreign direct investment, foreign assistance, IMF credit, national debt, economic freedom as determined by the Heritage Foundations' Index of Economic Freedom (Heritage Foundation 2018), and competitiveness as determined by the World Economic Forum (World Economic Forum 2015). I tried to assess if there was something about South Africa's position in the global political economy that was influencing national changes in the provision of ESRs. However, what these data showed was that South Africa's position within the political economy of the world system was remarkably stable over the decades since the end of apartheid. Given this stability, overall position in the world economy cannot explain variability in rights realization over time in South Africa. Beyond this, if any small differences in specific global political economy variables do enter into an explanation for variable rights realization over time or across rights, their influence is indirect and the mechanisms of influence are unclear. Due to the remarkable consistency of South Africa's position in the global political economy, I did not use quantitative

the field who could explain, or at least provide their perspective on, what happened, and how and why it happened. This necessitated my qualitative fieldwork.

To summarize to this point, immersing myself in both quantitative and qualitative primary data provided a strong context and foundation for conducting my fieldwork. The primary documents informed who I contacted for informant interviews, the questions I asked in interviews. They also helped me focus my ethnographic observations, they helped me validate or question my interviews and observations. Last but not least, they helped me develop the analytic apparatus employed throughout this dissertation, allowing me to arrive at a synthetic understanding of—and explanation for—the variability in South African rights realization that I document here.

### *Qualitative Fieldwork*

Much of the evidence to answer my overarching research question and to solve the associated three puzzles comes from my in-depth interviews and fieldwork. I conducted 50 in-depth interviews and observed 26 different events, meetings or tours (for more explanation see below). All the ethnographic observations and almost all of the interviews took place in South Africa between May and August of 2014 in the Johannesburg, Cape Town, Durban, and Grahamstown metro areas, and nearby rural areas.

### *Informant Interviews*

All the interviews I conducted were informant interviews. That is, I specifically sought out people who had been in some way involved in ESR realization in South Africa. I chose interviewees through a combination of purposive and snowball sampling. The two years of

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indicators of position in the world economy to help explain variability in South African ESR realization, and I did not include a review of the PEWS literature in chapter 3.

quantitative data analysis and primary data collection and review that I conducted prior to entering the field informed my decisions pertaining to who I contacted for interviews. During my review of primary documents, I developed lists of many of the important organizations involved in service delivery. I also developed lists of names of activists and social movements from news articles about service delivery protests. These served as the starting place for my purposive sampling for interviews. A week or two before I traveled to each city, I began emailing people and organizations on my lists. A typical email interview request script is included in Appendix B. If people did not respond to my initial email, I would send one follow-up email to ask again.

The snowball sampling process was multi-faceted. In addition to contacting the people and organizations on the lists generated from my primary document review, I also reached out to people I already knew from my studies abroad in South Africa in 2007. I asked each person either if I could interview them (if they seemed like an appropriate informant), or I explained my project and asked if they could recommend people to contact. When potential informants contacted through my purposive sampling method declined, I asked if they could recommend anyone I could contact for an interview instead. At the end of every interview, I asked interviewees if there were others they thought I should contact. Additionally, throughout my fieldwork I stayed in hostels and the homes of graduate students. Through these living situations, I met people involved in service delivery and was invited to events that they thought might be relevant to my fieldwork. Some of these events were among the ethnographic observations I discuss later in this chapter, and many of these events provided opportunities for me to meet new people who I could interview.

I interviewed 50 civil servants, nonprofit employees, activists, attorneys, academics, clergy, and businesspeople. Table 4.1 shows their constellation of organizational roles and

service areas of expertise. Many of these informants had experience in multiple organizational roles and/or with multiple types of rights and services, so the cell counts in Table 4.1 sum to more than the total number of interviewees. Appendix E lists all of my interviewees in alphabetical order by name (with anonymous interviewees at the end) along with their organization, area(s) of expertise and title at the time of the interview. If it is particularly relevant, I also list past affiliations.

Table 4.1 Number of Interviewees within each Organizational Type by Right

	Education	Electricity	Food	Housing	Sanitation	Social Grants	Water
Academic	3	8	4	8	8	3	9
Activist	3	15	3	11	11	3	11
Attorney	5	3	3	3	3	2	3
For-Profit and/or Consultant	1	2	1	2	2	0	2
Government	2	5	3	5	5	3	6
Journalist	2	1	0	1	1	0	2
Nonprofit	9	8	11	9	7	4	8

I reached out to all potential interviewees in English and conducted all of the interviews in English. South Africa has eleven national languages and most people are multilingual. Almost all of the people I interviewed are fluent in English. However, there was a slight language barrier between me and a few of the interviewees. In those situations, I asked many clarifying questions to confirm my understanding and I summarized what they told me rather than quote them directly.

My fieldwork took place in South Africa from May through August 2014 and I conducted all but two of the interviews in South Africa during this time. In my interview invitations, I asked potential informants where they would like to meet, and all of the interviews happened in places

that were chosen by the interviewees. Most interviews occurred at the interviewee's place of work or home, at a coffee shop or restaurant, or while being driven in their vehicle or an acquaintance's vehicle. Many activists who live in shacks invited me to their homes so that I could see their living conditions and meet their neighbors. Upon returning to the United States, I conducted two interviews via Skype in September 2014. These Skype interviews were with people who were not available to meet while I was in South Africa. All interviewees provided informed consent, and the informed consent form is available in Appendix C. As part of the informed consent process, I asked all my interviewees if, in my reporting of results, they would like to be named or anonymous, and if their organization should be named or remain anonymous. Real names are used when informants so requested. Likewise, I maintain anonymity when informants so requested.

The average interview lasted about an hour, but the interviews ranged in length from 15 minutes up to 5 hours and 45 minutes, spread across two interview sessions. The length of the interviews depended on how much the informant had to say about ESR realization and how much time they wanted to spend talking to me. With each interviewee's permission, I audio recorded and transcribed most of the interviews to provide full documentation of the conversation. For the few interviews that I did not record, I took copious notes and I summarize what these informants said rather than quoting them.

I did not collect demographic data for my informants because this did not seem directly relevant to answering my research question. Several informants did mention some of their demographic information as context for their experiences or perspectives, and in this way, interviewee demographics proved useful. However, I did not track or analyze demographic

information systematically. All informants provided insights beyond their personal experiences with rights realization.

The historical context from chapter 2 and theories covered in chapter 3 informed my interview questions and probes. The interview topics for all informants included:

- 1) Basic questions about their organization and its role in rights realization (if needed).
- 2) Feedback on my understanding of how the provision of ESR(s) with which that their organization is involved had changed over time, the reasons for these changes, and how their organization fits into this bigger picture.
- 3) Their perceptions of the roles that other organizations play in rights realization, these organizations' impact on service delivery, and how these organizations interact with the interviewee's organization or other similar organizations.
- 4) What interactions, if any, they have had with protesters while working (only asked of people who were not activists).
- 5) Who is prioritized in ESR realization.
- 6) How the right or rights in which they are involved impacts and is impacted by other economic and social rights.

I also asked additional sets of questions specifically for various legal professionals, government officials, activists, nonprofit employees, and business people. All the interview questions I asked were open-ended. Interview questions pertain to important concepts grounded in prior literature: ESR realization outcomes and changes over time; organizations' priorities, capacities, tactics, relationships with other organizations, opportunities for and constraints on rights realization; and which phenomena were unique to the focal informant's organization or conversely were generalizable to other actors and/or could be considered field-level phenomena.

Appendix D provides the full interview instrument. This instrument served as a checklist of all of the topics and questions to cover, and provided specific sets of questions for different types of people, roles, and organizations. I tried to learn as much as possible from each informant about the realm(s) of the ESR realization field relevant to their experiences.

I conducted interviews in a conversational style, generally beginning with exploratory questions to provide me with a better understanding of the informant's work and how they and their organization(s) are involved in ESR realization. Typically, I asked questions in an order based on the flow of the conversation, rather than strictly following the order in the interview instrument. If I was not sure whether an informant would be able to speak to a specific question, I would preface the question by stating that it was okay to say he/she did not know or could not share that information with me. Nevertheless, there were times when interviewees provided responses that were conjecture or turned out not to represent their understanding or beliefs. If they provided a loosely-held opinion or shared an idea that they later renounced, I did not include these more ad-hoc perspectives in my analysis but instead focused on the responses reflecting their areas of expertise.

All of the interviews involved further probing. One type of probe was simply to ensure that my understanding and assumptions were correct, or to clarify points of confusion. If something was unclear or could be interpreted in multiple ways, I would probe to clarify. There were times when I was not familiar with a South African term or reference and, in these situations, I would ask clarifying questions or give a nonverbal cue—often a puzzled look or a tilt of my head to the side—that would prompt the interviewee to explain further. Additionally, many of my informants generously made extra efforts to explain acronyms, organizations, or historical events without any prompting. This was often helpful. However, when interviewees continually provided unnecessary elaborations or explanations, I responded with some of the details, acronyms, or other insider knowledge I already had to signal that I understood and to enable informants to discuss with me more deeply rather than focusing on basics.

The second main way that I probed was to seek to add richness and details. When an informant alluded to an experience, opinion, or conflict without providing many details, I would probe to see if they could provide more of the full story. Though some of resulting details turned out to be tangents, many interviewees provided additional useful information and examples to ground patterns they had observed or opinions they shared.

The third way that I probed was to specifically bring the respondents into conversation with what I had heard from other respondents or understood from established theories or findings. I asked some questions that were more pointed or introduced more controversy than is typical in open-ended interviews with members of the general public. Since all interviewees were expert informants, I was less concerned with introducing bias into the interviews by making it clear I was aware of controversies. However, I prefaced my questions and comments so that it would be clear that I was not challenging informants' opinions or expertise. Specifically, I asked questions and probed to test my understanding of the quantitative data I had analyzed, my interpretation of the documentary data I had collected, and what I had heard from other interviewees. I often mentioned a previous informant's experience or opinion, or talked about something I had observed in my fieldwork. Then, I stated what was puzzling to me, presented multiple ways that I thought the information could be interpreted, and asked if they could explain from their perspective. I also would pose debates or conflicting accounts or opinions from other interviewees or people to whom I had spoken during my fieldwork, again asking the focal informant to provide his/her perspective. Through my interview practice of making these different opinions explicit, I was able to better tease out where there were truly conflicting accounts about what was happening within the ESR field, and where people ultimately agreed

about what had happened but had different perspectives that shaped how they interpreted how and why it happened.

### *Ethnographic Observations*

I conducted ethnographic observations at 26 events, meetings, and tours. As I began networking and conducting interviews during my fieldwork, I quickly started receiving invitations and recommendations. Seeing how various actors operated and/or interacted with each other in the field was invaluable. The events I attended and places I visited were informed by my primary data collection or based on recommendations and invitations from those I interviewed, those I contacted who were not available for an interview, and from persons I met who were more tangentially involved in ESR realization.

Table 4.2 shows the types of events and ESRs covered by observational data. Many of these events involved multiple types of rights and services or provided insights about relationships between multiple types of actors, so the cell counts in Table 4.2 sum to more than the 26 events. All the observed events and locations, along with the rights and/or sectors corresponding to them, are listed in Appendix F. The events I observed include protests, fundraisers for nonprofits, a high-school leadership program, and a documentary screening and Q&A session with a former Constitutional Court Justice. I also attended regular meetings and planning sessions for several social movements and activist groups.

My longest observations were at workshops. The longest was the three-day Feminist Table workshop that brought together women who are activists, bakery co-op employees, farmers, nonprofit employees, and academics, to talk about food. The second longest was the day-long HABITAT III Workshop for government and nonprofit employees in preparation for an upcoming UN conference. My third longest field observation involved a mix of activities. I spent

the day at the Kliptown Youth Programme nonprofit touring the neighboring shack settlement, interviewing the director, preparing meals with the tutors, and then observing classroom tutoring sessions. I also visited and toured shack settlements, nonprofit-built housing and communities, government-built housing, inner city areas, a nonprofit food garden, and several children's homes for orphans.

Table 4.2 Ethnographic Observation Activity Type by Rights Area or Focus

	Education	Electricity	Food	Housing	Sanitation	Social Grants	Water	Inter-Organizational Relations
Activism (Protest or Meeting)	0	4	0	6	4	0	4	9
Government Meeting	0	2	0	2	2	0	2	2
Nonprofit Event	2	1	2	3	1	0	1	6
Tour	4	5	3	6	4	1	5	1

The length of my field observations ranged from 60-minute long events or visits up to the three-day-long workshop. Most of my observations lasted approximately three or four hours. I took extensive notes during and after most of these observations<sup>17</sup>. For a handful of events, it was not appropriate for me to take notes during my observations, and in those cases I wrote or typed all of my notes as soon as possible afterward. In addition to my notes, I also collected any available documentation pertaining to the observed events, including: handouts, materials, and any documents provided prior to, during, or after the event, meeting, workshop, or visit.

My type and level of participation in observed events varied, largely based on how appropriate it was for me to speak and with whom it was appropriate for me to speak. During some events, such as fundraisers with presentations, I was silent during the event and chatted

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<sup>17</sup> I recorded the Awethu workshop with activists after being granted permission and encouraged by the organizers. However, given the large room and number of attendees, it is hard to decipher what is said in much of that recording and so I ultimately chose to rely on my notes rather than attempt to transcribe the recording.

with people before and afterward. In many meetings, the person who invited me would introduce me or I would introduce myself, explain why I was there, and thank the person who invited me. If I did ask any questions or share any information about my research during my field research, I was careful not to say things that would sway or direct the conversation, since my focus was on observing how things unfolded organically.

At many events, I chatted with attendees or participants beforehand, during breaks, or afterward. At protests I often chatted with participants while marching and afterward. For some of the tours, I was one of several people seeing the area and I would ask some questions when appropriate; for other tours I was the only person being taken on the tour and I asked many questions. At various events, the people who had invited me or were showing me around would tell me that I should “interview” members of the community or participants. In those situations, I would ask questions and take notes, but I count those notes and what I learned as part of my observational data, rather than as interview data.

Throughout my field research I sought to build on previous knowledge I gained from the primary data collection process, what I heard in interviews, and what I had observed previously. This allowed me to validate, counter, or complicate my then current understanding of the ESR field and/or particular interviewee statements. When appropriate at or after an event I observed, I would ask attendees or people who were familiar with what I had observed to provide their perspective. By having my own notes and then actively processing my interpretation or sounding out other informants, observers, or experts for their ideas, I was able to ensure that I understood diverse perspectives on the ESR field while also applying my own critical lens.

*Establishing Trust, Gaining Entry, and Durable Privilege During my Fieldwork*

As a white American female who was born and raised in the United States, I was easily identified as an outsider in many of the places I went during my fieldwork. Nevertheless, I was generously welcomed into a wide variety of environments and social locations throughout my time in South Africa. Indeed, it was common for people to tell me things off the record that they wanted to share as background, even if they did not want these to appear in my writing.

Part of how I was able to quickly gain this level of entry and trust was simply by being lucky enough to have a physical presence that people generally do not find intimidating or scary. Additionally, my approach to fieldwork was to ensure that the people who spoke with me were always comfortable and completely in control of what they told me. Given my conversational approach to asking the interview questions and to probing, the people I spoke with were also able to help control the flow of the conversation so that we focused on topics on which they were expert and that were interesting for them to talk about. Furthermore, I was invited into all of the spaces where I went on tours, and was brought around by a guide or several guides who were able to introduce me to the people with whom I chatted during these observations.

In the few situations in which the people I interviewed or with whom I chatted were somewhat skeptical, I would do what I could to show that my intentions were well-meaning and that talking with me was low risk. In situations in which it appeared that someone was not comfortable, I limited what I used from that situation for this research and kept my time with them brief. For example, in a few circumstances in which people appeared uncomfortable with being interviewed even though they provided consent, I did not even ask to record the interview and instead took written notes. Those informants are anonymous and I summarize what they said rather than quoting them. Ultimately, I tried to conduct my fieldwork as ethically as possible by

prioritizing the well-being of those I spoke to and observed over my goal of collecting information. By being forthcoming about this, I was often able to gain trust quickly.

After much reflection, I judge that much of my success in my interviewing and fieldwork resulted from being an outsider who voiced support for the goals of many to whom I spoke. Additionally, I have durable privilege that granted me both entry and some protection throughout my time in South Africa. As an American who has made a great effort to learn the landscape of South Africa, I was in a particularly privileged position to do this type of research for several reasons. First, there was at times a heightened sense of the practical importance of my research, even when I was clear that my research was not going to improve rights realization. Second, people frequently asked why I cared so much about improving access to basic services in South Africa even though it did not affect me personally. The knowledge and compassion that I demonstrated in my responses often resulted in people choosing to help me with this research. Third, I was regularly accompanied and protected by both informants and people whom I did not interview as we navigated places where it might be unsafe for me to travel on my own. When scheduling an interview or tour, I generally asked how to most safely reach the specified locations. Interviewees would often meet me in safe places and then escort me into locations in which my safety would have been at risk if I were walking or traveling on my own. There also were many times when I was traveling alone that I would meet a woman of color who was concerned about my safety, and she would walk with me to my destination or wait with me until the person I was meeting arrived. For these reasons and many more, I am forever grateful to the countless people who helped me throughout my fieldwork.

### *Qualitative Analysis*

Much as my qualitative data collection process was interactive and iterative, my interpretive analysis process also was interactive and iterative. I began analyzing and reflecting on the interviews and observations while I was in the field and I discussed my reflections with the informants. However, most of my analytic processing occurred once I returned from my fieldwork. This section explains how I iteratively pulled together all the interviews and observations with the quantitative data analysis and historical events to synthesize my field-level analysis.

Entering my fieldwork, my expectations about important concepts and theoretical questions were deductively informed by the academic literature discussed in chapter 3, by my time studying abroad in South Africa in 2007, and by the patterns that had emerged from the quantitative outcome data and from the primary documents in which I had immersed myself during the two years leading up to my fieldwork. While this previous work and extant theory informed my expectations, who I contacted for interviews, and the questions I asked, my approach to analyzing the interviews and observational data, was largely, though not exclusively inductive. I did not enter the field with specific research hypotheses to test, but instead wanted to understand the ESR landscape and explore potential explanations for the patterns of unequal access to ESR that I had observed. In short, I used my conceptual framework to guide my inquiry, but did not prejudge my findings or close off avenues of inquiry that were not foregrounded by constructs based on prior scholarship.

My critical analysis of what the interviewees said and what I observed began immediately. In interviews, when appropriate, I would ask for clarification and state what information seemed contradictory, or even mention that another interviewee had a different perspective and ask what the focal informant's thoughts were on this different opinion. This

prevented me from guessing or assuming the extent of and reasons for these differences. Instead, I raised apparent differences in experiences and/or opinions and asked for further explanation and/or nuance. I used the same process to surface different interpretations of phenomena I had witnessed in my field research.

After my fieldwork, I transcribed my interviews with the help of undergraduate research assistants. I also reviewed and typed up many of my handwritten notes, and I looked up additional facts to substantiate or correct specific details in the interviews.

### **Coding and Interpretive Analysis**

I analyzed the data through an interpretive coding process based on the principle of strategic narrative (Stryker 1996). Throughout this iterative process, the coding and analysis were inherently intertwined: existing theory shaped my expectations for analysis and provided a starting set of interpretive codes, yet at the same time, I systematically created new interpretive codes suggested by the data. Thus, my analytic coding scheme was able to capture empirical results that were counter to or outside of prior explanatory perspectives.

In short, prior theory guided my interview questions and field research. My interpretive coding of interview data, field notes, and documentary data was designed to surface and highlight not only data that could confirm the importance of prior concepts and explanatory ideas, but also data that helped me modify prior explanations or discount the importance or relevance of prior concepts and explanations and generate new concepts and explanations. My first round of coding included descriptively coding the different types of actors involved, specific phenomena (such as: protests without social movement organizations), and patterns and connections noted by my informants, in documents, or in my field notes.

Overall, my first round of coding resulted in a fairly exhaustive descriptive representation of the data I collected, regardless of whether or how it fit with extant perspectives. Some of my codes, for example, “limited government capacity,” were already analytic and fit with prior analytic constructs. Other codes I employed were more purely descriptive but became building blocks for additional analytic constructs. For example, coding water provision as “highly technical” fed into my developing concept of materiality, as one aspect of the materiality of rights. Some of the codes in this first round were just key words that I was able to transform into constructs through further thought and analysis. An example of this is the code “feed students at school to improve education and fight hunger.” Reflecting on my systematic application of this code helped me develop the analytic idea of synergies between food rights and education rights in South African rights realization.

Once I had my initial set of codes, I sorted them into broader categories or constructs grounded in established theoretical perspectives. Through this interpretive process, I assessed whether and how well the data I collected fit with what these perspectives suggested and discovered that some phenomena, patterns or trends revealed by my data did not fit these perspectives. Key constructs grounded in the literatures and discussed in chapter 3 that proved useful for making sense of my data included: fields, rights and their outcomes, actors and their various interests, capacities, strategies and tactics, various opportunities and constraints, and relationships with other actors. These key constructs span literatures and sectors, and are helpful in providing a framework for thinking about who and what shapes the provision of economic and social rights.

Though much of my data fit analytic constructs suggested by prior literature, some of it did not conform to prior explanatory frameworks or fit already-established constructs.

Inductively, I found evidence of gatekeeper and synergistic relationships between rights, and this led me to focus specifically on gatekeeping and synergies as well as more generally on the relationship among rights. My inductive analysis also revealed that many of the considerations of service providers were rooted in the material nature of the provision of each economic and social right, and the resulting practical opportunities and limitations. This led me to explore further and ultimately to emphasize the materiality of economic and social rights as a key sensitizing construct.

### **Sensitizing Constructs: Definitions and Examples**

In this section, I define, operationalize, and provide examples of the sensitizing constructs that I used to interpretively code my data and that provide the building blocks for my analytic response to the overarching research question and related research puzzles outlined in chapter 1. I used a hierarchical coding scheme (see Stryker 1996) in which the sensitizing constructs and their various sub-codes are embedded within three different units of analysis: the field, the right, or the actor. Coding the data hierarchically within these three locations or possible frameworks for understanding change—field-level, rights-level, and actor-level—allowed me to better understand what is helping or hindering ESR realization in South Africa and whether these insights may be generalizable. For example, I coded for both the field-level opportunities and constraints that I have discussed in chapter 2 and for rights-level and actor-level opportunities and constraints which I will discuss in depth in chapters 5-7.

My approach to coding was inclusive, not exclusive—each passage of interview or document text or field notes could—and often did—signal me to apply multiple codes. Conducting Boolean searches to see which codes tended to intersect (that is, to overlap or occur in conjunction in the same passages) and which tended not to intersect (that is, rarely occurred in

conjunction in the same passages) was a helpful tool in developing my analytic conclusions (see Stryker 1996). In particular, it helped me determine which opportunities and constraints were relevant for which specific actors and for which rights, and which actors used which specific strategies and tactics. I will use the terms intersecting and overlapping synonymously to refer to codes that appeared together.

In the remainder of this section, I detail the constructs that became building blocks for my answer to the question of what drives the insufficient and unequal access to constitutionally-guaranteed economic and social rights in South Africa. I also highlight which constructs build on extant theory and which constructs constitute my unique contribution to understanding ESR realization in South Africa. Specifically, I discuss further how my focus on materiality and the relationship among rights evolved while I was in the field and as I conducted my data analysis. The section concludes by providing examples of how I coded and analyzed six textual passages (Appendix G contains tables with the complete set of sensitizing constructs, codes and sub-codes).

### *Fields*

As discussed in Chapters 1 and 3, the concept of fields—socially constructed spaces or environments in which actors interact—informs my entire approach. For this research, the field of interest is economic and social rights realization and service provision in South Africa. Approaching the question of ESR realization using the field as the unit of analysis requires analyzing the many actors and factors that influence each other and the overall landscape of ESR realization, and in turn seeing how the field provides opportunities or constraints that inform or influence how these actors operate. As I indicated previously, my research uses the concept of

fields generally, rather than focusing on or developing a specific approach or perspective pertaining to fields (see also the section on fields in chapter 2).

I used the field of ESR realization to define the overall scope of my coding and analysis. Rather than code for what was or was not within the field, I determined that information that was not about ESR realization did not need to be coded or included in this research. The boundaries of the ESR realization field created the boundaries for the scope of the research.

#### *Field Level's Opportunities and Constraints*

I coded for context, specifically opportunities and constraints that shape what happens within the field. To count as a field-level opportunity or constraint, the evidence or attribute must exist in this broader environment, though the level and type of impact on the rights and actors within the field can differ. These opportunities and constraints range from somewhat abstract to extremely tangible.

Much of the literature focuses on field-level opportunities and constraints that are somewhat abstract, yet still very real and measurable. These opportunities and constraints include the geo-political climate, political changes, privatization, and various rules and regulations (Tarrow 1998; Meyer 2004; Simon 1991; Skrentny 2006). Such field-level opportunities and constraints are experienced differently by various types of actors and do not impact all actors within the field in the same way.

At the most material end of the spectrum, natural resources can create opportunities and constraints. For example, limited available residential land is a very tangible constraint on building and delivering houses, regardless of the actors involved and their capacity. Similarly, a drought can result in a limited water supply that can temporarily restrict access to water, food, and the ability to flush toilets as part of sanitation, again regardless of the actors involved and

their capacity. These physical or tangible opportunities and constraints are part of why the concept of the materiality of rights (Klug 2015a; Stryker 2015) plays such a prominent role in my analysis of patterns of ESR realization. The difference between natural resources and materiality is discussed more in the upcoming section on ESR materiality.

The types of field-level opportunities and constraints that I coded were:

- Economy/Market
- Geo-Political Climate
- Historical Context
- National Policy, Rule, Regulation, or Procedure
  - Constitution
  - Economic Policy
  - Program
- Natural Resources
  - Land
  - Water

Most of these concepts were the focus of chapter 2, which provided context for the whole ESR field by providing historical information and an overview of different actors, institutions, and policies that are somewhat constant or have durable patterns throughout the social and political environment of ESR realization. The more specific tangible rights, specifically land and water, are discussed in chapter 6 in the discussions of providing housing and water, and again in chapter 7 in the context of requirements for growing food.

Overall, both the material and non-material (i.e. political, economic, cultural, social, etc.) contexts within which actors operate are key to understanding patterns of ESR realization. This field-level environment often overlaps with and influences different actors' opportunities and constraints, and the natural resource opportunities and constraints can be directly related to the materiality of the ESR. While these codes often intersected with others, the field-level opportunity and constraint coding is limited to context that influences the whole field, while other codes are specific to an actor or right.

### *Economic and Social Rights (ESR)*

Turning to a different unit of analysis, within the overall field I also coded at the level of the specific economic and social rights involved. I coded for all of the economic and social rights named in the constitution as well as the rights that the Constitutional Court has deemed to be part of the right to housing. Thus, I coded for these economic and social rights:

- Education
- Electricity
- Food
- Health Care
- Housing
- Sanitation
- Social Security
- Water

Though I do not analyze health care in this study, I chose to code for health care when a respondent mentioned it. This allowed me to draw on examples of and comparisons to health care when informants brought it up, since health care is part of informants' conceptual understanding of the field of ESR in South Africa. Additionally, general discussions of "service delivery" or "utilities" without naming the specific right(s) involved were coded as electricity, sanitation, *and* water, as these basic services are what most South Africans refer to when they talk about "service delivery". Finally, I coded for these ESRs when they were mentioned, regardless of whether the source or informant acknowledged them as economic and social rights or simply talked about them as goods and services.

### *ESR Materiality*

During informant interviews, I was struck by how much people talked to me about the importance of space and infrastructure for understanding service delivery and rights realization. The process of categorizing the codes confirmed that many of the codes and phenomena that were about the rights themselves were focused on space, infrastructure, and other material

requirements for realizing these rights. This led me to return to the law and society literature to look for any specific theories that could explain this focus on the material nature of rights, and ultimately led to my use of Klug's (2015a) concept of materiality as a sensitizing construct. In my research, I use the concept of materiality to refer to the material requirements for the realization of economic and social rights (see discussion in chapter 3).

While there is a clear interplay between the materiality of rights and the field-level natural resources and these codes often overlapped, I treated these concepts as distinct. The key distinction is that the materiality of rights is focused on the material attributes of each right and the material requirements for their provision (regardless of their availability), while the field-level opportunity and constraints coding focused on the availability of materials in the field as natural resources (regardless of whether they were material requirements for ESR realization).

I used these codes to categorize the materiality of each right:

- Location
  - Public
  - Private
  - Home
- Material (physical attributes)
  - Electricity
  - Infrastructure
  - Land/space
  - Water
- Organizational (technical)
  - Labor

Additionally, I coded for when and how these different material characteristics were important, specifically looking at:

- Implementation
- Maintenance
- Quality

These codes often overlapped, and my analysis process involved looking at how and when different codes intersected. For example, land/space was often discussed as an implementation requirement for housing and utilities, but land/space was rarely mentioned in conversations about maintenance requirements or quality. On the other hand, infrastructure like sewer pipes were discussed as both an implementation requirement and a maintenance concern for continually functioning sanitation.

### *ESR Outcomes*

Other rights-level codes I employed to categorize and analyze the data were the outcomes for each ESR. These codes included all of the aspects of outcomes and access to each ESR, including quality, whether access is sustained, and the quantity for rights like water, electricity, and food where the amount provided is a key aspect of understanding whether and how the right is realized. I coded for these three types of outcomes:

- **Promised Outcome:** what was specifically promised in the Constitution or court decisions
- **Expected Outcome:** including access, quality, and quantity (including basic minimums)
- **Realized Outcome:** both substantiated by the quantitative data and public perceptions substantiated by ethnographic observations

The promised outcomes were largely based on textual analysis, especially of the South African Constitution and court decisions. The realized outcomes were mostly based on the quantitative analysis and were augmented with qualitative data. On the other hand, expected outcomes drew heavily from the interviews and ethnographic observations, which showed that there was often a difference between what the constitution and court decisions promised and what the public expected.

I also coded for gaps between these different outcomes that were explicitly discussed, or that became apparent when looking at the different outcomes for each ESR. The gaps I analyzed and coded for are:

- Gap Between Promise and Expectations
- Gap Between Promise and Reality
- Gap Between Expectation and Reality

Additionally, I found that similar outcomes across rights areas did not always solicit similar reactions from people, so I additionally coded for the sentiments attached to these outcomes or gaps:

- Dissatisfaction
- Satisfaction

Finally, these outcomes were not static, so I also coded and analyzed for whether and by how much things were improving, getting worse, or staying the same:

- Change Over Time

These outcomes are the “dependent variables” variabilities across rights that the rest of the coding and analysis is working to explain. These outcomes were often discussed and thus coded in tandem with the potential explanatory factors that were considered to be a reason for the progress or lack of progress.

### *ESR Relationships with Other Rights*

During my fieldwork, I noticed how some groups of ESR were often mentioned together, and I noted specific patterns pertaining to which rights were discussed together. Looking at the coding of ESRs discussed together confirmed my sense that housing and utilities tended to be discussed as a group and that social security, education, and food were more likely to be discussed with each other (though rarely all three together). Analyzing those two groups of rights allowed me to see the patterns of relationships among the rights. From this analysis emerged the

construct of rights relationships with other rights, and specifically synergistic and gatekeeper relationships that were largely based in the materiality of the different rights. I coded for the presence of these relationships, and often coded to define the relationship based on whether the realization of the rights was mutually beneficial (synergistic) or one depended on the other (gatekeeper). Since I asked interviewees about whether and how their ESR area(s) impact and are impacted by other ESR areas, I also was told explicitly when the realization of one right had nothing to do with the realization of another right. Thus, I also coded for explicit mentions of a lack of a relationship between economic and social rights. Here are the codes I used for these relationships or lack of relationships:

- Relationship Between Rights
  - Gatekeeper
  - Synergistic
- No Relationship Between Rights

This coding scheme and the concept of relationships between rights themselves emerged inductively from my fieldwork. This relationship between rights is one of the central contributions and concepts in this dissertation. I organize chapter 6 around the concept of gatekeeper relationships between rights and chapter 7 around the concept of synergistic relationships between rights.

### ***Actors***

The third unit of analysis for the coding is the actor level. For this research, actors are any of the organizations, groups, or individuals involved in the field of ESR realization. This includes all the organizations that are the subject of the literatures discussed in chapter 3 – including various government actors, legal actors, for-profit organizations, and civil society. These actors also include all of the individuals who are operating within or interacting with any of the institutions or organizations. Here is the coding scheme:

- Government
  - Civil Servant (ambiguous)
  - Elected Office
    - Elected Official
  - Legal System
    - Court
    - Judge
    - Attorney
  - Local Department
    - Civil Servant
  - Local Government
    - Civil Servant
  - National Agency/Department
    - Civil Servant
  - Political Party
    - Politician
- For-Profit
  - Law Firm
    - Attorney
  - Private Company
    - Employee
- Civil Society
  - Activism (without a Social Movement)
    - Activist
  - Nonprofit
    - Employee
    - Legal Center
      - Attorney
  - Social Movement
    - Activist
  - Union
    - Employee
    - Member
- Public
  - People Who Live in Shacks
  - Poor People
  - Specific Community
  - Wealthy People
- School
  - Public
    - Teacher
  - Private
    - Teacher
  - University
    - Teacher

These actor categories can overlap – for example an elected official who is running for reelection would be coded as both an elected official and a politician. Additionally, a role can appear at multiple places in the coding scheme. For example, attorneys appear in three different places in the coding scheme: state employees, private for-hire, or at a nonprofit legal center. Additionally, I coded for organizations and the individuals within them that do work as part of government contracts:

- Contractor/Vendor
  - Employee

I used this code for both for-profit and nonprofit actors, and on its own when the type of organization was not specified.

The fact that there are entire literatures dedicated to these many different types of actors suggests that they can operate in distinct and complex ways, both within and across types of organizations and individuals. Nevertheless, elements of what these actors do in the field can be understood through the lens of what they want, what they are capable of, how they operate, and the influence of the field on what they do. As such, the next several sensitizing constructs are all at the actor level, and were always coded in tandem with the type(s) of actor(s) involved.

#### *Actors' Goals*

I coded for any discussion of what organizations want to achieve, and labeled this code “goals.” These goals are what motivate, drive, and inform priorities for the various actors involved in the field of ESR realization. For some actors, some of these goals are rather prescriptive because they are fundamental to the type of actor. For example, corporations that are not interested in making a profit are not going to last long, and activists by definition seek to bring about political or social change or defend the status quo from change. Nevertheless, the realm of possible goals for each type of actor is relatively wide, and there also can be substantial

overlap in the goals of different types of organizations. For example, with the increased privatization of government functions, business goals and tactics have increasingly informed government goals and processes (Chipkin 2016). To fully understand what is happening within the field, it is important to acknowledge and analyze what the different actors are trying to accomplish, and then see how these goals align or compete in ways that influence their relationships and interactions and, in turn, affect ESR realization.

In my analysis, I largely looked at all of the goals shared by organizations as one master category, rather than looking at the different ways that people referred to what they wanted in interviews or documents. Most goals were not labeled in the document, interview, or observation as a specific type of goal, and thus most were sub-coded as simply a goal. Nevertheless, when possible, I coded using the more specific terms that the actors used to describe the things that they want, such as their nonprofit mission, corporate values, or institutional priorities. Anything that was discussed as a general want or desire was coded as a goal. Here is the coding scheme:

- Goal (general/ambiguous)
- Mission
- Motivation
- Priority
- Strategy
- Value

In the analysis phase, distinguishing the specific *type* of goal (for example: the mission vs. a priority vs. a value) was largely unnecessary – all of these codes generally captured what the actors want to do. Nevertheless, in the analysis it was important for me to return to the text to see what the specific goals were for each actor (for example: increase transparency, feed hungry children, or eliminate poverty), since the realm of possible goals was too large to create a code for every goal and the specific goals mattered for the analysis and interpretation of the data.

### *Actors' Capacities*

The actors' capacities include many of the characteristics that are analyzed at length in the institutionalization literatures. Broadly speaking, an actor's capacity is their ability to bring about their goals, and often includes their resources such as money, bureaucratic infrastructure, trained and/or skilled personnel, and formal powers (Amenta 1998; Barkey and Parikh 1991; Evans et al. 1985; Skocpol 1985; Skocpol 1992; Skocpol and Finegold 1982). Capacity is not just about an actor's internal resources, but also about their capacity for successfully navigating interactions with the external world. This includes their autonomy from unwanted outside influence or cooptation, ability to navigate bureaucratic barriers or processes, and aptitude for mutually beneficial partnerships or alliances that allow them to leverage the capacities of other organizations with shared interests.

Actors' capacities were coded using this scheme to note the different types of capacity for each actor involved:

- Ability
- Autonomy
- Bureaucracy
- Capacity (general)
- Money
- Partnership
- Power
- Skilled Personnel

Sometimes I simply coded for the presence of these capacities, but often I also noted the adequacy of each type of capacity using this set of codes:

- Good/Sufficient
- Misallocated/Uneven
- Not Enough
- Too Much

The misallocated/uneven code was used when interviewees said that the landscape of capacity did not match the need, typically when there was not enough capacity or resource allocation in one area and too much in another area.

### *Actors' Tactics*

Tactics are basically what actors do. Tactics within the realm of ESR realization can be one of the simplest constructs to describe, yet one of the hardest to explain. These tactics can be highly strategic – the tactics can be how actors strategically work to achieve their goals, while working within or building their capacities, and informed by a complex knowledge of opportunities and constraints. Yet it is also common, especially when capacities are limited, that tactics are not based on sound logic and strategy, and are not always planned out or premeditated. There are elements of randomness, inertia, limited information, poor logic, or simply an absence of careful thought behind many tactics. Moreover, even within organizations and institutions that are highly rule-based and top-down, individual actors may employ different and even competing tactics. Additionally, employing sound and strategic tactics does not guarantee increased access to ESR realization, nor do scattershot, path-dependent, or poorly informed tactics guarantee failure. Thus, I coded tactics as distinct from interests, capacities, and outcomes.

The possibility for such a high degree of mismatch between tactics and the other key sensitizing constructs is part of why the qualitative nature of this research is so important. Throughout this dissertation I seek to explain why different actors do different things, relying especially on the rationales provided by interviewees and attendees at the ethnographic events, and I also relate what appear to be poor tactical choices back to limited capacities and other constraints on actors. Yet it is not always possible to explain the why behind every action, and

tactics do not always make sense within the context of the other constructs. Thus, my analysis also points out these discrepancies between tactics and the other constructs (especially interests) as remaining puzzles and opportunities for future research.

I coded for actors' tactics using this large group of codes:

- Action (pertaining to the provision of an ESR)
  - Augment
  - Build/Install
  - Buy
  - Collect Data
  - Corruption
  - Donate
  - Exhaust Options Sequentially
  - Focus on Easy/Quick Solutions
  - Maintain
  - Provide
  - Pursue Multiple Pathways at Once
  - Sell
  - Wait
- Communicate (with or for the general public)
  - Acknowledge/Admit
  - Deny
  - Discuss
  - Document
  - Engage Community
  - Explain
  - Listen
  - Message, Frame, or Re-Frame
- Interact (with another actor)
  - Compete
  - Coopt
  - Hire
  - Influence
  - Partner
  - Pressure
  - Protest
  - Resist
  - Siloed
  - Train/Teach
- Law and Policy
  - Create Law/Policy
  - Enforce Law/Policy
  - Go to Court

- Legal Implementation
- Legal Interpretation

Many of these tactics were generally used more by some types of actors than others – for example, activists were generally the ones protesting, and civil servants were the ones hiring contractors. Additionally, I coded for the absence of these tactics in cases in which it was explicitly stated that actors did not engage in a specific tactic or that they stopped using a tactic.

The actor interaction coding and analysis process also built on my understanding of organizational relationships. I entered the field expecting to focus on the relationships between actors at the field level, and specifically hoped to learn how these relationships differed based on the type of actor. While I did hear, observe, read, and code substantial data about the interactions between different types of actors regardless of the rights involved, often what I heard was how actors with similar interests were siloed. I also collected and then coded information about how the space and infrastructure requirements for rights influenced when and how actors interact. Though I did not expect it, I found that the interaction between actors often depended on or were influenced by the relationships between the rights involved, and specifically by the material requirements or opportunities provided by the specific rights involved. Adding the concept of materiality to my analytic toolkit allowed me to better understand and build on the concept of actor interactions. Additionally, the analytic process led me to create clear distinctions between Rights Relationships and Actor Interactions, even though both types of relationships can influence and impact each other, and both are often influenced by the materiality of the rights involved. In the conclusion, I present recommendations for future research that focuses on between-actor relationships to better understand the field of ESR realization.

I found that there were fewer examples of actors using the legal system and policies to bring about ESR realization than I had initially expected. Similarly, I found that many people

talked about ESR realization as service delivery rather than rights realization, and that there were patterns about which ESR were discussed as rights, government services, or just not regarded as government obligations at all. These findings are addressed in chapters 5-7.

### *Actors' Opportunities and Constraints*

Another sensitizing construct that I employ throughout my analysis is the concept of actor's opportunities and constraints. I address opportunities and constraints together because they often are interrelated. Taken at face value, a situation can be a clear opportunity or constraint, and the level of opportunities and constraints can be determined on a relatively linear spectrum. Yet given that actors have agency and can both choose how they act and react while also shaping the field that they operate within, the reality is often more subjective and complicated. In many cases, whether the circumstances are opportunities or constraints depends in part on what the actors do. Sometimes a situation that presents as a constraint can lead to a reevaluation of tactics, strategies, or framing, and transform into an opportunity to approach the situation differently (Pedriana and Stryker 1997; Einwohner 2003). Other times, seemingly unlimited opportunities that are poorly pursued or not prioritized can result in worse outcomes than a more streamlined or dedicated set of tactics in an environment with more constraints (Skocpol and Finegold 1982). Thus, the classification of a situation as an actor-level opportunity and/or constraint, or simply irrelevant, was determined by how the actor(s) involved perceived or reacted to the situation.

The mechanics of coding the actor opportunities and constraints are unique because this code almost exclusively intersected with other codes. This overlap was necessary because the context of the field, attributes of rights, and capacities and tactics of actors were all things that

were interpreted as opportunities and/or constraints by the actors. These are the codes I used to note actors' opportunities and constraints:

- Constraint
- Irrelevant
- Opportunity

These codes showed whether actors viewed a situation within the field as an opportunity or constraint (or both), or if they thought the situation was irrelevant to them. Additionally, the same context or action could be coded as an opportunity for one type of actor, a constraint for another, and even irrelevant to a third type of actor. Thus, the same environmental factor could be coded differently for each actor involved. For example, policing of protests is a state tactic that mostly constrains activists and civil society (Earl 2011). Thus, some mentions of policing of community protests was coded as a local government tactic, local government opportunity, activist constraint, and public constraint. Most nonprofit employees said that policing of protests was irrelevant to their work, but one activist told me that several legal nonprofits interpreted his arrest and criminal charges for protesting as *both* an opportunity and constraint, and reacted with the tactic of going to court to try to change the laws (Interview Alfred "General" Moyo).

This high degree of overlap of codes requires complex parsing to understand how even a single circumstance or event can be interpreted by and impact different actors in different ways. Nevertheless, this level of complexity allowed for more nuanced interpretations of how the context can be both an opportunity and a constraint, neither, an intricate trade-off, or largely dependent on how actors experience the environment. Moreover, while this level of overlap makes the coding more complex, the fact that there is this high-level of overlap is part of the rationale for looking at the field-level interactions between actors, because what actors do shapes the social world for other actors, regardless of whether these actors are interacting or siloed.

## Examples of the Coding Hierarchy and Sensitizing Constructs

Now I will show five examples of how I coded the qualitative data within this framework of sensitizing constructs. Like most of the data relevant to the ESR realization field that I collected and analyzed, each of the six examples includes many codes. These examples show how the sensitizing constructs and specific codes interact and overlap, and that the patterns of the co-occurrence of codes (and the absence of such co-occurrence) help lay the foundation for my synthetic interpretation of and explanation for the patterns of rights realization. Each example is pulled from a different interview or primary document, and I make note of when my coding for each segment of text was aided by the context provided by the entire interview or document.

### *Example 1*

This first example is from an interview, and shows just how many different sensitizing constructs can be at play in a simple three-sentence response.

“The government does have feeding schemes at the schools. In a lot of the schools they will target specific children, on their sort of vulnerable list. But the schools will almost always say there is never really enough. And the schools really want to feed on the weekends because they say, ‘well what’s happening on the weekends?’” (Interview Anonymous at Foodbank South Africa)

In Table 4.3, you can see how I coded for the specific sensitizing constructs within this quote. The sensitizing constructs show how they are nested within the specific rights and actors that were involved in this passage. The codes employed for each right and actor are not necessarily the same. For example, the outcomes coded for this quote are attached to the code for Food, not the code for Education. This is because all of the outcomes discussed are about the provision of Food, not about gaps or dissatisfaction with the provision of Education. Additionally, the specific Opportunities and Constraints are specific to the Actors, and the coding suggests some of their dynamics at play in the situation.

In the Evidence column, I provide the specific portion of the text that led me to apply each code. In places where the evidence is not explicit, I note additional context that led me to select a specific code. For example, while the informant simply mentioned the government’s feeding schemes at schools, I was able to infer that they were referring to the National School Nutrition Programme, which is a National Program overseen by the Department of Basic Education. This knowledge of the policies and actors involved allowed me to read more specifics into the coding and analysis than the details mentioned explicitly by the informant.

Table 4.3 Example 1 Coding

Sensitizing Construct	Code(s) and Sub-code(s)	Evidence
Field’s Opportunities and Constraints	National Policy, Rule, Regulation, or Procedure	“The government does have feeding schemes at the schools” Context: this is a reference to the National School Nutrition Programme (NSNP)
Economic and Social Right	Education	“schools”
Relationships Between Rights	Relationship Between Rights (Education and Food)	“feeding schemes at the schools”
Economic and Social Right	Food	“feeding”
Outcomes	Gap Between Promise and Expectations	“And the schools really want to feed on the weekends because they say, ‘well what’s happening on the weekends?’” Context: The NSNP only feeds students on days when there is school
	Gap Between Expectations and Reality	“schools will almost always say there is never really enough”
	Dissatisfaction	“schools will almost always say there is never really enough”
Relationships Between Rights	Relationship Between Rights (Education and Food)	“feeding schemes at the schools”
Actor	National Agency/Department	“The government does have feeding schemes at the schools” Context: The Department of Basic Education is responsible for overseeing the administration of the NSNP

Goals	Goal: Feed vulnerable children	“they will target specific children, on their sort of vulnerable list” Context: The NSNP does not feed all children, but instead focuses on children in the bottom 3 income quintiles
Tactics	Provide: Food	“feeding schemes”
	Partner: With Schools	“government does have feeding schemes at the schools”
Opportunities and Constraints	Opportunity (Partner: With Schools)	“does have feeding schemes at the schools”
	Constraint (Partner: With Schools)	“what’s happening on the weekends?”
Actor	Schools	“schools”
Goals	Goal: Provide more food	“schools will almost always say there is never really enough”
	Interest: Feed children on weekends	“the schools really want to feed on the weekends”
Tactics	Provide: Food	“feeding schemes”
	Partner: With National Agency/Department	“government does have feeding schemes at the schools”
Opportunities and Constraints	Constraint (Interest: Provide more food)	“schools will almost always say there is never really enough”
	Constraint (Interest: Feed children on weekends)	“the schools really want to feed on the weekends”

Finally, while the example 1 quote shows that there is a relationship between Education and Food, this example does not specifically address the nature of the relationship, so it is not coded as synergistic or gatekeeper. The next example shows a situation in which the relationships between Education and Food was coded as synergistic.

### ***Example 2***

Here is another quote about the relationships between Education and Food. This example does show how the relationship is synergistic.

“Three things get affected by feeding. School attendance goes up once you start feeding because the children really are hungry.” (interview Mark Walker)

This quote was in an interview with the director of a nonprofit that provides food to children who are not fed through the NSNP. While other parts of the interview included codes about the

specific actors involved and about the overall field, this quote is focused on the rights themselves, and was only coded at the rights level.

Table 4.4 Example 2 Coding

Sensitizing Construct	Code(s) and Sub-code(s)	Evidence
Economic and Social Right	Education	“school”
Outcomes	Realized Outcome	“School attendance goes up”
Relationships Between Rights	Relationship Between Rights: Synergistic (Education and Food)	“School attendance goes up once you start feeding”
Economic and Social Right	Food	“feeding”
Outcomes	Realized Outcome	“feeding because the children really are hungry”
Relationships Between Rights	Relationship Between Rights: Synergistic (Education and Food)	“School attendance goes up once you start feeding”

This simple quote still includes several codes and sub-codes, and is one of the briefest examples suggesting how there is a synergistic relationship between education and food. As the coding indicates, the co-occurrence of these beneficial outcomes—decreased hunger and increased attendance—combined with showing that there is a relationship between these rights that is leading to those outcomes, indicates a mutually beneficial relationship.

### ***Example 3***

Here is an example that I coded as evidence of how housing, and specifically the land and foundation, are gatekeepers to utilities. I asked Dr. Dale McKinley whether what I had learned in Cape Town about people needing to have land or a house before they could receive utility services was true in Johannesburg and surrounding areas. He responded,

“For those who have no land, who have no housing and you do that, it makes sense. What you need to do is you need to establish a foundation first and then you draw in the possibilities of other services, as opposed to demanding everything without that pull.”  
(Dale McKinley)

I coded this as evidence of housing acting as a gatekeeper to receiving utilities.

Table 4.5 Example 3 Coding

Sensitizing Construct	Code(s) and Sub-code(s)	Evidence
Economic and Social Right	Housing	“housing”
Materiality	Natural Resource: Land/space	“no land” “establish a foundation first”
Relationships Between Rights	Relationship Between Rights: Gatekeeper (Housing and Utilities)	“What you need to do is you need to establish a foundation first and then you draw in the possibilities of other services, as opposed to demanding everything without that pull.”
Economic and Social Right	Electricity, Sanitation, and Water	“services”
Outcomes	Expected Outcome	“services” Context: question was specifically about whether housing is needed to get services.
Relationships Between Rights	Relationship Between Rights: Gatekeeper (Housing and Utilities)	“What you need to do is you need to establish a foundation first and then you draw in the possibilities of other services, as opposed to demanding everything without that pull.”
Actor	Public: People Without Formal Housing	“For those who have no land, who have no housing”
Goals	Goal: Get services	“services” Context: question was specifically about whether housing is needed to get services.
Tactics	Action: Get: Land	“you need to establish a foundation first”
	Interact: Pressure	“demanding everything”

While the exact phrasing and words used in this quote are not particularly explicit or clear, the coding for his quote was relatively simple. It was easy to code because it was a direct response to a question about whether people need to have land or a house before they can get utilities, and the answer was yes with a brief explanation of how. Nevertheless, some of the codes remain vague – for example, it is not clear who people would be demanding the utilities from, so the Pressure tactic code does not specify who would be pressured, though it is implied that this is an interaction and there is some ambiguous other actor involved. Dr. McKinley talked

about different utility providers elsewhere in the interview, and so those actors were coded in other portions of that interview.

#### **Example 4**

Here’s an example of a longer passage that is only about one right, but many different actors. Rudi Hillerman is a long-time civil servant with the KwaZulu-Natal Department of Cooperative Governance & Traditional Affairs, and he told me much about the lack of cooperation between different government bodies. Leading into this portion of the interview, Mr. Hillermann told me that the various government actors all want to take credit but have not improved how they deliver utilities and made a meaningful difference. He told me,

“So for instance, what is happening of late, and yes you can quote me, is that our political leaders at all levels are doing service delivery of services which they ought not to be delivering. So everybody wants to deliver water. Why? Because we all need water, obviously. Nobody focuses and says ‘Okay, so I’m Cooperative Governance and Traditional Affairs, so why should I be delivering water?’ It’s difficult. If there is a Department of Water Affairs, if there is a mandated service provider, the Water Service Authorities, why are we not building their capacities? Why are we not building the municipality’s capacity to ensure that they have- because cooperative governance is: establish the municipality, set up systems, monitor the implementation by them. But no. What do we do? We become the plumber or the department becomes the plumber. It’s not supposed to work that way.” (Rudi Hillerman)

For this passage, I coded each actor individually with their own actor sub-codes.

Table 4.6 Example 4 Coding

Sensitizing Construct	Code(s) and Sub-code(s)	Evidence
Economic and Social Right	Water	“water”
Materiality	When/How: Implementation	“set up systems, monitor the implementation”
Outcomes	Realized outcome	“deliver water”
Actor	Government: Cooperative Governance and Traditional Affairs	“Cooperative Governance and Traditional Affairs”
Goals	Goal: deliver water	“our political leaders at all levels are doing service delivery of services which they

		ought not to be delivering. So everybody wants to deliver water.”
Capacities	Capacity & Misallocated	“Nobody focuses and says ‘Okay, so I’m Cooperative Governance and Traditional Affairs, so why should I be delivering water?’” and “because cooperative governance is establish the municipality, set up systems, monitor the implementation by them, but no. What do we do? We become the plumber or the department becomes the plumber.”
Tactics	Provide: water	“deliver water” and “We become the plumber”
Actor	Government: Department of Water Affairs	“Department of Water Affairs”
Goals	Goal: deliver water	“our political leaders at all levels are doing service delivery of services which they ought not to be delivering. So everybody wants to deliver water.”
Capacity	Capacity Misallocated	“because cooperative governance is establish the municipality, set up systems, monitor the implementation by them, but no. What do we do? We become the plumber or the department becomes the plumber.”
Tactics	Provide: water	“deliver water” and “the department becomes the plumber”
Opportunities and Constraints	Constraint: Cooperative Governance not Cooperating	“If there is a Department of Water Affairs, if there is a mandated service provider, the Water Service Authorities, why are we not building their capacities?”
Actor	Government: Water Service Authorities	“Water Service Authorities”
Goals	Goal: deliver water	“our political leaders at all levels are doing service delivery of services which they ought not to be delivering. So everybody wants to deliver water.”
Capacities	Capacity & Not Enough	“if there is a mandated service provider, the Water Service Authorities, why are we not building their capacities?”
Opportunities and Constraints	Constraint: Cooperative Governance not Cooperating	“if there is a mandated service provider, the Water Service Authorities, why are we not building their capacities?”
Actor	Government: Municipality	“municipality”
Goals	Goal: deliver water	“our political leaders at all levels are doing service delivery of services which they

		ought not to be delivering. So everybody wants to deliver water.”
Capacities	Capacity & Not Enough	“Why are we not building the municipality’s capacity...”
Opportunities and Constraints	Constraint: Cooperative Governance not Cooperating	“Why are we not building the municipality’s capacity”

This example shows the level of nuance in the way I coded about actors operating in the same space. In this example, it is clear that Cooperative Governance is providing water even though its responsibility is to get the appropriate government actors involved, not provide the water itself. What is not clear in this quote is the nature of the relationship between the different actors. Thus, I did not code the interactions between the actors for this portion of the interview because it is unclear if they are interacting at all, or just operating in the same field. Instead, I simply coded this lack of cooperation that restricts the actors’ capacity as a constraint. Mr. Hillermann talked more about how government has the “most tsunami proof silos that you can imagine” and for those passages I certainly coded the relationship between these actors as siloed (Interview Rudi Hillerman). Within the context of the whole interview, we can see that the problem between these actors in this quote is that they are siloed. However, that inference happened later in the analysis process and did not shape how I coded this passage.

The key difference between this more conservative coding approach in example 4 and the coding in examples 1 and 2, in which I noted the additional context as evidence for my coding, was the *type* of context. In example 1, I used facts about the NSNP program that are general knowledge to inform my coding of the informant’s imprecise wording because there was only one large and commonly known government feeding program to which he could be referring. In example 2, I used context from the question that I had asked the informant immediately before his response to understand and code his response. In example 4, the context was provided later in

the interview, and thus I saved that coding for later in the interview rather than retro-actively applying it to what was said earlier in the interview.

### *Example 5*

In this final coding example, pro bono attorney Simon Delaney responded to my question about what role settlements play in ESR realization generally. He said:

“Our entire legal system is not geared toward settlement at all. It’s in a way inappropriate for our country, for a number of reasons. Government doesn’t have enough capacity to defend itself, its lawyers are not afraid, it’s about spending money on private lawyers...it’s crazy...when cases do get to court they... I don’t think the issues are framed in a way that is necessarily relevant for people, the way our legal system is designed is to focus on laws, and the sort of litigation on rights...rights over reality in a way...everyone is geared toward debating the wording of laws rather than what the policies are because that steps in the toes of the executive. So where is the check on the executive?” (Simon Delaney)

This example names many actors, but both “people” and “court” are truly treated as objects of the actions rather than actors, and so they were not coded in this passage as actors. Additionally, notice that the conversation of the “entire legal system” discusses these actions as interests, tactics, and constraints, and so the same passages reflect multiple aligned sensitizing constructs.

Table 4.7 Example 5 Coding

Sensitizing Construct	Code(s) and Sub-code(s)	Evidence
Actor	Legal System	“Our entire legal system”
Goals	Goal: Focus on legal wording, not policy impact	“I don’t think the issues are framed in a way that is necessary relevant for people, the way our legal system is designed is to focus on laws, and the sort of litigation on rights...rights over reality in a way” and “everyone is geared toward debating the wording of laws”
	Goal: Not question executive branch	“everyone is geared toward debating the wording of laws rather than what the policies are because that steps in the toes of the executive.”
Tactics	Action: Focus on legal wording, not policy impact	“I don’t think the issues are framed in a way that is necessary relevant for people, the way our legal system is

		designed is to focus on laws, and the sort of litigation on rights...rights over reality in a way” and “everyone is geared toward debating the wording of laws rather than what the policies”
	Action: Not question executive branch	“because that steps in the toes of the executive”
	Interact: Siloed: Not question executive branch	“everyone is geared toward debating the wording of laws rather than what the policies are because that steps in the toes of the executive. So where is the check on the executive?”
Opportunities and Constraints	Constraint: Focus on legal wording, not policy impact	“I don’t think the issues are framed in a way that is necessary relevant for people, the way our legal system is designed is to focus on laws, and the sort of litigation on rights...rights over reality in a way” and “everyone is geared toward debating the wording of laws”
	Constraint: Don’t check the executive branch	“everyone is geared toward debating the wording of laws rather than what the policies are because that steps in the toes of the executive. So where is the check on the executive?”
Actor	Government	“Government”
Goals	Goal: Self defense	“defend itself”
Capacities	Skilled Personnel & Not Enough	“Government doesn’t have enough capacity to defend itself”
	Money & Too Much	“it’s about spending money on private lawyers” Context: Simon discussed earlier in the interview that the government wasted money on private attorneys
Tactics	Interact: Hire	“it’s about spending money on private lawyers”
Actor	For-Profit: Law Firm: Attorneys	“its lawyers are not afraid, it’s about spending money on private lawyers”
Tactics	Action: Focus on legal wording	“our legal system is designed is to focus on laws, and the sort of litigation on rights” and “everyone is geared toward debating the wording of laws rather than what the policies”

Again, the breadth of Simon's quote led me to assign multiple overlapping codes that show the alignment of interests, tactics, and constraints for the legal system. This should not be interpreted as the sensitizing constructs being redundant, but instead this shows his understanding of this behavior as consistent and comprehensive. For much of my other data, these sensitizing constructs are not aligned and the coding does not overlap so tightly.

### **Analytical Consideration of Perceptions and Contradictions**

Whenever dealing with data that is reported, observed, or created by humans, there is room for error and for individual or shared perceptions to be presented as reality. When my perceptions in ethnographic observations did not line up with other accounts or perceptions, I probed further in conversations with informants while I was in the field. In my initial coding of the interviews and documents, I accepted some gaps between perceptions and reality, or perhaps multiple realities based on people's geographic or social locations, and did not immediately omit or ignore anything that informants held to be true. I then went back to the data and analyzed these discrepancies to determine whether or how to include this data in the dissertation, and handled these discrepancies in the following ways.

First, when there was a small, anomalous comment from someone who acknowledged doubt or a lack of knowledge about a specific topic, I omitted that data. One-off statements and perceptions that were unique to a particular interviewee are not included as pertinent to this research. Furthermore, rather than simply taking the research informants at their word when they recalled a story or fact, I researched these statistics or events to find the details and specifics that validate, clarify, or amend what I was told.

Second, many of the discrepancies were rooted in expectations for quality outcomes or actor excellence not being matched in reality, despite quantified or otherwise observed

improvements. These are situations in which high expectations are not being matched, and so the perception of reality is worse than the measured reality. These dashed expectations feel real to the actors and can result in real consequences, and thus these differences are explicitly acknowledged and reported as multiple perspectives on reality. These differences can be especially important for understanding the gap between promised and expected outcomes that are addressed explicitly in chapters 6 and 7.

Alternatively, actors were more likely to view their own progress in a more favorable light than outsiders did. This is likely because their expectations and sense of progress are filtered through their understanding of their own capacity and constraints, and in part due to simple self-preservation of ego. Once again, these discrepancies between charitable self-reporting of themselves and the more critical perspective of outsiders can have very real consequences for how actors operate and their relationships with other actors. Thus, I acknowledged and reported on these discrepancies between the assessments of progress from different types of actors.

Furthermore, sometimes interviewees provided different perspectives from others who were equally expert, at times they adamantly rejected well-established academic theories, and sometimes they even contradicted themselves. Thus, this dissertation includes some contradictory quotes and perspectives. Throughout this dissertation, I explicitly name these contradictions and address how some actors or types of actors have held on to ideas that conflict with facts or well-established theories. When I provide these conflicting or contradictory statements, my goal is not to advance an untruth, but rather to show what the common understandings or sentiments are among actors in the field and how that informs their work. Additionally, in a few cases in which the interviewees' perspectives contradict what experts

argue about the United States and other countries, I discuss how the informants' perspectives may be true in a South African context and provide opportunities for future research.

Overall, these differing perceptions and contradictions are only included and addressed when they are useful for explaining the field of ESR realization. Through the analysis process, I determined which statements or recollections were repeated by multiple interviewees and which of those reflected a shared understanding by actors within the field, and could be validated by my ethnographic observations or other data.

### **Analytical Limitations**

There are four main analytical limitations to this approach and the chapters that follow. First, my analytical framework was built on and developed through engagement with multiple interdisciplinary literatures, yet it does not include all possible literatures that could be relevant to the ESR realization field. Second, focusing the lens of this study on ESR realization as a field limits the depth of discussion of the actors' work and circumstances when these are not at least indirectly relevant to how they influence ESR. Thus, information that informants shared in the interviews that was important to their organization or their work but for which there was not any link to explain or understand ESR realization was not coded and is not analyzed or addressed in this dissertation. Third, the focus on South Africa—and specifically on ESR within South Africa that can be objectively measured—limited the study to a specific set of ESR, so this is not a comprehensive analysis of the realization patterns for all ESR nor ESR in all places. Fourth, I chose to look at the national field of ESR realization and not analyze regional differences. I did collect data about each ESR and each type of actor in multiple locations in South Africa, but I did not collect enough systematic information to draw conclusions about regional differences within the field. Nevertheless, I asked the informants about regional and local differences, and

then used the national quantitative outcome data and primary documents to check and substantiate what I learned in different places in South Africa. This check was important to help discern what phenomena could be anomalous to a specific location, and what could be empirically substantiated as occurring at multiple locations in the country and thus considered field-level phenomena.

### **Moving Towards an Explanatory Model of Rights Realization**

The sensitizing constructs and coding scheme that I have established in the preceding pages reflect the iterative process I went through to make sense of, code and analyze the qualitative data that I use in this dissertation. Thus far, I have used the unit of analysis to organize information about the coding scheme and these sensitizing constructs have been organized by the unit of analysis—showing that the field, the economic and social rights, and the actors are each a different unit of analysis, and that both the ESR and actors are within the field. Making sense of the ESR realization field involves looking at the field as the ultimate unit of analysis to understand the interactions happening within and between these different levels within the field.

After coding the data, I analyzed the patterns that emerged across both the ESR level and the actor level, and within and throughout the ESR realization field. I expected that most of the field-level variables would influence the ESR and actors within the field. Most of the field-level factors that are grounded in the literature in chapter 3 did seem to impact the field, yet they did not explain the differences in patterns for different economic and social rights. In chapter 5, I show that actor characteristics can only partially explain patterns of ESR realization.

During my fieldwork, I noticed that my informants often downplayed the role of the Constitution and legal system in impacting the realization of these rights. The coded data

reflected this reality of the evidence, that what helps and hinders ESR realization was not law and policies; informants often said that the Constitution and national policies were not effective at increasing rights realization. The reasons why the Constitution and legal system play such a small role in ESR realization in South Africa are the main focus of chapter 5, which also discusses how and why patterns of political mobilization cannot fully explain patterns of South African ESR realization. While the Constitution and legal system are field-level constructs that shape the actors' work and rights realization throughout the field, the reality is that the legal system is rarely a vehicle for ESR realization and even litigation plus political protest, while sometimes facilitating increased rights realization, also may fall short as an effective pathway. Indeed, my data shows that the materiality of rights, materiality of the rights, while not a field-level construct, may be an essential factor to consider in enhancing our understanding of and explanation for the rights-related work and outcomes happening throughout the ESR field. To preview, the materiality of rights is an antecedent variable that shapes the relationships among rights and rights outcomes throughout the ESR realization field. In the rest of the dissertation, I show that the materiality of the rights ends up being a more influential explanatory factor than the Constitution and legal system, because the material nature of the rights themselves also shapes legal factors and the actors' work, including their political work, throughout the field.

More specifically, the fundamental material nature of these rights and any enduring material requirements for their ongoing provision are inherent qualities. These rights' material considerations are more fixed than the various field-level variables, and thus the materiality of the rights impacts what happens within the field. Actors can acknowledge and work with these material constraints and opportunities to successfully increase ESR realization, or they can ignore these material constraints and opportunities at the peril of ESR realization. Moreover,

regardless of whether or how actors are interacting or simply operating in the same space, the inherent material requirements and qualities of the rights impact the relationships among the rights themselves. I explain gatekeeper relationships between rights in more depth in chapter 6, and synergies between rights in chapter 7.

## CHAPTER 5 THE LIMITS OF POLITICAL AND LEGAL MOBILIZATION FOR RIGHTS REALIZATION IN SOUTH AFRICA

The central perspectives on rights realization that I covered in chapter 3 suggest that ESR realization is shaped by the laws on the books, the actors who use laws as tools to promote social change, and the legal structures and mechanisms that can help or hinder how actors navigate the legal system. Altogether, these perspectives lead us to predict that we will find greater ESR realization to the extent that: 1) the letter of the law is more progressive; 2) there is more mobilization of law by diverse actors, and 3) there are more court decisions that set precedent supporting ESR realization. Looking to the South African context, this perspective is supported by the Treatment Action Campaign's (TAC) much celebrated activism, mobilization around the Constitutional right to health care, success in the Constitutional Court, and the subsequent HIV/AIDS medication rollout. TAC's success demonstrates that social movements in South Africa can mobilize progressive law on the books and, with the support of public interest rights advocacy organizations<sup>18</sup>, take the government to court to help ensure that economic and social rights are realized. Additionally—and consistent with Pedriana and Stryker (2004) and Stryker and Haglund's (2015) point that combining legal mobilization with political mobilization is likely to enhance rights realization—TAC combined litigation with political advocacy and social movement pressure because South African health rights activists recognized the limitations of litigation alone (Klug 2015a).

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<sup>18</sup> TAC was represented by the Legal Resources Centre, and was joined by The Children's Rights Centre in bringing the case. Additionally, there were three Amici Curiae: the Institute for Democracy in South Africa, Community Law Centre, and Cotlands Baby Sanctuary. See Epp 1998 for a discussion of the importance of a support structure for legal mobilization.

Yet during my fieldwork it quickly became clear that TAC's success at improving health and saving lives by improving access to HIV/AIDS medication was somewhat anomalous. Other celebrated examples of ESR legal success, like the Grootboom decision's affirmation of the right to housing, had not led to similar widespread improvements<sup>19</sup>. Dr. Vinodh Jaichand, then head of the University of Witwatersrand School of Law, agreed, "Little progress has been made on wide areas of socioeconomic rights, which by the way are arguably the most crucial of rights in South Africa because of the vast gap between the rich and the poor" (Interview Vinodh Jaichand). This is true even for rights like housing, which has been an arena for political protest and also has had substantial legal mobilization and several landmark Constitutional Court wins (see *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]; McDonald 2009).

For example, the Grootboom decision was a major success because it affirmed the right to adequate housing, and defined adequate housing as including electricity and sanitation, thus solidifying those ESR even though they are not in the constitution. Yet as chapter 6 will show, there are still millions of South Africans who do not have adequate housing, electricity, and sanitation, so the impact of the decision on increasing ESR realization has been limited. Since the Grootboom decision was not self-executing, this limited impact would be expected by socio-legal scholars (Rosenberg 1991). The Grootboom decision did create an opening for further litigation regarding the right to housing, however most of that litigation has been focused on stopping or preventing evictions rather than increasing or improving the provision of housing (Williams 2014). Perhaps the best example of how limited the Grootboom decision was in

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<sup>19</sup> The Grootboom decision also affirmed the right to not be evicted from any dwelling (formal or informal) without a court order, and the right to not be evicted has been frequently used as precedent in subsequent litigation.

practice is that Irene Grootboom, the namesake of that landmark case, died 8 years after that decision while still living in a shack (Joubert 2008). It seems that winning in the Constitutional Court was insufficient to realize her right to housing.

The clear inadequacy of housing provision in South Africa, in spite of the successful Grootboom litigation, led me to further examine what role legal mobilization and litigation play in answering my research question: *What drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa?* In this chapter, I contend that patterns of legal mobilization in South Africa are consistent with much prior socio-legal research while also suggesting that litigation is less important to ESR realization in South Africa than we might expect, given the voluminous prior literature exploring law as a pathway to realizing economic and social rights. This chapter's argument validates Haglund and Stryker's (2015) point that we must, as well, look at non-legal mechanisms and pathways to ESR realization, while also underscoring that mobilization of law is neither necessary nor sufficient for rights realization.

Indeed, law and legal mobilization are particularly relevant to underscoring Research Puzzle 1 about housing and Research Puzzle 3 about food. That is, there has been substantial activism, including legal mobilization, around realizing the right to housing and significant litigation that affirms the right to housing. Yet formal housing progress has been incredibly slow, and a larger percent of people are in shacks now than at the end of apartheid. In contrast, few South Africans are even aware that they have a right to food and there has not been any litigation pertaining to the right to food (see chapter 7 for more details; conversation with participants at Feminist Table conference; Interview Andrew Bennie; Interview Dale McKinley; Interview

Richard Pithouse; Interview Vinodh Jaichand; Interview Sasha Stevenson<sup>20</sup>). Yet hunger has decreased (GHS 2009-2014).

In this chapter, I develop further the point that patterns of political protest in South Africa cannot fully explain patterns of rights realization and then argue that neither can rights realization in South Africa be reduced to a story about law and legal mobilization. First, there is less mobilization of law than the scholarly emphasis on legal pathways to ESR realization might suggest. Some of this has to do with individual perceptions, and variable rights consciousness across ESR may help account for why there is an absence of litigation for food rights relative to other ESRs. But consistent with much research taking a socio-legal perspective (see chapter 3), the most important reason for limits on litigation can be attributed to limitations in the “support structure” for litigation (see also Epp 1998; Burstein 1991; Pedriana and Stryker 2017; Gloppen 2015).

Second, when ESR litigation does occur, rights bearers seeking to vindicate their rights face considerable challenges to winning in court, notwithstanding the “on the books” strength of ESR in the South African Constitution. Third, even when rights bearers win in court, those victories do not necessarily translate into improved rights realization. Indeed “weak” court orders, coupled with what appears to be a lack of government compliance, typically result in limited implementation and enforcement of judicial decisions. Despite all this, I show that in

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<sup>20</sup> Feminist Table was a three-day workshop that brought together women who are activists, bakery co-op employees, farmers, nonprofit employees, and academics, to talk about issues around food. Andrew Bennie is an organizer with Co-operative and Policy Alternative Centre (COPAC) whose work involved promoting food sovereignty and creating co-ops. Dr. Dale McKinley is an activist academic who has been involved in several different social movements and co-founded the Anti-Privatization Forum. Dr. Richard Pithouse is an activist academic who has been most heavily involved with the shackdwellers movement Abahlali baseMjondolo. Dr. Vinodh Jaichand was the head of the Law Department at the University of Witwatersrand. Sasha Stevenson is an attorney at Section 27 and as of August 2014 was the only attorney at a nonprofit or public interest legal center in South Africa doing work in the area of the right to food, though her primary focus was the right to health care.

some situations, litigation and court victories can and do promote ESR realization. Finally, I discuss how law, even in the absence of court victories or adequate implementation of such victories, can facilitate ESR realization. I also suggest that the materiality of rights shapes the extent to which court victories are likely to lead to increased ESR realization and perhaps also the extent to which law is mobilized as a mechanism for rights realization. Because patterns of legal mobilization and court victories cannot fully explain patterns of rights realization in South Africa, I end this chapter by returning to the concept of materiality in preparation for chapters 6 and 7. These subsequent chapters provide detailed investigation of how the materiality of rights conditions inter-relationships among diverse rights in broader fields of rights realization and how this in turn provides substantial explanation for the patterns of rights realization across diverse economic and social rights in South Africa.

### **Political Activism in South Africa**

Most people I interviewed told me that civil society in South Africa is necessary for progress pertaining to economic and social rights realization, because the South African government must be held accountable for failures of rights realization. For example, Dr. John Reynolds's current work is research informing policy development, mostly about water resource management, and he previously spent many years doing applied research and policy consulting around development planning and water services for government agencies. Dr. Reynolds said that people working in the government need to be held accountable, but that they are typically insulated (Interview John Reynolds). Or as attorney Simon Delaney put it, "the building of social justice movements is a manifestation of this disjunction, this disconnect of government and people. If government was [sic] a place we could go to enforce our rights, then there is no reason for social justice movements. Things would just work, which clearly they do not" (Interview

Simon Delaney). Dr. Dale McKinley explained the situation more boldly, “If we don't cause shit, the government doesn't pay attention” (Interview Dale McKinley). In short, there is hope that public pressure and activism can promote change, even though government accountability in South Africa remains limited.

Large scale protests have the potential to escalate issues beyond the local level, at which government officials have limited power to meet activists’ demands (Interview John Reynolds). When local officials are not responsive or are unable to help, protests are a way to get attention from a higher level of government. Dr. Carin Runciman is Senior Researcher at the University of Johannesburg and her research focuses on the politics of protest in post-apartheid South Africa. She me, “I think that's a lot of what protests are about, is trying to get to that higher level of government and trying to communicate to outside their little area of what's going on” (Interview Carin Runciman). Protests not only go outside of institutional pathways, they create the possibility of gaining attention from officials with more power than the previous targets of the civic engagement. Indeed, protests are helpful in garnering attention from the national government. At the same time—as is highlighted in Puzzle 1 which points out the very limited progress in housing despite substantial protest activity—protest activity alone is not sufficient for rights realization.

Even with respect to housing, levels of activism vary widely in different regions, and in different shack settlements and communities. Activism happens more often in urban areas, in part because these have more of a history of political activity (Interview Boyce Tom<sup>21</sup>). Additionally, the history of different shack settlements and their residents influences their politicization. Levels of political consciousness and advocacy vary in different shack settlements

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<sup>21</sup> Boyce Tom is an applied researcher at the nonprofit Trust for Community Outreach and Education.

(Interview Carin Runciman). Indeed, all the activists I interviewed who are living in shack settlements have a long history of activism or were encouraged by others in their settlement who have been involved in activism for many years (Interview Anonymous Marikana Land Occupation; Interview Tumi Ramahlele; Interview Alfred “General” Moyo; Interview Lindelani Figlan).

Despite South Africa’s deserved reputation as “the protest capital of the world,” resource limitations for poor activists in South Africa are a logistical barrier to sustained participation in social movement organizations. The lack of resources dramatically limits sustained and highly coordinated social movement activism, and instead we see more diffuse protest activity in South Africa. Both social movement and organizational scholars have well established that the wellbeing of social movements and other organizations is impacted by their available resources, including money, facilities, information and human resources (McCarthy and Zald 1977; Jenkins 1983; Cress and Snow 1996; Edwards and McCarthy 2004). In South Africa, limitations include an absence of capacity at a basic logistical level.

For example, Dale McKinley, one of the co-founders of the now defunct Anti-Privatization Forum (APF), explained that activists from Europe and America do not understand the basic resources and infrastructure required just to get people to the same place to have a meeting:

It is a totally different kind of practical realm that you operate in which makes it much more difficult and takes a lot longer to do the kinds of things that other middle class and other people in developed countries take for granted. Therefore, they can concentrate on very specific practical things, they don't have to worry about all these other things; whereas here I would say that 80% of the time and energy is spent on simply getting the basics together and that often times doesn't leave a great deal of time for the actual work that needs to be done; and you are dealing with a constituency which itself has no material capacity to support that process. We are not even talking about the funding involved, which is another story and how that fundamentally affects and shapes what happens as well. (Interview with Dale McKinley)

Despite the barriers to sustained and organized social movement activism, and while chapter 2 detailed a lull in activism immediately following the end of apartheid, service delivery protests have become increasingly common since 2004, with more than 2 million South Africans protesting each year since 2008 (Plaut 2012). Dr. Carin Runciman is a Senior Researcher at the University of Johannesburg, and her research focuses on the politics of protest in post-apartheid South Africa. She explained that the wave of social movements that appeared in the late 1990s and early 2000s, mostly “died out with big community organizations. So people have been through these different experiences and I think there is a tendency now to even reject that formal mobilization. So they’re rejecting organization” (Interview Carin Runciman). This has shifted the focus to more community-based activism, which has increased as many of the social movement organizations have died out. While the move away from social movement organizations is based on very real concerns about cooptation and corruption, the result is that even seasoned activists are now operating without the shared resources and knowledge that social movement organizations can provide (Interview Carin Runciman).

Thus, while political activism remains, it now is more diffuse. Along with the decline in social movement organizational capacity, political activists are relying on somewhat different tactics than before. According to Dr. Runciman and Dr. McKinley, as of 2014, many of the protests were being led by small and relatively informal community-based organizations with a small number of devoted leaders who were mobilizing aggrieved members of their community but did not rely on substantial commitments beyond the actual protest events (Interview Dale McKinley; Interview Carin Runciman). As well, such protests often have diffuse goals, asking for improved “service delivery” rather than focusing on specific economic and social rights. Moving away from more formalized and large-scale organizations shapes the ways activists

mobilize, including limiting options for legal mobilization; litigation requires sustained organizational management, including of strategic planning and follow through, funding and commitment.

Consistent with these trends, researcher Bryce Tom noted that despite the prevalence of protests in South Africa, activists are not always effective at claiming rights (Interview Boyce Tom). Activism on the ground around utilities could be better coordinated, and much of the language on the ground is removed from how government is approaching those problems (Interview Kate Tissington). Though there is issue alignment, activists and government officials or civil servants rarely come together to forge solutions (Interview Kate Tissington).

The constraints on, and limited effectiveness of, political activism help answer Puzzle 1, highlighting the lack of housing progress despite substantial activism for housing. Chapter 6 will address this puzzle further to show that the specific materiality of housing—and the utility provision for which housing is a gatekeeper—provides important insight into why formal housing progress lags despite housing activism. More generally, although political activism has been neither necessary nor sufficient for rights realization in South Africa, such activity still is relevant and can help. As researcher Kate Tissington made clear, pathways to rights realization frequently are not straightforward. She noted that “often the levers to change things are not where you think they are.” That is, effective activism is not just a matter of having a well-thought-out strategy. Change doesn’t happen in a fully rational way, but is fraught with political contingencies; activists must be able to sustain their activity until the timing becomes right and there is a political opening (Interview with Kate Tissington). This belief is aligned with insights from political opportunity theory: the same social movement actions at different points in time may yield different results based on differences in the political environment (see Jenkins, Jacobs,

and Agnone 2016; Kitschelt 1986; Kriesi et al. 1992; Kurzman 2011; McAdam 1982; McAdam and Paulsen 1993; McCammon et al. 2001; Meyer 2004; Meyer and Minkoff 2004).

Nevertheless, optimism that keeping the pressure on can create change when the right political opportunities are present is tempered by limits on capacity for legal, as well as political, mobilization.

### **Legal Mobilization in South Africa**

As we already have seen, South Africa exemplifies the gaps predicted by socio-legal scholars between rights promised “on the books,” and rights realized in practice. As socio-legal scholars also recognize, however, legal mobilization in the face of such gaps is the exception rather than the rule, especially when rights bearers are economically or socially disadvantaged or marginalized (Berrey, Nelson, and Nielsen 2017; Felstiner, Abel, and Sarat 1981). In South Africa, different economic and social rights have been subject to different levels of legal mobilization. For example, as Chapters 6 and 7 will show, litigation of the right to food has been non-existent, while there has been substantial litigation for the right to water. These differences in litigation exist even though the rights to food and water are declared together in Section 27(1)(b) of the South African Constitution and Section 27(b)(2) requires the state to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights” (Constitution of the Republic of South Africa 1996). Additionally, even though no right to other utilities such as electricity is provided in the South African Constitution, electricity rights have been litigated as well (see Chapter 6). Clearly, provision of rights on the books is neither sufficient nor necessary to litigation.

Beyond the variability in legal mobilization across ESR in South Africa,<sup>22</sup> there are multiple reasons for an absence of legal mobilization. In South Africa, these include lack of awareness that the right exists, responding to rights awareness by exercising patience and—quite sensibly given the financial cost and time required for litigation—viewing litigation as a last resort when all other options have been exhausted. If we extend the concept of legal mobilization from its usual referent—bringing legal claims to court—to trying to navigate government bureaucracy as a way of holding the South African government accountable for making good on its constitutional responsibilities for rights provision, we find this is no easier than bringing rights claims to court.

### ***Rights Consciousness***

The majority of protests in South Africa are about service delivery generally, and more specifically about the economic and social rights to housing and utilities. Most people are aware that the government has promised housing and utilities to them, even if they do not explicitly refer to them as rights (Interview Vinodh Jaichand; Interview Richard Pithouse). However, as will be further developed in chapter 7, many South Africans are not aware that there is a constitutionally guaranteed right to food (conversation with participants at Feminist Table conference; Interview Andrew Bennie; Interview Dale McKinley; Interview Richard Pithouse; Interview Vinodh Jaichand; Interview Sasha Stevenson). This may be one reason for the absence of food rights litigation.

Even when there is widespread awareness of the legal promise of social and economic rights, paradoxically, this can backfire to inhibit legal mobilization. Knowledge of the legal

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<sup>22</sup>Below, I suggest that, in addition to factors that socio-legal scholars would highlight as accounting for variability in legal mobilization across different rights areas in South Africa, the materiality of rights also partially shapes this variability.

promise can lead people to trust that the government will provide; they may presume they need to be patient rather than protest or apply legal pressure. This ties into what we learned in chapter 2, that civil society in South Africa became far less active for several years after apartheid ended, while people patiently waited for the new ANC government to deliver on its promises (Ballard et al. 2006; Gibson 2007).

Especially in the late 1990s and early 2000s, many South Africans assumed that having a progressive Constitution and the ANC in power were sufficient to bring about rights realization (Interview Rudi Hillerman). Rudi Hillerman, long-time civil servant and senior manager at the KwaZulu-Natal Department of Co-operative Governance & Traditional Affairs, shared an example that demonstrates this belief. He told me that years ago, after apartheid, he was shown the initial plans for an art installation that led people through African Savannah vegetation, “so the idea was to depict Africa from its beginning” along a path, with ups and downs, depicting colonization and South African history (Interview Rudi Hillerman). “Then things would gradually go up... and then the top of it all was the achievements of the '96 Constitution” with closed walls (Interview Rudi Hillerman). Rudi continued, “I said but guys, you know what, the Constitution is only now the beginning of the next phase of the trip. So you can't close it off, you've actually got to keep it open, because it is the beginning of the next phase” (Interview Rudi Hillerman). While this example is purely symbolic, it demonstrates how people initially conceptualized the adoption of the 1996 Constitution.

Even now, the legal promise and limited news reporting on the realities of rights realization continue to deter some activism, probably including some potential legal mobilization, because people are patient, hopeful, and trust the ANC. The result is that in communities that are new to activism, there is often a slow build-up to mobilizing. For the most

part, poor people are immensely patient when waiting for housing, water, and other utilities (Interview Vinodh Jaichand). Dr. Dale McKinley explained, “We have this institutional framework in all of the legislation and it all looks very good on paper” (Interview Dale McKinley). This makes people hopeful and inspires patience. Activism about housing and utilities often happens after years or even decades of waiting and then trying other, institutional ways of seeking services (Interview Dale McKinley; Interview Alfred “General” Moyo). As longtime activist Alfred ‘General’ Moyo told me, some communities think that simply occupying the land is enough, but “they have to put pressure on the municipality. You find some establishments [have been living in shacks on the land for] twenty years’ time, but still have no services” because they haven’t put pressure on their local officials (Interview Alfred “General” Moyo).

### ***Litigation as a Last Resort and/or Because Government Mobilizes the Law***

Consistent with the time and resource-intensive nature of litigation (Stryker 2007), South Africans typically will use litigation as a last resort, when all other options have been exhausted. Gauri and Brinks (2008) have also confirmed that ESR litigation in South Africa is typically claiming economic and social rights in a defensive manner. Of the litigation that does occur in the context of rights advocacy, some results because the South African government instigates recourse to the legal system. The housing arena exemplifies the latter because of government action to evict squatters (whether with or without the legally required court order), remove shack settlements, and arrest protesters.

According to activist and academic Dr. Dale McKinley, the situation typically is that people and communities first try—and are failed by—institutionalized procedures (Interview Dale McKinley). Dr. McKinley continued, “Precisely because all of the institutional avenues

have often been tried and have failed, and the only option left for those communities is to take to the streets to make trouble” (Interview Dale McKinley). Only after protesting is unsuccessful will people consider legal action (Interview Dale McKinley). This means that making it down this pathway to a point of litigating is extremely rare. Additionally, as the co-founder of an activist organization told me, even some activist organizations avoid litigation because it “locks you into adversarial relationships” (Interview Doron Isaacs). For individuals, communities, and organizations then, going to court is typically avoided at all costs and only used when all other options have not worked.

Indeed, often when there is political conflict in rights arenas such as housing, it is the South African government that chooses to take individuals or communities to court. In these situations, as Dr. McKinley noted, “often times it’s a default choice because government says ‘we’ll take this to court’. They [government] don’t care because they just hire lawyers and they can string it out” (Interview Dale McKinley). When the government arrests people, evicts them, or stops providing utilities, the only way to deal with the situation to avoid the costly loss is to invoke the law themselves.

As Dr. Richard Pithouse said, “The fact is you cannot avoid it, it comes to you. If someone gets arrested you are now in the legal system, you can’t say, ‘oh well, we don’t care about the legal system’ because it cares about you” (Interview Richard Pithouse). As Kate Tissington at SERI told me, often the situation is put upon people in terms of being evicted or having utilities shut off, it is not that they’re choosing to have the situation that merits legal action (Interview Kate Tissington). Pithouse explained that in the case of evictions, going to court is the only good option. He continued, “If you are being evicted, are you just going to resist that eviction directly? I mean, you can try that, but... [if you resist] ultimately the state will deal

with you with violence. Getting it on to the legal terrain slows it down, gives you time to organize, to make alliances. It takes it off the terrain of violence” (Interview Richard Pithouse). In many cases, then, it is not that citizens are choosing to take their grievances to court, but that litigating is the only option other than simply giving up resisting and being subjected to violence. In this situation, members of the public who are litigating are not taking legal action to *gain* something, but to prevent a loss. This legal action is reactive, not proactive. I discuss such uses of law to prevent slippage, rather than gain new rights, further in the subsection *The Law Remains Useful for Rights Realization*, which underscores how, even when legal mobilization remains fairly limited, law can be helpful in ESR realization.

### ***Navigating South African Government Bureaucracy***

Finally, trying to hold the government accountable for ESR provision by navigating the South African government bureaucracy is just as difficult as going to court, and again especially so if one is economically disadvantaged. The South African government as a whole is widely regarded as having an ineffective bureaucracy (Natrass and Seekings 2005; Smit 2008; Chipkin 2012). Elaine ‘Ela’ Gandhi was a member of Parliament from 1994 through 2004, is a long-time activist, and is the granddaughter of the famous Mahatma Gandhi. Ela Gandhi told me that both government and service providers are part of a poorly organized and dysfunctional bureaucracy (Interview Elaine Gandhi). Several other informants shared this view, with a legal professor describing the system as “wholly inept,” an activist academic describing it as a “maze,” and a nonprofit director calling it “difficult” (Interview Vinodh Jaichand; Interview Dale McKinley; Interview Kathryn Hoeflich). Two interviewees who currently or previously worked in government positions shared this sentiment that government bureaucracies are challenging for

both civil servants and especially the public to navigate (Interview Rudi Hillerman; Interview Anonymous 6/30/2014).<sup>23</sup>

Additionally, even people who have learned to navigate their local municipal bureaucracy must continue to re-learn how to navigate it, because the dynamics are frequently changing. Applied researcher Boyce Tom at the nonprofit Trust for Community Outreach and Education (TCOE) explained that the nature of local politics is such that the political landscape is constantly changing at the municipal level (Interview Boyce Tom). Both Tom and independent academic and activist Dr. Dale McKinley said that these constant changes in interests, capacity, and opportunities and constraints make it difficult for people in the community to navigate the system or to pressure the right people within the system to have their rights realized (Interview Boyce Tom; Interview Dale McKinley). These changes in local politics affect how service delivery happens and ultimately how economic and social rights are realized (Interview Dale McKinley).<sup>24</sup>

### **Challenges within Litigation**

When people do seek to achieve ESR realization through legal mobilization in South Africa, they are faced with many barriers and minimal support, such that litigation may not lead to enhanced rights realization. Self-representation is a rarely used option any of the higher courts

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<sup>23</sup> Another challenge for South Africans seeking accountability for rights realization is the government's use of private contractors in housing and utility provision (interview Tristan Taylor; Interview Dale McKinley; Interview Trevor Ngwane; Interview Alex Jongens). This will be discussed further in chapter 6.

<sup>24</sup> The people who lack access to ESR are typically poor South Africans who rely on the government and, frequently, government contractors for the implementation and maintenance of the rights in question. While wealthy South Africans may have grievances about the government provision of services, their grievances are likely to be about maintenance and quality—such as their water supply or rolling blackouts due to the limited electricity supply—and not about whether these rights are implemented in the first place. Additionally, there are many service areas where elites do not rely on the same services as the rest of the public because wealthy people will pay for their own housing and send their children to private schools. The result is that there are few situations where there is elite pressure for ESR realization in South Africa, and when these wealthy citizens do apply pressure, it is typically focused on improving circumstances for their household or immediate community (which, due to the legacy of housing segregation, is likely also to be wealthy) and will not improve conditions more generally.

in South Africa, so to litigate about ESR the applicant generally needs a lawyer, and preferably a lawyer who is free or very affordable (see Berrey et al. 2017; Epp 1998 for the importance of lawyers). To have a chance of winning in court, the applicant needs a good lawyer. For example, in one high court case in which the applicants were shackdwellers seeking the rights to adequate housing and utilities, the judge agreed that they “[were] affected by the lack of basic resources and that their human rights [were] also infringed” (Concerned Citizen of Tswaing/SIBU and Another v Local Municipality of Tswaing and Others (1498/09) [2009] ZANWHC 17). Yet the judge also dismissed the case due to non-joinder because the applicants’ attorney failed to include the proper respondents and because the filing did not make a proper case consistent with formal procedural requirements (Concerned Citizen of Tswaing/SIBU and Another v Local Municipality of Tswaing and Others (1498/09) [2009] ZANWHC 17).

Almost all ESR realization cases are civil cases, but there are limited options to get free legal help for them. Overall, South Africa has a minimal public interest bar with insufficient capacity to advocate for rights bearers (Berger 2008; Gauri and Brinks 2008). South Africa does not provide free legal representation for civil litigation. As Attorney Simon Delaney explained, “After the adoption of the new constitution, there was a great need for state enforced access to justice and we got half of that. We got access to criminal justice through the legal aid public defender system, but there was obviously no provision for access to civil justice” (Interview Simon Delaney).

Without the government support that is critical for collective legal mobilization (see Gauri and Brinks 2008; Klug 2015a; Pedriana and Stryker 2017), the remaining affordable options are nonprofit legal centers or private attorneys who are willing to work pro bono. Yet in South Africa, “pro bono services, university legal clinics, and clinically oriented NGOs are still

comparatively underdeveloped” (Berger 2008). The third, least accessible option is finding a way to pay for a private attorney.

***Limitations in the South African Support Structure for ESR realization***

The South African government does not fund ESR litigation by those seeking to vindicate their constitutional rights. Yet, consistent with research that emphasizes the importance of support structures for litigation (e.g., Epp 1998), there are some organizations that enable ESR litigation, though they do not create a particularly extensive support structure. Most importantly perhaps, there are a handful of public interest legal nonprofits in South Africa that undertake litigation to increase and improve economic and social rights realization, either by providing representation or as amicus curie (*Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011]; *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]; *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* (CCT8/02) [2002]; *Mkontwana v Nelson Mandela Metropolitan Municipality* (CCT 57/03) *Bissett and Others v Buffalo Municipality and Others* (CCT 01/04) *Transfer Rights Action Campaign and Others v MEC for Local Government and Housing Gauteng and Others* (CCT 61/03) [2004]; *Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* (CCT 23/12) [2012]). However, the South African legal profession mostly consists of private lawyers who charge fees for their services and there is not a well-developed tradition of pro-bono lawyering in this private sector.

Consistent with literature on “cause-lawyering” more generally, most South African legal nonprofits take cases they presume can have a big impact by creating important legal precedent

vindicating ESR (Interview Jared Sacks). On the one hand, this may well produce important legal precedents (Chesler, Kalmuss and Sanders 1988; Scheingold 2004; Epp 1998). On the other hand, this also means that many individuals who do not have novel rights claims lack the needed support to formulate and fund their grievances about inadequate or non-existent service provision by government or government contractors rights claims. As Dr. Richard Pithouse put it, “[t]hose types of [legal nonprofit] organizations are trying to improve the law rather than support people in struggle, and it means people often don't have legal support when they really need it” (Interview Richard Pithouse). Thus for example, legal nonprofits do not take individual eviction cases, so people who have been evicted have to pay for their own lawyer (Interview Jared Sacks).

Each nonprofit that provides legal support has its own ESR focus areas, based on the nonprofit or sponsoring organization’s mission. There are just a handful of organizations in the country, at most, that will provide representation for each of the different ESR. For example, the Legal Resources Centre (LRC) is mostly focused on cases that set precedent for rural land issues, farmworkers, the environment, and immigrants (Interview Jared Sacks; Interview Kate Tissington). The Center for Applied Legal Studies (CALS) at the University of Witwatersrand does lots of gender and violence work, and has also increasingly focused on water and sanitation (Interview Kate Tissington, CALS 2015). The public interest law center Section 27 has a somewhat broader scope because it advocates for many rights that are in Section 27 of the South African Constitution’s Bill of Rights – mostly health care and education, and a budding focus on food<sup>25</sup> (Section 27 2019). Similarly, the Socio-Economic Rights Institute of South Africa (SERI)

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<sup>25</sup> In 2014, Attorney Sasha Stevenson at Section 27 told me that the nonprofit had just begun to include the right to food as a focus area. Stevenson was primarily involved in the right to health care, and was the one attorney

has a broader scope by design and supports individuals, communities, and social movements seeking to realize rights to “housing, water, healthcare services, fair labour practices, electricity, sanitation, a clean and healthy environment, education and various children’s rights” (SERI 2019). SERI frequently serves collective legal mobilization for social movements that are trying to get the realization of socioeconomic rights (Interview Kate Tissington). SERI also has a research branch, and a registered law clinic that takes individual cases, and the law clinic and research branch work together to determine strategy for both research and litigation (Interview Kate Tissington).<sup>26</sup>

More generally, when legal nonprofits and centers partner with social movements to provide representation for potentially high impact strategic litigation, tensions can arise between the legal professionals engaged in formulating litigation strategy and social movement activists and their leadership. When I talked with longtime activist Alfred (General) Moyo about movement activists’ toolkit to promote progressive social and economic change, he first noted: “We will fight them in court, we will fight them in the street, we will fight them in the Boardroom.” (Interview with Alfred Moyo).

Yet Moyo elaborated to explain that activists’ relationships with nonprofit legal advocacy organizations are complicated and often become strained. In particular, there are concerns about cooptation. This is especially so when the grassroots activists and the legal nonprofits fail to share a common mission or when the legal professionals insist on directing the activists rather

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who was also responsible for their work on the right to food. She confirmed that there had not yet been any litigation in South Africa around the right to food (Interview Sasha Stevenson).

<sup>26</sup> Access to legal centers, whether for collective or individual legal mobilization, is highly unequal. As interviewees Kate Tissington (a Senior Researcher at SERI) as well as interviewees Simon Delaney, Vinodi Jaichard and Sasha Stevenen (insert organizational affiliation and position) all confirmed, many legal centers are in the cities and affiliated with universities, and are focused on high impact litigation. All these factors lead to inequality in access to legal representation for ESR claims.

than simply partnering with them to provide support. As activist academic Dr. Richard Pithouse, who has written extensively on the shack dwellers' social movement discussed further in Chapter 6, noted, lawyers who insist on monopolizing social movement strategizing are particularly problematic for grassroots activists. He stated, "If social movements or community organizations are going to endure, they need sustained legal support that crucially is willing to take instruction from people who are poor and black."

SERI represents an exception among these public interest legal nonprofits: its mission and strategy include working with social movements and individuals. SERI supports grassroots activists by providing tools for them to engage successfully with government, including but not restricted to using litigation (Interview with Kate Tissington; Interview with Alfred "General" Moyo; Interview with Richard Pithouse). Indeed, activist Moyo told me he recommended SERI highly because "they have never turned their back on any community struggles. Once they take your case, you know you are in safe hands" (Interview Alfred 'General' Moyo). SERI is also exceptional in that it will take cases even when these do not have potential to make novel, high-impact precedent, which is a requirement for most of the other public interest legal nonprofits to take a case (Interview Jared Sacks; Interview Richard Pithouse).<sup>27</sup>

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<sup>27</sup> SERI's support of social movements has been seen in the organization's willingness to take on criminal cases to defend social movements' protest rights. Bridging between the civil and the criminal is important because they are interconnected in the struggle for ESR realization. Attorney Simon Delaney explained, "[T]here is a link between that public defender system and civil justice, and I see it in the work that I do around the right to protest, very much. So, people get arrested for protesting at certain time, and when they....so you can notify that you want to protest, they get denied, they march anyway; and then they get arrested for criminal charges. Then they will get a [free criminal defense] lawyer for that, they won't get a [free civil defense] lawyer for the early problem of being banned from marching" (Interview Simon Delaney). SERI decided to expand who they served so that they could address both the underlying problem and the criminal charges. Through working with Abahlali and other activist organizations, SERI realized that there is state oppression of activists and then started to do more criminal justice work because activists were being arrested (interview Kate Tissington). In short, whereas originally SERI was focused on rights realization, the organization has moved to defend the right to protest because of the circumstances of activists with whom the organization was working (interview Kate Tissington). Because the likelihood that the criminal protest cases go to trial is high, and these cases require substantial resources, SERI accepts only criminal

With respect to limits on the extent of litigation, due to the minimal presence of other elements that would enhance the support structure for ESR-related litigation, South Africa lacks a strong tradition of pro-bono work (Interview Simon Delaney; Interview Vinodh Jaichand; Latham & Watkins LLP 2016; PILnet 2010). I interviewed Simon Delaney, a South African attorney who specializes in pro bono work, previously worked as the dedicated pro bono attorney for two major South African law firms, and was former director of ProBono.org. Delaney, who noted there was a major lack of pro-bono infrastructure in South Africa, said, “Basically, and I am only half joking here, South African clients can’t seem to find a pro bono attorney and in the U.S., pro bono attorneys can’t seem to find clients” (Interview Simon Delaney).

The pro bono requirement in South Africa is small, just 24 hours a year, and those hours can be aggregated within the firm (Interview Simon Delaney; Interview Vinodh Jaichand).

Simon Delaney opined:

I’m not a fan of aggregation, I mean, I was the pro bono attorney doing the hours for a hundred other lawyers, and the point is that pro bono attorneys are never going to make serious advances into the problem if there is [sic] only a few them doing it. If all the 20,000 [South African] attorneys actually [did] pro bono work, then there may be some difference. I think there would also be a difference in attitude. (Interview Simon Delaney.)

The implication of Delay’s remarks is that if all South African lawyers were required to do the pro bono work themselves and for more hours, a culture of pro bono work would be more likely to materialize.

The fact is that most attorneys are simply not exposed to pro bono work; they claim they don’t get it or they don’t have time for the cases....[so] “I think the bigger problem is the attitude of the attorneys. Attorneys will always find excuses to find reasons not to do pro bono work or find ways to get around and one of those ways is aggregation (Interview Simon Delaney.)

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cases that are for activists involved with movements with whom SERI already is partnered and only when the criminal charges are related to protest activism (interview Kate Tissington).

Even if there were a much larger number of attorneys who did pro-bono work and even if the requirements for pro-bono work for “for fee” attorneys and law firms were increased, there would be barriers to pro-bono ESR litigation. Lawyers are precluded from taking cases pro-bono that create conflicts of interest with their paid work, and for lawyers working in large law firms, potential conflicts of interest are ubiquitous (Interview Simon Delaney; Interview Dale McKinley). As well, it is hard for many potential clients to access pro-bono attorneys because of the location of the mostly urban offices out of which those attorneys work (Interview Simon Delaney) In sum, difficulties accessing pro-bono representation limit the extent of ESR-related litigation in South Africa.

For those who do not secure representation from a legal nonprofit, finding a private attorney—pro bono or not—is difficult. Even though there are some firms or individual attorneys who would be happy to represent clients who have been evicted or denied access to utilities, potential clients may well not know where to find attorneys who will take their case<sup>28</sup> (Interview Simon Delaney). This is true both in terms of getting contact information for a lawyer, and getting to a physical location where they can find one. Although there are some exceptions, generally law offices are in wealthy, urban areas (Interview Simon Delaney).

Additionally, it can be challenging to secure an attorney who is willing to bring a case against the government. This is challenging because many law firms are retained by the city or municipality, and local government will drop the firms if they take any cases against the

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<sup>28</sup> In South Africa it is technically possible for litigants to represent themselves in court (called “litigant in person” in South Africa and “pro se” in the US). However, I did not find any court decisions where litigants attempted to represent themselves in matters of ESR realization. South African precedent makes it clear that litigants in person are still held to Rules of Court and it is well documented that litigants in person in South Africa typically lose (Kaersvang 2008; Legal Aid Board v S and Others (363/09) [2010]; Xinwa and Others v Volkswagen of South Africa (Pty) Ltd (CCT3/03) [2003]).

government (Interview Jared Sacks). While this is not technically a conflict of interest, and it is common for firms in the US and other places to take cases both for and against government entities, this practice is widespread and has a chilling effect on firms that may otherwise be willing to take cases to represent poor people (Dugard and Tissington 2009; Interview Vinodh Jaichand). One well known example of this is that in 2009, a group of backyard shack dwellers who were members of the social movement Abahlali baseMjondolo took their case against the City of Cape Town to Western Cape High Court (Dugard and Tissington 2009; Majavu 2009). The applicants were represented, at a substantially reduced rate, by the law firm Smith Tabata Buchanan Boyes - the largest property law firm in South Africa, which had several ongoing contracts for legal work with the City of Cape Town (Dugard and Tissington 2009). Shortly after the shack dwellers won, the city terminated all their contracts with the firm, writing “It has come to our attention that whilst acting on behalf of the City of Cape Town ... you also acted for a third party against the city. The city is therefore terminating its mandate with your firm” (Dugard and Tissington 2009; Majavu 2009). The firm’s attorneys understand this action to be the result of taking the Abahlali case, though the city did not explicitly state this in its letter (Dugard and Tissington 2009).

When I asked if this practice was the situation across the country, Dr. Dale McKinley told me, “I think every municipality has several law firms that they keep on retainer or that are just waiting in the wings that do their work... and large amounts of money are thrown at them” (Interview Dale McKinley). This practice perpetuates a legal culture of attorneys not helping the poor, which can limit ESR realization for people who do not have the financial ability to realize these rights for themselves (Interview Simon Delaney; Dugard and Tissington 2009; Majavu 2009). Similarly, these private firms are reluctant to represent social movements, which may

make it even more challenging for activist groups to secure representation if they cannot find a public interest nonprofit to represent them (Interview Jared Sacks; Dugard and Tissington 2009; Majavu 2009).

It also can be challenging for a community or communities to find an attorney for collective legal mobilization. Many attorneys or firms who will represent this type of client on a smaller scale simply cannot manage the logistics of representing the whole community on their own (Interview Simon Delaney). Attorney Simon Delaney suggested that collective legal mobilization on this scale often necessitates of team of attorneys and firms, but few attorneys or firms are comfortable being part of a large legal team that represents the community or communities (Interview Simon Delaney). Delaney said there are exceptions and highlighted that he was involved in the Mazibuko case at the beginning and that in this case, he worked in partnership with the Center for Applied Legal Studies (CALs).

In the Mazibuko case, which ultimately was decided by the Constitutional Court, Lindiwe Mazibuko and four other residents brought a case against the City of Johannesburg and argued that the City's free basic minimum of 6 kiloliters of free water per month was insufficient and pre-paid water meters were unlawful<sup>29</sup>. Delaney said these large cases are difficult: "I would say that it's not easy to do. There is a mentality that it's one lawyer or one law firm, per case. You won't often find co-relation of lawyers coming together to tackle an issue. It's perhaps a difficulty. There is this sort of siloed mentality, I can't think of one example where a group of clients has been represented by a range of different firms or NGOs" (Interview Simon Delaney). This creates a complicated situation where the size of the case can also make it difficult for

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<sup>29</sup> The Constitutional Court determined that this policy and practice were indeed lawful and also resisted setting a minimum core for the right to water.

communities to find legal representation, even though these collective cases are more likely to succeed in court than are individual cases (see Berrey et al. 2017; Pedriana and Stryker 2017 on the enhanced efficacy of collective legal mobilization relative to legal mobilization by individuals).

### **Winning in Court is Difficult**

Forty five years after Marc Galanter's seminal essay "Why the 'Haves' Come out Ahead: Speculating on the Limits of Legal Change," there has been consistent empirical support for the proposition that when members of disadvantaged or marginalized populations litigate to vindicate legal rights provided to them "on the books," they are very likely to lose (Berrey et al. 2017; Stryker 2007), though, as indicated above, various forms of collective legal mobilization are more likely to end in court victory than are lawsuits brought by individuals (Berrey et al. 2017; Pedriana and Stryker 2017). Consistent with this, in South Africa, the reality is that litigation is a gamble because many cases are not successful (Interview Vinodh Jaichand). Thus, not only is litigation in pursuit of rights realization often not undertaken at all, but when it is undertaken, the relatively few court victories such as Grootboom and those resulting from the TAC campaign are the exception rather than the rule.

The rest of this section shows that in South Africa itself, there are multiple reasons why it is difficult for rights bearers to win in court when seeking to receive or protect the economic and social rights guaranteed in the South African Constitution or in key Constitutional Court cases that vindicate and extend these rights. First, even if poor people have accessed legal representation and are engaged in litigation, they typically are disadvantaged in court. Second, government officials typically use litigation as a delaying tactic, refusing to settle and fighting rights bearers seeking to vindicate their rights to the end. This includes appealing cases won by

rights bearers in lower courts (typically Provincial High Courts). Third, court justices themselves are reluctant to check the power of the legislative and executive branches of the government so as to order meaningful rights provision. This includes, but is not restricted to, failure to specify a “minimum core” for adequate rights realization. Fourth, even when important victories are achieved to vindicate various economic and social rights in South Africa’s Constitutional Court, lower courts sometimes fail to follow or build on them so as to solidify and extend these key precedents. As Charles Epp (1998) noted with respect to rights more generally, unless later court rulings implement and build on key precedents enunciated by the highest constitutional court in any given jurisdiction, there can be no sustained “rights revolution.”

### ***The Litigation Process is Not Friendly to the Poor***

Much as the legal system is not set up in a way that helps poor people be able to gain representation to litigate, the court system is also not set up for poor people to be able to easily navigate it toward successful and impactful legal outcomes, even once they have secured legal representation. There is a shared sense among people who are familiar with navigating the South African court system that nothing about the court system or civil process is designed with the intent of serving the poor.

Attorney Simon Delaney explained, “There is a disjunction between law, policy, and practice. I tend to think of laws, and lawyers, and courts and judges, as a sort of otherworldly realm where you[ve] got laws myopically drafted, and lawyers argue over wording, and parliamentary submissions, constitutional court cases” (Interview Simon Delaney). According to Kate Tissington at SERI, the goal of the judges is not to be progressive or create radical change, but to protect rights (Interview with Kate Tissington). This can mean that litigation may end up protecting wealthy citizens who already exercise economic and social rights (including

substantial property rights) or perhaps improving the quality of services enjoyed by the middle and upper classes, rather than increasing rights realization for the poor (Galanter 1974; Gauri and Brinks 2008; Lempert 1999; Songer, Sheehan, and Haire 1999)(Galanter 1974; Lempert 1999; Songer et al. 1999).

### ***The South African Government “Fights Everything”***

When subjected to ESR litigation, the South African government typically refuses to settle outside of court, and when lower courts rule to vindicate ESR, the government typically appeals the decision<sup>30</sup> (Interview Dale McKinley; Interview Kate Tissington; Interview Simon Delaney; Interview Vinodh Jaichand). When citizens challenge the government or other service providers, they often are in desperate situations while the government is content to play the long game. Kate Tissington at SERI said, “Normally government tries to fight everything to the bitter end. They don’t like to give up, they like to have their day in court” (Interview Kate Tissington). Simon Delaney stated: “My sense is that there is a reluctance to settle because the dispute [is] too far gone. ... Our entire legal system is not geared toward settlement at all” (Interview Simon Delaney). Delaney then described the government’s reluctance to settle and insistence on fighting legal battles to the end as “inappropriate” (Interview Simon Delaney). Dr. Vinodh Jaichand, then head of the University of Witwatersrand School of Law, agreed, “This government has the distinction of wanting to be overly litigious and to ensure that the issue is ground into the legal dust... which is again a little bit strange given the normative values of the Constitution, the preamble, and why we struggled” (Interview Vinodh Jaichand).

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<sup>30</sup> This was confirmed by my review of ESR litigation. However, there is one notable exception, the South African Social Security Administration (SASSA) typically settles all litigation rather than going to court (SASSA 2014a). This is discussed further in chapter 7.

Dr. Dale McKinley provided an example of this phenomenon and explained that the government tried to bankrupt the Anti-Privatization Forum (APF) social movement by taking everything to court. McKinley told me that the APF was well connected and had lawyers on its Board of Directors, so the social movement organization could manage the constant court battles. But most community organizations do not have the same resources and connections (Interview Dale McKinley). His analysis is, “The entire system is designed essentially to ensure [people’s] inability to use the institutional mechanisms, including legal redress” (Interview Dale McKinley). He continued, to emphasize that even if rights bearers have lawyers on their side, they are “working on a shoestring budget, or none at all [and] are facing a state with all the resources: legally and otherwise. This is a constant disadvantage, it’s a miracle [that] cases are actually won. It’s a testament to the dedication of the activists’ lawyers and the activists themselves to carry it through” (Interview Dale McKinley). The government is not afraid to bankrupt and further alienate people who are trying to fight for their rights in court. The result is that even an initial win in a lower court may be overturned in appeals, and the actors litigating for their rights may give up rather than continue to appeal.

Another reason the South African government may refuse to settle ESR litigation and almost always opts to appeal unfavorable High Court rulings is that, notwithstanding constitutional text pertaining to housing and water, and court interpretations pertaining to other utilities, many government officials do not see the services they provide as rights at all. For example, Dr. Vinodh Jaichand told me that there is a lack of understanding among civil servants that the Constitution and laws apply to them. He maintained that the situation would be better if all government officials understood that the Constitution applies to them and that when they fail to deliver, they are impeding basic rights (Interview Vinodh Jaichand).

If civil servants themselves believed and mobilized “rights talk,” they would likely feel more of an obligation to deliver. This might in turn forestall their mobilization of law to delay and defy. As Dr. Jaichand noted, when “rights implementation... [is] reduce[d to] a public administration exercise,” legal rights become less compelling; Jaichand noted that this is a pervasive problem in South Africa (Interview Vinodh Jaichand). In addition to contributing to government use of litigation as a stalling tactic, it also is possible that this mindset of politicians and government officials could facilitate recalcitrance in complying, even when, as in Grootboom, the government definitively loses rights litigation<sup>31</sup>.

### ***The Judiciary is Reluctant to Check Executive and Legislative Power***

Throughout my research, I found evidence that, at least when it comes to ESR realization, the South African judiciary is not willing to meaningfully check the power of the executive or legislative branches. This manifests itself in judicial reasoning that focuses on wording, processes, and procedures, rather than on the content or substance of policies or their impact on rights bearers. It also manifests in the judiciary’s reluctance to order structural or systemic changes and take ongoing supervisory responsibility for monitoring them. Pedriana and Stryker (2017) have shown why, more generally, such a relatively formal as opposed to substantive focus in legal interpretation tends to restrict rights realization (see also Stryker and Haglund 2015). Chesler, Kalmus and Sanders (1988) and Stryker and Haglund (2015), among others, argue that an activist judiciary engaged in supervision and monitoring of the structural remedies that it orders will tend to facilitate rights realization.

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<sup>31</sup> This is an area for potential future research and is discussed more in chapter 8.

South African constitutional law scholar Heinz Klug (2010) provides substantial evidence of the South African judiciary's cautious approach and its reluctance to check the power of, or second guess the other branches of government. He summarizes:

“Although there has been constant clamouring for bolder judicial action—demands that courts award mandatory relief and retain supervisory jurisdiction—the Constitutional Court in particular has been careful to frame its orders in ways that encourage compliance but also attempt to bring the democratic organs of government into the decision-making [sic] process.... (Klug 2010)

This is not to say that the Constitutional court invariably fails to protect ESR. As Klug (2016) also notes: “The [Constitutional] Court has asserted its right to provide appropriate relief, including mandatory orders and structural relief; yet it has also used its ability to suspend declarations of invalidity to give the legislature or executive the time and the flexibility to formulate constitutional alternatives” (Klug 2010; see also Roach and Budlender 2005).

The practice of determining that a policy or government action is invalid because it is unconstitutional, but then suspending that declaration of invalidity to allow time to create a new alternative prevents the court from truly serving as a check on whether the other branches are furthering their rights-related obligations under the South African Constitution, in favor of preserving the political peace. There may be good reasons for this in terms of protecting the Court's institutional authority and legitimacy, and allowing it to engage in dialogue with the other branches of government (Klug 2010). Yet prioritizing these relationships over using its power of mandatory relief or exercising more supervisory jurisdiction suggests to rights activists that the Constitutional Court is not well set up to extend realization of economic and social rights to the South African citizen, nor to maintain a central focus on protecting the economically and socially disadvantaged.

Indeed, throughout my interviewing, I encountered frustration with the judiciary among rights activists. For example, attorney Simon Delaney explained that “everyone is geared toward debating the wording of laws rather than what the policies are because that steps on the toes of the executive. So where is the check on the executive?” (Interview Simon Delaney). Given the lack of such a check, Delaney and others viewed the courts as ineffective and indeed an inappropriate forum for realizing social and economic rights. “Whether people are getting a house, or when they will get a house and all of that...courts are the wrong place to do that” (Interview Simon Delaney).

My discussion with Doron Isaacs, who founded an education advocacy organization after graduating from law school, echoed the sentiment that the courts are the not the right branch to turn to for rights realization. He viewed going to the courts as a “shortcut” resulting from “a total lack of faith in the other two branches of government” (Interview Doron Isaacs). Isaacs believed that, “there is no shortcut around the building of the power of people, and... there are no shortcuts around these two most significant branches of government by utilizing the third [the courts]” (Interview Doron Isaacs).

As socio-legal scholars have rightly pointed out, and these South African attorneys clearly agree, executive and regulatory agencies can proactively work realize economic and social rights, the courts are passive and require other parties to litigate for the courts to get involved (Skorwonek 1982; Skrentny 2006; Sutton 2001). The way that South African courts have operated in terms of their legal reasoning focused on procedure over effects and their reluctance to check the other branches, means that in practice, in South Africa, relying on the judicial branch for rights realization is rarely an effective strategy. Yet the upcoming section on

how the law remains useful will show that there *are* exceptions, and the courts should not simply be dismissed as inappropriate for ESR realization in principal.

Some who critique the judiciary's cautious approach, have called on the Constitutional Court to define the 'minimum core' for ESRs in the constitution (Bilchitz 2007; Klug 2010; UN Committee on Economic, Social 1990). Establishing an essential "minimum core" provision of various rights would move judicial interpretation in a more substantive and social-impact facilitating direction, because it would make clear what counts as minimally adequate or sufficient rights provision for the South African government to have met its constitutional obligations. Constitutional Court precedents pertaining to such a minimum core would then be available for lower courts—and for the Constitutional Court itself in its subsequent cases—to use as a tool to further define and insist upon appropriate implementation by the other branches of the South African government.

Nevertheless, "South Africa's Constitutional Court has made clear its resistance to these calls to define the 'minimum core' of these rights in the Constitution" (Klug 2010). When activists pushed for a substantive definition of the basic minimum for water, they were optimistic in the late aughts when the Provincial High Court established a requirement that the City of Johannesburg would provide each resident with a minimum of 50 liters (13 gallons) of free water each day in its decision for the Mazibuko case<sup>32</sup> (*S v Mazibuko* (A1246/2006) [2008] ZAGPHC 106). However, the Constitutional Court overturned the lower court's decision, and found Johannesburg's new policy to be reasonable (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09 [2009]). In doing so, South Africa's highest court

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<sup>32</sup> This is the case that Simon Delaney mentioned his involvement with where there was a legal team that spanned several public interest organizations.

firmly rejected the idea “that the social and economic rights in our Constitution contain a minimum core” (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09 [2009]).

***Lower Courts Do Not Always Follow Constitutional Court Precedent***

Finally, even when those litigating to help realize their economic and social rights win in the South African Constitutional Court and the Court issues decisions creating important and potentially socially impactful judicial precedent, the lower courts may not follow that precedent or build on it. Indeed, although Constitutional Court decisions formally are binding on all other courts (Constitution of the Republic of South Africa 1996), the scope of legal progress toward making rights real has been limited because sometimes lower courts do not implement precedent from the Constitutional Court when making new decisions. This creates an uncertain environment for litigants and reveals that even court decisions that set precedent vindicating the economic and social rights of disadvantaged South Africans may not have redistributive social impact.

In my review of 310 court decisions pertaining to service delivery, I found that the lower courts and the Supreme Court of Appeals sometimes make decisions that obviously disregard previous Constitutional Court decisions (see especially *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Mkontwana v Nelson Mandela Metropolitan Municipality* (CCT 57/03) *Bissett and Others v Buffalo Municipality and Others* (CCT 01/04) *Transfer Rights Action Campaign and Others v MEC for Local Government and Housing Gauteng and Others* (CCT 61/03) [2004]; *Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* (CCT 23/12) [2012]).

Because of this, the Constitutional Court will hear cases that are almost identical to decisions it has made relatively recently, in order to overturn a lower court ruling that is inconsistent with previous Constitutional Court precedents. One example of this is the decision *Mkontwana v Nelson Mandela Metropolitan Municipality* (CCT 57/03) *Bissett and Others v Buffalo Municipality and Others* (CCT 01/04) *Transfer Rights Action Campaign and Others v MEC for Local Government and Housing Gauteng and Others* (CCT 61/03) [2004] where Justice Yacoob addresses three similar cases of lower courts not following precedent by publishing one decision for all three cases to bring them into alignment with the Constitutional Court precedent. On the one hand, this shows that the Constitutional Court will revisit an issue when necessary to rebuke lower courts and ensure that most follow precedent in the longer run. On the other hand, this creates uncertainty about the utility of litigation among those who are deciding whether to mobilize the law for ESR realization. Lower courts not following higher court precedent is particularly troubling given the resource-scarce legal environment and the government's tendency to fight everything in court, because it means that even cases that seemingly should be easy to win can turn into long legal battles.

In sum, to this point we have seen that, although legal mobilization for rights realization is limited for a variety of reasons, important instances of legal mobilization do exist. We also have seen, however, that even when legal mobilization occurs, victories are difficult to come by and Constitutional Court decisions that both vindicate ESRs and create potentially socially impactful precedents that are implemented and extended by subsequent lower court rulings are relatively rare. Revisiting Puzzle 1, understanding how little legal mobilization for ESR realization results in victory in court can help explain why such mobilization is not sufficient for ESR realization in society. At the same time, it does not explain why major, potentially impactful

Constitutional Court victories such as that in Grootboom (which affirmed emphatically the right to housing and the government's responsibility to take positive action to meet the needs of people without adequate housing), did little to enhance housing provision for the South African poor (*Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]).

### **Winning in Court is Not Sufficient for ESR Realization**

Why might winning rights litigation in court not lead to improved rights realization? Here the major point is that the social impact of court victories in South Africa often is minimal because court decisions vindicating ESRs, including those of the Constitutional Court, may not be fully implemented and enforced. As indicated earlier in this chapter, court orders are not self-enforcing and South African courts typically do not take it on themselves to supervise and monitor implementation by putative rights providers including the South African government. Attorney Simon Delaney explained, "In particular there is a myth that winning high profile cases is somehow going to have a trickle-down effect. My experience is that the whole system of enforcement and application is so, kind of, federalized in a way that, ... especially when the government loses cases, it drags its feet" (Interview Simon Delaney). Dr. Richard Pithouse put it bluntly, "a court order means nothing to the municipality, they just don't care" (Interview Richard Pithouse).

The lack of implementation and enforcement of court orders is exacerbated by the observation made earlier that most politicians and civil servants do not see their work as involving rights realization. Dr. John Reynolds agreed with this from a practitioner perspective, highlighting that, unless there is political will to comply with a court decision, remedies and enforcement might not happen (Interview John Reynolds). He stated, "Enforcement of court

decisions requires political decision-making at the high level and top-level civil servants who can make it happen” (Interview John Reynolds). This is consistent with the literature that warned that legal victories require elite champions within the bureaucracy to ensure that they are made real (Handler 1966, 1978; Rosenberg 1991).

In the case of Irene Grootboom, the namesake of the 2000 landmark court decision that affirmed the right to adequate housing, including water, electricity, and sanitation, we see this failure of enforcement. As mentioned in the introduction to this chapter, Irene Grootboom passed away 8 years after the court decision while still living in a shack (Joubert 2008). The court order for the case specifically affirmed the right to housing that is in the Constitution and interpreted that right to include two new types of utilities that were not provided explicitly as rights in the constitutional text. However, the Grootboom decision did not mandate a remedy, nor provide monitoring of government remedial action to ensure that Grootboom herself, let alone other shack dwellers, would be provided with adequate housing. Practitioners told me that it was unlikely for this kind of court ruling to have substantial social impact.

The lack of implementation and enforcement speaks to the distance between court rulings and social practice. As lawyer Simon Delaney said, “If you ask local authorities, they don’t have any idea of what is going on [in the legal world], and they will just carry on their merry way doing things as they have always done. I am very skeptical of that trickledown effect and I am a great believer in people just assuming that laws are not going to be followed by government and having to drag them along” (Interview Simon Delaney). This does not mean that it is not valuable to have the laws, it just means that a decision in one case is not likely to impact the situation for others, or even guarantee enforcement for that case. In chapters 6 and 7, I build on this point to show that the scale and rate of ESR realization, including the lack of implementation

and enforcement of court decisions, is in large part due to the nature of the *material requirements* for rights realization.

### **The Law Remains Useful for Rights Realization**

Though this chapter has detailed many ways that the South African legal system fails to create an effective legal pathway to making economic and social rights real in society, this is not to say that litigation and court rulings are irrelevant or useless. Although many interviewees told me that the ideal of effective use of the constitution and courts for rights-claiming and holding the South African government responsible for rights provision was not met, and expectations for achieving government accountability through litigation may be unrealistic, most of the same interviewees also indicated that the inspiration that stems from the existence of a legal promise was itself useful (Interview Dali Weyers; Interview Alfred “General” Moyo; Interview Simon Delaney; Interview Kate Tissington).

Though the Constitution is not the driver of service delivery and government officials may not understand service delivery as involving a legal duty to provide economic and social rights, the Constitution still serves as a goalpost that people can strive for and a tool they can wield. As Klug’s research on ESR realization in South Africa noted, even when the law has very minimal effects, it can help to keep rights-based claims alive. He wrote, “the legal nature of these provisions has meant that even when political mobilization has failed or simple enforcement by the courts has not been possible, the mere fact that the right is claimed, asserted and become part of the political discourse has kept alive the claims of those seeking more equal access to resources” (Klug 2010). Pro bono attorney Simon Delaney shared a similar sentiment. Even though Delaney was among those who highlighted reasons that mobilizing legal rights does not necessarily improve rights realization (see above), he also stated, “The good thing we have now,

as opposed to the apartheid [era], is the fact there is law and one can point to the actual writing of the law and measure the government” (Interview Simon Delaney).

Interviewees familiar with legal mobilization told me that even though litigation was not a reliable tool for improving ESR realization, it was at least a way to get information. Researcher Kate Tissington at the Socio-Economic Rights Institute (SERI), and attorney Simon Delaney both told me that litigation is a way of getting information about the status of ESR realization (Interview Kate Tissington; Interview Simon Delaney). In an environment where there is limited government transparency, simply getting information about government progress and plans can be useful (Interview Simon Delaney).

Consistent with continuing focus on rights consciousness and providing reliable information about progress—or lack thereof—in rights realization, legal mobilization that is successful in court has the potential to change public understanding of the legal promise of rights and of which government actions or inactions are “legal.” This is so, even when legal victories do not translate into substantial social impact.

For example, as Dr. Richard Pithouse explained, “legal victories can be incredibly important. Sometimes not because changing the law changes things but because it allows you to engage in a different way” (Interview Richard Pithouse). Although the South African media typically presents land occupiers as criminals, “if you go to court and you can show them in fact that it is the state that is the criminal, it changes the discourse and gives you more space to make alliances and win people over, to access the media, and that can be the benefit of it [the litigation]” (Interview with Richard Pithouse). Even though the municipality may not care about a court order, that court order can be used to show the news media that you were wronged and to generate more positive news coverage (Interview with Richard Pithouse). Indeed, the same local

officials who do not care about the court order itself “do care about a headline story on the seven o'clock news saying ‘Durban municipality illegally and violently evicts shack dwellers.’ They don't like that. So how you use the law is often to make a point, rather than to actually assume that the result there is going to automatically change things” (Interview Richard Pithouse). In short, winning in court can generate positive media coverage and a change in media discourse that in turn may generate enhanced government accountability.

Additionally, with respect to the utility of legal mobilization even in the absence of a successful legal outcome, as Dr. Vinodh Jaichand of the University of Witwatersrand School of Law put it, “One of the certainties of law is that you can always go to the courts to have yourself heard” (Interview Vinodh Jaichand). Even when this does not lead to a favorable legal outcome, being heard in court affirms a person's worth as a human (Interview Vinodh Jaichand). Nonprofit director and activist Jared Sacks told me that living without housing and basic services degrades a person's sense of dignity and, as researcher and activist Carin Runciman explained, people do seek to regain a sense of dignity by being heard in court (Interview with Jared Sacks; Interview with Carin Runciman).

Finally, it appears to be more common for people to win in court when they are protecting a realized right that is endangered or has been taken away, which often represents a breach in process or procedure, rather than calling to implement or realize a right that has yet to be received, in which case the defense is often that the process is not yet complete (Gauri and Brinks 2015 also noted that the ESR law typically is used in this defensive manner). Essentially, the law is used to reduce slippage, not increase ESR realization. The result is that court victories are more likely to improve the situation for people who have already had the right realized,

which is good for ensuring that the realization of the right is sustained, but can also mean that there is an increased gap between the haves and have nots. This is discussed further in chapter 6.

Sometimes, however, reducing slippage also protects ongoing provision. In 2014, the firm Allpay, that previously was responsible for the contract for administering Social Grants, took a case to the Constitutional Court. Allpay claimed that the South African Social Security Administration (SASSA) unfairly chose a new contractor, Cash Paymaster, to administer the social grants. While this case was brought with a focus on correct government practices, not ESR realization, the decision had the potential to impact millions of people's grant payments, which would have a direct impact on ESR realization. The Constitutional Court decision acknowledged this potential and named the reality that these grants are a constitutional right. The Court ordered SASSA to redo the process of awarding the contract, but stated, "The conclusion of a contract with constitutional obligations, and its operation for some time before its dissolution – because of constitutional invalidity – means that grant beneficiaries would have become increasingly dependent on Cash Paymaster fulfilling its constitutional obligations. For this reason, Cash Paymaster cannot simply walk away: it has the constitutional obligation to ensure that a workable payment system remains in place until a new one is operational." (Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2) 2014).

Thus, while this decision to repeat the bidding process was driven by procedure and not impact, the Court decided not to pause or delay the payments to fix procedure, in order to ensure that there would not be an adverse impact on rights bearers. This case was also important because it made clear that contractors have constitutional obligations when they hold government contracts about ESR realization. The decision reads, "That SASSA is an organ of state is clear.

But, for the purposes of the impugned contract, so too is Cash Paymaster.” (Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2) 2014). This helps to advance precedent that may be used to hold contractors accountable in the future.

In sum, mobilizing legal rights on the books through litigation has utility even though the bulk of legal mobilization in South Africa at best fairly minimally enhances rights realization in society. That said, TAC remains the standout anomaly in which ESR litigation produced substantial societal benefit, including widespread benefit to the South African poor.

### ***Progress with TAC***

The Treatment Action Campaign’s (TAC) success is widely touted as proof that activism and litigation can result in increased ESR realization. It also provides an atypical example of the South African Constitutional Court checking the power of the executive branch. Looking more deeply into this case yields greater understanding both of why it was so exceptional and that notwithstanding its exceptional nature, it had more mixed results than its reputation would lead people to assume. Though this dissertation does not focus on the right to health care more generally, briefly comparing the TAC decision to the Grootboom decision is useful to suggest how focus on the materiality of rights enhances our understanding of conditions under which South African court decisions vindicating rights are, or are not, implemented adequately to achieve substantial social impact.

At the time of the TAC campaign, South Africa was experiencing an HIV/AIDS epidemic, yet President Thabo Mbeki’s AIDS denialism shaped the nation’s policies.

In 2000, with infections of newborns in the range of 80,000 per year, the anti-retroviral [ARV] drug Nevirapine offered the potential of preventing the infection of 30 – 40,000 children per year. The drug was offered to the Government for free for five years [the manufacturer offered it to developing countries for free], but the South African

government announced it would introduce Mother-To-Child-Transmission (MTCT) only in certain pilot sites and would delay setting these up for a year, thereby denying most mothers access to treatment. (ESRC 2002).

TAC challenged this policy and won in the High Court (ESRC 2002; *Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002]*). Then the government appealed this decision to the Constitutional Court, skipping the appellate court, and the Constitutional Court rejected the appeal.

The Constitutional Court's decision was informed both by the right to health care in Section 27 of the South African Constitution and by the rights of children guaranteed in Section 28. Notably, the latter rights are not restricted by language of "available resources" or "progressive realization" (Constitution of the Republic of South Africa 1996; *Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002]*). While the Constitutional Court rejected the argument supporting setting a minimum core for the right to health care and refused to set such a minimum core, it did order that all pregnant women and newborn babies be provided with Nevirapine (*Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002]*). Specifically, "the Court ordered the Government to extend availability of Nevirapine to hospitals and clinics, to provide counselors; and to take reasonable measures to extend the testing and counseling facilities throughout the public health sector" (ESRC 2002).

Looking at these details, the material requirements for realizing this right seem to be relatively minimal. First, the rights realization locations were existing health care facilities where people would go to seek treatment or give birth. The government simply needed to change its policy to allow the medication to be provided at these locations. There was no need for installing any kind of infrastructure. Second, the material requirements for the government to realize this

right were minimal because the medication was available for free from the manufacturer. The national government could change the regulations to accept the free medication and allow it to go to the proper facilities; the government did not need to expend additional resources.

Third, the organizational requirement for the government was rather minimal. The government was responsible only for overturning a policy that conflicted with a constitutionally guaranteed right. This would allow a mix of government, nonprofit, and for-profit health care providers to provide the medication. Health care providers already existed and already were providing care to pregnant mothers who were giving birth, and to their newborns. All that was required was that these existing organizations get the medication.

Fourth, implementation requirements at the time were quite minimal, as the pregnant mother would receive one dose while in labor and the newborn would receive one dose soon after birth (UNAIDS 2010). There was no maintenance required because it was a one-time provision, and the quality was largely up to the manufacturer and the health care provider's timing. Overall, allowing health care professionals to provide free medication to prevent the spread of HIV/AIDS and death was materially quite simple. Chapters 6 and 7 will show how all the other economic and social rights, including notably the housing and utility rights at stake in Grootboom, have more substantial material requirements for their realization. Thus, a focus on the materiality of rights may well enhance our knowledge of the conditions under which court victories have substantial social impact. I will return to this point in the concluding chapter to this dissertation.

Yet even after the TAC Constitutional Court decision's court orders and despite minimal material requirements for government implementation of the court order, the South African government's restrictions on Nevirapine stayed in place for over a year following the

Constitutional Court decision. This changed only when President Mbeki was overruled by his Cabinet in August 2003, following a period of civil disobedience led by TAC (Elliott 2003; IOL 2003; Republic of South Africa 2003). The public sector rollout finally began in 2004, and by 2009 over 80% of pregnant women with HIV and their children received Nevirapine to prevent mother-to-child transmission (UNAIDS 2010). While the TAC decision has saved tens of thousands of lives, the government's delay and incomplete rollout resulted in hundreds of thousands of preventable deaths (Nattrass 2008). Moreover, as Scheingold (1974) would indicate, there is a concern that the TAC win and its public reputation legitimized the legal system and perpetuated false hopes in the ability of litigation to lead to the realization of economic and social rights.

Looking at the details, it becomes clear that TAC's Constitutional Court win and resulting ARV rollout were not an instant or clear-cut success in terms of implementation and enforcement. Consistent with other research showing that rights litigation combined with social movement pressure tends to enhance rights realization compared to litigation alone, it took additional social movement mobilization to pressure the government to take action based on the court order, and the rollout should have been faster. Additionally, while preventing mother-to-child transmission is pivotal, this decision did not prevent any other forms of HIV/AIDS transmission or ensure the right to health care more holistically. Acknowledging how hard-fought and gradual this progress was in a context of relatively optimal material requirements for the realization of a single medication, it begins to make more sense why Grootboom was inadequately implemented and did little to improve South Africa's provision of housing. Grootboom calls for realizing multiple different rights—housing, water, electricity, and sanitation—in a far more complete and materially-intensive way than providing a single dose of

medication. These material requirements and their consequences for rights realization will be detailed in-depth in the following chapter.

## **Conclusion**

While limits on political and legal mobilization can help explain the gap between economic and social rights on the books and ESR rights realization in practice, they cannot fully explain the variability in realization of the diverse economic and social rights at issue in this dissertation. Legal system limitations do help explain why, notwithstanding substantial political and legal mobilization, there has been little progress in realizing the right to housing as posed in Puzzle 1. However, the limitations of the legal system do not explain why there has been progress in rights realization in arenas in which there is limited or no litigation as it true for the right to food and is the focus of Puzzle 3. Variations in rights realization across different economic and social rights in South Africa would seem to depend substantially on what the South African government can and cannot do, or will and will not do, yet this chapter has suggested that government action or inaction often has little to do with legal mobilization and court rulings.

To answer the three puzzles, we must turn to look at the non-legal mechanisms and pathways that Haglund and Stryker (2015) suggest also can play a role in shaping ESR realization. While this chapter's discussion of political advocacy and legal mobilization laid important groundwork to understand the role of both political and legal mechanisms in South African rights realization, it did not capitalize on the idea of ESR as a field in which the realization of diverse types of rights not only can be compared, but can be shown to be inter-related. Chapters 6 and 7 focus on relationships among rights in the broader field of rights realization that encompasses all the rights discussed in this dissertation.

Chapter 6 focuses on rights that are ideally realized within the home and thus involve gatekeeping, while chapter 7 focuses on rights that are easily realized outside the home and have synergistic relationships. In these chapters, the concept of materiality comes to the fore as key to understanding the relationships between these rights within the field of ESR. This in turn helps to shape patterns of rights realization across different types of ESR in South Africa.

## CHAPTER 6 RIGHTS AT HOME: A STORY OF GATEKEEPING

Everything begins with having a home<sup>33</sup>. During my fieldwork, I was told time and again that people do not worry much about other goods and services beyond day-to-day survival if they are homeless or live in informal housing (shacks) (Interview Patricia Matolengwe; Interview Liza Cirolia; Interview Jared Sacks; Interview Richard Pithouse). This chapter will show that this sentiment is based on a very practical reality: the government is hesitant to upgrade informal housing by installing utilities, so shack dwellers often rely on communal water and toilets, and either illegal electricity or other forms of energy to provide heat. Throughout this chapter, while I discuss both differences and similarities between the rate and type of progress for each ESR, we will also see that the percent of households with formal access to each utility within or at the site of their home converges to roughly 80%, which as of 2014 is the percent of households who have formal housing (GHS 2014).

This chapter uses the data, methods, and sensitizing constructs from chapter 4 to explain patterns of progress regarding housing and utilities in South Africa since the end of apartheid. The chapter moves us closer to the goal of understanding what drives and shapes the insufficient and unequal access to constitutionally guaranteed ESR, by focusing on two of the specific puzzles originally posed in chapter 1 and developed in the preceding chapters. The first portion

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<sup>33</sup> For many people who do not have a formal dwelling, the issue of housing is about more than just housing. It is about dignity, a sense of belonging, feeling secure, and having a new South Africa that is truly for everyone. As Patricia Matolengwe, chair of the Homeless People's Federation, told me, "If you don't have a house then you don't have a home" (Interview Patricia Matolengwe). Liza Cirolia, whose work involves housing and planning, summed it up this way, "They want a different South Africa, and the house can represent that... Housing has come to be a lot more politically than it ever should have" (Interview Liza Cirolia). Jared Sacks is co-founder of a nonprofit organization called Children of South Africa and explained that having housing means that you also have land and a home in a social sense, and that a home represents comfort, security, permanence, and ownership. These are the basics not just for survival and maintaining a basic standard of living. At their core, most service delivery issues are about dignity (Interview Jared Sacks). While this chapter does not interrogate or unpack the deeper meaning or symbolism of having a house in the new South Africa, understanding that there are strong emotions behind the process helps to reveal why housing has become so politically charged and deeply important to poor South Africans.

of this chapter is focused on housing and speaks to Puzzle 1: *Why, despite ceaseless activism and the government making housing a top priority, do a larger percentage of households live in shacks now than at the end of apartheid?* I show that, although there has indeed been great effort to house poor people in South Africa, the material requirements accompanying housing implementation are immense. After discussing housing, I move on to discuss utilities and to answer Puzzle 2: *Why, despite a mix of public and for-profit providers, has utility progress been so slow?* By answering this question for each specific utility that is an economic and social right in South Africa, I build the argument that housing is often a gatekeeper to utilities due to the materiality of utilities.

For housing and each utility in this chapter, I discuss the key factors needed to explain patterns of rights realization in the same general order:

- 1) Materiality as an *antecedent variable* that shapes the promised, actual, and desired outcomes for each right. This discussion reveals some commonalities and distinct characteristics for each ESR based on its material nature and requirements for provision. Consistent with my earlier definition of materiality, I explore the concept of the materiality of rights through six attributes: the 1) location, 2) materials or physical attributes, and 3) organizational or technical requirements as mentioned by Klug (2015a), and their material 4) implementation, 5) maintenance, and 6) quality.
- 2) The constitutional and policy promises for each right. While these promises themselves are explanatory variables, they can be thought of as defining the benchmark for assessing progress because they establish the *legally promised outcomes* for ESR realization. Though the Constitutional Court has resisted establishing a minimum core for these rights (Klug 2010; Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09, [2009]), several national policies do establish the basic minimum housing and utilities, and the Constitutional Court has validated that the current minimum standards for water provision are constitutional (Department of Water Affairs 2013).
- 3) Progress after apartheid, which are the *observed outcomes* as they are quantitatively measured by the General Household Survey data. These sections show that there are differences in access to utilities based on type of housing. This in turn points towards a gatekeeper relationship between housing and utilities. Throughout the discussion of measured progress, I also discuss the role(s) and limitations of government actors in the provision of housing and utilities. The role(s) and limitations of government actors can be understood as an additional explanatory variable, but one that itself may be shaped by materiality.

- 4) How housing serves as a gatekeeper to each utility, and how this gatekeeping relationship is shaped by the materiality of the involved rights. This gatekeeping relationship is an additional *explanatory variable*.
- 5) Criticisms of the government's progress, which include reference to a mix of *explanatory variables* that have slowed progress or variables that South Africans believe are relevant to understanding the realities of ESR realization. The criticisms sections reveal the *desired outcomes* and show where there is a mismatch between the promised outcomes, actual outcomes, and critics' and/or the publics' desired outcomes. These sections further explain how attributes of government actors can operate as explanatory variables, and whether and how these explanatory variables may be shaped by the materiality of each ESR.
- 6) The involvement of other (non-state) actors as potential other explanatory variables that have the potential to influence ESR realization. Thus, the final sections for each ESR discussed in this chapter focus on the vendors, nonprofits, activists, courts, and litigants involved. In some instances we learn that these actors have played an important role in shaping the realization of the given right, though in many instances we see how these actors are limited by the material requirements or constraints for each ESR.

This chapter is organized to have a section for each right, to highlight how the materiality of that right creates unique challenges and opportunities for its realization. I summarize the answer to Puzzle 1 after the section on housing and the answer to Puzzle 2 after analyzing all three utilities.

### **Housing as a Gatekeeper**

This chapter argues that housing is an economic and social right that often operates as a gatekeeper to utilities. More specifically: having housing, the location of housing (especially whether the area is urban or rural), and the type of housing (formal, informal, or traditional) are all material aspects of housing that influence the ability to receive utilities. Thus, the notion of housing as a gatekeeper to utilities is fundamentally based on the material nature of the right to housing and the rights to various utilities; specifically the requirement that housing is built on land and that reliable access to utilities requires that they are installed either within the home or within a close distance of the home. The reality that land is a finite resource that is privately owned creates an automatic field-level constraint on the realization of housing, and thus the limited availability of land also constrains utility implementation. The result is that there is a

material relationship between housing and utilities that transcends the specific actors or rules involved in their provision.

Housing as gatekeeper, and at least implicitly, the importance of materiality to the gatekeeping relationship between housing and utilities, is also reflected in court decisions and policies in South Africa. Specifically, while sanitation and electricity are not guaranteed in the Bill of Rights, the Constitutional Court (the highest court in the country) has determined that electricity and sanitation are part of the right to housing established in Section 26 (see *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000]; *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]; *McDonald* 2009). This means that the Constitutional Court decisions provide legal evidence of housing serving as a gatekeeper for utilities. Additionally, the relationship between housing and utilities increasingly has been built into or acknowledged in policies throughout South Africa. Given the wide range of actors involved in the provision of these different rights, the details vary based on the province and the municipality (Interview Rudi Hillerman).

At the national level, this move towards integration is best demonstrated by the 2004 Comprehensive Plan for Sustainable Human Settlements (usually referred to as *Breaking New Ground*) and by the Department of Housing changing its name to the Department of Human Settlements (DHS) in 2009 (South African Cities Network 2014). The DHS has subsequently expanded both the government and public understanding of the role of housing in the provision of utilities and other services that revolve around the home (South African Cities Network 2014; Interview Trevor Ngwane). Additionally, the National Housing Programme requires that each permanent residential structure is built with the infrastructure for water, sanitation, and electricity. It states that each new home must include: “A separate bathroom with a toilet, a

shower, and hand basin; a combined living area and kitchen with wash basin; and a ready board electrical installation where electricity supply in the township is available” (Republic of South Africa 2014). The material nature of these utilities requires that to build a house to NHP specifications, the proper water and sanitation infrastructure must be installed in the ground first before the foundations are laid and the homes are built, even if these utilities are not yet connected to the larger grid (Interview Trevor Ngwane; Interview Kate Tissington; Interview Rudi Hillerman; Interview Dale McKinley; Interview Liza Cirolia).

In short, both the Constitutional Court’s decisions and the national government’s policies reflect an acknowledgement of the reality that housing and utilities are materially intertwined. This means that integrating utilities infrastructure with housing developments is the most efficient way to guarantee that South Africans have access to several ESR. It does not make sense to build houses without pipes and electrical infrastructure, and so putting these best practices into policy helps the government to ensure efficient service delivery. While neither court decisions nor legislated policies use the language of materiality or call housing a gatekeeper right, the rationales for both court decisions and legislated policies imply such an understanding.

While acknowledging that housing is often a gatekeeper to utilities enables utility providers to use more efficient and streamlined tactics, it does not ensure that the right to utilities is realized. The government’s drive for efficiency creates an all-or-nothing scenario in which South Africans who do not have formal housing also are less likely to have adequate access to utilities. It makes sense for the government to only build houses that can be connected to utilities. However, installing those utilities is now seen as the responsibility of the municipalities that implement the National Housing Programme when they build new homes (Tissington 2011). The

result is that the various agencies responsible for ongoing utility provision do not regard themselves responsible for connecting households to utilities (Tissington 2011). The outcome is that many people are waiting for housing to receive upgraded sanitation or electricity (Tissington 2011). This all-or-nothing relationship is discussed throughout this chapter and is a key element in solving Puzzle 2.

This all-or-nothing reality is especially concerning given the limited available land and slow formal housing progress. The logical alternative to sidestep housing's gatekeeper relationship is to move towards upgrading informal and traditional dwellings so that more people can have adequate utilities regardless of their type of housing. However, the South African government and utility providers traditionally have been opposed to installing infrastructure in shack settlements because they do not want to waste money putting in services that will be upgraded later. Dr. Marie Huchzermeyer, Professor of Architecture and Planning at the University of the Witwatersrand, told me that prioritizing formal housing seems to be efficient and cost-effective (Interview Marie Huchzermeyer). The mindset regarding informal and traditional housing has become that services will be provided elsewhere, or the providers will not spend the resources to upgrade until they have a more feasible space (Interview Marie Huchzermeyer). This government reluctance and the lack of adequate public pressure for informal upgrading are mentioned throughout this chapter and discussed in-depth towards the end of this chapter.

While court decisions and government policies reflect and further cement the gatekeeper relationship between housing and utilities, the gatekeeper relationship is rooted in the material nature of these rights and thus would exist regardless of how integrated utility provision becomes or which utility installation models are adopted. The material nature of water, sanitation, and

electricity systems is that they require the installation and maintenance of immovable infrastructure. Each right in this dissertation has unique physical attributes. This chapter focuses the discussion on thinking about these attributes in terms of one-time installation requirements and ongoing maintenance requirements to better understand the differences in the complexity of realizing these rights, and the shaping of their relationships with other rights, as well as the actors who are involved in their provision. More specifically, housing is a right which is very resource-intensive to build and receive, but which has more minimal government maintenance requirements. Utilities have varying requirements for installation and maintenance, but generally all utilities require some rather intensive public maintenance with ongoing requirements. For example, ongoing access to potable water has the most maintenance-intensive requirements; simply installing pipes is not enough. Clean water needs to be consistently supplied. Throughout this chapter, I show how these material requirements shape the realization of each of these rights.

Although “housing as gatekeeper” is a useful shorthand, ultimately it is land and space that are materially required for *both* dwellings and utilities, and thus the gatekeeping relationship is rooted in land and space, as well as the material structure of the dwelling. This remains true even when people are using their own money to receive a house and utilities, or when they are seeking utilities through a non-integrated process. Several activists told me that having housing, or at least land, is necessary before you can demand other social services (Interview Dale McKinley; Interview Jared Sacks; Interview Patricia Matolengwe; Participant Observation with SECC). Dr. Dale McKinley, co-founder of the now defunct Anti-Privatization Forum and longtime activist, said, “You need to establish a foundation first and then you draw in the possibilities of other services, as opposed to demanding everything without that pull” (Interview Dale McKinley). More generally, throughout the rest of this chapter, discussions of specific

actors' work and the interactions between actors are tied back to the material requirements of each right, as these requirements shape what is possible.

### **Why Actors Fall Short**

There are several recurring explanations for why housing and utility progress have come up short that appear below in the discussions for multiple rights. These themes, including privatization, government capacity, and accountability, are well-established in the research on service delivery in South Africa as well as in broader literatures on rights realization:

#### ***Privatization of Economic and Social Rights***

Much of the research on housing in South Africa has focused on the reality that land and housing are private market goods that cannot be simply reformed and redistributed; this perpetuates pre-apartheid and apartheid era inequalities (Bond and Tait 1997; Pienaar 2011; Wilson 2011). Similarly, research on access to water has shown that the prevalence of private service providers has resulted in treating water as a profitable commodity rather than as an economic and social right (Bakker 2007; Bond 2002; McDonald and Ruiters 2005). This is also consistent with the literature on contractors as service providers, emphasizing that providers are profit-driven and complicate the role of the state (Alter and Hage 1993; Haglund 2010; Kaletski et al. 2016; Smith and Lipsky 1993). However, as the remainder of this chapter also shows, privatization and commodification as they shape rights realization are themselves shaped by the materiality of rights.

#### ***Limited Government Capacity***

Poor government capacity is a recurring theme in the literature on bureaucratic administration and the needed staff and resources to implement and maintain rights to housing and utilities (Goldin 2010; Tissington 2011). This fits with the political institutionalist

perspective's focus on the importance of government capacity to meet objectives (Skocpol and Finegold 1982; March and Olsen 1984; Evans, Rueschemeyer, and Skocpol 1985; Skocpol 1985; Barkey and Parikh 1991; Gilbert and Howe 1991; Skocpol 1992; Amenta 1998; Pedriana and Stryker 2004). The focus on limited capacity is unsurprising, given the literature on how contractors can substitute for but ultimately handicap the building of state capacity (Alter and Hage 1993; Smith and Lipsky 1993). In addition, however, the implications of the limits in capacity differ depending on the material requirements for the provision of each specific right. This aspect of materiality includes workers' technical expertise, the necessity of ongoing provision and maintenance, and where the right can be realized.

### ***Lack of Accountability***

There are few effective mechanisms for people or civil society organizations in South Africa to hold the government accountable and ensure legal enforcement when it comes to providing housing and utilities (Dugard, Madlingozi, and Tissington 2012). The government has sought to keep people waiting patiently rather than to provide the open and honest information about backlogs and timelines that would enable the public to act in an informed way (Tissington et al. 2013). Although it is well shown that pressure from activists can lead to broader legal interpretation (Amenta et al. 2005; Pedriana and Stryker 2004; Stryker 2007; Quadagno 1992) and that nonprofits can be effective watchdogs (Abouharb et al. 2015; Nelson 2015; Sabatier 1975; Sano 2015), unfortunately this has rarely been the case for housing in South Africa. Additionally, even when rights bearers engage in litigation, as was discussed in chapter 5, the decisions have typically been based on whether the proper steps were followed rather than whether there has been any impact and thus judicial enforcement has not been conducive to

maximum realization of the right to housing and utilities (see Stryker and Haglund 2015; Pedriana and Stryker 2017).

I argue that the slow progress on the part of government is due to a focus on following practical and bureaucratic processes—which is exacerbated by the Courts’ focus on process over impact—and that there is a lack of adequate legal implementation and enforcement to speed up the process. This leaves it to civil society to apply pressure through activism, and for nonprofits to fill in the gaps while millions of South Africans wait for formal housing and reliable access to utilities. However, nonprofits and other actors in civil society often lack the capacity and mechanisms to make a widespread difference.

In sum, actors involved in the realization of rights to housing and various utilities fall short because of privatization, lack of capacity, and lack of accountability. All these recurring themes have been discussed amply in the prior literature on rights realization, including rights realization in South Africa. I build on the importance of these recurring themes, while also providing new insights by showing how many of the constraints previously discussed through the lens of privatization, capacity and accountability can be understood even better by applying the conceptual lens of materiality and the gatekeeper relationship between housing and utilities. These material elements influence how, and the extent to which, privatization, limited capacity, and a lack of accountability influence the realization of rights to housing and to utilities.

## **Housing**

The constitutional promise of adequate housing is unrealistically grand, yet remains desired and expected by the public. While many houses have been built since the end of apartheid, the housing backlog is massive due in part to limited government capacity. Many critiques highlight the government’s limited capacity and the unfair or misleading tactics it

employs. I show that the substantial material requirements for housing—both the land and the structures themselves—are an antecedent factor helping us to understand these government limitations, and that material realities also substantially limit the work of the many different actors who are seeking to provide and/or improve housing in South Africa.

### *Materiality*

As already indicated, housing's materiality centers on the land that the home occupies and the resources necessary to build a home. Maintenance is also a concern but a lesser one. In terms of the space where the right is realized, the vast majority of homes are intrinsically tied to the land or space that they occupy. The physical attributes of housing can vary, but overwhelmingly housing has large one-time requirements in raw material, and to a somewhat lesser extent, in skilled labor, to build the structure. Given the installation and material requirements, it often is government-funded contractors who are responsible for building homes (Lodge 2003). Although all homes require maintenance, the requirements for maintenance are not constant and it is the residents and not the state nor publicly funded contractors who are typically responsible for home upkeep. The quality of housing can vary substantially, however there is a threshold required in terms of location, materials, and technical skills for a house to meet a standard of quality that will last for several decades with only basic maintenance (Act 1997).

The space where houses are built is the largest material barrier to realizing the right to housing in South Africa. Land availability is a major limitation to housing delivery and, according to long time civil servant Rudi Hillerman, most of the fluctuations in how many new houses are built each year are due to land availability (Interview Rudi Hillerman). Past segregation has limited land availability and affordability – most of the land is owned by white

South Africans (HABITAT III National Workshop<sup>34</sup>). Land procurement is expensive and increasingly challenging as the obvious places to build houses fill up with new formal housing. The most common remaining option is to build on previously uninhabited land further from the cities, and these are both less desirable and more challenging locations for installing utilities (Interview Kiru Naidoo; Republic of South Africa 2014).

Starting in about 2009, the government shifted tactics to building fewer, higher quality homes as a reaction to limited available land (Interview Marie Huchzermeyer). Since 2009, more resources have gone towards the materials and labor for the house, as there has been less land to acquire for building (Interview Marie Huchzermeyer). As land became scarcer and the quality of housing was critiqued, the government moved towards decreasing the number of houses built, but making the homes nicer and more expensive (Interview Kate Tissington).

Another nuance pertaining to the material requirements for homes is that formal housing typically requires more land than does informal housing. Shacks are often quite small and can be built very close together, while formal housing is mandated to take up more space and follow regulations about spacing between buildings (Republic of South Africa 2014). Additionally, the material and legal requirements for building a formal house require that the land be able to safely support houses and that the land be zoned for residential properties. One option for land acquisition that the government sometimes uses is to build houses on land that is currently occupied by informal shack settlements (SAHPF tour; Interview Alfred ‘General’ Moyo; Interview Anonymous Marikana Land Occupation). This requires evicting the current residents, providing alternative accommodations elsewhere, building houses and installing utilities

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<sup>34</sup> I attended this HABITAT III Workshop for government and nonprofit employees in that was a national workshop in preparation for the 2016 United Nations Human Settlements Programme (UN HABITAT) III Conference. This international conference occurs every 20 years.

infrastructure, and then moving people into the new homes (Interview Kathryn Hoeflich). This process gets tricky because of the different material requirements for formal housing compared to informal housing. Once the space is renovated, the new housing is not as compact as the shacks were, so the land cannot house as many people as before, and thus not everyone who lived on the land previously can live in a formal dwelling there (SAHPF tour).

Moreover, many shack settlements are built on land that was not zoned for residential use or was already deemed undesirable or unsafe to build on, which is why the land was unoccupied in the first place. For example, the Kennedy Road shack settlement in Durban is 0.1 km<sup>2</sup> of land (25 acres) located on a steep hill right below the Bissasar landfill, the largest formal dump in Africa (tour Kennedy Road shack settlement, GAIA 2011). As of the 2011 Census, the Kennedy Road settlement was home to 5,455 people, so it has a density of 55,000/km<sup>2</sup> (140,000/sq mi) or about 200 square feet per person (2011 Census). So, even though the Kennedy Road settlement has an excellent proximity to amenities, much of the land is not safe for building houses. Even if the land were safe to build on, Reconstruction and Development Programme (RDP) houses are generally only one story tall, and thus the land would only be able to formally house a small fraction of the current Kennedy Road population.

### ***Constitutional Promise***

Section 26 of the Bill of Rights guarantees the right to housing. It reads:

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

(Constitution of the Republic of South Africa 1996).

The first clause stating that everyone has a right to adequate housing is progressive. It also creates a minimum standard for the quality of government-provided housing, though the definition of adequate is complicated: formal housing is generally adequate, informal housing is not adequate, and traditional dwellings' adequacy depends on their size, insulation, and shelter from the weather (Hall 2014). This standard of adequate housing has been upheld in several landmark court cases (Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000]; Joseph and Others v City of Johannesburg and Others (CCT 43/09) [2009]). The result is that the government cannot simply take steps to improve inadequate housing situations, but instead must ensure that any government-provided housing meets specific standards of adequacy. This sets a high material bar for the quality of anything that the government implements or upgrades.

The second clause weakens the stance on the provision of housing. The focus on taking "reasonable" measures to providing housing that are within the state's "available resources" tempers the onus on the government to aggressively realize the right to housing for all. This has implications for the overall implementation of housing.

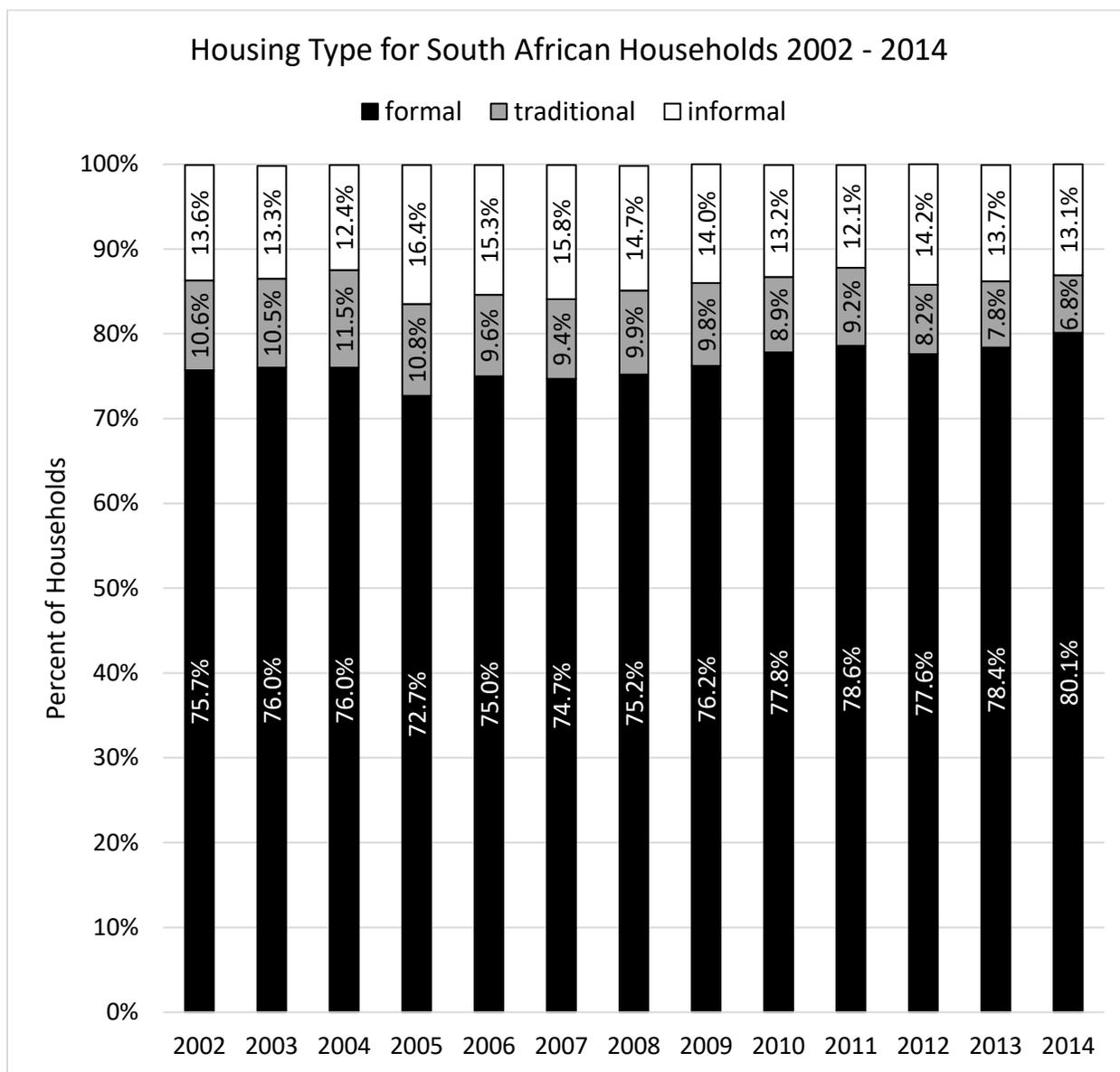
The third portion of Section 26 may be considered the most progressive because, as pro bono attorney Simon Delaney confirmed, it takes the unique position of protecting the rights of people who are occupying a home over the rights of the landowners (Interview Simon Delaney). This is a promise that, even when a current housing situation is inadequate, inhabitants will not lose the shelter that they have without being provided with alternative accommodations. Later in this section on housing, I will discuss how South Africans are more likely to go to court to protect their right to not be evicted, rather than to request the provision of adequate housing. Yet while protecting the rights of squatters over property owners is quite progressive, housing is

regarded as a private market commodity rather than a social good (Bond and Tait 1997). This creates a situation in which land reform is limited and property law is often respected (Pienaar 2011), and so the historical inequalities regarding who owned land continue to shape the housing situation (Wilson 2011). This is often true even though the Constitution privileges housing, and providing alternative accommodations to people who need to be evicted, over protecting property rights (Constitution of the Republic of South Africa 1996).

### ***Progress After Apartheid***

Formal housing progress in South Africa has been quite slow. About a fifth of South African households do not have adequate formal housing. Figure 6.1 indicates that since 2002, the percent of South African households living in formal housing has increased from 75.7% to 80.1% (GHS 2002 – 2014). At the same time, the percentage of households living in traditional dwellings (usually huts) has decreased from 10.6% to 6.8% (GHS 2002 – 2014). Yet the percentage of households living in informal housing (shacks, either in shack settlements, or backyards of formal housing) has barely decreased: from 13.6% in 2002 to 13.1% in 2014 (GHS 2002 – 2014). Additionally, the increase in formal housing and decrease in traditional housing have not been steady. The percentage of households living in formal housing dipped from 2005 through 2008, and the percentage of households living in informal housing (shacks) peaked during that time.

Figure 6.1 Housing Type for South African Households 2002 - 2014



Source: GHS 2002 – 2014

Informal dwellings are shacks that are often made by individuals and community members from reused and repurposed materials like corrugated metal, plywood, signs, cardboard, sheets of plastic, and tires. Many shack dwellers live in informal settlements with up to thousands of households. These settlements often are built on land that is privately or publicly owned by someone other than the residents and was not occupied when the first shacks were

constructed. This land is often publicly designated green space, privately owned land with future building plans, or land that cannot officially be built on, such as land zoned for agricultural purposes, on top of a landfill, where there are sinkholes, or on steep slopes that are unstable in the rain (CORC et al. 2012; Segodi 2018). It is common for shack settlements to have vermin, flooding during the wet seasons, and fires when it is cold. All these phenomena can be deadly. Other shacks are built in backyards of formal dwellings. According to Luvo Vanyaza, secretary of the Mandela Park Backyarders, a social movement of people living mostly in backyard informal dwellings in the Khayelitsha township in Cape Town, people who live in backyard shacks often are in arrangements in which they pay a small amount of rent and sometimes utilities to the home (and land) owner (Interview Luvo Vanyaza).

Given population growth, these data show an increase in the number of people living in informal dwellings in South Africa. The number of households living in informal dwellings was 1.45 million in 2002 and increased by about half a million to 2.02 million in 2014 (GHS 2002; GHS 2014). Looking back to the 1994 October Household Survey, we find that just 9% of South Africans lived in informal dwellings around the end of apartheid, which represents about 782,000 households (October Household Survey 1994). This increase in the number of households living in informal dwellings in the two decades since the end of apartheid is what prompts Puzzle 1: why has this increase occurred?

The minimal progress is not due to a lack of effort. Between 1994 and 2014, the South African government built 3 million RDP houses for 13 million people (Department of Human Settlements 2015). The percentage of households who received a government housing subsidy or lived in Reconstruction and Development Programme (RDP) housing increased from 5.6% in 2002 to 13.6% in 2014 (GHS 2002, GHS 2014). In 2014, 19.1% of households living in formal

housing were either in RDP housing or received a subsidy to fund part of their rent (GHS 2014). This progress signifies a substantial commitment to providing housing.

Yet there are field-level and actor-level constraints that have limited this progress. The South African government has not been able to keep up with growing demand due to population growth, urbanization, and the limited availability of land. The population of South Africa grew by about 16 million in that same time, plus millions have moved from rural areas into the cities (World Bank Data 2017). One reason for population growth is immigration; an estimated 1.6 to 2 million people living in South Africa (3-4% of the population) are foreign (CORMSA 2010). Internal immigration between provinces and from rural to urban areas within provinces has also resulted in substantial changes in the population landscape (CORMSA 2010). The country was 54% urban and 46% rural in 1994, and steadily increased to 66% urban and 36% rural by 2014 (World Bank Data 2017). Finally, land is a fundamental material requirement for housing and the limited availability of land is another major constraint (see this chapter, above, and the discussion about the history of land ownership in the beginning of chapter 2).

Shacks can be found almost anywhere, and it is not unusual to see shacks next to office buildings, nice houses or highways, or in poorer areas. While new shack settlements do appear frequently, there also are many informal settlements that have been occupied since apartheid. Shack dwellers are not a transient or temporary population. The land where these shacks are built may not be ideal from a building perspective, but the locations are often chosen based on their proximity to various destinations or transportation options. Though living conditions in shacks are poor and most people who live there would like to have formal housing, it is common that people would much prefer to upgrade their shack and stay in the same location rather than to be put in government housing further away from the city, jobs, and schools, or separated from their

communities and social networks (Interview Alfred “General” Moyo, SAHPF tour). Ultimately, for some people, there are benefits to living in a shack rather than living in formal housing in a more isolated location. This element of the location or proximity of land to desired location or transportation options is certainly not part of the constitutional right to housing, but is an important element of the experience of living in housing that affects the opinions of South Africans who seek better living conditions without sacrificing the benefits of their current accommodations.

### ***Criticism of the Government’s Progress***

A common thread across many criticisms of housing in South Africa is simply that progress has been so slow. This slow pace has been attributed to many factors, including that the constitutional promise is unrealistic given the state’s capacity, faulty and even misleading government tactics pertaining to housing administration, and the unfortunate reality that preventing evictions can slow down the land procurement process.

First, one of the main limitations of housing delivery is simply the limited capacity of the government and of government contractors to build large numbers of quality houses. Kate Tissington, a senior research and advocacy officer at the Socio-Economic Rights Institute of South Africa (SERI), said, “There aren’t really any major problems with the policy and the legislation, other than the fact that it’s so aspirational as to never really be able to be implemented.... It was designed with another state machinery and institutions and capacity in mind—that doesn’t exist” (Interview Kate Tissington). This is in part a reference to the fact that, in the transition to democracy, the new government did not overhaul the state bureaucracy (Sparks 2006; Foster 2012). Dr. Marie Huchzermeyer, Professor of Architecture and Planning at the University of the Witwatersrand, told me that housing progress is slow because of capacity,

political will, bureaucracy, micro-politics, and contractors who do not know how to do the work well. In fact, the norm is that 10% of the housing budget gets returned due to limited capacity to use financial resources (Interview Marie Huchzermeyer). Additionally, when building houses is fast-tracked but the bureaucratic capacity to carry out the work and do quality control is limited, the consequence is corruption and problems with poor quality homes (Interview Marie Huchzermeyer).

Second, while the government has abandoned its previous tactic of shack eradication and has updated policies to formally allow for shack upgrading by installing utilities, the vast majority of government agencies are not implementing the tactic of shack upgrading (Huchzermeyer 2011; HABITAT III National Report; Interview Marie Huchzermeyer; Interview Liza Cirolia). For the first decade of democracy, the South African government was focused on shack eradication (Huchzermeyer. 2011). Yet as it became clear that the country was not going to be able to meet its housing goals,

...high level policy discussions at a National level began to explore more progressive ways of responding to informal settlements. Ensuing policy decisions resulted in the introduction and approval of the Comprehensive Plan for the development of Sustainable Human Settlements commonly known as “Breaking New Ground” (BNG) in 2004” (Republic of South Africa 2014). The release of BNG prompted the update of all National Housing Codes, which led to the creation of Part 3 of the National Housing Code: the Upgrading of Informal Settlements Programme (UISP). The UISP allows for *in situ* [in place] upgrades to shacks, aiming for minimal disruption and displacement as a last resort.  
(Interview Marie Huchzermeyer).

This change in policy could have resulted in a change in tactics to minimize the role of the *type* of housing as a gatekeeper.

Yet despite having the policy in place to allow for shack upgrading, the UISP went almost entirely unimplemented and UISP funds have been reallocated (Huchzermeyer 2009, Huchzermeyer 2010). This is acknowledged in South Africa’s HABITAT III National Report:

Whilst UISP sets out the national approach to informal settlement upgrading; it is however not prominent in terms of application and/or practice across many informal settlement projects. As a result the conventional, quantitative housing delivery continues to dominate development policies and approaches to the point that the provision of a top structure (house) is perceived as the only ‘solution’ (Republic of South Africa 2014).

Put another way, the government has not adopted a tactic that would allow for sidestepping the location barrier to improving housing. Much of this is likely because, when there are new political promises to build more houses, upgrading is less likely to happen (Interview Marie Huchzermeyer). As Kate Tissington at SERI told me more bluntly, Johannesburg does not want to do informal settlement upgrading, partially because they think it’s “political suicide” because in the public’s eyes they’re supposed to be building houses (Interview Kate Tissington). This again was acknowledged in the HABITAT III report, “The distinction between slum upgrading and access to adequate housing is problematic. A high level of political will is needed to stress the importance of incremental housing approaches in order to assist those living in informal settlements to improve their housing conditions without relocating them, and allowing for security of tenure, allocation of permanent plots and similar where this is possible” (Republic of South Africa 2014).

This fear of political backlash can be partially attributed to a lack of transparency and communication about housing progress and projections. It can also be partially attributed to a lack of meaningful participation, which if done effectively would allow the government to hear that many people do want shack upgrading, especially if they are unlikely to receive an RDP house in their lifetime.

This brings us to the third criticism, which is that the government’s tactic of creating the myth of a waiting list, coupled with a Constitution with an unrealistic promise of adequate housing for all, has created a misleading situation in which people are misinformed and unable to

plan or make choices in their own best interest. Providing housing was a political tool for the ruling National Party during apartheid, but in 1994, the South African Government scaled up its efforts with the goal of eradicating the housing backlog within 10 years (Department of Housing 1994). With that goal in mind, politicians fostered a “dominant discourse around housing delivery... that there is a ‘waiting list system’ which constitutes a housing ‘queue’, and that people must wait patiently until their name comes up in terms of a rational process of ‘first come first served’” (CLC and SERI 2013).

The discourse of patience led to the lull in activism after the end of apartheid, as people patiently waited for housing (Ballard et al. 2006; Gibson 2007). However, these waiting lists are a myth perpetuated by a government that is reluctant to share information with the public, and these practices are now criticized by activists, academics, and attorneys. According to Kate Tissington of the Socio-Economic Rights Institute of South Africa (SERI), the idea of the housing waiting list is just another political tool. Housing allocation is not planned with regard to waiting lists, people who are waiting do not have a number and cannot find out how long they will need to wait or where they might be housed (Interview Kate Tissington). Instead, there are unique circumstances in different settlements and different municipalities, so there are different solutions in different localities for determining who is housed where (Interview Kate Tissington).

Liza Cirolia, whose work involves housing and planning, noted that sometimes households are selected based on which groups are receiving political attention, such as “woman headed households, then every once in a while it’s HIV headed households, whatever the kind of national push is” (Interview Liza Cirolia). Liza continued, “Sometimes they also use distance from project areas... There is no good way of prioritizing people, and each municipality does it

in its own way. They're not required to streamline that process nationally or provincially” (Interview Liza Cirolia).

This myth of a waiting list typically leaves poor South Africans waiting for the government to provide their promised housing, rather than receiving information on which they can act. This government tactic—adopted for political reasons under conditions in which land is scarce, capacity to build new homes is limited, and the political will to explain a policy of upgrading shacks is largely absent—constrains those with housing needs. These people who need adequate housing generally do not know the waiting list is a myth and thus are unable to make informed decisions—including potentially the decision to mobilize—to reach their housing goals.

A fourth and more nuanced criticism is that the tactic and legal requirement of protecting the right to not be evicted without alternative accommodation actually slows government formal housing progress. In fact, informal occupants' protection from eviction is a legal opportunity for the occupants, but a legal constraint on housing those who have been patiently waiting. The crux of the problem is that the government moves slowly, but shacks can be established quickly; when the government encounters unexpected shacks it is slow to remedy the situation.

A former Programme Manager for the Department of Public Service and Administration explained that there is a budget cycle and a work plan for each year that designates where houses will be built. Most of this is planned at least 3 years ahead of time. But when the time comes to start construction on a new piece of land, the government often will find people in shacks who have been living on that land for years (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration). These shack dwellers cannot be evicted without providing alternative accommodations, and so this slows down the process; civil

servants do not plan in advance to find alternative accommodations for squatters (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration). If civil servants could plan ahead for squatters, they could start planning alternative accommodation and tell the community years ahead of time so that everyone is on the same page by the time the houses are supposed to be built (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration).

Additionally, people who are evicted are sometimes prioritized when government housing is assigned. As Liza Cirolia told me, “So the eviction cases, those people need to be prioritized as well, which really pisses people off, of course because it’s like the guy that came two months ago and squatted... now gets prioritized over the family that has been waiting twenty five years” (Interview Liza Cirolia). This situation highlights the tension between providing alternative accommodation as part of the proper eviction process, guaranteeing housing to all, and protecting property rights; all of these are protected in the Bill of Rights. In sum, part 3 of section 26 of the Bill of Rights, which protects people from evictions, can have the unintended consequence of slowing down progress toward the granting of rights in parts 1 and 2 pertaining to housing adequacy and the progressive realization of the right to housing.

The fifth criticism is that living conditions and quality of housing vary substantially even for people living in formal government housing, so it cannot be assumed that all those with formal housing have adequate housing. One reason for this is that a structure may end up housing more and/or different people than those for whom it was intended. It is common to have large and extended families, or even multiple families, living in a disproportionately small house or apartment. This is especially common when people who were living in shacks are moved into government housing, and may invite additional family members to come live with them (SAHPF

tour). Often the RDP houses built on the periphery are larger because there is more space, but that also makes them more expensive to maintain and difficult to access, so many breadwinners who have received houses like these have a second arrangement to stay closer to work while their family lives in the house (Interview Marie Huchzermeyer).

The other reason for a lack of adequacy pertains to the quality of the home. State-funded houses have wide a range of sizes and quality (Republic of South Africa 2014). I have seen some earlier RDP houses that are one large room with cinderblock outside walls and no interior walls, just a sink in one corner and a toilet in another corner. Newer government houses have inside walls to separate the living room and kitchen from two bedrooms, and the newer homes also have a bathroom (Republic of South Africa 2014). The quality of the build, however, ranges from solid to crumbling walls, in part depending on the contractors who built the place (SAHPF tour). These quality issues stem in part from the government's limited capacity to do the work of building homes itself and/or from hiring private contractors who cut corners. The latter is consistent with the lessons of academic literature pertaining to government contracting (Alter and Hage 1993; Smith and Lipsky 1993; Haglund 2010; Chipkin 2016; Chipkin 2017). Thus, assessing the quality of rights provision is essential to assessing ESR realization outcomes.

### ***Involvement of Other Organizations***

Because housing is extremely important to many South Africans, there are many different actors beyond the South African government involved either directly or indirectly in the provision of housing. Yet housing's material requirements are so resource intensive that most non-state actors lack the capacity and resources to overcome these massive constraints. Although these non-state actors do play important roles in improving access to housing, their work is limited in scale and impact relative to the overall need.

### *Vendors*

Most government houses are built by private construction contractors, and there are many construction companies that are contracted by the government to build houses. However, at least in some locations, qualified contractors are scarce. As was noted earlier in this chapter, it is a norm that about 10% of the annual housing budget is returned (Interview Marie Huchzermeyer). This is due, in part, to a lack of available land and a lack of suitable contractors (Interview Marie Huchzermeyer). Meanwhile, the government has limited capacity to do the work itself precisely because of its established reliance on outside contractors (Alter and Hage 1993; Smith and Lipsky 1993; Haglund 2010; Chipkin 2016; Chipkin 2017). For example, in Mpumalanga, the third densest province in South Africa, the government put out a request for proposals with 11 simple criteria, and few contractors met the standards to qualify (Interview Marie Huchzermeyer).

Additionally, this inability to deliver and use up budgets can influence budgeting allocations for future years (Interview John Reynolds; Chitiga-Mabugu and Monkam 2013). In my interview with Dr. John Reynolds, the Head of the Neil Aggett Labour Studies Unit at the Institute of Social and Economic Research at Rhodes University, Reynolds shared insights from his decades of applied research and policy experience, which were particularly helpful in shedding light on these dynamics. In South Africa, national budgeting is often based on historical budgeting rather than current priorities (Interview John Reynolds; Chitiga-Mabugu and Monkam 2013). Dr. Reynolds explained that this means that the national budget will allocate less to agencies and local governments that were not able to spend most of their previous budgets, no matter how large a priority that service or location is (Interview John Reynolds). Thus, having contractors who are unable to use up the allotted funds can influence future budgets and

resources, perpetually handicapping the agencies and local governments responsible for delivering services (Interview John Reynolds).

Informants told me about many ways that relying on contractors constrains the quality and reliability of service delivery. Issues of quality were mentioned in particular with regard to housing, since the quality and longevity of a structure can have a large impact on the quality of life of its residents, who are then responsible for the maintenance and upkeep (SAHPF tour). Ways that using contractors can reduce the quality include cutting corners (Interview Rudi Hillermann) and designing projects with financial considerations as the primary concern (Interview John Reynolds). The contractual relationships between the agencies and contractors limit the quality by creating difficult bureaucratic reporting lines (Interview John Reynolds), limiting the sharing of expertise and local knowledge (Interview Kate Tissington), and limiting government control because they aren't directly providing the services (Interview Kate Tissington). Furthermore, the contracting process can limit growth or change in approaches or resource allocation—which could lead to improved quality—because most project requests for proposals (RFPs) are too formulaic. When the scope that the government specifies in its RFP does not allow firms to propose different allocations of resources or approaches based on their knowledge of best practices, this limits the ability of the contractors to use their expertise to improve the overall quality (Interview John Reynolds).

### *Nonprofits*

Housing's material requirements likewise inform the work and limit the progress of the many nonprofits that provide or improve housing in South Africa. In general, nonprofits can be government contractors, can fill service gaps with private funding from donors, and can serve as watchdogs to pressure the government (Habib and Taylor 1999; Sabatier 1975) Powell and

Steinberg 2006; Abouharb et al. 2015). When nonprofits work using government contracts, they fall into the vendor category discussed previously. The Socio Economic Rights Institute (SERI) was discussed in-depth in chapter 5 and has a watchdog and advocacy role. SERI directly pressures government to fulfill immediate needs and pushes for informal settlement upgrading and rental stock with affordable housing to bring about material gains (Interview Kate Tissington). Yet the most common role that nonprofits play regarding housing in South Africa is filling the gap in housing provision with funding from donors or through alternative funding mechanisms.

One approach to filling the gap and providing housing is exemplified by the South African Homeless People's Federation (SAHPF), which has built more than 50,000 homes since 1996 (Interview Patricia Matolengwe; Podlashuc 2011). Patricia Matolengwe, the National Chairperson of the SAHPF, and several SAHPF members graciously took me on a tour of shack settlements, government-built houses, and houses that the SAHPF built in the Western Cape (SAHPF tour). The SAHPF has a program in which women pool their resources to buy property and build houses, and according to many, this program works (Interview Patricia Matolengwe; Interview Rudi Hillerman). Throughout my tour, residents both in houses and those staying in shacks on recently purchased land, expressed to me the importance of building in the correct order. After purchasing land, SAHPF families often build shacks to show that people are living on the land so that they may solicit services (SAHPF tour). Once the government installs water, plumbing, and electricity, then SAHPF families develop more permanent structures (Interview Patricia Matolengwe). This approach has been honed through lived experience and over the years has had results that have been acknowledged most publicly by Hillary Clinton in her multiple visits to South Africa (Interview Patricia Matolengwe; Interview Rudi Hillerman; Podlashuc

2011). Overall, this approach works because, understanding the constraints that limit government provision of housing, SAHPF encourages people not to wait but instead to take action now through savings and hard work to expedite access to their own formal housing.

SAHPF has impressively scaled up (Podlashuc 2011), yet its work remains a drop in the bucket given the massive need for housing. Moreover, SAHPF also struggles with land as a material requirement for housing. In fact, while I was with the SAHPF in 2014, we visited a community where SAHPF participants had saved up and begun the process to purchase the land in 2009. The purchase was completed and as of 2014, shacks were being built (SAHPF tour). The nearest source of water was 5km away, and SAHPF participants were trying to get utility providers to come service the land so that they could stop building shacks and begin building houses (SAHPF tour). However, officials told them that they were not allowed to build there because the land is zoned as agricultural rather than residential (SAHPF tour). I was there when the sheriff arrived and delivered 54 legal documents—one for each structure that had been built on the property—and advised the new land owners to get an attorney (SAHPF tour).

A different and common approach used by many nonprofits is to improve the housing situation in informal settlements by optimizing the technology and design of shacks to maximize space, minimize fires, and provide more comfortable and stable informal dwellings (World Design Capital Cape Town 2014 fieldwork). These nonprofits, led by architects with private funding and good intentions, sidestep the material barriers that land issues create by focusing on helping households that already have a shack (Interview Marie Huchzermeyer). They are trying to fill the gap and improve the situation in the shacks until people can move into formal, government-funded housing, or in hopes of improving the mobility of shack dwellers so that they

have the financial means to move into formal housing without waiting for government housing (World Design Capital Cape Town 2014 fieldwork).

However, having a nicer shack does not overcome the governmental, bureaucratic, and informal barriers that living in informal housing creates in terms of access to other goods and services. Dr. Marie Huchzermeyer, Professor of Architecture and Planning, shared my concerns that these nonprofits are limited in their ability to solve South Africa's housing problems. Better shack-building practices are clearly helpful given that most shacks are shoddily built from found materials, and it is good that organizations are finding places to pilot these new building practices (Interview Marie Huchzermeyer). Nevertheless, better building practices do not solve the big problem of access to land and the protection of private property in lieu of redistributing land (Interview Marie Huchzermeyer).

#### *Activism and Social Movements*

Activists and social movements commonly demand housing or upgrading (Ballard et al. 2006). Yet, there are fewer people protesting than there are people who need houses, in part because people typically exhaust the institutional channels and wait patiently for years before they begin protesting (see discussion in chapter 5). Even then, people often protest for formal housing unless they realize the realities of the housing backlog and advocate for upgrading (Interview Vinodh Jaichand; Interview Dale McKinley).

As of 2014, there was already a sense that activists and other civil society actors had played a role in the move towards shack upgrading (Interview Liza Cirolia; Interview Richard Pithouse). It is likely that honest communication from the government about the situation would expedite more informal housing upgrading instead of having people holding out hope for formal houses. When people who are waiting for housing understand the reality of the situation, and are

given the choice between either waiting indefinitely for a formal house that will likely be in a different location or getting upgrades sooner in their current location, they often prefer the latter option. Yet, as previously discussed, the truth of the housing backlog is largely unknown and masked by the waiting list myth. Thus, although protests for housing are common, they are also far from ubiquitous among people who lack housing.

### *Courts and Litigation*

Several landmark court decisions affirm the Constitutional right to housing, yet enforcement of those decisions is limited. There are also hundreds of documented court decisions pertaining to the right to housing, yet most are about preventing eviction. The Constitutional Court judgment for the Government of the Republic of South Africa and Others v Grootboom and Others in 2000 maintained that people cannot be evicted from any type of home without both the issuance of a court order and the provision of an alternate accommodation (Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000]). Yet, as was discussed in chapter 5, evictions continued and the decision was not self-executing. When Irene Grootboom, the namesake of that landmark court case, died in 2008, she was still living in a shack and had not yet received government housing (Joubert 2008). This represents the reality that winning in court is not sufficient for ESR realization, though the precedent created by Grootboom did create an opening for further litigation regarding the right to housing, which has mostly been used to stop or prevent evictions rather than furthering the provision of housing (Williams 2014).

One example of such litigation, which became another landmark decision, was in 2009 when the shack dwellers movement Abahlali baseMjondolo (translation: “People who Live in Shacks”) won its case against the Premier of KwaZulu-Natal in the Constitutional Court, which

declared the KZN Slum Act unconstitutional (*Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009]). The KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act that was invalidated had forced private landowners to evict shack dwellers, and required that municipalities evict unlawful occupiers of informal settlements when landowners did not manage the evictions themselves (*Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others* (CCT12/09) [2009]). It is unusual that the Constitution and the Constitutional Court protect occupiers at the expense of protecting the private property they are occupying (Interview Simon Delaney). As chapter 5 discussed, court decisions are not self-enforcing and so it is unfortunate but unsurprising that evictions continued even after the *Grootboom* and *Abahlali* decisions.

Although housing is one of the most litigated socio-economic rights in South Africa, landmark court cases have not fueled much progress in realizing housing rights due to a lack of implementation and enforcement. This is particularly disappointing because the Constitutional Court should be able to create more substantive, effects-based doctrine to improve ESR realization (Pedriana and Stryker 1997, 2004, 2017; Stryker and Haglund 2015), yet also unsurprising given that action from elites is necessary to ensure court victories lead to change (Rosenberg 1991). While the *Treatment Action Campaign* Constitutional Court decision led to large antiretroviral drug rollouts, the *Grootboom* decision did not have the same effect of filtering down to increase the provision of housing (see discussion in chapter 5). Evictions that do not follow the proper procedures have continued—albeit with substantial litigation to resist illegal evictions, thanks to the *Grootboom* precedent—and many South Africans' housing situations are vulnerable.

As previewed in Chapter 5, the different outcomes, as the result of successful litigation in the TAC vs. Grootboom litigations, are logical when viewed through the lens of the materiality of the provision of rights. As chapter 5 discussed, the ARV rollout that resulted from the TAC decision had very few material requirements for the government; it was mostly a matter of allowing the drug manufacturer to provide a specific medication for free in specific circumstances, not realizing the entire right to health care. Yet even the ARV rollout following the TAC decision was not nearly as quick and complete as the court had ordered.

On the other hand, Grootboom reaffirmed the right to adequate housing, which it defined as also including multiple utilities, affirming a bundle of rights that are far more holistic than allowing for a free medication to prevent mother to child transmission of HIV/AIDs. As this chapter has and will continue to show, housing and each of the utilities that are part of adequate housing require a substantial amount of government effort and resources to make real, and thus it is unsurprising that this progress following Grootboom has been lacking.

Simon Delaney, an attorney specializing in supporting civil society, has litigated media freedom cases in the Constitutional Court, and housing and water rights cases in the Supreme Court of Appeal and High Court. Delaney reiterated that in housing, economic and social rights realization simply is not happening based on court decisions or legislation, “So you got two laws around securing of right to land and homes, the [1998] PIE Act: the Prevention of Illegal Eviction, which protects open residents. Then you have [1997 Extension of Security of] Tenure Act, that protects rural occupiers,... but a million people have been evicted after these laws [were enacted]” (Interview Simon Delaney). Given that the laws aren’t filtering down (see chapter 5), Delaney said that combating these problems requires “increasing the capacity of state funded legal aid offices” to take on these individual cases (Interview Simon Delaney).

Ultimately, using the courts to protect the right to housing is more reactive than proactive, and is focused mostly on not taking away the protections for occupiers that already exist on the books, rather than on expediting the process of providing new formal housing. People are generally going to court to fight for their right to housing when and because they have been evicted from an informal dwelling and litigation is their last resort, not proactively going to court to demand a house (see chapter 5). This reactive nature of using the courts is the result of both the housing waiting list myth and very few options for poor people to use the court, given their own resource limitations, which in turn makes it unlikely that people will proactively use litigation to seek a right they have been promised but not yet granted.

Through the lens of materiality, this reveals that people are unlikely to litigate to seek a right that has not yet been materially implemented, and are more likely to go to court if the right has already been realized (at least in part through access to informal housing) and there is a problem with the material maintenance or quality of the right. We saw evidence of this in chapter 5, where the focus was on litigation regarding evictions, not on securing better housing (Williams 2014). How the court will decide on issues of maintenance or quality often is a matter of whether the court is more concerned with impact vs. procedure (see Pedriana and Stryker 2017 for the importance of this issue). While these attributes of ESR realization typically are separate from the initial question of access and whether a right is realized, it appears that maintenance and quality are more likely to be litigated because laws are often used to protect people who already have an economic or social good or service, and people often mobilize when they experience a threat or a loss of that good or service. This reveals how litigation plays a larger role in reducing slippage than it does in spurring implementation. Thus, the courts are not the pathway to large-scale formal housing progress, but may be the key for preventing some

setbacks by protecting people from removal from shacks while they continue to wait for formal housing

While litigation may not be an effective pathway to increasing the provision of housing, it can be a necessary way to learn the realities of the housing situation. Attorney Simon Delaney told me:

There isn't really a mechanism for government to be sort of open and honest about its challenges and I suppose it's a basic human frailty we don't easily accept our limitations and wrongdoing, especially in the case of the government. They're thrust into the position of being the omnipotent provider of services where clearly they are not an institute to do that. The problem is that the expectations of people are so high, because of promises in the Constitution, the promises in elections and the rest of it, but there is no mechanism for honesty.

(Interview Simon Delaney)

Delaney went on to explain that people do not realize how bad the formal housing backlog is because, "The only place you know what government is doing is in court, which is the wrong place to do it.... When I was litigating, there was an admission in a court paper that government is 200 years behind on its housing backlog" (Interview Simon Delaney). While the admission that the government is 200 years behind in the housing backlog would certainly be politically difficult, the current situation is simply misleading and creating false hope. Delaney continued, "I don't think telling people to wait and hang on is good enough. People don't understand that the government plan is inadequate because the government doesn't have capacity. I don't think there is an understanding of that, there is just this myth perpetuating that government has it under control" (Interview Simon Delaney).

In sum, and as indicated previously, without honest communication about the timeline projections, prioritizing shack upgrading over building formal housing is unlikely because people who are waiting for housing do not realize just how bad the situation is (Interview Simon Delaney; Interview Liza Cirolia). Therefore, although it is far from ideal that the government is

only disclosing information about the extent of the backlog in court, it does show the importance of having the court as a mechanism to obtain this information.

Speaking with people who had been involved in court cases pertaining to housing and utilities, it became clear that, just as the socio-legal literature more generally makes clear, the process of seeking, securing, and keeping legal representation in South Africa disadvantages poor people. As chapter 5 explained, this is due to an insufficient pro bono system, a small number of nonprofit legal assistance options, and a general lack of attorneys committed to helping the poor (Interview Vinodh Jaichand; Interview Simon Delaney). As Dr. Vinodh Jaichand told me, rights often take care of those who have, not those who “want to have” (Interview Vinodh Jaichand).

One example is the failure of progress in land restitution. In 1994, President Nelson Mandela signed the Restitution of Land Rights Act to restore the land rights of those dispossessed by racially discriminatory land legislation dating back to the 1913 Land Act. The Restitution of Land Rights Act should have gone a long way towards providing land to families and communities that were displaced. However, Delaney told me, “I think only 5% of land claims have settled and the other 95% of restituted land is a failure. I am not saying more lawyers would help because there are issues with training, but one thing is for sure, people need lawyers for their process to navigate them through the system” (Interview Simon Delaney). This situation is reminiscent of Galanter’s (1974) finding that the haves come out ahead because repeat legal players with money have advantages over people who have never navigated the legal system before. A lack of access to and familiarity with working with lawyers is one element of how poor one shot players are disadvantaged, whereas planning for potential litigation is an

advantage for the repeat players, including the government and organizations that own large plots of land (see Galanter 1974).

One exception is that some communities that have been waiting for upgrading for 10 or 20 years have proactively threatened legal action for lack of service delivery and this may have played a role in spurring their local governments to start upgrading existing shacks or building housing (Interview Kate Tissington). Yet it is incredibly hard to determine true cause and effect.

For example, the Rooigrond informal settlement in the Northwest Province approached SERI in late 2011 to request assistance after more than a decade of resisting eviction and pushing for development (SERI 2014). SERI took met with over 200 households in the settlement in May and June 2012, preparing for litigation (SERI 2014). In months that followed, there was a combination of service delivery protests in the same province, a visit from the Portfolio Committee on Human Settlements which ordered the municipality to negotiate with the community, and a Rooigrond community protest in which members of the community blocked a major highway and protesters were shot at by police, which went viral on social media (SERI 2014). In late July 2012 the Mayor met with the Rooigrond community and publicly promised that Rooigrond would be developed (SERI 2014). This led to a pause of the litigation process with SERI, and in 2012 and 2013 SERI held a series of workshops with representatives of settlements in the area that emphasized how to engage with local government, and at the same time the government went through the planning, budgeting, and procurement process to prepare to build houses (SERI 2014). Construction of houses in Rooigrond finally began in July 2014 (SERI 2014). In this case it is unclear how much each of the different forms of pressure contributed to the Mayor's decision and the follow-through with her commitment, yet it is possible that the threat of litigation contributed to ESR realization.

Using the threat of litigation is the exception to the rule, and many situations where litigation had been threatened or had begun were ongoing as of 2014 (Interview Kate Tissington). But there are circumstances where the threat of using the law to proactively pressure government providers—rather than using litigation after an eviction or when services are shut off—has worked in favor of the people (Interview Kate Tissington).

### ***Summary and the Answer to Puzzle 1***

This section on housing has demonstrated that the installation of housing has extensive material requirements including building materials, labor, and, most importantly, land. The combination of these material requirements for implementation, as well as population growth and urbanization, have created a situation in which the South African government has built 3 million homes yet has been unable to keep up with the demand for housing (Department of Human Settlements 2015). This is the answer to Puzzle 1 and explains why more people live in shacks now relative to the end of apartheid, despite the government's commitment to building and providing housing. Getting everyone into adequate housing as it is currently defined, and as the public expects, in less than the 200 years mentioned in the court admission (Interview Simon Delaney) would require a massive increase in available land, capable contractors or government builders, and more state funding for housing to pay for those increases.

The housing situation also shows how the ANC's unaggressive approach to land reform, coupled with an unwillingness to provide truthful information about the massive field-level material barriers to building housing for everyone, have also played a key role in creating the current situation. By perpetuating the housing waiting list myth and unrealistic public expectations, the government has created a situation where it is politically dangerous to admit that most people who are currently homeless or in shacks will not receive adequate housing

within their lifetimes. This has also resulted in a situation where the government is unlikely to shift to focus on shack upgrading because so many people have their hearts set on getting high-quality formal housing. Moreover, this lack of accurate information and the waiting list myth have likely diminished activism and litigation, which could play an important role in pressuring government action.

This section has also raised the conundrum that two aspects of the constitutional right to housing—the right to adequate housing and the right to not be evicted—have at times worked at cross-purposes. The courts have repeatedly determined that the right to not be evicted without a court order and alternative accommodations, trumps the eviction of squatters and the demolition of shacks to build new homes. Yet there continue to be instances of illegal evictions from land that has been designated for formal housing, which can result in litigation. This litigation then forestalls eviction so the right not to lose one's home without the provision of alternative housing is enforced, but this then may be at the cost of building new formal housing so that the right to adequate housing is not made real. This can be particularly problematic because the planning cycle is typically three years; civil servants are not allowed to plan for alternative accommodations for people who are evicted, and the historical budgeting process has reduced future budgeting when municipalities are unable to expend all of their allotted funds (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration; Interview John Reynolds). The result of these bureaucratic processes, combined with following proper procedures regarding evictions, is that realizing the right to housing by not illegally evicting people can create ripple effects that last for years, delaying the building and provision of formal and adequate housing.

Additionally, the material requirements of formal housing are so great that few non-state organizations have the means to significantly improve the housing situation for a large number of people in South Africa. While there are some exceptions, such as the SAHPF which is helping people to build their own formal homes, most nonprofits are focused on the more realistic near-term goal of improving living conditions for people in informal and traditional dwellings. While these efforts do not result in measurable improvements in terms of the number of people who are adequately housed and often work within existing land constraints, these efforts nevertheless improve the lives of people experiencing poverty.

### **Water**

The constitutional right to water is quite progressive, though legislation has established and litigation has confirmed a volume of sufficient basic water that many critics believe is not enough. While there has been progress in improved access to water since the end of apartheid, the specifics depend on aspects of location due to the many different service providers involved, urban and rural differences, and feasible options for various types of housing. There are major criticisms of the water service providers' capacities, maintenance practices, and lack of coordination that result in inconsistent access to water even for households that have adequate infrastructure installed. Additionally, households that rely on shared taps for access to water are more likely to encounter gaps in service and other barriers to having consistent access to adequate water. The material requirements for receiving water play a major role in these various limitations because water has large resource-intensive and technical-intensive requirements both for installation and ongoing maintenance. While the importance of water is undeniable and water rights are a common object of protest, the landscape of non-state actors involved in water realization consists of mostly private contractors; nonprofits are not helping to fill the gap by

providing water, but instead focus on improving quality of water or encouraging integrated service provision (PureMadi 2018; Miya 2018).

### *Materiality*

Water is a materially difficult right to realize. The physical attributes of water require substantial and sound infrastructure and ongoing maintenance (Republic of South Africa 2014). Installing pipes requires regional and community planning to get the right size of pipes to deliver the proper volume of water to different areas (Interview Rudi Hillerman). Installing also requires having the pipes themselves—ideally the pipe materials chosen will be durable and safe—and also requires digging into land to place the pipes, technical expertise for installation, and then additional planning to get the pipes to the locations where taps will be located (Tissington et al. 2008; Interview John Reynolds). Maintenance of the pipes then requires access to the land where they are installed; coordination between consumers and providers, as well as between different providers to know where there are problems; ongoing monitoring and evaluation; and technical expertise to fix leaks and other problems (Tissington et al. 2008; Interview John Reynolds; Interview Rudi Hillerman). Water can also be supplied through reservoirs, boreholes, and water trucks. While these options are less common, they can be less materially intensive to install than piped water. Additionally, ongoing provision and the quality of water are particularly important. There needs to be an adequate water supply for the area that will receive water and many steps must be taken to insure that drinking water is safe.

When water taps are not in—or very close to—homes and people are unable to use the water directly from the tap, there are additional material requirements that individuals often become responsible for to ensure their own access. These include the containers used to transport and potentially store the water and a means to transport these containers from the tap to the place

of storage and/or consumption. If the water is not clean, there may be additional requirements like boiling or filtering the water for it to be safe for consumption. In this section, I will show that housing is a gatekeeper to having in-home tapped water, and the implication of this relationship between housing and water rights is that people who lack a formal house and the convenience of an in-house tap need to overcome large material constraints to have safe and clean water.

### *Constitutional Promise*

Section 27 establishes the right to water along with several other rights. It reads:

“3. Everyone has the right to have access to: ... e. sufficient food and water... 4. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.  
Constitution of the Republic of South Africa. 1996.

It is notable that the Bill of Rights uses the term “sufficient” but does not define how much water is sufficient, and then also includes a reasonable and progressive realization clause that can be seen as tempering the promise of receiving sufficient water.

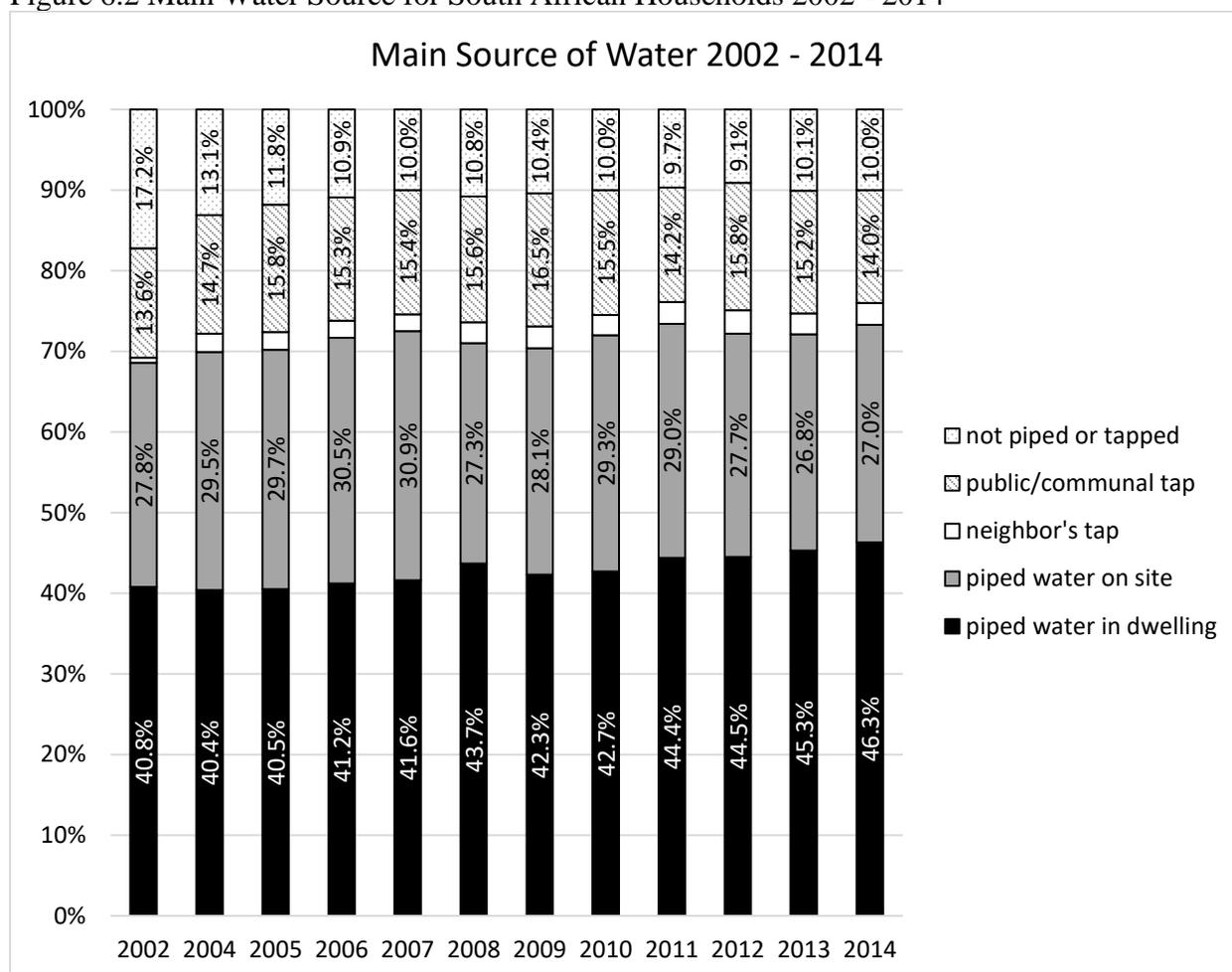
In 2001, the Department of Water Affairs and Forestry chose to institute a national free basic water policy that provides every household under the poverty line with 6kl (1,585 gallons) of free water per month, regardless of their specific water provider (Department of Water Affairs 2013). This free basic minimum equates to 50 liters (13 gallons) of water per day per person with the assumption that a household is 4 people. This allocation is the equivalent of about one large bathtub full of water per day per household.

Additionally, the National Housing Programme ensures that everyone who received a permanent residential structure will have the infrastructure for water. This includes a bathroom sink basin, shower, and flush toilet, as well as a kitchen sink (Republic of South Africa 2014).

### *Progress After Apartheid*

Access to water has improved since the end of apartheid, but there is still much room for improvement in terms of both the source of water, proximity to water, and access to water without service interruptions. Figure 6.2 shows that the percentage of households whose primary water source is not piped or tapped has decreased from 17.2% in 2002 to 10.0% in 2014. However, progress has slowed. Since 2006, the percentage of households without piped or tapped water has consistently hovered between 9% and 11%. As of 2014, 46.3% of households have piped water inside their house, 27% have a water pipe on site (generally in their yard), 2.7% of households' primary sources of water is a neighbor's tap, and 14% have a communal or public tap as their primary source. Of those who do not have water in their house or on site, 41.6% have to travel further than 200 meters (656 feet) to reach their main source of water (GHS 2014). While there has been some progress, the reality is that many people who did not have adequate access to water during apartheid still do not have piped or tapped water, or have to walk to and/or share their primary source of water.

Figure 6.2 Main Water Source for South African Households 2002 - 2014



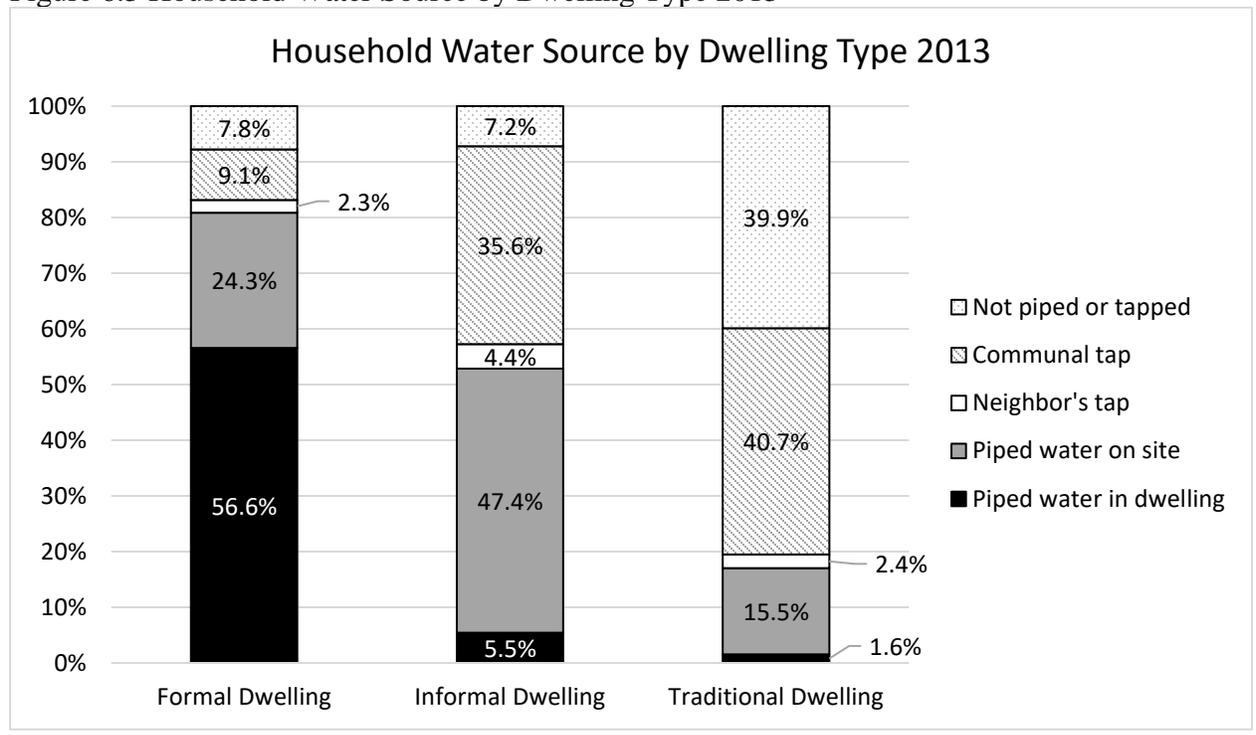
Source: GHS 2002-2014 (no data for 2003)

Water provision is handled at the municipal level. There are 278 municipalities and 152 water service authorities in the country, and a combination of public and private water providers (Department of Water Affairs. 2013). Due to the diversity of water suppliers, there are ongoing debates over what counts as “basic” access to water as defined in the national free basic water policy. Some provinces interpret the basic minimum as access to water in the house or yard, while others say it is within 200 meters of the dwelling (Republic of South Africa 2014). For households with their own tap, prepaid meters are often installed to regulate access to water (this is explained more in section on Criticisms of the Government’s Progress).

### *Housing as a Gatekeeper to Water*

The 2013 GHS data reveals that there is a relationship between type of housing and the source of water, reflecting the material link between housing and access to water. Figure 6.3 shows that households with formal dwellings generally have piped water inside their dwelling (56.6%) or piped water on site (24.3%). Households in informal dwellings, which can be shacks in a backyard or in a shack settlement, primarily rely on piped water on site (47.4%) or a communal tap (35.6%). Households in traditional dwellings (huts) are the least likely to have access to water close by, and for most, the primary source is a communal tap (40.7%) or they do not have piped or tapped water (39.9%). Traditional dwellings tend to be in rural areas, and there are likely other explanatory variables for which types of dwellings have which sources of water. Nonetheless, the main finding is that 56.6% of households with formal dwellings have piped water inside their home, while only 5.5% of informal dwellings and 1.6% of traditional dwellings have piped water inside (see figure 6.3). Overall, this gatekeeper relationship explains much of why there is still a gap in access to water and begins to answer Puzzle 2: why utility progress is been so slow regardless of the multiple types of providers involved.

Figure 6.3 Household Water Source by Dwelling Type 2013



Source: GHS 2013

***Criticism of the Government's Progress***

The main criticisms of progress pertaining to water center around the notion of what is sufficient, the tactics of the actors involved in the provision of water, and the cost of water. For the most part, these criticisms are about the ongoing provision of and access to water, showing that for many people simply having a water hookup, or even receiving the legal free basic minimum, are not sufficient. All of these criticisms are directed at the actors involved in providing water, but all of the criticisms are rooted in the material requirements for water provision. Water is a unique material that requires substantial infrastructure to move, store, and clean, and has major ongoing requirements. Installing access to water is necessary but far from sufficient to ensure continuous access, and problems with maintaining access to adequate water are at the heart of these criticisms.

First, many people believe that the legally established free basic minimum and prepaid meters and community shut-offs used to limit water use do not provide sufficient access to water. While many have called for South Africa to constitutionally define a minimum core for all economic and social rights (UN Committee on Economic, Social, and Cultural Rights 1990; Bilchitz 2007; Klug 2010), water is one of the few rights for which that minimum core is somewhat defined. Though it is defined in legislation and not the constitution, the basic minimum has been upheld by the Constitutional Court, though the decision clearly stated that while the court thought the policy was constitutional, it was not setting a minimum core in precedent (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]). Nevertheless, the criticism is that the 2014 monthly basic minimum is not enough when it is provided communally or with a prepaid meter – that the specifics of how the minimum amount of water is provided results in inadequate access (this is discussed further in this chapter’s subsection on the Courts and Litigation).

With a prepaid meter, once the household has used its monthly allotment of free water, it is shut off until the household pays for more. For many households that receive the free basic water in their dwelling or yard, when the allocated water has been used, there are insufficient funds to pay for more so the household must wait until the next month begins.

Communal taps present even more problems. Each communal tap should be programmed to provide the free basic minimum of water for all homes within 200 meters so that each household relying on the tap gets its monthly free amount of water before the water shuts off for the month (Hall et al. 2006). This makes access to water particularly precarious for people who rely on communal taps, who often live in informal or traditional dwellings, because there is no way to know which households have used more or less than their portion of the minimum, and

no reliable way to ration out the water to ensure each household using the tap gets its free basic minimum (Interview Kate Tissington). Additionally, there can be problems with leaking pipes, leaking taps, improper calculations of how many households use a communal tap, and water being shut off after residents use a large volume of water to put out shack fires (Kliptown Youth Programme tour and observations; Interview Alfred “General” Moyo).

Alfred “General” Moyo is an organizer for the Makause Community Development Forum. Where General lives, they have roughly one water tap per 1,000 people in the shack settlement and the taps are located on the edges of the settlement where they are easy to service, but require a longer walk to reach (Interview Alfred “General” Moyo). In the shack settlements I visited, it was common to see lines of people waiting to use the only taps that had not yet run out for the month (Kliptown Youth Programme tour; SAHPF tour). The reality of the current basic minimums is that, while many South Africans do have monthly access to water, they do not have daily access to water and in some circumstances may have to go weeks without adequate access to water, even though they are legally considered to be receiving sufficient water<sup>35</sup> (Interview Kate Tissington; *Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]).

Second, especially among activists, there is criticism that the privatization of water, and the use of prepaid meters and communal taps, serve the interests of water providers in maximizing profits, rather than treating water as an economic and social right. Once again, the focus here is on the importance of having consistent access to water beyond simply having infrastructure to receive the free basic minimum. The prepaid meters and community tap shut-off

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<sup>35</sup> This decision is discussed more in the section on Courts and Litigation and explains that the Constitutional Court considered the monthly allotment to be a reasonable procedure.

systems allow the company or municipality to provide the constitutionally guaranteed minimum, and only provide more than that if the recipients have the means to pay. This is interpreted by critics as prioritizing profits over rights and is consistent with the thrust of literature on contractors as public service providers (Alter and Hage 1993; Smith and Lipsky 1993). This situation has at times jeopardized the meters themselves as households and communities decide to remove the meters and their shut-off valves to try to gain unhindered access to water, or protest by ripping out and then publicly burning their meters to show their hatred of the system (Tour with SECC; Interview Rudi Hillerman; Interview Trevor Ngwane). That ultimately negates the utility providers' attempts at efficiency and cost savings, and creates situations in which households that are assumed to be receiving their free basic minimum are either defrauding the utility providers by having unlimited access, or have broken their connection and no longer receive the basic minimum.

Third, there are major complaints about consistent access to water and most of these complaints are rooted in capacity problems. The reality is that access to water is less consistent than Figure 6.4 indicates. In 2014, 25.7% of South African households whose primary source of water is tapped municipal water reported that their service had been interrupted for at least two consecutive days within the past year. Based on what I heard during my fieldwork, the interruptions can frequently last much longer. Some of the problems result from volatility of the state funding for free basic water provision; this is funded through conditional grants and can result in gaps in service (Interview Kate Tissington). Other problems are basic maintenance to ensure the pipes still work. As civil servant Rudi Hillerman told me, there are now more pipes in rural areas, but that does not mean the services are being delivered. Hillerman said, "There's no water in the pipes. Maintenance is just falling down. They only are measuring the length of pipes

that they put in, or the money spent on the provision of length of pipes. They are not measuring, ‘is there water?’” (Interview Rudi Hillerman).

A representative from FEDUP at the HABITAT III National Workshop, a gathering of government and nonprofits in preparation for the 2016 United Nations Human Settlements Programme (UN HABITAT) III Conference, agreed that there should be better monitoring and evaluation of water, because there are many taps without water flowing in shack settlements (HABITAT III National Workshop). In recent years there also have been water shortages in some locations, and in 2018, Cape Town struggled with a water crisis (Bohatch 2017; Haldenwang 2009; Poppick 2018). Starting February 1, 2018 until October 1, 2018, the City of Cape Town mandated that every person limit water use to 50 liters (13 gallons) per day—the same as the free basic minimum—to avoid running out (City of Cape Town 2018; Pather 2018).

Fourth, the problems with coordination between service providers have drawn substantial criticism. With so many different actors responsible for providing water and a need for ongoing access and provision, there are many opportunities for communication breakdowns that result in people going without water while the actors responsible for provision presume that water is being provided. One key problem is that, although a given organization installs the pipes, there will be no water coming out of the tap because the pieces come into place at different times and the various providers are not fully coordinated<sup>36</sup> (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration).

For example, Hillerman of the KwaZulu Natal Department of Cooperative Governance & Traditional Affairs told me he once received a call from a man who lived in a small town called

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<sup>36</sup> The informant also noted that this sort of phenomenon is often considered by the public to be an example of corruption, when it is typically just the result of poor government coordination.

Pongola in KwaZulu Natal. In Pongola they had all of the infrastructure, but no water. “There are pipes, meters, everything.... the people ‘had water’ in their home, but now for the last two years they had no water. For two years they’ve had no water!” (Interview Rudi Hillerman). Hillerman then contacted the project manager at the water service authority and she told him that arrangements had been made and they thought the residents were receiving water. He asked her to follow up the next morning, and she said they would take care of it. After two days passed and he had not heard back, Hillerman called the project manager at the water service authority to follow up. She told him that the residents had not gone through the proper channels, and she could not take action until the residents went to the local municipality and had the municipality contact the water service authority (Interview Rudi Hillerman). This extreme adherence to the proper bureaucratic channels to coordinate can be a huge barrier to access to water.

On the opposite end of problems with coordination, some agencies try to sidestep the bureaucracy and provide water even though it is not their responsibility. This is a problem of actors’ tactics that ultimately becomes a capacity problem. Hillerman said,

What is happening of late, and yes you can quote me, is that our political leaders at all levels are doing service delivery of services which they ought not to be delivering. So everybody wants to deliver water. Why? Because we all need water, obviously. Nobody focuses and says “okay, so I’m Cooperative Governance and Traditional Affairs, so why should I be delivering water?”  
(Interview Rudi Hillerman).

When government actors try to fill needs that are not their responsibility, it may help in the short run, but it ultimately undermines the work of the water service providers and creates bigger problems because it can limit the capacities of the water agencies to fulfill their duties. Hillerman continued, “If there is a Department of Water Affairs, if there is a mandated service provider, the water service authorities, why are we not building their capacities? Why are we not building the municipality’s capacity?” (Interview Rudi Hillerman). At the root of this are problems with civil

servants not sticking to their intended roles. Hillerman lamented, “Cooperative governance is: establish the municipality, set up systems, monitor the implementation. But no, what do we do? The department becomes the plumber. It’s not supposed to work that way” (Interview Rudi Hillerman). Since ongoing maintenance and provision of water are so important, both agency coordination and the appropriate division of labor between designated roles are important to ensure continual access.

### *Involvement of Other Organizations*

There are many different public and private actors involved in the provision of water, however there are few ways for actors other than water service providers (either public or private) to be involved in realizing the right to adequate water. Although there are some actors involved in filling gaps in water service provision, the main role that other actors play is seeking to improve access and quality to ensure adequate water provision, though with seemingly minimal impact.

### *Vendors and Private Service Providers*

Vendors are very involved in the engineering side of water provision, specifically when it comes to installing pipes. Dr. John Reynolds is founding Head of an independent academic wing at Rhodes University that does research informing policy development, mostly about water resource management. He previously spent many years doing applied research and policy consulting around development planning and water services. He confirmed that much of the water implementation work is highly technical and told me that the Department of Water Affairs and Forestry (DWAF) had many engineers leave. This, in turn, diminished technical capacity, making the DWAF more reliant on external consultants (Interview John Reynolds). This is consistent with the literature on the international move towards reliance on contractors,

especially for highly technical work (Haglund 2010). Since much of the technical work for water provision is completed by large engineering companies, this reliance creates structural challenges for the achievement of high-quality water service delivery long term. Big engineering companies often design projects with financial considerations first and foremost, ensuring that they make a large profit. Because the companies make decisions about their materials and processes with the profit motive as top priority, quality suffers (Interview John Reynolds).

As was mentioned in the criticism section, there also are private water service providers. Some private providers are on short-term government contracts, some are on short-term contracts for just specific services, and others have long term (multi-decade) concessions for water provision (Department of Water Affairs and Forestry 1994; DWAF 2009). Reliance on private contracting can be concerning in terms of pricing and availability, since the private companies involved are less likely to see their work as pertaining to rights realization and more likely to be concerned about cost recovery and profits (Alter and Hage 1993; Smith and Lipsky 1993).

### *Nonprofits*

Many nonprofits focused on realizing the right to water in South Africa are focused on water as part of the right to housing or in combination with sanitation (see Mvula Trust 2018) or agriculture and food (see TCOE 2018). Given the intense material requirements involved in the provision of piped water, nonprofit water service provision is not realistic. Instead, nonprofits that try to fill the gap are often providing tech-focused solutions to make water drinkable (see PureMadi 2018) or improving water operations or efficiency (see Miya 2018). Similar to housing nonprofits, these water-focused nonprofits are doing important work to improve access, but are limited in their capacity to hold government and other service providers accountable or serve as a viable substitute to water service providers.

### *Activism and Social Movements*

Access to water is a common demand at community protests and problems with access to water are a common grievance among activists (Ntwana and Sibanda 2013). Many social movements that fight for the right to housing and other utilities also are fighting for the right to water, and in addition to demanding water in memoranda, some use tactics like removing and burning prepaid meters (Interview Anonymous; Interview Alfred “General” Moyo; Interview Richard Pithouse; Tsakane Community Protest observation). However, there is a lack of organized social movement activity focused specifically on demanding the right to adequate water.

### *Courts and Litigation*

There has been very little litigation pertaining to the right to water in South Africa, with one chief exception. In the landmark Constitutional Court case *Mazibuko and Others v City of Johannesburg and Others*, the Constitutional Court deemed the current basic minimum established in state policy constitutional (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]). In this case, which was mentioned in chapter 5<sup>37</sup>, Lindiwe Mazibuko and four other residents argued that the City of Johannesburg’s free basic minimum of 6 kiloliters of free water per month was insufficient and that pre-paid water meters were unlawful. Specifically, the applicants said that by providing access to 6 kiloliters a month rather than 50 liters per day the City of Johannesburg was not ensuring access to sufficient water (*S v Mazibuko* (A1246/2006) [2008]). The Provincial High Court ruled in favor of the applicants and declared that the City should provide 50 liters of free basic water daily (*S v Mazibuko*

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<sup>37</sup> This is the case that Simon Delaney mentioned his involvement with, as part of a legal team that spanned several public interest organizations.

(A1246/2006) [2008]). The appeals court then modified the decision by suspending it for two years and said that 42 liters of water per day must be provided (*City of Johannesburg and Others v Mazibuko and Others* (489/08) [2009]). These decisions were exciting for many who sought to define and establish a minimum core of ESR realization to ensure more complete rights realization (Klug 2010).

However, the Constitutional Court then overruled these decisions and said that the City's 6 kiloliters of free water per month policy was reasonable (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09 [2009]). The decision stated, "it is clear that the right does not require the state upon demand to provide every person with sufficient water without more; rather it requires the state to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources." (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09 [2009]). The decision also specifically reminded that in both the *Grootboom* and *Treatment Action Campaign* decisions, the Constitutional Court has "rejected the argument that the social and economic rights in our Constitution contain a minimum core which the state is obliged to furnish" (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09 [2009]).

In the *Mazibuko* decision, the court also explained that its reluctance to establish a minimum core was in part because what counts as materially sufficient depends on many different factors. The decision reads:

As emerges from research by the World Health Organisation in 2003 to which two of the experts, Mr McLeod and Mr Palmer, referred, what constitutes sufficient water depends on the manner in which water is supplied and the purposes for which it is used. Water can be supplied in a variety of ways, including through reservoirs, boreholes, water trucks, neighbourhood taps and by piping it into houses. Even where the manner in which and the purpose for which it is supplied are clear – as in this case where we know that in Phiri

piped water is generally provided to brick houses with water-borne sanitation – the expert evidence on the record provides numerous different answers to the question of what constitutes “sufficient water”. Courts are ill-placed to make these assessments for both institutional and democratic reasons.

(Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09 [2009]).

This indicates that the Constitutional Court is reluctant to determine what counts as sufficient ESR realization *because* economic and social rights are fundamentally material in nature. This shows yet another example of the Constitutional Court’s reluctance to serve as a check on the legislative and executive branches (see discussion in chapter 5) when it comes to ESR realization. However, this decision goes a step further by indicating that, for rights which can be materially realized and used in multiple ways, the court is unwilling to assess what amount or type of ESR realization is sufficient, and will defer to the other branches of government.

Even though Mazibuko lost and the litigation did not result in establishing a minimum core, the case received substantial attention and, as the only major case pertaining to water in South Africa, it brought increased awareness to the issues of access to water (Interview Kate Tissington). The case discussed—and thus raised awareness of—problems with leaking pipes, improper calculations of how many households use a communal tap, water being shut off after residents use it to put out shack fires, and various other concerns with the basic minimum amount established by legislation and its implementation (Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09, [2009]). Thus, we see that even though the court was not a mechanism for improving water rights realization through a decision or any enforcement mechanisms, consistent with McCann’s (1994) arguments that even losing litigation may help empower those who sought court relief, the Mazibuko litigation was important for awareness and consciousness-building (Interview Kate Tissington).

### *Summary*

Realizing the right to water is another materially intensive endeavor, both in terms of the installation of pipes and other water infrastructure, and the ongoing maintenance and work to ensure households receive clean water that is safe to drink. As this chapter has shown, the type and location of housing are major material gatekeepers to different types of access to water. Although overall access to water has increased substantially since the end of apartheid, people who live in informal or traditional dwellings are far more likely to have inferior access to water rather than a private tap in or very close to their home. This begins to indicate the answer to Puzzle 2: a major reason for the limited increase in access to adequate water is largely the gatekeeping role of housing. This, in turn, is due to the material nature of water realization, which ideally happens in or near the home.

Although legislation has set standards of implementation and the Constitutional Court has validated a free basic minimum that is considered to count as access to water, the maintenance and quality that play such an important role in water provision, coupled with the realities of rationing the free water that is provided, result in many people saying that they have inadequate day-to-day access to water. Additionally, regardless of the type of piped water, there is a lack of provider capacity and coordination that results in some people suffering days to years with pipes that fail to provide water. This is compounded by a general lack of enforcement and accountability for the hundreds of organizations involved in water provision.

### **Sanitation**

The right to adequate sanitation has been established by the Constitutional Court as part of the right to adequate housing. While some may think of sanitation as simply flush toilets with similar material requirements to piped water, sanitation can be provided through various possible forms. Additionally, sanitation has its own unique challenges with maintenance that raise new

questions about what counts as adequate sanitation realization. While the focus of maintenance for water and electricity center on the output of those utilities, sanitation has the unique challenges of maintenance for a utility that is, at its most fundamental, a receptacle rather than a source.

### ***Materiality***

The material requirements for the provision of sanitation are somewhat more flexible than for water or electricity because there are multiple different ways of providing legally adequate sanitation. Proper sanitation requires varying levels of technical skills and maintenance depending on the type of sanitation system. Flush toilets can be connected to sewer or septic systems, both of which require a materially and labor-intensive installation process. According to the HABITAT III National Report, many rural municipalities lack the skills to install flush toilets, which is a major barrier to improving sanitation (Republic of South Africa 2014). The implication is that the materiality of a right, when coupled with a lack of provider capacity, creates barriers to rights realization. Additionally, all flush toilets require water to flush, and “the provision of water along the supply chain from source to tap requires a higher level of technical skill when compared to providing a basic improved sanitation facility like a ventilated improved pit” (Republic of South Africa 2014). All sanitation options must include an enclosure to provide privacy for the user, but those structures may be quite simple and chemical toilets (also known in the US as a portable toilet) are built as a single enclosed unit (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011).

All sanitation options that are not connected to piped water and the sewer are typically less materially intensive to install, but often more involved to maintain. Septic systems are an approved option that requires a water source, installation of a septic tank, and large but

infrequent servicing to empty the tank (Tissington 2011). Ventilated pit latrines (also known as Ventilated Improved Pits or VIPs) are considered adequate by the National Housing Code in rural and peri-urban areas, and have an installation process that can vary in terms of level of technical skill and cost of resources used in construction, but have less intense material requirements than a flush toilet since they do not require access to water (Bester and Austin 2000; Tissington 2011). However, it is unfortunately common that ventilated pit latrines are not properly installed, and thus are simply just pit latrines which are not an adequate sanitation option (Bester and Austin 2000). All pit latrines typically need to be emptied every five years, or they can be sealed and closed (Tissington 2011). Chemical toilets are the easiest sanitation option to install and the National Housing Code considers chemical toilets to be adequate sanitation in urban areas (Tissington 2011; Interview Alfred “General” Moyo). However, these chemical toilets require frequent servicing and also have other risks due to the mobile nature of the units (Tissington 2011; Interview Alfred “General” Moyo). All sanitation options require frequent basic cleaning and maintenance, as an unmaintained toilet in any form can quickly become unusable and unsafe.

There are a wide variety of spaces, providers, and levels of coordination required for providing adequate sanitation. Due to the different material options for adequate sanitation, the responsibility for providing sanitation is split between the Department of Human Settlements (Housing), Department of Water, Department of Cooperative Governance and Traditional Affairs (CoGTA), and Department of Health (Tissington 2011). This differs from the other utilities, which have clearer lines of responsibility. When it comes to sanitation, much like with water provision, this flexibility of material options for realizing the right brings with it an increased need for coordination to ensure adequate ESR realization. Coordination can be

especially important regarding sanitation maintenance, which is discussed more throughout this section.

### ***Constitutional Promise***

Sanitation is not promised in the Bill of Rights; instead, the Constitutional Court determined in the 2000 Grootboom decision that sanitation is part of the right to adequate housing that is established in Section 26 (Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000]; Joseph and Others v City of Johannesburg and Others (CCT 43/09) [2009]; McDonald 2009). Grootboom is an example of courts setting precedent to help ensure progressive ESR realization.

The relationship between housing and sanitation is built into national policies as well. Reconciliation and Development Programme (RDP) houses have always been required to include a toilet, though not necessarily in a separate bathroom, so some RDP homes included a toilet simply in a corner of the house (Act 1997). As of 2009, the National Housing Programme began requiring that all government-built houses include a bathroom with a flush toilet (Department of Human Settlements 2009; Republic of South Africa 2014). While the national standard for adequate sanitation includes more flexible options than simply a flush toilet, the NHP policy helps to ensure that anyone who receives a government house should also have an in-home flush toilet (Republic of South Africa 2014). Overall, these policies and the Grootboom decision show that housing is a gatekeeper for sanitation and acknowledge that toilets are ideally realized within the home.

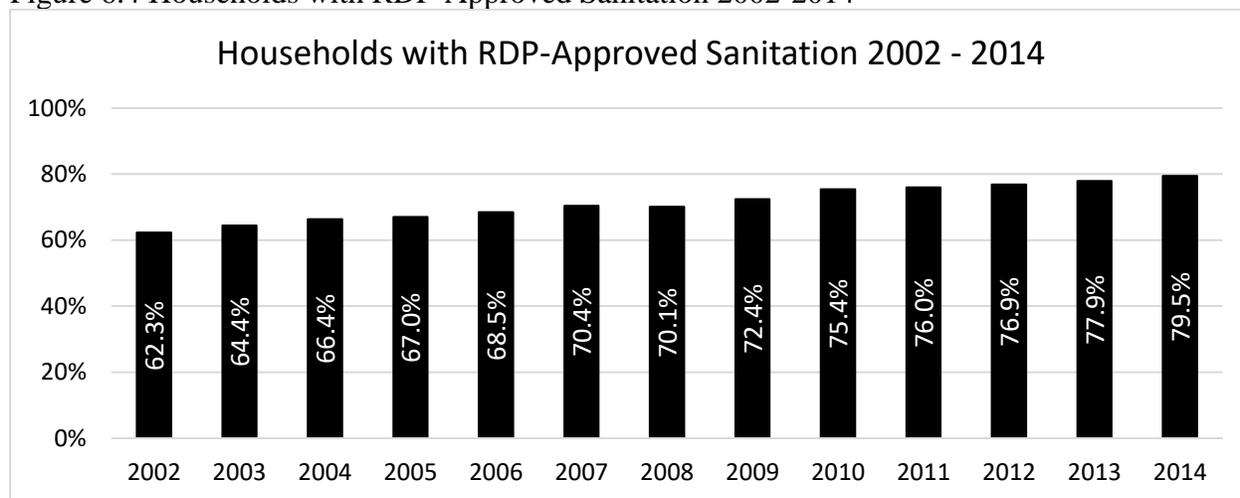
### ***Progress after Apartheid***

There has been some progress in access to sanitation since the end of apartheid. Sanitation progress has occurred at a faster rate than improved access to adequate water, yet the

percent of households with adequate water remains slightly higher than the percent of households with adequate sanitation. In 2002, 62.3% of households had Reconstruction and Develop Programme (RDP) approved sanitation, and that increased to 79.5% of households in 2014 (GHS 2014). RDP approved sanitation includes primarily a flush toilet connected to either sewer or septic (63.1% of households), a pit latrine with a ventilation pipe (16.3% of households), or very rarely a chemical toilet (0.1% of households) (also known in the US as a portable toilet) (GHS 2014). Households without proper sanitation are most likely to have a pit latrine without a ventilation pipe (14.8% of households), but some report using “the bucket system” where people urinate and defecate in a bucket and then empty the bucket elsewhere (1.3% of households) (GHS 2014). Unfortunately, 3.6% of households do not have any form of toilet, and the remaining 0.8% of households reported an ‘other’ option or did not specify their primary sanitation (GHS 2014).

Much like access to water, most of the improvements in access to sanitation have involved improved access to shared toilets or latrines within 200m of home. There has been less increase in access to flush toilets within the home (GHS 2002-2014). Overall, most of the measured improvements are less than ideal, and I will discuss throughout this section the criticisms of outside-the-home sanitation options. While improved sanitation options of any kind are certainly helpful, in-home or at least in-yard toilets are preferable to shared toilets.

Figure 6.4 Households with RDP-Approved Sanitation 2002-2014



Source: GHS 2002-2014

Unfortunately, the validity of the sanitation data is particularly questionable due to confusion about the survey terminology. Different people and communities use the same terms to refer to different types of sanitation options, and the GHS Survey and Census did not accurately capture this information in a valid way. Due to the high rate of error in the sanitation data, I present these data simply by showing an aggregate of RDP-approved sanitation options to show general trends rather than breaking out the data by type of sanitation.

The most substantial error is due to a misunderstanding about the term ‘bucket system’ that resulted in inaccurate data about what kind of toilets South Africans are using (Interview Rudi Hillerman). The bucket system is using a bucket as a toilet, and the KwaZulu Natal province said in 2007 that it had eradicated the bucket system (Interview Rudi Hillerman). Civil servant Rudi Hillerman told me, “Yet in the latest census, [in some areas] you will see everyone says bucket systems, bucket, bucket, bucket” (Interview Rudi Hillerman). While visiting an area that showed high levels of bucket use, Rudi and his colleagues asked, “okay, now tell us, where are these bucket systems?’ They say, ‘you see, we don’t have enough water in the toilet system, so we’ve got to take our buckets and we go to the tap, and we fetch the water, and then with the

bucket, we put the water into the system. That's why we call it a bucket system'" (Interview Rudi Hillerman).

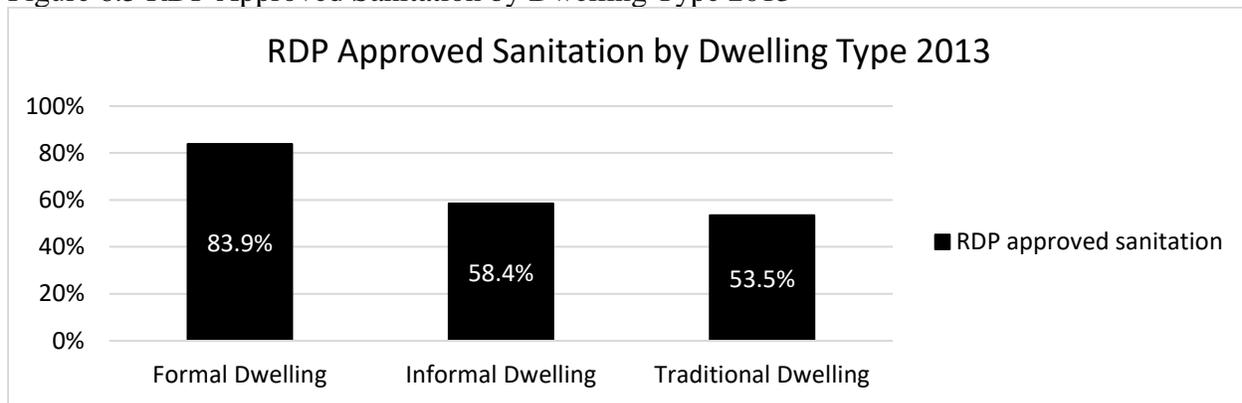
Similarly, the Department of Housing often puts chemical toilets in informal settlements for temporary relief, but the residents using them "just call them 'bucket' because they don't know it's a chemical [toilet]" (Interview Rudi Hillerman 2014). The result is that many South Africans with flush toilets or chemical toilets are counted as having bucket toilets instead. As Rudi laments, "You know that's horrible. The cold statistic says buckets. We know that no one put in bucket systems" (Interview Rudi Hillerman 2014).

Nevertheless, even if most of the 1.3% reporting use of the bucket system actually have RDP-approved sanitation, and we assume that everyone who reported using an option that is RDP-approved provided a valid answer, the reality is still that roughly 19% of South Africans did not have RDP-approved sanitation as of 2013.

### ***Housing as a Gatekeeper to Sanitation***

Household access to sanitation also varies by dwelling type (see Figure 6.5). Looking simply at which households in 2013 have RDP approved sanitation – which includes a flush toilet, a pit latrine with a ventilation pipe, or a chemical toilet within in 200m of the dwelling – we find a large difference based on type of dwelling. Eighty-three and nine-tenths percent of households in formal dwellings have RDP approved sanitation, compared to 58.4% of households in informal dwellings and 53.5% of households in traditional dwellings (GHS 2013). Additionally, formal dwellings are more likely to have RDP approved sanitation that they do not share, while informal and traditional dwellings are more likely to share their RDP approved sanitation (GHS 2013).

Figure 6.5 RDP Approved Sanitation by Dwelling Type 2013



Source: GHS 2013

### *Criticism of the Government's Progress*

The criticisms about sanitation depend in large part on the type and location of the sanitation. I did not hear or find any major criticisms about toilets installed in homes other than problems with flushing toilets when there is no water access due to either exceeding the free basic minimum or some other reason for a gap in water provision. However, that problem is more of a water problem than a true sanitation problem.

In contrast, there are several criticisms of shared or communal RDP-approved sanitation options. We again see that the materiality of sanitation results in unique critiques regarding how and where sanitation is provided and maintained. Moreover, the public's standards for what counts as adequate sanitation are different from what the RDP considers suitable and what counts as access to sanitation in the statistics. The raw numbers tell us sanitation has improved, but the criticisms show that the material maintenance and quality of these communal toilets are lacking.

First, cleaning and maintenance is a concern for all shared sanitation and when toilets are not adequately cleaned or maintained they can be unusable. Additionally, while shared sanitation typically does not have the problems of rationing a collective free basic minimum in the ways that water does, shared sanitation brings its own set of maintenance problems. Chemical toilets

and septic tanks must be periodically emptied and serviced to remain usable (Tissington 2011); Interview Rudi Hillerman). There are problems with upkeep when latrines become full, chemical or bucket toilets are not emptied frequently enough, or flush toilets break (Interview Rudi Hillerman). Additionally, for government or contractor-maintained shared toilets, there are problems with proper maintenance when there are inaccurate counts of the number of people using each toilet (Interview Rudi Hillerman). Though the scale and technical requirements of some maintenance for shared toilets is quite small, the maintenance requirements also are extremely frequent. Cleaning a bathroom is a relatively quick and easy task when done frequently enough, but when people do not clean up after themselves or take responsibility for cleaning a shared facility and the providers do not maintain the facilities, the toilets very quickly can become unusable.

Second, shared toilets can be a safety concern both due to the large number of people who have access to them and their distance from where people reside. It is particularly unsafe for people to walk to use the toilet at night in shack settlements, both because it is generally unsafe to walk in the dark and especially because of concerns about rape and murder (Interview Alfred “General” Moyo; Totaro 2016). There also is a tension between maintenance and safety when placing the toilets. To ensure that toilets can be serviced, they are often installed near roads and in a row along the edges of shack settlements, where it is easy for service vehicles to access, empty, and clean them (Interview Alfred “General” Moyo). But these locations are often furthest from most informal dwellings and thus less safe.<sup>38</sup>

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<sup>38</sup> Additionally, in 2018 there was pressure for and court action to eliminate pit latrines and upgrade to flush toilets in schools after two children fell into pit latrines and drowned (de Greef 2018).

Third, while the portability of chemical toilets makes them easy to install, this portability can also create a whole variety of other problems. There are incidents of people moving communal chemical toilets into their yards and then charging others to use the toilet or simply restricting access altogether (Tissington 2011; Interview Alfred “General” Moyo). There are also large maintenance and public health concerns if the chemical toilets fall over or are pushed over (Interview Alfred “General” Moyo).

Fourth, in the late aughts, “open toilets”—flush toilets without any type of enclosure for privacy—were installed in two communities in different provinces (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011). These toilets were met with great public outcry and, as discussed further below, residents took the City of Cape Town to court. Unenclosed toilets were deemed unconstitutional and should no longer be installed<sup>39</sup>, however this event remained highly criticized as an example of inadequate realization of the right to sanitation (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011).

### ***Involvement of Other Organizations***

Given the many different ways of providing sanitation, which metric of material success we consider as rights realization also influences how we consider capacity and which actors can be involved. If we consider chemical toilets adequate, then the maintenance needs are high, but the permanent infrastructure requirements are low, and there is no need to worry about water service providers or wastewater utility companies involved with adequate sanitation. Adequate sanitation can just be contracted to chemical toilet vendors (though this is costly in the long run

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<sup>39</sup> As far as the author is aware, no government agencies have attempted to install unenclosed toilets since this court decision. This is not surprising given that this was not a common practice when these toilets were installed.

and thus rarely done). If ventilated latrines are adequate, then nonprofits and even individuals/communities are more capable of installing sanitation and the maintenance needs are pretty minimal, though frequent. However, the National Housing Code says ventilated latrines are only acceptable in rural areas and not urban areas, so their adequacy and thus the capacity of others to help depends on the location.

### *Vendors*

Various contractors and vendors can be involved in the provision of government-funded sanitation, in part depending on the type of sanitation. There are many different contractors that can install different kinds of toilets, private water service providers are involved in providing the water and wastewater hookups for flush toilets, and there are various other contractors that will provide and maintain chemical toilets (Tissington 2011).

### *Nonprofits*

Since there are multiple ways to help provide toilets, different nonprofits have taken various approaches to improving or providing sanitation, though all on a relatively small scale given the large need, and often working to provide toilets in communal spaces rather than for households. For example, the Mvula Trust says that it is the largest sanitation nonprofit in South Africa and has installed ventilated pit latrines in hundreds of schools (Mvula Trust 2018). The South African Toilet Organization was founded in 2007 and worked to improve sanitation for at least 2,000 families, but now appears to be defunct (Prodder 2017). Another notable way that nonprofits have helped ensure the right to sanitation is through a watchdog role, as in the case of the nonprofit South African Human Rights Commission (SAHRC) which came to the aid of the community to show that the local authorities had unconstitutionally installed toilets without enclosures. This is discussed more in the next two subsections.

### *Activism*

Sanitation has long been one of the many rights that South Africans demand as part of their service delivery protests (Interview Richard Pithouse; Interview Alfred “General” Moyo). However, awareness of sanitation conditions and calls for improved sanitation have increased substantially after the ‘open toilets saga’ discussed in the next section (Tissington 2011). Most notably, this increased awareness has led to ‘poo wars’—the protest tactic of throwing bags of fecal waste to protest inadequate sanitation (BBC 2013; Robins 2014).

### *Courts and Litigation*

There have been only a handful of court cases in South Africa about the right to sanitation, and the Beja Case is the most widely known example of rights realization and especially informal settlement upgrading in South Africa. In the Makhaza informal settlement in Khayelitsha, a township near the City of Cape Town, the City installed 1,316 unenclosed flush toilets as part of the Upgrading of Informal Settlements Programme (UISP) (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011). The City of Cape Town believed there was an agreement with the community “whereby the City would provide a toilet on each household/erven [plot of land] (1:1) and residents would provide an enclosure for each toilet” (Tissington 2011). The City’s notion was that they could stretch limited financial resources further by providing the portions of the infrastructure that required substantial government involvement—the plumbing and toilets—and leave it to the community to build the basic enclosures around the toilets, which did not require the government or utility providers be involved for proper installation (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]). Moreover, this was a case of the City of Cape Town going above and

beyond most local governments to upgrade informal settlements (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]).

While most of these toilets were enclosed by residents, more than 50 toilets remained unenclosed (Tissington 2011). A formal complaint about these toilets was lodged with the South African Human Rights Council, which took this case, known as the Beja case, to the Western Cape High Court to argue that the installation of unenclosed toilets violated the human rights to dignity and privacy (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011). After the case was heard by the Western Cape High Court in November 2010, Judge Erasmus did an inspection in loco at the site and made an interim order for the City of Cape Town to enclose the open toilets (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]; Tissington 2011). When the judgment was handed down in April 2011, the Court indicated that the City had violated several constitutional rights, including the rights to dignity (Section 10), privacy (Section 14), housing (Section 26), and healthcare (Section 27) (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]).

The decision also determined that the agreement with the community was not enforceable because the process used to make the agreement did not meet the Section 26(2) reasonableness requirement in the Constitution (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]). Specifically, “the City only gave the community four days [sic] notice of the meeting and the proposed agenda did not include any item about toilets or sanitation. Less than one percent (60 people) of the community (6,000 people) attended the meeting. No minutes were taken at the meeting, and the toilets were only installed two years later” (Tissington 2011). These procedures violated the requirements of the Constitution and National Housing Code to ensure community participation for upgrading, and “the City’s agreement failed to take into account

those with disabilities, the safety and security of the most vulnerable members of the community, as well as the potential increased risk of gender-based violence” (Tissington 2011).

This decision, as well as the involvement of the SAHRC, represents the constitutional power of legal actors to hold the government to account and enforce the realization of ESR. While this power is only realized in a small minority of the many situations in which people do not have adequate access to sanitation, it shows that there is potential for legal mobilization to be a pathway to substantial changes for ESR realization. Nevertheless, it is notable that constitutional litigation tends to be a reaction to improper government tactics as opposed to a lack of government action.

The Beja case also is one of the few situations of informal upgrading of housing happening in South Africa, and it is no coincidence that this occurred in the Western Cape—the only province where the ANC does not dominate the political landscape (Electoral Commission of South Africa 2018). At the time of the Beja case, the Democratic Alliance had the majority in the province and the Mayor of Cape Town was from the DA (Electoral Commission of South Africa 2018). This push for informal upgrading and for finding “creative” ways to stretch resources could be considered progressive, especially since the City of Cape Town’s realm of other appropriate options included installing portable chemical toilets or doing nothing in the informal settlement. Providing flush toilets was both more durable and more costly compared to the City’s other options of installing chemical toilets or doing nothing, both of which would have been constitutional.

But by innovating through cutting corners and providing more flush toilets without enclosures rather than fewer flush toilets with proper enclosures, the City’s action was deemed unconstitutional. Moreover, by failing to follow appropriate procedures in its public engagement

process, the City's agreement was not enforceable (*Beja and Others v Premier of the Western Cape and Others* (21332/10) [2011]). This shows how interpretation of this progressive Constitution, by holding government actors to a certain minimum standard, also validates the government concerns regarding embracing *in situ* shack upgrading. This is a recurring trade off. That is, when providing ESRs, government agencies and their contractors must provide a specific level of quality in both communication and material provision, rather than use half-way measures that result in simultaneously more, yet constitutionally inadequate, provision.

### ***Summary***

Sanitation progress again shows that housing serves as a gatekeeper to adequate sanitation, contributing to the answer to Puzzle 2. While with water there was a focus on ongoing provision and what counts as enough to be adequate, with sanitation the focus shifts more to what is needed to maintain sanitation that was adequate when it was installed. Sanitation requires more involved maintenance requirements for facilities to remain usable, especially if they are shared, which can quickly result in failed installations. Additionally, the maintenance requirements may be deterring some implementation in the first place because actors would rather invest in infrastructure that will continue to be usable without requiring ongoing maintenance (Bester and Austin 2000). Finally, the *Beja* case about the unenclosed toilets serves as a rare example of *in situ* upgrading and a cautionary example of how government actors must ensure that the utilities they install are adequate in order to be constitutional.

### **Electricity**

Electricity is another right that is not in the Constitution but instead is guaranteed by the Constitutional Court as part of the right to housing and also mandated through national policies (*Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00)

[2000]; *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]). Like water, there is also a policy-based free basic minimum of electricity for all households with a connection to the grid. Electricity is unique relative to other utilities because it is almost entirely generated by one public organization, Eskom, so it is the most centralized. Few organizations other than Eskom are involved in producing electricity; however, there are also about a dozen municipal government distributors who oversee electrification and customer service for their areas and Eskom relies heavily on vendors and third parties that oversee much of the electricity installation and maintenance (Eskom 2018). Thus, even though Eskom is the public national electricity provider, Puzzle 2 about differences based on the various types of actors involved still applies to electricity.

### ***Materiality***

The material elements of providing electricity include those pertaining to its production, which generally is done in power plants far from the site of the provision of electricity<sup>40</sup>. Eskom, the national public electricity utility, has struggled to create enough electricity to meet demand<sup>41</sup> (Eskom 2018). All things considered, electricity is slightly easier to provide than water. While both water and electricity require both a highly technical installation and ongoing provision, when compared to water, electricity is easier to informally connect and does not have the same concerns about quality (Eskom 2018). However, electricity is less flexible to provide than water or sanitation because there is basically just one option to safely provide electricity and several

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<sup>40</sup> While there are some solar panels in South Africa, very few dwellings have them, largely due to concerns about theft (Interview Anonymous, Interview Anonymous Eskom Employee).

<sup>41</sup> Eskom mostly generates electricity using coal fired power plants, though it does also have gas turbine, hydro, wind, nuclear, and solar power plants (Eskom 2018).

ways to safely provide water and sanitation. Electricity has less frequent but generally more technical maintenance requirements than does sanitation.

### ***Constitutional Promise***

The right to electricity is intricately tied to the right to housing. Electricity is not mentioned in the Constitution, yet the Constitutional Court has determined that electricity is part of the right to housing established in Section 26 of the Constitution (Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000]; Joseph and Others v City of Johannesburg and Others (CCT 43/09) [2009]; McDonald 2009). Kate Tissington at the Socio-Economic Rights Institute of South Africa, confirmed that it is not problematic that electricity is not in the Constitution because it is written into legislation and agency regulation (Interview Kate Tissington).

In 2003, the South African Department of Energy established a monthly allotment of 50kWh of free basic electricity (Department of Energy 2018). The department has worked to provide all poor households that are *legally* attached to the electricity grid with their free basic electricity allotment (Department of Energy 2018). One notable difference between the free basic electricity and water allotments is that electricity always is provided per household, as there is no option for communal electricity equivalent to a communal tap for water. The National Housing Programme requires that each permanent residential structure is built with “a ready board electrical installation where electricity supply in the township is available” (Republic of South Africa 2014). Again, this ensures that everyone who is given formal government housing should have electricity.

### ***Progress After Apartheid***

Household access to electricity has increased steadily from 77.1% in 2002 to 86% in 2014 (GHS 2002 – 2014). In that time, the percent of households that report that electricity is their main source of energy for lighting has slightly *exceeded* the percent who report that they are connected to the electricity grid (GHS 2002 – 2014). As is discussed in the coming pages, this likely results from some households being illegally connected to electricity and thus underreporting that they are connected to electricity when asked directly.

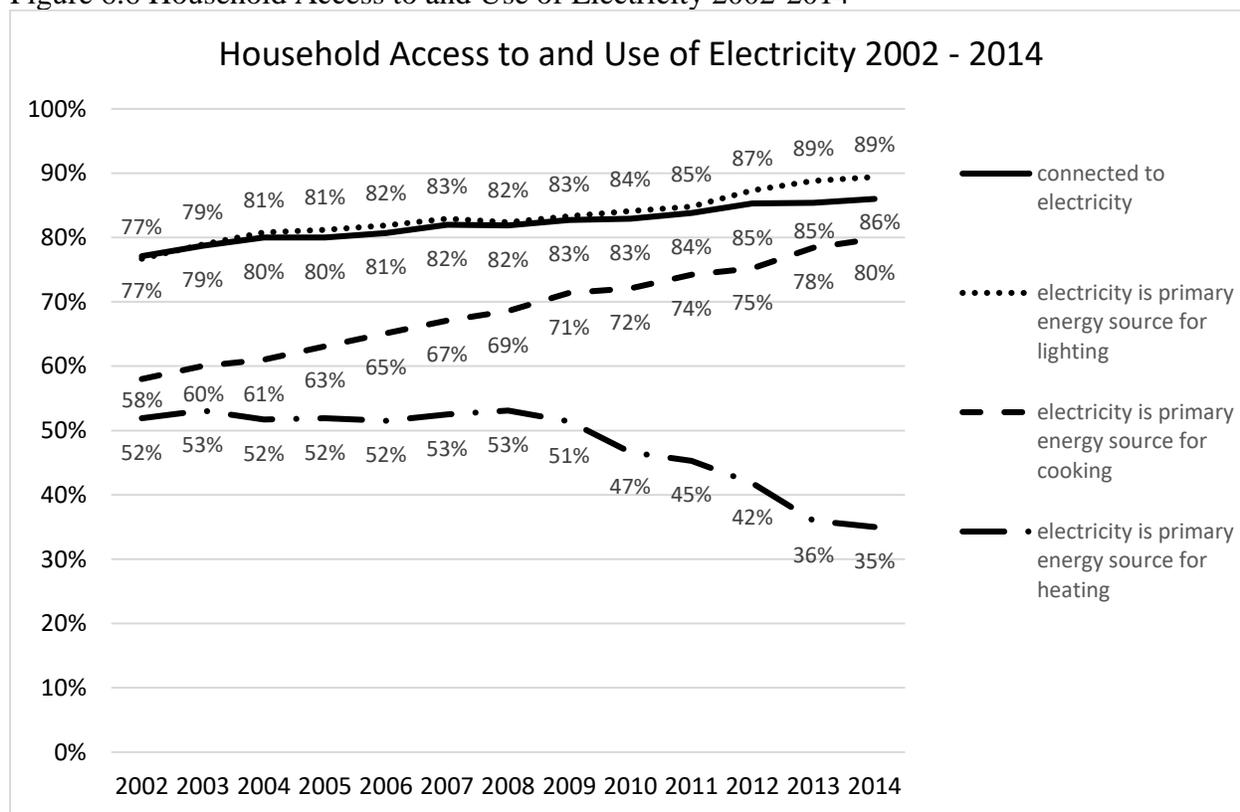
As of 2014, the other primary sources of energy for lighting in households were candles (6.6%), paraffin (1.7%), and electricity from a generator (1.2%), while less than 1% of households used other sources of energy for lighting or had no lighting (GHS 2014). The percent of households that used electricity as their primary source of energy for cooking also increased consistently from 58% in 2002 to 79.8% in 2014 (GHS 2002 – 2014). The other main sources of energy for cooking in 2014 were wood (9.8%), paraffin (5.1%), gas (2.7%), a generator (1.2%), and coal (0.6%), while less than 1% of households used other sources of energy for cooking or had no way to cook (GHS 2014).

Unfortunately, during this same time period, the percent of households that use electricity for heat decreased substantially, from 51.9% in 2002 to 35% in 2014 (GHS 2002 – 2014). This decrease is not the result of an increase in other safe forms of energy for heating households, but instead reflects the fact that the percent of households with no source of heat increased from just 7.2% in 2002 to 41.7% in 2014 (GHS 2002 – 2014). I could not find any explanation for this increase in households without heating other than anecdotal data that because of the relatively warm climate in most of the country for most of the year, heating is not necessary (see TripAdvisor 2015). Informal and traditional structures are very unlikely to use electricity for heating, and even most formal structures do not use electricity for heating (GHS 2014). During

winter, many South Africans bundle up to stay warm rather than heating their homes. One contributing factor is that government-built homes come with an electrical hookup but without an electric heat source. Another likely contributing factor for the lack of household heating may be cost, especially since household heaters will quickly use up the electricity allotted through the free basic minimum (discussed more on the next page). Yet it should be noted that the lack of heating is not limited to only government-built houses or low income households (GHS 2014).

The other main sources of heat, as of 2014, are wood (11.2%), paraffin (7.0%), gas (2.3%), and coal (1.4%), while 1.4% use other sources of energy (GHS 2014). These alternative forms of heat can be unsafe to breathe and are more likely to start fires, making the use of alternative sources of heat a public safety concern.

Figure 6.6 Household Access to and Use of Electricity 2002-2014



Source: GHS 2002 – 2014

While the GHS does not measure the volume of electricity that people use, households that cannot pay are capped at the monthly allotment of 50kWh of free basic electricity (Department of Energy 2018). While it is common for many older and nicer houses in South Africa to pay a utility bill for their electricity usage after the period in which they consume electricity, the payment system in government-funded and newer inexpensive housing is often different. Most private electricity companies install prepaid meters, and prepaid meters are typically installed in government-built houses and upgraded shacks. The prepaid meter system allows the utility companies to ensure that they are paid for all electricity used that is above and beyond the monthly free basic minimum (Jack and Smith 2016). The size of this free basic minimum and restrictions created by the prepaid meter systems are discussed in depth in the upcoming section on Criticisms of the Government's Progress.

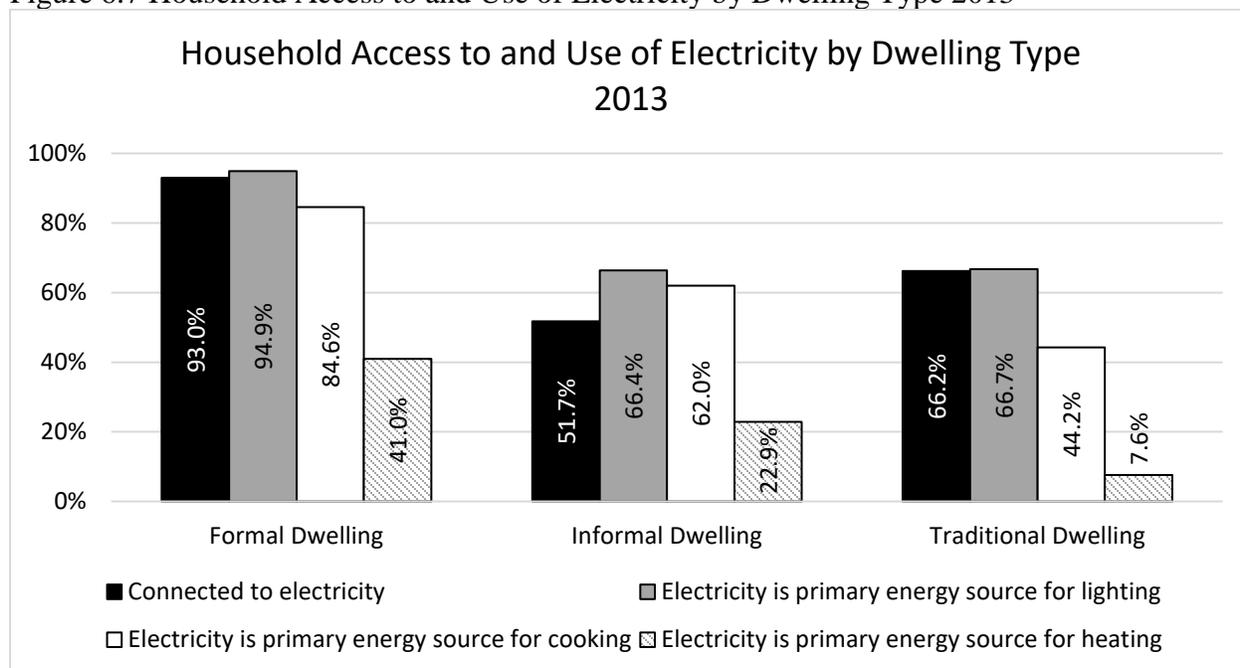
### ***Housing as a Gatekeeper to Electricity***

Household access to and use of electricity also vary by type of dwelling, indicating that housing has a gatekeeper effect on access to electricity (figure 6.7). As of 2013, 93% of formal dwellings reported that they were connected to electricity compared to 51.7% of informal dwellings and 66.2% of traditional dwellings. One reason for this difference is that the government has been reluctant to electrify informal structures, which is discussed more on the coming pages. Part of the reason for the slow progress of electrification for traditional dwellings is that rural areas have been electrified at a slower rate than more urban areas, and traditional dwellings have been disproportionately impacted because they are more likely to be in rural areas (GHS 2013). This slow progress in rural areas is partially because the Department of Energy has missed many of its targets to electrify rural areas (Interview Rudi Hillerman). However, this slow progress has impacted all dwellings in rural areas, including formal

dwellings, and rural electrification rates are lower across the board (Interview Rudi Hillerman, GHS 2013).

Use of electricity as the primary source of energy for lighting, cooking, and heating also varies based on the type of dwelling. Formal dwellings have the highest use of electricity for all three purposes. The percentage of informal dwellings that report using electricity for lighting and cooking is much higher than the percentage who report being connected to the main electric grid, which suggests that roughly 15% of informal dwellings may be illegally connected to electricity. Use of electricity for lighting is almost the same for households in informal and traditional dwellings (66.4% and 66.7% respectively), however traditional dwellings have the lowest use of electricity for cooking (44.2%) and heating (7.6%). Some of these differences may be due to choices or priorities, rather than simply not being able to afford electric appliances or not being able to use electricity for these purposes. For example, a formal dwelling connected to the gas utility that has gas heating and/or a gas stove should not be regarded as inferior to one that uses electricity for heating and cooking. Nevertheless, we see a substantial difference between access to and use of electricity based on type of dwelling, and these lower rates of electricity use for informal and traditional dwellings do not indicate the use of other equivalent or preferable options.

Figure 6.7 Household Access to and Use of Electricity by Dwelling Type 2013



Source: GHS 2013

The fact that electricity is both practically and legally linked to where a person lives has implications for implementation. As Kate Tissington of SERI told me, “The problem with people getting connected to electricity is that it is always linked to formalization. So either your RDP houses or formalizing informal settlements, or renting, so there’s a whole lot of barriers to it” (Interview Kate Tissington). For most of the first two decades of democracy, the government at various levels resisted electrifying shacks because it hoped to eradicate informal structures. Mark Byerley, the Manager of Research and Policy at eThekweni Municipality (which includes Durban and surrounding areas), told me that, due to this focus on eradicating informal structures, most government entities did not want to support shacks by providing services, nor did they want to devote limited time and money to installing infrastructure that would need to be replaced when the shacks are finally gone (Interviews Mark Byerley).

The one major exception to this reluctance to electrify informal dwellings is the City of Cape Town, which has been at the forefront of electrifying shacks (Interview Alfred “General”

Moyo). Cape Town has done the most legal electrification of shacks and it has been quite safe (Interview Marie Huchzermeyer). In one of the newer shack settlements I toured in Cape Town, I noticed that the residents had built some of the dwellings with electrical outlets included, even though the residents confirmed that they were not currently connected to electricity (Interview Anonymous Marikana Land Occupation). Cape Town is an exception because, as indicated earlier in this chapter, it has a different political climate than the rest of the country, and is in the only province not dominated by the ANC (Electoral Commission of South Africa 2018).

### *Criticism of the Government's Progress*

There are many criticisms of electrification progress in South Africa. One is focused on the dangers of illegal electrification infrastructure, and how homes that are illegally electrified are a health risk. Much like the other utilities, most of the criticisms focus on the reality that many households that technically have access to electricity do not have the level and consistency of access that people expect.

First, although the households that are illegally connected to electricity are receiving some benefits of having electricity, their access is perilous. While informal dwellings, water sources, and sanitation also can be hazardous, informal electricity hookups can be particularly deadly. Illegal electricity connections often consist of households attaching their own wires to the power lines or to transformers without any kind of meter to monitor or regulate their electricity usage (Interview Anonymous; Interview Anonymous; Eskom 2019). In these instances, people have taken informal action to minimize the role of housing as a gatekeeper so that they can receive electricity. It is unsurprising that when people do not receive their constitutionally guaranteed rights, they are likely to seek alternative options. Yet this option is far from ideal because, although some wires are properly buried, many are tenuously connected

and suspended, and can be inadvertently disconnected. There are substantial risks of electrocution from children playing with the wires, people tripping over the wires, and from wires becoming disconnected and lying on the ground (Eskom 2019; Shozi 2018). Additionally, there is a risk of fires as the result of improperly gauged wires, poor connections, and damaged or partially disconnected live wires (Eskom 2019; Shozi 2018). Ultimately, the lack of rights realization for electricity results in some people creating materially risky situations to try to gain access to electricity.

Second, for many households, being legally connected to electricity is the first step; rationing their free basic minimum or paying to maintain their electricity supply throughout the month is the next hurdle. Since 2003, the South African Department of Energy has worked to provide all poor households that are legally attached to the electricity grid with a monthly allotment of 50kWh of free basic electricity (Department of Energy 2018). To provide some context, Eskom says that 1kWh can run a refrigerator for 15 hours, can microwave 16 meals, or power a television for 5 hours (Eskom 2011). This means that 50 watts of electricity is enough to run a refrigerator for a month, with just 2 kw left over for all of the rest of the household's needs.

As a point of reference, 200kWh is the average household energy consumption for the lowest third of houses in Cape Town (Winkler 2005). Several people I interviewed and talked with told me that this free basic allotment of 50kWh per month is not enough, and should be at least 200kWh (Interview Anonymous; Interview Anonymous). Ultimately, while installation is necessary for access to electricity generally speaking, maintenance through rationing supply is necessary to ensure that households have consistent access. This also raises the question of what counts as rights realization when the supply is so limited that households cannot have both a consistently run refrigerator and light their home without exceeding the basic allotment.

Third, most homes in South Africa that receive the free basic electricity allotment have prepaid meters that regulate their electricity usage. This is common in both formal and informal dwellings, and all of the informal dwellings in Cape Town that are electrified use prepaid meters (Interview Marie Huchzermeyer). These prepaid electricity meters work much like the prepaid water meters, though the electricity meters are always for each household and never installed to be shared for a community in the way that a communal water tap is. Rather than receiving a bill for their extra electricity usage at the end of the month, the way that the prepaid meters work is that once a household reaches its monthly allotment, the power is shut off. The household must either wait until the next month for the electricity to turn on or, if they can afford it, residents can go buy a voucher for more electricity and then enter that code into their meter to receive additional kWhs.

I experienced this while staying with a family in Durban in 2007 – one evening while making dinner, the power for the 2-bedroom cinderblock house turned off because the meter ran out. Luckily it was not dark yet and so we walked to the local shop, bought a voucher, and then entered the code into the meter to turn the power back on in the home. The Constitutional Court has deemed this meter system constitutional because the homes are technically electrified even when the meter is barring access after the free basic electricity amount has been used (*Lindiwe Mazibuko & Others v City of Johannesburg & Others*, Case CCT 39/09, [2009]). However, the prepaid meters mean that families do not have any leeway for when they pay for more services, and this is challenging when money is tight. Additionally, even if the household has funds, the timing of the electricity shutting off means that households may need to go a short period of time without electricity until it is a reasonable and safe time to travel to a store to buy a voucher and regain power. At the very least, this is extremely inconvenient.

Fourth, the increased privatization of electricity and contractor involvement has raised the price of electricity in some areas. For example, the 2000 Johannesburg master plan increased the privatization of electricity and private electricity providers often have a markup compared to paying the electricity provider directly (Interview Anonymous). Dr. Tristen Taylor is an activist academic who at the time of our interview was Project Coordinator at Earthlife Africa Johannesburg, and previously worked for Jubilee South Africa as the Apartheid and Ecological Debt Coordinator. Dr. Taylor explained how the process hollows out government because:

The only way local municipalities can raise funds is through the tariffs on electricity, water, and other services and sewage, rubbish and property rates and local taxes sometimes. So their incentive to pay for all of these tenders is to keep tenders and rates very very high, and to squeeze as much as they possibly can from the system. So the state becomes predatory in order to be able to pay for the tendering process. (Interview Tristen Taylor).

The implication here is that it is not just the for-profit vendors who are profit-motivated (Alter and Hage 1993; Smith and Lipsky 1993), but that the lack of tax revenue has created an unsustainable system in which even the public agencies must continually raise rates for use above the free basic minimum.

Fifth, as demand for electricity has increased in South Africa, there has been trouble generating enough power. The problem of wires without electricity is a similar problem to having pipes without water, but for water it is often a problem of poor communication and coordination, whereas for electricity it is more likely to be a problem of supply. Rudi Hillerman with the KwaZulu-Natal Department of Cooperative Governance & Traditional Affairs told me, “it’s worse for electricity [than water] ... because we are even more strained in this province for electricity, there just isn’t enough” (Interview Rudi Hillerman).

Eskom, South Africa’s electricity public utility, generates over 95% of South Africa’s electricity and 45% of the African continent’s electricity (Eskom 2018). So, the increased

demand is not coming from just within South Africa, nor is it simply an increase in residential demand. Thirty seven percent of electricity consumption in South Africa is residential, while the rest is industrial (41%), commercial (11%), transportation (3%), or other (8%) (Department of Energy 2010). Since 2008, Eskom has had trouble keeping up with demand, and uses rolling blackouts to manage the high demand on their limited electricity supply (Eskom 2017). This tactic of rolling blackouts, also known as “load shedding,” is supposed to be pre-scheduled to evenly distribute the burden (Eskom 2017). Yet there are complaints that in poor areas the outages happen more often, last longer, are scheduled during prime cooking hours, and happen without warning (Interview Anonymous; SECC meeting observation; Tsakane Community Protest observation)<sup>42</sup>.

The 2014 General Household Survey revealed that 18.2% of households *that paid for electricity* had electricity interruptions during the 6 months before the survey. The GHS did not ask people who only receive the free basic minimum of electricity about whether they have experienced interruptions, but the percent is likely much higher due to a combination of both the rolling blackouts and getting power shut off after exceeding the basic minimum.

### ***Involvement of Other Organizations***

While electricity is the most centralized utility when compared to water and sanitation, there are still a variety of other actors involved in the realization of the right to electricity. There are many similarities between the roles of other actors involved in electricity and the roles of other actors involved in water and sanitation.

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<sup>42</sup> As of 2016, the rolling blackouts have ceased due to the economic slowdown, not due to increased capacity (Burkhardt and Wilde 2016).

### *Vendors*

While Eskom is the national public electricity provider, vendors are still heavily involved in electricity in South Africa. Eskom uses seven different vendors who administer the prepaid electricity system, and uses hundreds of vendors for a large variety of materials and services (Eskom 2018). As was discussed on the preceding pages, the prepaid system has been strongly critiqued, and there are concerns that the cost of relying on vendors while lacking an adequate tax base has also resulted in Eskom raising prices to cover costs (Interview Anonymous; Interview Tristen Taylor).

### *Nonprofits*

While there are a variety of nonprofits involved in the realm of electricity, few are focused on household electrification. Given the environmental impacts of electricity production, many of the nonprofits that are involved in energy and electricity in South Africa are focused on changing the means of production of electricity and improving the environment.

One example from a watchdog perspective is Earthlife Africa. According to the nonprofit's website and Project Coordinator, Dr. Tristen Taylor, Earthlife demands clean electricity and renewable energy for a holistic solution to improving and meeting South Africa's energy needs (Interview Tristen Taylor; Earthlife 2014). Specifically, the organization promotes sustainable energy and advocates against nuclear energy and coal power plants (Earthlife 2014). While Earthlife Africa is certainly involved in issues of electricity, it does not serve as a watchdog for ensuring that people receive electricity, but instead is focused more on the big picture issues regarding sustainability of how electricity is produced (Interview Tristen Taylor; Earthlife 2014). While this is important work that can have long term impacts on quality of life in South Africa, Earthlife's watchdog role does not have an immediate impact on access to

electricity and its demands are not coming from people who are without electricity (Interview Richard Pithouse).

The Sustainability Institute is another nonprofit that is focused on environmental impacts, but that has worked to fill a gap in electrification through the iShack project. The institute uses “solar electricity to demonstrate how green technologies can be used appropriately to incrementally upgrade informal settlements and slums and at the same time build local enterprising capacity and resilience within the community” (Sustainability Institute 2015). Through its program, the Institute electrified at least 800 shacks with about 2,500 residents, though the organization hopes to scale up its model of solar electrification (Sustainability Institute 2015). However, some people I spoke to were skeptical of the possibility, noting that solar panels were so valuable that anyone who received a solar panel would be at risk of having it stolen and then even less likely to ever be connected to the electricity grid (Tsakane Community Protest observation).

### *Activism*

Soweto Electricity Crisis Committee (SECC) is one organization that has been heavily involved in advocating for universal electrification and against the privatization of electricity. The SECC emerged in the early 2000s and was very involved with the Anti-Privatization Forum (Egan and Wafer 2004). The SECC both engaged in protests for electricity and in illegal reconnections (Ngwane 2003). During my fieldwork, I interviewed the SECC’s founder Trevor Ngwane, and several current SECC members. I also observed one of SECC’s regular meetings, and attended a service delivery protest with SECC members in another community in a township outside of Johannesburg. The Soweto Electricity Crisis Committee has undergone a diffusion of goals, interests, and grievances, and thus focuses on a variety of service delivery problems

beyond electricity. Members commute to areas outside of Soweto to protest in solidarity with other communities (Interview Anonymous; Interview Anonymous; SECC meeting observation; Tsakane Community Protest observation). The SECC has always had a loose structure and, by focusing on issues beyond electricity in communities beyond Soweto, the organization has broadened its impact while surviving in a difficult environment for social movements (Interview Anonymous; Interview Anonymous). The decreased focus on a single issue, and in a specific location, shows that many grievances plague poor people in South Africa, and they regard the realities of service delivery as interconnected.

There is also community-based activism for electrification, particularly from communities that are directly impacted by the lack of safe options. Alfred “General” Moyo is an organizer for the Makause Community Development Forum and he told me that in the Makause settlement outside of Johannesburg, “on the first of June, this year [2014], we had 98 shacks destroyed by shack fires because of not having electricity” (Interview Alfred “General” Moyo). Moyo was part of a group pressuring the city to electrify their shack settlement, but he was not optimistic that they would be able to achieve electrification while living in informal dwellings (Interview Alfred “General” Moyo). This shows an acknowledgement of the gatekeeper relationship between formal housing and access to electricity.

Alternatively, when people do have a formal house, it is possible for them to advocate, hold government accountable, and receive electricity all without protesting or any other collective action. Rudi Hillerman of the KwaZulu Natal Department of Cooperative Governance & Traditional Affairs told me that there is a lack of accountability, but that when residents can hold the government accountable, they can get results. For example, a man asked Hillerman for help getting electricity in his house and Hillerman told the man he must talk to the Department of

Energy instead. Hillerman told the man about the process to engage the right department to get his right realized:

I said, “On Monday morning, you go to the municipality and you ask them for the IDP [Integrated Development Plan] where they budgeted for the electricity. You know there’s five million rand [the South African currency], so ask them to show you that five million rand in the IDP document. You then ask him to make a copy of that and when he’s made the copy of that, then you just ask him to sign it, that he’s given it to you, with the date.” I said “I can guarantee you that that project will work because you’ve held him accountable.” And what did he do? He did exactly that. They got the electricity!  
(Interview Rudi Hillerman)

This story suggests that when people have a formal house and know how to navigate the bureaucracy to hold government to account, getting results can be relatively simple and easy. Yet having the house and having an ally in government, or otherwise learning how to advocate for oneself, are substantial barriers for most poor people. This man was successful because he already had a formal dwelling and Hillerman told him how to navigate the system. This example, when juxtaposed with Moyo’s struggle to get electricity and other proper utilities for the Makaanse shack settlement, again shows just how powerful of a gatekeeper formal housing is to receiving electricity.

### *Courts and Litigation*

While there is substantial legislation pertaining to the right to electricity, litigation about electricity is rare (Interview Kate Tissington). There are some instances of people taking their grievances to court when their electricity supply is shut off (see *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]; *Rademan v Moqhaka Local Municipality and Others* (CCT 41/12) [2013]). The Constitutional Court decision in the matter of *Joseph v. City of Johannesburg* determined that tenants are entitled to procedural fairness and must receive notification before being disconnected from electricity (*Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009]). Unfortunately, that decision did not bring any

relief to the applicants because vandals removed the electrical wiring from the building in the time that it took for the case to reach the Constitutional Court (ESCR Caselaw Database 2010). However, in 2010 the Socio-Economic Rights Institute (SERI) relied directly on this precedent to reconnect the electricity for 420 low-income households (ESCR Caselaw Database 2010). This demonstrates how implementing and building on precedent can play an important role in the broader progress regarding ESR realization, even if a specific litigant's victory does not directly benefit that litigant.

While there are several examples of people taking their grievances to court or organizations relying on precedent to re-electrify households, I did not find any records of individuals or organizations turning to litigation to seek the initial electricity installation. This again supports the idea that litigation is generally used to protect rights that have already been materially implemented and either have not been maintained or are of low quality. While people could go to court to claim the right to electrification, the reality is that people experiencing poverty are typically turning to the court as a last resort when they lose something they had, rather than to proactively gain a right that has been promised to them but has not materialized.

### *Summary*

As this section has shown, progress for implementing electricity has been slow not due to differences in providers, but as the result of formal housing's prevalence as a gatekeeper to electrification. In the case of electricity, we can again see that there are large differences in access to it depending upon the type of housing, reinforcing the central argument of this chapter that housing is a gatekeeper to utilities. Additionally, while implementation has increased, the ability to use electricity depends on a continued supply of power, and thus maintenance in the form of ongoing provision is incredibly important. Due to electricity shortages, the small free

basic minimum amount, and prepaid meters—all of which are designed based on what is best for the providers—many households that are connected to electricity only have intermittent access to it. This reaffirms that what counts as “adequate” or “access” can be interpreted differently by various actors and is fundamentally rooted in the materiality of economic and social rights.

### **Answer to Puzzle 2**

In Puzzle 2, I asked: *Why, despite a mix of public and for-profit providers, has utility progress been so slow?* Previous perspectives have largely focused on concerns about state capacity and bureaucratic barriers, the outsized role of private contractors and companies, and the various roles that non-state actors can play in applying pressure to the state as key factors influencing ESR realization or a lack thereof. Yet looking at the progress regarding water, sanitation, and electricity in South Africa, it becomes clear that a full answer to Puzzle 2 involves shifting the research focus to understanding the materiality of these rights and their inter-relationships. While various actors’ interests, capacities, and tactics continue to play an important role in understanding utility provision, this chapter has provided an increased focus on how the materiality of each of these utilities has shaped how, when, and where various actors are involved in their provision.

By focusing on utilities that are ideally provided within the home, this chapter has held the location of the utilities relatively constant. For each of these utilities, having formal housing is a material gatekeeper to the installation of the ideal forms of utilities. When the dwelling structure is informal or traditional, and especially if the land that the home is on is in some way unstable, illegally occupied, improperly zoned, or otherwise not ideal for installing utilities, households are much less likely to have formal utilities installed. Ultimately, then, it is the lack of housing progress that has resulted in slow utility progress. It is not coincidental that, as of

2014, the metrics for access for each utility are quite similar. As of 2014, 80% of households have a formal dwelling, 79.5% of households have RDP-approved sanitation, and 86% of households are connected to electricity – though some illegally (GHS 2014). While access to adequate water is more prevalent than the other utilities, 73% of households have piped water inside or on site, which is largely influenced by the type of dwelling (GHS 2014). Though the rates of progress in the preceding decades have been different for each utility, understanding how housing is a gatekeeper begins to show how households without a formal dwelling face a difficult barrier to having their rights to utilities realized.

Each of these utilities has unique physical attributes, and these attributes create unique circumstances for each utility's implementation, maintenance, and quality. Additionally, these material characteristics also influence which types of organizations can or cannot be involved with each utility in different ways. For example, in-home or on-site water and flush toilets have extensive material requirements for implementation, even if there is adequate bulk infrastructure nearby, because they require in-ground plumbing. Meanwhile, electrifying a home is relatively simple if there is a power line nearby. The result is that informal and traditional dwellings are especially unlikely to have piped water inside or on site, while they do have a chance of receiving electricity.

This chapter has also demonstrated that all of these utilities require substantial maintenance and—at least for piped water, flush toilets, and electricity—ongoing provision, which means that installation without proper maintenance and supply is insufficient to ensure ESR realization. Maintenance and ongoing provision are not only crucial for accurately measuring actual ESR realization, they can shape when and how various actors engage with utilities because a one-time intervention can only do so much good. Material requirements limit

the ability for nonprofit organizations to fill the gap when it comes to providing utilities on site because ultimately the designated utility provider must be involved to ensure proper and continued access (Republic of South Africa 2014; Tissington 2011; Tissington et al. 2008; Interview Rudi Hillerman; Interview John Reynolds). These material requirements have also resulted in the focus on setting and then increasing the free basic minimum, since those policies have a tremendous impact on the realities of ESR realization for people who are connected to utilities.

### **Housing as a Gatekeeper, and the Future of Housing and Utilities**

Where do practitioners go from here? Various actors involved in housing and utilities are aware that the location of service provision and the resources necessary to realize each right create limits or boundaries for how they do their work. While these actors do not use the language of housing as a gatekeeper, they have made changes and pursued new options that indicate an understanding that housing and land create restrictions on the ability to realize rights to utilities rights. To conclude this chapter, I address how the trends in housing and utilities rights realization and possible future approaches to ESR realization in these areas reflect the reality of, and searching for opportunities to work around, housing as a gatekeeper.

#### ***Integrated Service Provision***

Several cities, provinces, and the public electricity utility ESKOM have moved towards more integrated service provision since the end of apartheid (Interview Rudi Hillerman). When these actors coordinate, they better understand where and when in the construction or upgrading process to install utilities. This move towards integration indicates an acknowledgement that housing is a gatekeeper to utilities, and that there are efficiencies to be gained by having different service providers work together.

The government and utility providers' approach to information sharing has improved over time and utility provision has become increasingly integrated. The move towards integration was an especially large shift for Eskom as the national electricity provider. While Eskom was founded by the government as a public electricity provider in the 1920s, Eskom was privatized in the 1990s, and then became public again in the early 2000s<sup>43</sup> (Eskom 2018). Rudi Hillerman told me that during the time when Eskom was private, Eskom had data on households' GPS coordinates, housing type, water connection status, and electrification status, but would not share that information with government or other service providers, so many providers lacked basic information on who needed which ESR realized (Interview Rudi Hillerman). Now that Eskom is public again and engaged in more partnerships with water and sanitation providers, Eskom's household data is shared with other utility providers to increase the efficiency of utility provision (Interview Rudi Hillerman).

When services are integrated and actors cooperate, the construction and utility providers coordinate to provide services to households within the same short period of time, and in an order that works well given the requirements for the installation of each utility. This integrated process allows providers to eliminate redundant bureaucracies for determining which households need to have utilities installed. The benefit is that this system should increase efficiency and allow utility companies to reach more houses in a short amount of time, and streamline the bureaucratic steps for households to receive utilities.

### ***Not Fully Integrated***

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<sup>43</sup> As of 2014 (conversation with anonymous Eskom employee) and through at least 2016 (Steyn 2015, Smith 2016) there was more talk of privatizing Eskom again. In 2019 it was announced that Eskom would be split into three different entities – one each to focus on generation, transmission, and distribution (Toyana and Roelf 2019).

Despite this focus on integrated service provision, many providers are still siloed and there is great potential for further cooperation (Interview Trevor Ngwane). Based on Rudi Hillerman's decades of experience as a civil servant, he told me that government employees "are so scared of moving outside of their silo or their mandated area, even just to talk. I believe us as a department, cooperative governance, have no effect either in getting these entities to talk to each other. ... They just say no, if you want to walk then walk, we will stay out of the way" (Interview Rudi Hillermann).

In addition to the opinions held by people working in government, there is evidence that the current structures for provision of services limit further integration. Contractors play a large role in the provision of services, and fully integrated provision is particularly challenging for them (Interview Marie Huchzermeyer). Bureaucracy also limits how integration happens. Urban planner and housing practitioner Liza Cirolia told me that the push for integration is "at odds with both bureaucratic processes and the demand for housing, which is very specific" (Interview Liza Cirolia). Liza further explained, "There are still going to be sectors and they have to perform their respective jobs... but there is a growing understanding about the importance of integrating different types of services" (Interview Liza Cirolia).

Some bureaucratic limitations on integration reflect the practical and material limitations of each ESR. Put another way, the physical infrastructure and systems for each right are quite different and must be implemented separately, so it makes sense for these services to belong to separate departments and have different bureaucratic requirements. The person installing the plumbing for the municipal water provider does not also install the electricity, and even if the process is integrated, it still involves discrete actors and systems.

Additionally, integration progress is very inconsistent throughout the country. At the HABITAT III National Workshop I attended, several representatives voiced the need for improving inter-governmental relationships and partnerships across sectors, and these calls for further integration also appear in South Africa's HABITAT III National Report to the UN. The report states: "The key lesson learned with regard to entrenched spatial forms and the uphill struggle to reform urban and rural space is that close and intense collaboration is required between different role-players: planners, the private sector, government sectors, its entities, communities, designers, environmentalists et al. An integrated, inclusive space cannot be crafted by single players" (Republic of South Africa 2014).

The report also acknowledges that there are major local disparities in delivery and integration due to poor intergovernmental coordination. It reads, "In planning, the Integrated Development Plans of municipalities (IDP) have an uneven record in delivering integrated planning across local spaces, as many national and provincial sector departments are not collaborating sufficiently with municipalities during the planning stages for infrastructure and services. Managing intergovernmental coordination is a major challenge in South Africa" (Republic of South Africa 2014). The report specifically calls for collective planning of energy, water and sanitation, storm water drainage, and solid waste management, declaring that, "these services should be seen as interconnected and planned for accordingly" (Republic of South Africa 2014). This move towards integrating services would likely exacerbate the importance of land, space, and dwelling type as determining factors for who receives utilities.

### ***Downsides to Integration***

While integrating service delivery can make the ESR realization process more efficient, the focus on efficiency and cost-savings manifests in ways that create further unequal access to

these social services. By linking utilities, more households have neither or both, as opposed to a more even distribution of utilities where access to one does not predict access to the other (GHS 2014). This means that, despite overall progress in increasing access to water and electricity, the inequality *between* households has grown (GHS 2014). In cities in which utilities are bundled, it is common for a household to either have everything or nothing.

This all or nothing access to utilities is an unintended consequence of how planning is done. A respondent who was previously Programme Manager for the Department of Public Service and Administration explained to me that the inter-governmental relationships between different levels of government often impact this process because municipal grants are focused on bulk services, so that electrification and water are often coupled in the same budget (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration). The end consequence is that if there is a ‘misalignment in water’, it also happens in electrification. The connection made between these different services in the budgeting process impacts implementation (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration).

People who have not received bundled services are very aware of how this situation—often contingent on having formal housing—creates haves and have nots. Luvo Vanyaza is secretary of the Mandela Park Backyarders, a social movement of people living mostly in backyard informal dwellings in the Khayelitsha township in Cape Town. In our interview, he discussed how there are “two worlds” in South Africa, driving home this point that households commonly have all or nothing. Vanyaza said, “So when madam [Mayor Patricia de Lille] says that Western Cape has the best services, it is the most thriving province in South Africa, maybe it is only for this part of the world. As I said, there are two worlds in one city” (Interview Luvo

Vanyaza). In a country with such a massive housing backlog, simply integrating all of the utilities means that millions of people will continue to go without basic services for decades.

***Alternative Approaches: Shack Upgrading and Housing Opportunity***

Alongside this move towards integration, there also has been a push towards finding alternative approaches to ESR realization that sidestep or creatively work with the realities that housing is often a gatekeeper to utilities and that utilities are materially intensive to provide. While these alternatives have their limitations, a variety of actors are pursuing these options so that more people can have their rights realized sooner.

The first alternative, which was also discussed in the subsection on criticisms of the government's progress pertaining to housing, is doing more *in situ* shack upgrading. When I asked Richard Pithouse whether he believed that housing is a barrier to receiving utilities, he responded, "I think that idea that you need a house and then you get services is no longer always correct. It was three years ago [in 2011]" (Interview Richard Pithouse). He explained that the state has always tried to provide water—generally communal taps—to people in informal housing. He continued, "They are starting, some places will provide sanitation before housing. ... That's a direct concession to the [protest] struggle [for service delivery]. They are even talking about providing electricity [when before] they refused to do it. So there was always water provided, but the toilets and electricity are being provided to shack settlements is new" (Interview Richard Pithouse).

This change is happening because the government is moving away from, "this fantasy that shack settlements are going to be eradicated and so on. The states have realized that it's not going to happen and that [realization] is because of people's resilience, whether if it's in an

organized or unorganized way” (Interview Richard Pithouse). This provides some hope that having a formal dwelling does not have to be a gatekeeper for receiving utilities.

The other model that has been considered to expedite the service delivery process is to have the government provide slab foundations with the utilities hooked up and then let people build their own structure on top. This is called ‘housing opportunity’ and the water and toilet are the ‘wet core’ (Interview Rudi Hillerman). This model was first introduced briefly in the 1980s, and it created jobs, allowed residents to customize their dwelling to fit their needs, and looked better than having rows of identical RDP houses (Interview Rudi Hillerman). These ‘service sites’ can be a way for employers to buy and provide housing, residents can build a shack on top and then formalize it over time, or the government could even provide cash transfers to the new residents which they could use to pay to have their house built, or use to fund materials and build it themselves (Interview Marie Huchzermeyer; Interview Richard Pithouse; Interview Rudi Hillerman).

Yet there is a lot of potential for both shack upgrading and the housing opportunity method to fail. The Beja case of the unenclosed toilets was an instance of shack upgrading that had elements of housing opportunity where the City of Cape Town installed the toilets and plumbing infrastructure, but expected the residents to build their own enclosures (Beja and Others v Premier of the Western Cape and Others (21332/10) [2011]). The court’s decision shows that constitutional rights regarding dignity and adequacy restrict how providers should operate, which limit the realm of creative options that they can pursue outside of providing completed structures.

Looking more specifically at the downsides of housing opportunity, there are more opportunities for things to go wrong when houses are not delivered as completed, move-in-ready

structures. For example, in one housing opportunity service site, someone sold fake titles, people built on the sites even though they were not allowed to, and those houses ended up being bulldozed (Huchzermeyer 2014; Interview Marie Huchzermeyer). Overall, there is a sense that housing opportunity could work very well, or go horribly wrong. As Rudi Hillerman put it, “Yes, there are some good ones, but as a rule, it can’t work. It’s the answer, but nobody dare do it” (Interview Rudi Hillerman). While using service sites could be a way to get around needing to build houses to provide people with utilities, as of 2014 this option of building sites with utilities installed was used infrequently.

### **Conclusion**

This chapter has demonstrated that from a material standpoint, economic and social rights that are realized at home truly do center around housing provision which in turn centers on access to land for building homes land. While the South African government has devoted substantial resources towards housing everyone, the material requirements in terms of both building homes and land procurement are major constraints that render the state’s capacity insufficient. This gets at the heart of the answer to Puzzle 1: *Why, despite ceaseless activism and the government making housing a top priority, do a larger percentage of households live in shacks now than at the end of apartheid?* The material requirements to build new formal houses, and especially the limited availability of land, pose immense barriers to the government’s ability to rapidly provide housing.

I also showed how both the location of housing and the type of housing (formal, informal, or traditional) serve as gatekeepers to the realization and continued provision of utilities. Thus, in answering Puzzle 2: *Why, despite a mix of public and for-profit providers, has utility progress been so slow?* I brought the focus away from the actors who are involved and to

the material basis for each of these utilities. This revealed that there are shared patterns in ESR realization across utilities that are shaped by the material requirements for their realization. Throughout this chapter, I also analyzed how the material differences for each utility create unique challenges and opportunities that have shaped how and what is considered adequate or enough.

Utilities, by definition, involve not just installing infrastructure but accommodating ongoing use. For water and electricity, there are large maintenance needs because people expect their sources of water and electricity to be able to provide consistent output, which raises both practical and legal debates over what counts as adequate access. This need for an ongoing supply has spurred litigation seeking to establish a minimum core, and has resulted in pushback from the courts who are unwilling to establish such a constitutionally-mandated minimum (see UN Committee on Economic, Social, and Cultural Rights 1990; Bilchitz 2007; Klug 2010; Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09, [2009]). Sanitation, on the other hand, involves a receptacle and thus the ongoing maintenance requirements are about keeping facilities clean and serviced to be usable. This creates a different set of criticisms and needs especially surrounding communal sanitation options, which can have immense maintenance requirements, and also around ensuring that the sanitation installed meets standards of adequacy regarding health, safety, privacy, and dignity (Beja and Others v Premier of the Western Cape and Others (21332/10) [2011]; Interview Alfred ‘General’ Moyo).

While throughout this chapter I have shown how materiality serves as an antecedent variable that shapes the ESR realization for rights materially linked through their provision at home. I have also documented many examples of how political actors and factors still matter for how these rights are realized. The various actors and the rules and systems according to which

they operate do matter. When government actors responsible for realizing these rights ignore—or simply fail to plan and coordinate around—their material linkages, the outcomes include delays in providing housing as they scramble to find alternative accommodations for squatters, pipes without water due to a lack of communication between the different agencies responsible, or deadly illegal connections to electricity as people seek to find an informal way to gain access to power. On the other hand, acknowledging and embracing the gatekeeping relationship of housing to rights provided at home can result in simultaneously more efficient rights provision *and* a widening gap between haves and have nots because integrated service provision results in more households having either all or nothing when it comes to formal housing and utilities.

It remains to be seen whether acknowledging and then innovating, to overcome or at least sidestep the gatekeeping relationship between the availability of fully built formal housing and the provision of all utilities may be a feasible solution to widescale ESR realization. As of 2014, the ANC's unwillingness to share information about the realities of housing realization, or to take bold action to reallocate land, has created a situation where public expectations for housing and service delivery are unrealistically high given the material realities. Until this situation changes, it seems unlikely that there will be widespread incremental progress through channels like *in situ* upgrading or housing opportunity where the government provides the utilities and foundation and the recipient completes the house.

The Western Cape Province, and especially Cape Town, remain an exception because this area has a different political climate than most of the country and is not dominated by the ANC (Electoral Commission of South Africa 2018). Yet it also remains to be seen whether these incremental options will ultimately be considered constitutionally adequate given the court's focus on procedural adequacy, as was seen in the Constitutional Court's decision to rule against

the Western Cape when it deemed unenclosed toilets to be inadequate sanitation (Beja and Others v Premier of the Western Cape and Others (21332/10) [2011]; Tissington 2011).

The next chapter shifts to focusing on rights outside the home, and analyzes the synergies between these rights. It shows that synergies too are grounded in the materiality of the various ESR. I also find that the materiality of rights shapes expectations for who is responsible for providing each ESR.

## CHAPTER 7 RIGHTS OUTSIDE THE HOME: A STORY OF SYNERGIES

In my interviews and fieldwork, I often found that discussions of either social grants, education, or food would end up touching upon at least one of the other rights. People who work in education nonprofits told me time and again how important it is to ensure children are fed so that they can focus on learning, and how vital providing food is to incentivizing attendance both in school and in extracurricular educational programs and tutoring (Interview Joy Olivier; Interview Thulani Madondo; Interview Barbara Dale-Jones<sup>44</sup>). Discussions of social grants always included mention of the basics that those grants were used to purchase—most commonly food and sometimes school uniforms (Interview Kathryn Hoeflich; MES tour; Interview Dale McKinley; Interview Rudi Hillerman<sup>45</sup>).

While food, education and social grants make a less cohesive grouping than do housing and utilities, in that the former are not tied materially to the same spaces in the ways that the latter are, informants were very likely to discuss food, education and social grants together without any prompting. Perhaps most surprisingly, many people brought up food as a synergistic good with both social grants and education without knowing that food is a constitutionally guaranteed economic and social right. Most important, it became increasingly clear that the right to food was being realized despite a complete lack of litigation, legislation, social pressure, or rights discourse pertaining to food.

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<sup>44</sup> Joy Olivier is Co-Founder and Director of an education nonprofit; Thulani Madondo is Founder and Director of an education nonprofit; Barbara Dale-Jones is CEO of an education nonprofit.

<sup>45</sup> Kathryn Hoeflich is Director of the Cape Town Refugee Centre; MES (originally Metro Evangelical Services and more recently Mould Empower Serve) is a nonprofit engaged in a wide range of “poverty alleviation services”; Dr. Dale McKinley co-founded and was executive member of the Anti-Privatization Forum social movement and is now an independent writer, researcher, lecturer, and activist; Rudi Hillerman is a long time civil servant who is senior manager at the KwaZulu-Natal Department of Cooperative Governance & Traditional Affairs.

This realization that food seemed to be linked to social grants and education, regardless of its status as an economic and social right, was part of what led me to focus on Puzzle 3: *Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food rights?* This chapter uses the sensitizing constructs explained in chapter 4 and rooted in the literature in chapter 3 to analyze the realization of rights to social security, education, and food in South Africa. Throughout the chapter, I build the argument that the synergistic relationships between these rights are the key to answering Puzzle 3. Moreover, I show how these synergies appear across various types of educational organizations, revealing that there is a material rationale—rather than a rights-based imperative—for providing these ESR in tandem.

For economic and social rights in this chapter, I discuss key factors needed to explain patterns of rights realization. The organization of my argument follows a path parallel to chapter 6's discussion of housing and utilities. The argument itself parallels that of chapter 6 in emphasizing how materiality shapes rights-related policies and outcomes, as well as the roles of and limitations of actors involved in rights provision and realization. However, while chapter 6 emphasized how materiality shapes the gatekeeping relationship between housing and utilities, this chapter elucidates the synergistic relationship among food, education and social security. Indeed, this chapter is organized to have a section for each right, to highlight how the materiality of that right creates unique challenges and opportunities for its realization, and how the materiality of the involved rights creates synergies between these rights. Due to the presence of synergies between rights, each section also includes discussions of the other two rights and how the realization among rights is interlinked. Additionally, while chapter 6 showed that there was

widespread awareness of rights to housing and utilities, as well as agreement that the government was responsible for realizing each of those ESR, for the rights in this chapter those expectations are not as common. The criticism subsections discuss how the materiality of rights shapes the desired outcomes and expectations around who is responsible for providing which ESR. They also show where different expectations have resulted in less criticism of the government's work.

### **Synergies in Rights Realization**

This chapter reveals how and why social security grants, education, and food have synergistic relationships. I argue that the materiality of these rights and actors' quests for effectiveness and efficiency lead to synergistic relationships among the rights themselves, regardless of whether the relevant providers are cooperating, competing, or siloed.

While evidence of the gatekeeper relationship between housing and utilities appeared in both litigation and legislation, the evidence of synergies is largely found in specific programs and policies, and litigations pertaining to the rights in this chapter do not invoke synergies. The main example of synergies enshrined in policy is the National School Nutrition Program (NSNP), which has dramatically increased school attendance rates by incentivizing attendance through feeding about 9 million students every school day (Rendall-Mkosi, Wenhold, and Sibanda 2013). Yet the discussion of the synergies between education and food also reveal that there are many non-government programs that synergistically realize both education and food as the result of the combination of mutually beneficial partnerships and simple practicalities (Interview Joy Olivier; Interview Thulani Madondo). The evidence of the synergy between education and food existing outside of government programs and policies indicates that the synergistic relationships between ESR can exist regardless of the type of actor(s) involved and regardless of whether actors are motivated by rights realization.

The links between social grants and food and between social grants and education are not based in policy, but only in practice. Yet these synergies also are shaped by the materiality of the rights that grant funds can be used to realize. There are no limitations on how people spend their social grants, and this flexibility creates more potential for synergistic relationships between social grants and one or more other social rights. Numerous studies have found that social grant funds are typically used to feed families and cover school fees and uniforms, but rarely for electricity, and not for housing and other utilities (Aguero, Carter, and Woolard 2006; M. Altman, Hart, and Jacobs 2009; Case and Deaton 1998; Case, Hosegood, and Lund 2005; Khosa and Kaseke 2017). Looking at this through the lens of materiality and patterns of ESR realization, I find that grant funding is typically used for the basic needs that people do not expect the government to provide. These also are the needs that do not require government (or contractor) installation but instead can be easily purchased by the household through a private provider.

While it may seem that goods and services that are provided within the home should be more personal and goods and services outside the home should be more public, I found that in South Africa, expectations of what the government should provide are shaped less by the personal vs. public sphere, and more by the possible pathways to realize the right. The ability for a right to be provided through a variety of pathways can make it less likely that people acknowledge that it is a good or service that the government should provide. For example, as we will see, South Africans expect the government to provide social grants and access to schools. On the other hand, food can be realized through many different pathways by many different actors, including purchase facilitated through social grants, and school uniforms too can be purchased with funds from social grants. A unique aspect of food is that, given it has been

produced, it is so materially easily to realize that it can be provided almost anywhere by almost anyone, which makes it possible for a wide variety of organizations to provide it. I found that it was this diversity of pathways to receiving food that led many people to not consider food to be a good that government needs to provide or even a right at all. To put it another way: the materiality of each ESR discussed in this chapter shapes their possible pathways to realization and which actors can and want to engage with realizing those rights. In turn, the presence and absence of possible pathways and involved actors shape public awareness and expectations and thus influence public pressure (or the absence of such) for the realization of specific rights<sup>46</sup>.

This chapter shows that the public expectations around what the government needs to be involved in providing are influenced by how possible it seems for individuals to realize the right themselves, and also how realistic it is for nonprofits to help fill the gap. The public expectations for education are that the government provide access to schools, but there is little pressure to improve the quality of education in public schools (Interview Doron Isaacs; Interview Barbara Dale-Jones). Similarly, the public does not expect the government to be involved in food provision (Interview Dale McKinley; Interview Sasha Stevenson). In these instances, the materiality of the rights have shaped public expectations for government provision, which in turn shape the likelihood of litigation and help to explain why there has been less legal mobilization for the rights to education and food.

Additionally, I analyze how the material aspects of the different rights shape public consciousness about differences in and expectations for the realization of these rights. There is a lack of awareness among poor students and their parents that the quality of education they are

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<sup>46</sup> To reaffirm, while I use the language of ESR and rights throughout this dissertation, the public typically uses the language of service delivery and goods. My earlier quote from Dr. Vinodh Jaichand about how the lack of rights talk in South Africa is not good for ESR realization made a similar point.

receiving is poor, which contributes to a lack of awareness that their right is low quality. By comparison, houses are highly visible and people can generally understand if the quality of their dwelling is lacking. Turning to the topic of food, I show how the material experience of food insecurity and hunger is typically fleeting and not visible to the community when compared to other ESR, such as living in a shack, which is an ongoing and visible problem. Ultimately, the materiality of these rights also contributes to the lack of awareness, low expectations, and again the minimal legal mobilization for both education and food.

Yet with the absence of an expectation for government provision of food or high-quality education, there are more outside actors working to fill the gaps when it comes to both education and food. Many individuals and organizations share a belief that these basics can be provided by anyone and that every bit helps, and thus we see more nonprofits working to fill the gaps. Notably, some organizations are filling the gaps without even trying, especially with regards to food. While there are organizations whose mission includes reducing hunger and improving food security, most of the organizations that provide food are not driven to realize this right. Instead, these organizations simply give people food as a means to another end, often as an incentive for students to attend school or as a way to keep them engaged in their studies for a longer period of time (Rendall-Mkosi, Wenhold, and Sibanda 2013; Interview Joy Olivier; Interview Thulani Madondo).

### **Why Actors Fall Short**

While there are some criticisms of the realization of grants, education, and food in South Africa, these are far less substantial than the criticisms of realization of rights to housing and utilities. This difference can be attributed to several differences between the rights focused on in this chapter and the previous group. First, there is simply less awareness of these rights and, in

particular, many people are unaware that the constitution promises the right to food (Interview Anonymous; Interview Anonymous at Foodbank South Africa; Interview Boyce Tom; Interview Vinodh Jaichand; Interview Richard Pithouse; Interview Sasha Stevenson<sup>47</sup>). While people are somewhat more aware of the rights to social grants and education, these rights are not universally applicable to all people at all stages of life, and so compared to housing and utilities they generally are not a high priority for mobilization even if quality is lacking (Interview Jared Sacks; Interview Doron Isaacs).

Second, there is less of a concern about the privatization of these rights, though the reasons why are different for each right. Social grants are fundamentally government provided—grants are not an item that could be sold—though the grant disbursement all happens through for-profit vendors. Only 6% of students in South Africa attend private schools (GHS 2014). On the other hand, food is almost entirely purchased from private companies, however it is widely accepted that food should be a purchased commodity rather than a publicly provided good.

Third, accountability is less of a concern for these rights. While there is certainly a lack of accountability, there also are not many people pushing to improve these ESR, and thus the topic of accountability rarely comes up. Rather than a focus on advocacy that was common in chapter 6, the civil society actors involved in education and food are more focused on filling the gaps. Finally, with diminished expectations of government provision, capacity simply is not brought up as frequently as a blanket criticism. Instead, the criticisms of the government's

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<sup>47</sup> The first anonymous informant does work regarding social and environmental justice; the second anonymous informant works at Foodbank South Africa; Boyce Tom is a Researcher at the Trust for Community Outreach and Education, a nonprofit that does work regarding land and agriculture; Dr. Vinodh Jaichand was Head of the Law Department at The University of Witwatersrand; Dr. Richard Pithouse is Senior Researcher and Programme Coordinator at the Unit for Humanities at Rhodes University; Sasha Stevenson is an attorney at the public interest law firm Section27.

capacity to adequately realize the rights at issue in this chapter comes through with a focus on improving quality and reducing corruption. Quality was a common criticism in chapter 6, and is also a concern for education. In the discussion of quality in the education section, I address which elements of the materiality of utilities and education create concerns about quality.

### *Corruption*

Criticisms about corruption are common with regard to the rights in this chapter. These concerns pick up on the concerns raised in chapter 2 that dependence on contractors creates opportunities for corruption and state capture (Chipkin 2016; Chipkin 2017) and that the public's perception is that corruption is rampant, especially in government contracting<sup>48</sup> (Transparency International 2016; Interview Tristan Taylor). In the case of social grants, corruption has been well documented and the South African Social Security Administration (SASSA) has gone to great lengths to reduce corruption within the administration, with contractors, and with fraudulent recipients (Pule 2014; Reddy and Sokomani 2008; SASSA 2014b; South African Social Security Agency 2015; Ungerleider 2012; Interview Kathryn Hoeflich). In fact, when it comes to social grants there is also a criticism that at times SASSA has gone too far and has inadvertently hurt qualified recipients (SASSA 2014a). For education and food, the criticisms around corruption focus on the administration of the National School Nutrition Programme and the contractors responsible for providing students' meals (Beesley and Ballard 2013; Rendall-

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<sup>48</sup> While accusations of corruption abound in South Africa, several informants told me that corruption is not as bad as people say (Interview John Reynolds). A former Programme Manager for the Department of Public Service and Administration told me that she does not buy the idea that many officials and contractors are corrupt because it takes a very smart person to steal in this system, any corruption must be deliberate and well planned (interview Anonymous Former Programme Manager at the Department of Public Service and Administration). Additionally, conspicuous consumption is common in South Africa, which feeds assumptions about corruption (interview Anonymous Former Programme Manager at the Department of Public Service and Administration; Interview Simon Delaney). I overheard and was told about these casual accusations of corruption frequently during my time in South Africa, especially when a teacher or local politician had an expensive car.

Mkosi et al. 2013; Seakov and Vally 2010; Zwane 2015; Interview Salim Vally; Interview Mark Walker).

### **Social Security**

My analysis of the right to social security focuses specifically on the government's legal obligation to provide social assistance and social relief—both of which take the form of social grants—as they are defined in the Whitepaper on Social Welfare (see the upcoming section called Constitutional Promise for details). Throughout this chapter I use the term 'social grants' as shorthand to refer to the social assistance and social relief portions of the right to social security. While a minority of people in South Africa currently qualify for social assistance or relief, these rights have received the greatest funding and seen the largest improvements since the end of apartheid. The national government made relatively swift changes to centralize the grant system to reduce corruption and redefine child support grants, which allowed for substantial improvements in the realization of the right to social security (Reddy and Sokomani 2008). Moreover, all of the permanent grants are provided without any strings attached, which allows the recipients to spend the funds as they choose. This in turn means they often spend their grant money on food for their families (Aguero et al. 2006; Van der Berg 2006).

### ***Materiality***

Social security is the least infrastructure-intensive right of all the ESR discussed in this dissertation. Social grants are not tied to any specific location or material infrastructure. In earlier years, social grants were provided via direct cash payments and paypoints or electronic deposits to bank accounts, which required recipients to pick up their checks in person or have an active bank account (Kay 2010). In recent years, the system has taken advantage of technological improvements to allow for multiple electronic and card-based options, mostly focused around a

South African Social Security Agency (SASSA) card that is directly reloaded and used like a debit card to make payments or withdraw cash (Ungerleider 2012). This change demonstrates a move towards even more flexible location and material requirements.

The material of the grants themselves is simply money, often in a digital format. This means that the funds transferred through the grant system are highly liquid – they can be spent electronically using a debit-card based system or withdrawn as cash and spent on any number of things. This liquidity also allows for social grant money to pass on to benefit more people than simply the recipient. The funds can be given directly to other people or can be spent on goods or services for other people. Though grants are provided to a particular recipient, social grant funds are often shared within the household or with family outside the household and used to provide food (Aguero et al. 2006; Van der Berg 2006).

The administration of social assistance and social relief requires an extensive bureaucratic system and substantial organizational capacity to oversee and administer the enrollment and payment of social grants. The coming pages will detail more about how South Africa moved from a provincial system of administering social grants to a single national agency – the South African Social Security Agency (SASSA). This consolidation reflected an acknowledgement of different capacity in different areas and a move towards consistency.

Social grant implementation and provision are administratively sophisticated in terms of ensuring that the correct people are receiving their grants monthly, with the intent of minimizing corruption. Yet the provision of the grants themselves largely relies on resources that are financial, technological, and involve skilled labor rather than any natural resources or physical goods. Over time, SASSA and its contractors have introduced more technologically advanced processes for the implementation and maintenance of social grant provision. In 2012, SASSA

introduced biometric certification processes, and by 2014 SASSA required recipients to either make a call or use a fingerprint reader to show proof of life once each month before they could access their funds (Ungerleider 2012; SASSA 2014b).

The quality of social grants is again fundamentally different from many of the rights discussed previously because—unlike, for example, housing which can be poorly built, electricity which can have intermittent access, or toilets which could be installed without enclosures—there are few material differences in the provision of social grants that affect their adequacy. The amount of funds in the grant payment is the clear differentiator, but as long as each recipient of a specific grant receives the same<sup>49</sup>, correct amount of money, the right to the grant is adequately realized. There are indeed disagreements about the ideal amount for each social grant, but these are substantially very different from the criticisms about the quality of housing and utilities that appeared in chapter 6, in which low quality rights realization could be ineffective or even dangerous (for example: water that is not safe to drink).

### *Constitutional Promise*

Section 27 of the Constitution guarantees the right to several ESR, including social security. Pertaining to social security, it states, “Everyone has the right to have access to ... social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights” (Constitution of the Republic of South Africa 1996). While the constitution does not define the

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<sup>49</sup> The coming pages will name the grant amounts for the various social grants. All of the grants have a means test to determine eligibility and, since the creation of SASSA, everyone who is eligible for a particular grant receives the same amount.

terms “social security” and “social assistance,” the 1997 White Paper for Social Welfare provides definitions for these key terms. It reads:

Social security covers a wide variety of public and private measures that provide cash or in-kind benefits or both, first, in the event of an individual’s earning power permanently ceasing, being interrupted, never developing, or being exercised only at unacceptable social cost and such person being unable to avoid poverty and secondly, in order to maintain children. The domains of social security are: poverty prevention, poverty alleviation, social compensation and income distribution. The social security system in South Africa has four major elements:

- (a) Private savings — people voluntarily save for unexpected contingencies such as disability, retirement and chronic diseases.
  - (b) Social insurance — joint contributions by employers and employees to pension or provident funds, or social insurance covering other unexpected events. Government may also contribute to social insurance covering accidents at work.
  - (c) Social assistance — non-contributory and income-tested benefits provided by the State to groups such as people with disabilities, elderly people and unsupported parents and children who are unable to provide for their own minimum needs. In South Africa, social assistance has taken the form of social grants.
  - (d) Social relief — short-term measures to tide people over a particular individual or community crisis. This is also non-contributory and needs-tested.
- (Department of Welfare 1997)

This white paper clarifies what everyone is promised, and what is limited to specific groups or only provided for a specific length of time. To be clear, the right to social security is *not* the promise of a universal basic income. Only specific groups—including people with disabilities, people who are elderly, and unsupported parents and children unable to provide for themselves—are promised social assistance. The guarantees for everyone are simply the possibility to voluntarily contribute to private savings, the potential to be eligible for short-term social relief, and the choice as an employee to contribute to various social insurance vehicles (Department of Welfare 1997).

My analysis of the realization of social security focuses specifically on the provision of social assistance and social relief (items c and d). I focus on these elements of social security because there is a legal obligation for the government to provide social assistance and social

relief. All the other specific rights to social security offer simply the possibility for the individual or their employer to contribute, but do not put the onus on the government to do more than ensure these options are available.

### ***Progress After Apartheid***

The social grant system was disjointed at the end of apartheid and through the first decade of democracy in South Africa. While the social grant system originated in 1928 as a benefit for only white people, it became somewhat more inclusive over time (Inter-Regional Inequality Facility 2006). The apartheid social grant system had racially differentiated benefit levels in which white people received substantially more than people of color and the apartheid system did not consistently apply its eligibility criteria across race groups (Inter-Regional Inequality Facility 2006; Woolard 2003). The result was that during apartheid, many people of color did not receive grants for which they were eligible, and even those who did receive the grants were awarded less than white recipients (Inter-Regional Inequality Facility 2006; Woolard 2003).

After apartheid, there were changes to make the social grant system more racially equitable, yet each province was responsible for administering grants to its citizens and so there were 14 separate provincial systems responsible for the dispensation of various social grants (Reddy and Sokomani 2008). Amid claims of corruption and fraud, four committees were established between 1996 and 2000 to evaluate the existing systems and make recommendations (Reddy and Sokomani 2008). The commissions found that there were many contradictory interpretations of the means testing rules at the provincial level (Reddy and Sokomani 2008). These inconsistencies were somewhat unsurprising given that state bureaucracies were not overhauled after the end of apartheid (Sparks 2003). Additionally, the commissions found that an

estimated R1 billion, or 7% of the total social security budget, was lost annually due to corruption or fraud (this is over 100 million USD annually, but it is difficult to estimate because the currency exchange varied substantially during this time) (Reddy and Sokomani 2008).

The problems with the provincial administration of social grants led to the creation of the Department of Social Development (DSD) in 2003. Then in 2005, the DSD created the South African Social Security Agency (SASSA) to administer all social grants at the national level, replacing the disjointed provincial systems. This centralization from the 14 separate systems to one national agency was a major change and signaled a commitment to the goals of consistency, efficiency, and eliminating corruption (Reddy and Sokomani 2008). This decision also reflects the understanding that large bureaucracies are important aspects of state capacity (Amenta 1998; Barkey and Parikh 1991; Evans et al. 1985; Skocpol 1992; Skocpol and Finegold 1982) while at the same time bureaucrats can stand in the way of proper implementation and thus political will can be necessary to ensure rights are properly realized (Handler 1978; Rosenberg 1991).

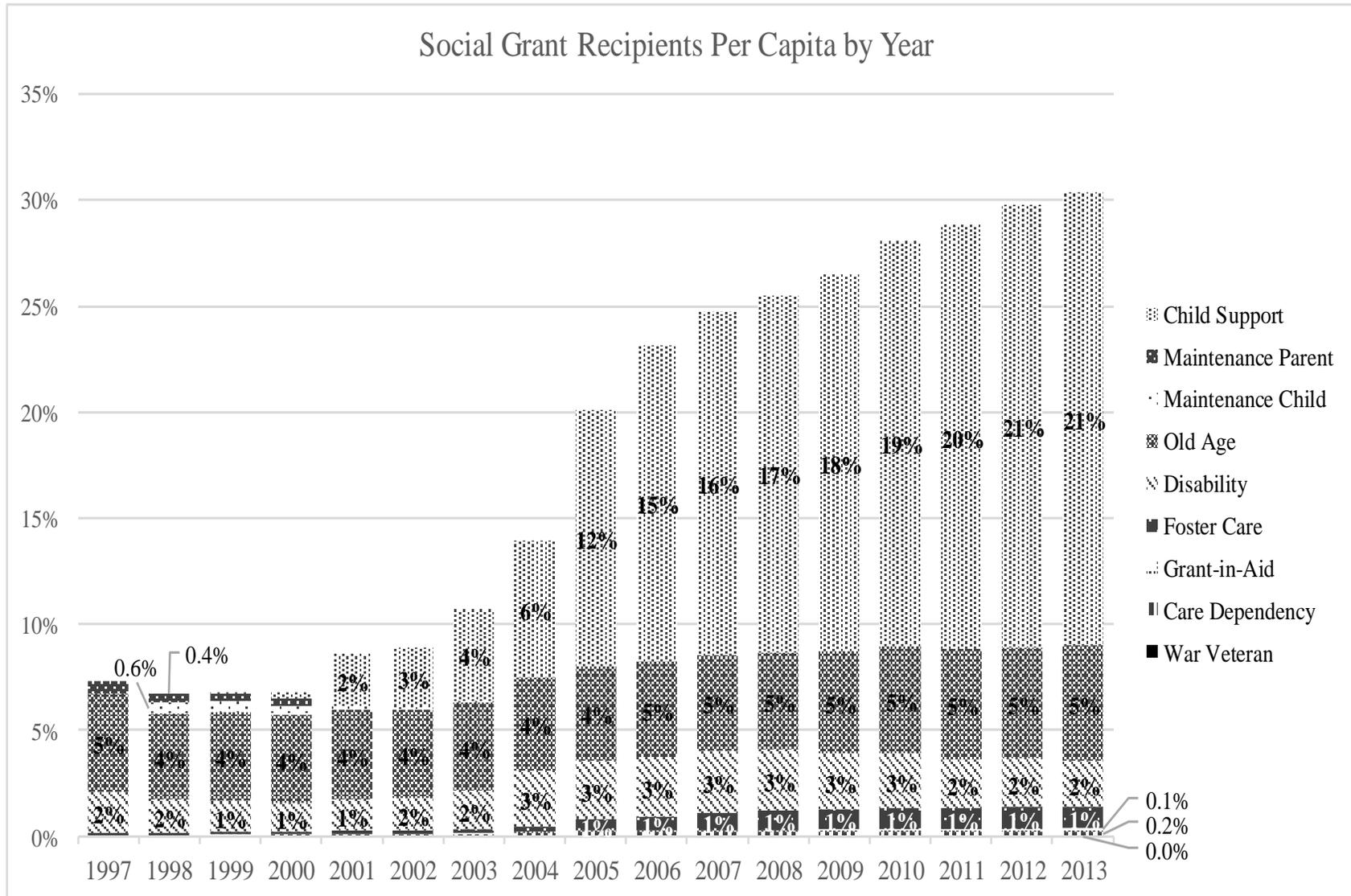
Social security is now the most centralized of all economic and social rights in the constitution. In fact, the old social grant system with 14 providers was already more centralized than most of the constitutionally guaranteed ESR, apart from electricity. This transformation from provincial to national administration was largely made as the result of internal and government pressure to improve the system, rather than as a response to public pressure (Reddy and Sokomani 2008). Additionally, this centralization was largely possible thanks to a combination of the material ease of administering social grants and continued reliance on private contractors for the administration of grants (SASSA 2016a). This change was made for administrative purposes and was easier to do for social grants than it would be for other ESR because providing financial social assistance does not require the same in-person or on-location

presence needed for many of the other rights in this research. Yet, as I discuss more in the subsections on other actors, SASSA relies heavily on for-profit vendors to administer and distribute the social grants.

The Social Grants system is the most substantial way that the government supports people experiencing poverty. In budget year 2013/2014, SASSA's total grant expenditure was R134.9 billion, or about \$15 billion USD (Plagerson and Ulriksen 2015). This represents almost 10% of total government expenditures (Frye 2017).

As of 2014, SASSA administered 7 long-term grants: Care Dependency (dependent children with disabled parents), Child Support, Disability, Foster Child, Grant-In-Aid (additional assistance for elderly or disabled), Old Age, and War Veteran (fought in WWII or Korean War). Some of these grants are quite substantial, while others are significantly smaller. The number of long-term grant recipients has increased dramatically since the end of apartheid. As Figure 7.1 shows, 7% of South Africans, or roughly 3 million people, were grant recipients in 1997, and as of 2013 more than 30% of South Africans, or roughly 16 million people, received grants (Statistics South Africa 2014b). This represents a more than four-fold increase in the percent of South Africans who are supported by social grants, though this increase has been almost entirely due to an increase in child support grant recipients (Statistics South Africa 2014b).

Figure 7.1 Social Grant Recipients Per Capita by Type of Grant and by Year



Sources: SASSA Records emailed to the author from SASSA on 2/20/2014; Statistics South Africa 2014b

The grants that support children have gone through some of the most substantial changes since the end of apartheid. In the late 1990s, SASSA began a switch from State Maintenance Grants (SMG) for children and parents to the new Child Support Grants (CSG). While the Maintenance Grants were not equitably applied, in theory they were meant to support every parent who was single or whose partner was unable to provide for their children (Haarman 1998). The SMG included both a child allowance and a parent allowance. There was a complex means test and calculation for the payouts, but at most, the maintenance grants would support one parent and two children (maximum) for a total of up to R700 per month, or roughly \$150 USD per month (Haarman 1998). The reality of the inequitable application of the grant was that very few black South Africans received SMG (Haarman 1998). This meant that millions of people who should have been receiving the SMG were not receiving the grant. After apartheid, the SMG were phased out and replaced with the new Child Support Grants.

As of 2014, the CSG only support children aged zero to six—not older children or parents—and pays just R320 per month (less than half of the per capita poverty line) (StatsSA 2014). This change was notable because it reduced the number of people who should be eligible for the grant by several million people, but made it more feasible for SASSA to ensure that everyone who was eligible for the grant would receive it. One of the central goals of replacing the SMG was to ensure that everyone who qualified for the CSG received it, and the large increase in grant recipients is evident in Figure 7.1 (Haarman 1998). While the old SMG maxed out at supporting just 229,685 children and 235,162 parents, by the final year of phasing out the SMG, the CSG supported almost 2 million children (SASSA 2014). Ultimately, the change from the SMG to CSG decreased the number of eligible people (older children and adults are excluded) and decreased the grant amount, but allowed the government to ensure equitable

application within the means of the state and thus substantially increased the number of young child recipients (Haarman 1998).

The other long-term grants are all larger financial amounts than the CSG and have been more stable since the end of apartheid when compared to the CSG. The Foster Child Grant is also focused on supporting children and had a value of R830 per month in October 2014, which was just above the per capita poverty line. There has been a proportionally large increase in the number of foster grants administered, which is largely the result of the HIV/AIDs crisis in South Africa; this remains constant at supporting about 1% of the population (Breckenridge et al. 2017). As of October 2014, recipients of the Care Dependency (for children with disabled parents), Disability, Old Age, and War Veteran Grants all receive R1,350 per month, plus an additional R20 for individuals over the age of 75 and veterans (SASSA 2014c). In USD, this is roughly \$135/month, plus an additional \$2 for veterans and people over age 75. The per person amount for these grants is almost double the per capita poverty line of roughly R750 in South Africa in 2014, and so this is a substantial income for many people given that about 45% of South Africans live below the poverty line (GHS 2014).

While the income-based means tests<sup>50</sup> and old age qualifications for these grants have changed over time, these changes have had a minimal impact on the overall percent of the population who receives each grant. In 2013, almost 9% of South Africans received one of these sizable long-term grants. Beginning in 1993, the age requirement was 60 for women and 65 for men (Plagerson and Ulriksen 2016). In 2008, the minimum age changed to 63 for men and then, in 2010, 60 became the minimum age for both men and women to qualify for the old age grant

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<sup>50</sup> The means test is based on income and was modified in the aughts to appropriately account for inflation (Plagerson and Ulriksen 2016). In South Africa there is not a public pension system, only employer-specific pensions for people who were formally employed (Plagerson and Ulriksen 2016).

(Plagerson and Ulriksen 2016). Yet many South Africans do not live long enough to receive the old age grant (StatsSA 2014b). Largely due to HIV/AIDS, the average life expectancy at birth was just 52 years in 2005 (StatsSA 2014b). In Figure 7.1, we see that, in the early aughts, the percent of South Africans receiving the old age grant dipped and the percent receiving the disability grant peaked, due to the AIDs crisis (StatsSA 2014b). As treatment and prevention improved, the average life expectancy at birth increased to 61 years in 2014 (StatsSA 2014b). With a current minimum age of 60, this means that many South Africans never make it to an age at which they are eligible for the grant, but those who do live to reach the age of 60 receive a large monthly income by South African standards (StatsSA 2014b).

Given that all of the permanent grants take the form of money, the real impact of the social grants on an individual's wellbeing is best understood by how the funds are spent. While social grants are disbursed to individuals rather than households, their use often extends from the official recipient to the whole household unit, and most of the grant is spent on food (Aguero et al. 2006; M. Altman et al. 2009; Case and Deaton 1998; Case et al. 2005; Khosa and Kaseke 2017). However, these grants still do not support most South Africans, because the grants only target specific disadvantaged populations that are considered unable to provide for themselves due to their age or disability. The grant system is not intended to support the majority of the population: working-age adults.

SASSA has only one grant for which people of any age and ability—including working-aged adults without a disability—can apply<sup>51</sup>. The Social Relief of Distress (SRD) grant is “for persons in such dire material need that they are unable to meet their or their families' most basic

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<sup>51</sup> In 2015 it was announced that the South African Government planned to introduce social assistance for unemployed South Africans (SANGO Pulse 2015). However, as of 2014, there were no grants or other forms of public assistance for people experiencing unemployment in South Africa.

needs,” and can be provided for up to three months (SASSA 2016b). To receive this grant, the applicant must meet one or multiple of the following conditions: awaiting permanent aid, experiencing a short-term disability, experienced a natural disaster but the area was not considered a disaster area, their household’s breadwinner is deceased, their household is not already receiving a grant, not receiving assistance from another organization (SA News 2009).

While all of the other SASSA grants can be received in cash or check, the SRD comes in the form of parcels or vouchers—not a check—and is used exclusively for food (Sehlabane 2014). In part because these funds are used to purchase food parcels in emergency situations, there is limited data on the number of recipients or average amount of the SRD (Sehlabane 2014). Nevertheless, SASSA’s annual reports show that the SRD has consistently received less than 1% of SASSA’s annual budget and served less than 1% of the population (Parliamentary Monitoring Group 2015; SASSA 2008, 2014a).

### *Synergies*

It is common for the recipients to use their grants to support the rest of the family, paying for their basic needs, and especially food and education (Devereux, McGregor, and Sabates-Wheeler 2011; Patel 2012; Samson et al. 2004). Thus, we begin to see that these grants are not just benefitting the elderly, disabled, and children, but supporting other relatives as well. In particular, the bigger grants (Care Dependency, Disability, Old Age, and War Veteran Grants) that amount to roughly double the poverty line income, are largely used to alleviate poverty for the families of recipients, and thus indirectly aid in the realization of other socio-economic rights.

SASSA grants have been shown time and again to increase recipients' access to food<sup>52</sup> (Ardington and Lund, 1995; Case and Deaton, 1998; Lund, 2002; Gertler, 2005; Van der Berg 2006; Lund 2007; Delany et al, 2008; Tanga and Gutura, 2013; Gutura and Tanga, 2014 (Case and Deaton 1998; Khosa and Kaseke 2017). Grant recipients' primary use of their grant income is to pay for food (Booyesen and Van der Berg 2005). The grants also have been found to improve child nutrition (Aguero et al. 2006). While SASSA grants are not necessarily intended to be spent primarily on food, many people who need the funds to purchase food receive a grant or have a family member who receives a grant.

Grants are also used to fund education. While the vast majority of students in South Africa attend public school, it is normal for public schools to require that families pay school fees and students are required to wear school uniforms, so fees and uniforms can be two financial barriers to attending public school for low income families. There is substantial evidence that grant recipients put the money towards basic school necessities including school fees and school uniforms (Department of Social Development, South African Social Security Agency, and United Nations Children's Fund 2011; Khosa and Kaseke 2017; Zembe-Mkabile et al. 2015). Additionally, grants have been found to increase school attendance (Case et al. 2005).

The fact that housing, utilities, and schools all include substantial formal *installation* requirements to be realized makes it difficult to imagine that grant funds could be used to realize these other rights for households that lack *access*. Add to that the expectation that the government is responsible for realizing housing and utilities, but not food, and couple that with the immediacy of hunger, and it is hard to envision people saving up their grant funds to buy a

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<sup>52</sup> The use of social grants – both Child Support Grants and Old Age Grants – to purchase food is also documented in Rehad Desai's film *The Weather Gods* (<https://www.youtube.com/watch?v=62bjhd5TdZI>).

home or pay for utility access rather than feeding their families. This is what the research on grant spending shows – people largely spend their grants to cover food for their household and even their extended family, and then pay for small but crucial basics like school fees and uniforms (Aguero et al. 2006; M. Altman et al. 2009; Case and Deaton 1998; Case et al. 2005; Khosa and Kaseke 2017). Left over funds may occasionally be used to fill their electricity meter and pay for public transportation (Aguero et al. 2006; Khosa and Kaseke 2017). None of the studies found use of the grants for housing, water, or sanitation, but from a material perspective this all makes sense.

Looking through the lens of materiality, rights that can be easily installed or maintained with a relatively small amount of money on a monthly basis are reasonable to realize through social grants. These ESR include food, school fees and uniforms that can be the missing piece to have access to public schools, and—for households that are formally electrified—adding to the meter after exceeding the free basic minimum. Water is unlikely to be paid for with social grants because households are more likely to be relying on a communal tap than to have a prepaid meter to which they can add to fund additional water consumption. Sanitation is even more unlikely to be paid for with social grants because it is more a matter of organizational maintenance to ensure ongoing provision rather than paying for a larger quantity of sanitation usage.

These primary uses of social grants to fund the realization of other economic and social rights, with variations that are grounded in the materiality of these different rights, begins to answer Puzzle 3 about how the government does so much work to indirectly provide food despite a lack of popular pressure for food provision. While SASSA does not have any requirements for what people spend their grants on, the vast majority of grant recipients spend

their grant money on basic goods that they can acquire themselves and do not expect the government to provide, specifically food and educational expenses. While grant recipients could choose to put the funds towards other basics, their spending patterns indicate that they are more likely to put the funds towards household needs that they can actualize and for which they believe the family is responsible. They rarely spend their grant funds on housing and utility expenses, since they expect the government to provide these rights directly and moreover there are limitations on how their grant funds could possibly be used to realize these rights<sup>53</sup>. In the coming sections, I will show how recipients' expectations are shaped by the materiality of the goods themselves and that the goods that materially allow for multiple pathways to ESR realization are less likely to create expectations for government provision. Food, school fees, and school uniforms are simple for households to realize themselves when they have the funds, while housing and utilities involve more substantial steps to implementation that require public sector involvement. In the South African context, grant money is not enough to realize proper housing and utilities, and this is why there is no synergistic relationship between social grants and housing or utilities. Moreover, the fact that the South African government is minimally involved with realizing the right to food and expects adults to purchase food through the private sector creates a need for social grants.

This case of mutual dependence and benefit between grants and food and between grants and educational expenses point towards a synergy. Typically a synergy means that the whole is

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<sup>53</sup> Also of note, SASSA does not coordinate with other government agencies nor have any involvement with integrated service provision. While SASSA has an excellent database of South African citizens and important information about their households and needs, it does not share information nor work cooperatively with any of the other government agencies or other service providers. As Rudi Hillerman at the Department of Cooperative Governance and Traditional Affairs explained to me, SASSA and other agencies and levels of government “as a rule don’t share any information. There’s no integration around the identification of these people so you might be a grant beneficiary but you still don’t appear on the list for free basic [utility] services” (interview Rudi Hillerman).

greater than the sum of its parts, and for this setup to be seen as a synergy we must look through the lens of a neoliberal capitalist government that is constitutionally obligated to realize non-standard ESR, which are typically purchased in the market rather than provided by government (Kaletski et al. 2016). In these instances, the “greater” whole is that, rather than the government providing smaller grants and directly providing more goods and services, the government can efficiently provide larger grants and thus support private businesses and a capitalist system while also helping to ensure families are fed and children are able to attend public school.

### *Criticism of the Government’s Progress*

While there are several criticisms of the social grant system in South Africa, the overall perception I heard from many South Africans in 2014 is that SASSA is doing good work (Interview Kathryn Hoeflich; MES (originally Metro Evangelical Services and now also Mould Empower Serve) tour). SASSA’s grants were acknowledged and appreciated as the largest way that the South African government supports people experiencing poverty (Interview Anonymous at Foodbank South Africa; Interview Boyce Tom; Interview Elaine Gandhi). As Kathryn Hoeflich, Director and CEO of the Cape Town Refugee Center, told me, “SASSA has helped. The social security system in South Africa is massive. Millions of people are supported by SASSA. They have recently upgraded their system to more secure chip-based cards and people really are accessing and making use of it. It is a strong system that they have” (Interview Kathryn Hoeflich). Yet despite these improvements, I did hear varied criticisms of SASSA.

First, corruption continues to be a concern for SASSA, which is consistent with the public concerns about rampant corruption, especially when contractors are involved (Transparency International 2016). Investigations found that even in 2006, after the switch from provincial administrations to SASSA administration, an estimated R1.5 billion was lost because

of corruption and maladministration (Reddy and Sokomani 2008). While the amount of money lost in 2006 was higher than before the creation of the DSD, the amount lost was now only about 2.5% of the SASSA budget (down from 7%), showing improvement over the previous systems (Reddy and Sokomani 2008). As part of the investigation, over 400,000 private beneficiaries were investigated for grant fraud (Sakoana 2006). These beneficiaries were a combination of government employees, private contractors responsible for the administration of the grants, and individual citizens who had fraudulently applied for or collected social grants for which they were not eligible (Reddy and Sokomani 2008).

Since the 2006 revelation of continued fraud, SASSA has continued to take steps to prosecute people involved in corruption and fraud, and has chosen vendors who have upgraded to a more secure system with chip based cards and biometric confirmations of life (Pule 2014; Interview Kathryn Hoeflich; Ungerleider 2012; SASSA 2014b). In 2013, the agency started an annual anti-corruption conference to help tackle the problem (SASSA 2015). While the corruption is not gone, in 2014 there was a sense that it had shrunk in proportion to the total amount of grants SASSA now administers, though there were also allegations of SASSA not following the proper vendor procurement process when selecting its main vendor; this is discussed in the upcoming section on Courts and Litigation. In the years following my fieldwork, it became increasingly clear that SASSA continued to be plagued with vendor corruption (Banton 2018; McKune 2016).

Second, in the quest to stamp out corruption, sometimes SASSA goes too far to limit corruption and inadvertently hurts deserving recipients. In the process of battling corruption, SASSA will discontinue funding recipients whom the agency believes are deceased (SASSA 2014b). When SASSA incorrectly determines that a recipient is deceased and stops sending their

funds, the result is that people who are alive and deserving can go months without support as they navigate the bureaucratic process to prove they are alive and should be receiving funds (see for example Ntuli 2017).

There are also concerns that citizens have limited recourse if they believe SASSA has wrongly denied them a grant (Ntuli 2017). SASSA indicates that this situation has improved; its 2014 annual report says that despite a large number of lawsuits against SASSA in earlier years about people not receiving grants they were owed, that number has dropped significantly (SASSA 2014). The report reads, “As a result of effective legal services and improved customer services, SASSA continued to experience a decrease in the number of litigation cases” (SASSA 2014). While SASSA views the decrease as a sign of improvement, it is not clear if the decrease in litigation could also indicate that some people decided it was futile to take SASSA to court.

Third, among academics and activists, there are also concerns that the social grant system may be too big, given that in 2014, social grants were the main source of income in 21.5% of households (GHS 2014). Receiving social grants may create dependency and limit both self-sufficiency and government capacity. While the grants are largely focused on supporting people who should not be expected to provide for themselves, the reality of how grants are shared within households and families means that working age adults often receive food and other basics that are purchased with their family member’s grants (Aguero et al. 2006; Van der Berg 2006). This is unsurprising given the extent of unemployment and poverty in South Africa, and that there no financial support for working-aged adults who are living below the poverty line, only the potential to receive three-months of food vouchers or parcels from the Social Relief of Distress grant (see chapter 2 and descriptions of specific social grants in this chapter). Dr. Dale McKinley, an independent writer, researcher, lecturer, political activist, and co-founder and

executive member of the now defunct Anti-Privatization Forum, argues that social grants increase dependency and are a political tool. He told me the “social grant system has catalyzed the situation which is not about people not wanting to work, it's a situation where the dependency becomes real, very real because there is no other way of doing things. That translates into political loyalty” (Interview Dale McKinley).

However, research testing these phenomena suggest that receiving the grants has a limited effect on increasing dependence and that recipients still would prefer paid employment (Surender et al. 2010). Other research found that receiving social grants had a limited effect on influencing voting behavior (Graham, Sadie, and Patel 2016). Nevertheless, the criticism of the extensive social grant system is more about systematically creating dependence than people simply not wanting to work.

By making the grant system the primary way that the government supports poor people, the new South Africa developed in a way that has favored grants rather than build state capacity to fulfill other ESR directly or create jobs so that more people can pay for their own goods and services. By developing systems around the transfer of funds—including the reliance on contractors to administer the grants—rather than building up the state’s infrastructure to provide goods and services, the government has handicapped itself. Dr. McKinley explained that social services are necessary, “but the growth in the social welfare system here is a symbol of the failure of the government to engage proper development and productive opportunity” (Interview Dale McKinley). For socialists, activists, and scholars who share Dale’s point of view, “you can’t de-link the social grant system from the basic services” (Interview Dale McKinley). They are intertwined because the government chose to build up the social grant system through the

extensive use of vendors rather than to invest in the necessary government infrastructure to provide other economic and social rights (McKinley 2017).

### *Involvement of Other Organizations*

While a small number of vendors are heavily involved with SASSA's work, there are few other ways that non-state organizations can be involved in realizing the right to social security in South Africa. This largely reflects the material nature of the grants—it does not make sense for other organizations to fill the gap to provide state-funded grants. In some ways, this is an example of the materiality of grants limiting the possible pathways to rights realization and thus limiting the types of actors that become involved and the ways that various actors can be involved<sup>54</sup> (Huber and Stephens 2000, Powell and Steinberg 2006). Additionally, as of 2014, there was mostly a lack of criticisms of SASSA and the social grant system, and thus lack of activism to seek improvements.

### *Vendors*

The primary way that SASSA involves other organizations is by hiring companies, through the procurement process, as for-profit vendors that administer and distribute the social grants. As of 2014, SASSA's had a five-year, R10-billion contract with Cash Paymaster Services (CPS) to be the main vendor that administered social grants<sup>55</sup> (McKune 2016). This contract was under legal scrutiny at the time due to litigation initiated by the previous vendor, AllPay (AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013]; AllPay Consolidated

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<sup>54</sup> It makes more sense for most organizations to provide the goods and services that people can purchase with grant funds.

<sup>55</sup> After my fieldwork was complete, there were many allegations of corruption against CPS (Banton 2018; McKane 2016) but they are outside the scope of this dissertation.

Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2) [2014]; Finn 2016) This situation ultimately resulted in more public scrutiny after my fieldwork was complete (Banton 2018; McKune 2016). While the more recent revelations are beyond the scope of this dissertation, it shows that SASSA has continued to battle problems with vendor corruption and allegations of corrupt processes for choosing vendors, in spite of all the work SASSA has gone through to reduce corruption within the grant system (Banton 2018; McKune 2016; Pule 2014; Interview Kathryn Hoeflich; Ungerleider 2012; SASSA 2014b, Reddy and Sokomani 2008; Sakoana 2006).

### *Nonprofits*

Of the nonprofit employees I spoke with, most had minimal contact with SASSA, though some knew that many of the people they serve receive grants (Interview Boyce Tom; Interview Kate Tissington; observation MES tour). One social worker I spoke with at MES Johannesburg (originally Metro Evangelical Service, now also the secular Mould Empower Serve depending on the services they're providing), a nonprofit engaged in a wide range of "poverty alleviation services," told me that they sometimes assist their customers through the process of applying for SASSA grants (observation MES tour). Additionally, the Black Sash, an organization that was a white women's resistance movement during apartheid and is now a multiracial nonprofit that does education and advocacy work, provides educational materials about SASSA grants (Black Sash 2018). Given the lack of options for nonprofits to help with providing social grants, it makes sense that both MES and Black Sash are doing work on the periphery to help increase awareness and assist with navigating the application process.

### *Activism and Social Movements*

Activism related to the grant system was rare in 2014. The notable exceptions were the criticisms covered on the preceding pages, specifically individual complaints or stories about poor grant administration (Tsakane Community Protest observation; tour with South African Homeless People's Federation). Additionally, the big picture complaints about dependency and government capacity were shared with me by an activist academic, but he and his colleagues were not protesting or engaging in other action around the issue as of 2014 (Interview Dale McKinley).

### *Courts and Litigation*

There was one landmark decision regarding the right to Social Security in 2004, prior to the creation of SASSA. The Constitutional Court declared, per the language of the constitution, that all permanent residents, not just citizens, have the right to Social Security (*Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* (CCT 13/03, CCT 12/03) [2004]). The legislation that this decision took issue with was repealed and replaced in the same year by the Social Assistance Act of 2004, and so this decision was in effect applied within the same year.

As of 2014, most litigation against SASSA was settled outside of court (SASSA 2014a). Most of the decisions in cases in which individuals took SASSA to court were largely procedural in nature, such as ensuring that applicants were notified of the outcomes of grant applications within 3 months (see *Ngalo v South African Social Security Agency (SASSA)* (2740/11) [2013]).

However, there were two landmark Constitutional Court decisions about SASSA grant administration that resulted from a case brought by the previous contractor, AllPay. While the

case was about contracting processes and procedures for awarding contracts and not about rights realization, the Constitutional Court's decision specified the contractual responsibility of vendors to provide Constitutional Rights when the work they were selected for is ESR realization, and this has widespread implications for all ESR contractors. AllPay Consolidated Investment Holdings (AllPay) was the main contractor to administer social grants from 2007 to 2012. In 2012, Cash Paymaster Services (CPS) was awarded that contract for the next five years. AllPay challenged the scoring process for this decision, and in the 2013 the Constitutional Court found that the award of the tender was invalid (*AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (CCT 48/13) [2013]). The Constitutional Court determined that it needed more information for a just and equitable order and that grant recipients needed to continue to receive grants, and thus CPS was ordered to continue doing the contracted work (*AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (CCT 48/13) [2013]; Finn 2016). The court requested more information because it "had to weigh the importance of ensuring that social-grant claimants are protected maximally against the need to vindicate the rule of law (including by rectifying incorrect administrative decisions)" (Finn 2016).

In 2014, the Court declared the contract between SASSA and CPS invalid, and ordered that the tender process be re-run (*AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (No 2) [2014]; Finn 2016). Nevertheless, the decision was clear that Cash Paymaster System undertook constitutional obligations when it entered into the contract to provide social grants and thus had an obligation to continue paying the grants until a new system was operational (AllPay

Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2) [2014]; Finn 2016). Ultimately, this Constitutional Court decision took steps to reduce corruption and unfair contracting processes while putting the needs of current grant recipients first to ensure that there was not a lapse in grant provision.

What is perhaps most notable is that, despite these major Constitutional Court decisions just months before my 2014 fieldwork, only one of my interviewees mentioned systemic or vendor corruption as concerns when I asked them about social grants and SASSA. The person who brought this up was Vinayak Bhardwaj, an Investigative Journalist at The Mail & Guardian (a well-regarded weekly newspaper), and he was on the team covering this story. While this controversy may be why I was unable to secure an interview with anyone who worked at SASSA, it apparently had not made a large impression on many people whose work involved ESR realization in South Africa. This seems to indicate the general lack of a watchdog environment pertaining to social grants.

### *Summary*

Social grants are the standout success story of ESR realization, due to their size and substantial progress since the end of apartheid in both the number of people receiving grants and the rate of realization among people who qualify for grants. The Constitution promises long-term assistance to people who are demographically unable to support themselves and short-term relief to people in crisis. The data shows that this ESR is mostly being fulfilled in South Africa. Since the end of apartheid, access to and the equitable provision of social grants has increased substantially, and social grants now support almost a third of South Africans (SASSA Records emailed to Kate from SASSA on 2/20/2014; Statistics South Africa Population Counts 2014).

There is a high level of satisfaction with the realization of this economic right, with some concerned that there are problematic outcomes of dependence because South Africa has been so successful at providing these grants to a sizable portion of the population.

Social security is also a notable right because social grants have far more administrative requirements than physical requirements. Moreover, all the permanent grants are in the form of money and thus can be easily shared (Aguero et al. 2006; Van der Berg 2006). The reality of how the grants are administered and spent is part of the solution to Puzzle 3. Grant funds are often used to overcome the few fundamentals for access to education that households can purchase themselves – school fees and school uniforms. The government plays a large yet indirect role in feeding South Africans because purchasing food is what the grant recipients typically choose to do with their grant funds. Using grant funds to purchase other ESR—mostly food, but also school fees, school uniforms, and electricity—creates essentially a double success for the neoliberal capitalist government. This is synergistic from the neoliberal capitalist perspective because it allows the state to indirectly fulfill its constitutional obligation without building government capacity and while supporting a capitalist market system.

### **Education**

Access to education is quite high in South Africa, and almost all children attend school. The vast majority of the nation's 14 million primary and secondary students attend public school, though 6% attend private schools which shows that rich families are able to opt out of public schooling, which furthers the gap between the rich and the poor (GHS 2014; Gauri and Brinks 2008). Research on education in South Africa has focused on the reasons behind the vast improvements in attendance and enrollment, despite lingering problems of inequities in provision of high-quality education. The increase in attendance is partially thanks to the National School

Nutrition Programme that incentivizes attendance by providing food (Rendall-Mkosi et al. 2013; Seakov and Vally 2010). The NSNP is a clear example of the synergy between education and food.

Yet inconstant quality of education and disparate education outcomes persist, despite the right to education technically being fulfilled. This tension between substantial improvements to access yet an extremely low quality of education in many public schools is a recurring theme throughout this section. Scholars have found that changes in resource allocation and policies have improved equal treatment of pupils, regardless of race (Fiske and Ladd 2004). However, the country has not promoted equal educational opportunities or adequate education regardless of race, and thus outcomes are still unequal (Fiske and Ladd 2004). Part of the lack of progress in schools is due to poverty at home, and so the realities of school fees and the costs of attending schools have undermined the right to education, both practically and conceptually (Spren and Vally 2006). Additionally, fitting with the overall findings pertaining to rights realization both in South Africa and elsewhere, educational court cases have had a limited effect on policy outcomes, and their impact depends on how organizations and other actors use the law to apply pressure or find creative solutions (Berger 2010). The quest to improve the quality of education is largely occurring in the realm of nonprofits, and there are countless nonprofits that provide supplemental education outside of school as an attempt to improve student outcomes. At the same time, there is a general lack of activism or watchdog pressure for the government to improve the quality of education, though there is one notable exception which I will discuss.

Looking through the lens of materiality, I show that part of the reason for disparities in education outcomes is that education is an extremely labor-intensive right. In the upcoming sections, I will discuss more about the lack of qualified teachers and poor quality of instruction

in South Africa. I will also show that there is also a widespread belief that nonprofit actors are part of the key to improving education in South Africa. Moreover, I argue that the synergy between education and food results because education is a right that requires students to attend school and be engaged for learning to occur. In a country where 45% of households are below the poverty line (GHS 2014), providing food can be a key motivator for attending school and also a crucial element of ensuring that students are physically capable of engaging with their studies.

### ***Materiality***

Schools are materially intensive to build; of the ESR considered in this study, education is the most labor-intensive for ongoing maintenance and provision. While education occurs both inside and outside the classroom, for the purposes of the economic and social right to education, this discussion is focused on formal schooling in a traditional classroom environment. The locations of school buildings and grounds are important for ensuring that children are able to get to school, and require substantial amounts of land, materials, and labor to build. The additional material requirements for even the most basic school include items like: desks, books, teachers' supplies, writing implements, and paper, as well as functioning utilities including electricity, water, and sanitation. While these implementation requirements are substantial and largely necessary to educate students, education cannot be "installed" but instead requires ongoing provision.

The maintenance requirements for schools are both material and labor-intensive, and make a substantial difference for the quality of education. School facilities and educational supplies require significant upkeep to stay functional in the face of the daily wear and tear of hundreds of children. Occasional updating is necessary for equipment to be safe and functional,

and for the educational materials to stay current. Moreover, education is the right that has the most labor-intensive requirements for ongoing provision, and the skills or adequacy of the teachers has a substantial effect on the quality of their students' education.

Educational segregation during apartheid resulted in extreme disparities in the quality of education. These persist today as many teachers are underqualified. The standard for qualifications to be a teacher in South Africa is high school matriculation plus three years of training (Fiske and Ladd 2004). In 1994, about one in three teachers did not meet that standard. By 2001 the situation had improved somewhat so that just one in five teachers did not meet that standard (Fiske and Ladd 2004). By 2013, roughly 2% of teachers were considered unqualified and had only passed their matriculation exam (and graduated from high school) and another 0.5% were under-qualified and had completed their matriculation exam and just one or two years of tertiary studies (eNCA 2013). Yet simply meeting this standard does not mean that someone is a good teacher, and the upcoming Criticisms section reveals more of the poor education outcomes that can largely be attributed to poor quality of instruction.

Improving education is a complex and multi-faceted issue. Joy Olivier, director of the IkamvaYouth educational nonprofit, told me:

That's why the need to work and collaborate is actually the solution to the education crisis because it's not like with HIV advocacy where like you have an antiretroviral rollout and suddenly lives are saved. You know? There's no ARV for education<sup>56</sup>. Like, even if everyone gets textbooks it's still going to suck. So, yeah I guess that's why we've taken the longer roads slow approach [to growing our nonprofit].  
(Interview Joy Olivier).

What Olivier's quote acknowledges is that improving education in South Africa requires collaboration among educators, or at least scalable improvements to the labor involved in

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<sup>56</sup> ARVs are anti-retroviral drugs which are used to treat HIV/AIDS.

educating. While there are also physical material attributes to providing a good education, fixing the physical environment for education is insufficient for improving the quality of education. There is an interesting parallel between Olivier's comparison with the TAC decision's outcomes and the points raised by Dr. Vinodh Jaichand, (then head of the University of Witwatersrand Law School) discussed in chapters 5 and 6; Jaichand noted that the Grootboom decision did not filter down to improve housing the way TAC led to major ARV rollouts. This reaffirmed that TAC is regarded as a clear case of litigation leading to ESR realization success, while multiple actors in the field also acknowledged that the material requirements for realizing other rights meant that they did not and could not enjoy the same relatively easy and rapid progress (Interview Joy Olivier; Interview Vindoh Jaichand).

### *Constitutional Promise*

Section 29 of the Constitution establishes the right to both basic education (primary, secondary, and adult literacy education in US terminology) and further education (higher education in US terminology) for both children and adults. It states:

2. Everyone has the right
  - c. to a basic education, including adult basic education; and
  - d. to further education, which the state, through reasonable measures, must make progressively available and accessible.
 (Constitution of the Republic of South Africa 1996).

The Constitution says that the right to *basic* (primary, secondary, and adult literacy) education is *not* subject to limitations based on the state's resources, reasonableness, or budgetary commitments. Additionally, the Constitutional Court confirmed in the Juma Masjid Primary School Case<sup>57</sup> that, "Unlike some of the other socio-economic rights, this right is immediately

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<sup>57</sup> In this case, the Constitutional Court permitted an eviction order that a private land owner obtained to evict an independent school that had ceased paying rent. The court ruled that the right to education is immediately

realizable” (Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others (CCT 29/10) [2011]). However, the right to *further* education is accompanied with language about reasonable and progressive realization, which leaves it open to legal interpretation.

Given that the quality of education is the focus for improving the right to education, it is notable that Section 29 does not make any mention of the quality of education in the ways that it calls for “adequate” housing and “sufficient” food and water (Constitution of the Republic of South Africa 1996). The South African Schools Act is more substantial legislation that is the foundation for many of the specifics for how schools should be governed and organized. The Schools Act does charge the governing bodies of schools with the responsibility to “promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school” (Anon 1996). Yet the Schools Act does not provide additional specifics about how to define the quality or adequacy of education (Anon 1996).

### ***Progress After Apartheid***

While there were many public schools in South Africa before and during apartheid, after apartheid ended there were two swift changes in education – schools were required to be racially integrated and attendance increased. As of 1996, 79% of children age 5 to 15 were attending school (Census 1996). By 2002, 94.8% of children age 5 to 17 attended school, and that percentage increased steadily to 97.8% in 2014 (GHS 2002 and 2014). As Barbara Dale-Jones, the then CEO of BRIDGE, a nonprofit focused on cooperation among educational stakeholders told me, the consensus among people involved in education in South Africa is that “access to

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realizable and thus the private landowner had a constitutional obligation as a non-state actor to not impair the right to education. The eviction was only allowed to occur after alternative schools were secured for all of the students.

education has improved enormously” since the end of apartheid (Interview Barbara Dale-Jones). This sizable increase was not due to building substantially more schools, and in fact many of South Africa’s schools have been in disrepair since apartheid (Soon-Shiong 2018a). Instead, this improvement was partially due to racial integration – which now allowed students to attend schools in closer proximity to their homes.

However, many consider the practice of incentivizing school attendance with food to be the main way that South Africa reached this high rate of attendance (Govender 2016). The National School Nutrition Programme (NSNP), “was established in 1994 as one of the first initiatives of the first post-apartheid democratic Government of South Africa” (Rendall-Mkosi et al. 2013). The NSNP is funded by a ring-fenced (protected) Conditional Grant through the National Treasury – and in the 2012/2013 school year had a budget of R4.9 billion (or \$600 million USD) (Rendall-Mkosi et al. 2013). In South Africa, all public schools are categorized into quintiles based on the household income, level of education, and unemployment rate in the community, as well as the school’s infrastructure. Through the NSNP, schools in the poorest three quintiles are required to provide a free meal every day that school is in session, an average of 191 days per year (Seakov and Vally 2010). Originally the NSNP only operated in primary schools, but the program expanded beginning in 2009. By 2011, all quintile 1 through 3 secondary schools also provided daily meals to students (Rendall-Mkosi et al. 2013; Seakov and Vally 2010).

### *Synergies*

There is a clear synergy between feeding students and education. School feeding programs in South Africa and elsewhere have been found to improve both attendance and education outcomes. Assuaging short term hunger improves concentration and performance on

complex tasks, and feeding programs improve school performance (Beesley and Ballard 2013; Food Action Research Center 2008; Grantham-McGregor 2005). Additionally, the World Bank has found that providing meals in school is roughly equivalent to adding 10% to mean household incomes (World Food Programme 2009). In South Africa specifically, according to Ela Gandhi, member of Parliament from 1994 through 2004 and long-time activist, the NSNP is especially helpful for very poor South Africans who live in shack settlements (Interview Elaine Gandhi). Meals provided through the NSNP have been found to improve short term memory, increase energy, increase attendance, and reduce hunger-related illnesses (van Stuijvenberg et al. 1999; Seakov and Vally 2010).

While providing food does not improve the quality of instruction, many believe it can improve the quality of education by helping the students be able to learn. As one anonymous informant whose work involves food security told me:

If you go to school in the morning and don't eat, then you are losing your education. You can't focus; can't concentrate and that's common. That's the problem for the schools and children. That perpetrates the cycle of poverty because if the children don't get educated properly, then there is another generation that is not employable or employable enough only to get low skill jobs. That's an issue as well. So, obviously education is important and that's why there is [sic] government feeding schemes.  
(Interview Anonymous at Foodbank South Africa).

Ultimately, we see that feeding students not only incentivizes attendance, it improves students' ability to learn. This is why education and food have a synergistic relationship, in which the whole is greater than the sum of its parts. Additionally, feeding students can indirectly improve the learning environment in other ways.

This synergy between education and food is shaped by the materiality of these rights. Education is an ongoing process that requires an engaged recipient to be realized. Simply having access to education does not ensure that the students will attend school and that learning will

occur. Food improves the student side of the equation. Moreover, food is quite easily to realize from a material perspective, and can be used to efficiently improve students' engagement with their education. While food does not improve the material quality of the education that is being provided, it has the ability to improve the students' experiences and retention in ways that benefit education outcomes.

Providing food may also have benefits beyond students' attendance and focus. Another anonymous informant's mother is a school teacher. The informant told me that the relationship between education and food is real and that providing food in school can help to catalyze a sense of agency among parents, both to ask for additional help and to give back. For example, when children receive food at school, parents are more likely to come to the school to ask for help with things like shoes and textbooks (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration). Other parents will ask what they can do to return the favor (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration). In sum, the NSNP can help lead to deeper involvement of parents in their children's education, which helps to improve the quality of education (Interview Anonymous Former Programme Manager at the Department of Public Service and Administration).

There are also synergies between social grants and education. Previous research using longitudinal data in the KwaZulu Natal province found that receiving social grants increases school attendance (Case et al. 2005). There is also substantial evidence that many grant recipients spend some of the funds on school fees, uniforms and other school necessities (Department of Social Development et al. 2011; Khosa and Kaseke 2017; Zembe-Mkabile et al.

2015). This again shows the pattern of grant recipients spending their grant funds on items that government agencies—and in this case schools—are not expected to provide.

### ***Criticism of the Government's Progress***

Most of the criticisms about education in South Africa are about the poor quality of education in many primary and secondary schools, and the vast inequalities between different types of schools. The Constitution does not establish a minimum standard of quality for education, it simply focuses on availability and accessibility. Yet the criticisms throughout this section make the case that if the quality of education is severely lacking, we should not consider the right to education truly realized. The criticism of the education system parallels the criticisms about utility maintenance and quality. Granted, a low-quality education is not immediately dangerous as is contaminated water, and an absentee teacher can be ignored more easily than can intermittent access to drinking water. Nevertheless, the criticism of education once again raises the question of whether the minimum standards of quality and consistency for an established and generally available ESR are required for that ESR to be considered truly realized.

The first major criticism is that the quality of schools in South Africa, particularly public primary and secondary schools, is quite poor. According to the CEO of BRIDGE, a nonprofit focused on cooperation among educational stakeholders, despite excellent *access* to education, educational “*quality* is famously poor” (Interview Barbara Dale-Jones). The World Economic Forum Global Competitiveness Index 2014-2015 ranked South Africa #133 out of 144 for the quality of its primary school education and in last place, #144 out of 144, for math and science education<sup>58</sup> (World Economic Forum 2015). The poor quality is reflected in the poor outcome

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<sup>58</sup> In a rather indirect way, this helps explain the limited government capacity especially for highly technical utility installation (see discussions in chapter 6).

metrics: there are low rates of advancement through the grades and very low graduation rates (The Economist 2017).

Joy Olivier, the co-founder and director of the Ikamva Youth tutoring nonprofit explained, “the problem comes in schools not delivering a sufficient quality of service, then having young people staying in school and so there are a million kids stuck in grade one every year. Half of those make it to the final year of [secondary] school” (Interview Joy Olivier). Many students are held back or are not performing at grade level. Of those who do make it to the final year of secondary school and take the matriculation exam, about 70% pass, but that is because the minimum score to pass the matriculation exam is 30% correct (Interview Joy Olivier). “So if you made it a 50% requirement [to pass the matriculation exam], it [the pass rate] would be significantly lower” (Interview Joy Olivier). The fact that just about two-thirds of students who make it to the final year of high school manage to get a score of at least 30% on their final matriculation exam reveals just how poor the quality of education is for many South Africans. Poorer students advance more slowly through the grades and are far more likely to be held back or repeat grades (Seekings and Nattrass 2005). Even among those who do pass their matriculation exams and graduate from high school, few go on to attend university, and only 15% of undergraduates at public universities graduate (Mtshali 2013).

A major reason for the problems with quality is that the education system remains extremely unequal. Neighborhood segregation persists as a consequence of where people lived during apartheid and their limited ability or inclination to integrate now that apartheid is over (Seekings and Nattrass 2005; Statistics South Africa 2017). As a result, the local public schools reflect that persistent segregation. Again, 6% of students in South Africa attend private schools, which perpetuate class segregation (GHS 2014). The top private schools have highly trained and

motivated educators, beautiful and high-tech facilities, and students typically receive substantial family support with their studies<sup>59</sup> (Lemon 2013). All of this results in private school students receiving an excellent education.

The lack of quality is not due to an overall lack of funding. There is substantial government funding for education: between 2001 and 2014 government expenditures on education were consistently between 18% and 20% of all government expenditures, which is relatively high given that the global average is around 14% (World Bank 2017). Nevertheless, this funding cannot quickly overcome the disparities created through decades of segregation and oppression. Schools in South Africa were built cheaply and poorly before and during apartheid, so it is unsurprising that the current level of funding is not enough to catch up by refurbishing many established schools and replacing schools that are beyond repair, especially the 400 mud schools in the Eastern Cape (Equal Education 2013). For example, as of 2013, there were 24,793 total primary and secondary public schools and of them: 92.5% did not have stocked libraries (because most of those did not have room for a library), 14% do not have electricity and another 3% do not have a reliable source of electricity, and 3% do not have any sanitation facilities plus 46% have only pit latrines, which are especially dangerous for small children (Equal Education 2013).

The problems with educational quality involve a mix of labor and material attributes, and particularly the maintenance aspects of both, since providing education is an ongoing process.

The poorest schools have absent educators, corrupt administrators, and lack basic infrastructure

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<sup>59</sup> Many households are generally unsupportive of students completing homework and studying, and in many poor households there is no adult who can help students with their studies. For families living in poverty there are additional material barriers to studying including not having a quiet place to work, a lack of adequate lighting, and prioritizing more immediate needs over schoolwork (interview Thulani Madondo; interview Doron Isaacs).

and facilities. There are a multitude of problems with the quality of instruction, which are due in part to a lack of national standards for teachers and their ongoing training (Maphosa et al. 2012). In 2007, a study had a nationally representative sample of 6<sup>th</sup> grade math teachers take a content mastery test and 79% tested below the 6<sup>th</sup> grade content level (Venkat and Spaul 2015). Yet due to an overall shortage of educators and widespread absenteeism, there has been more focus on hiring additional teachers and fixing school facilities than on holding teachers to standards (Human Sciences Research Council 2017). According to the Equal Education founder and coordinator Doron Isaacs, there are schools where the toilets are overflowing or do not work, every window is broken, new textbooks or stationery are missing because of problems with the tender procurement process, or students do not have seats or desks (Interview Doron Isaacs).

Many families do not support their students. Children may miss school or arrive late because they must take care of their house and younger siblings due to absent parents. If a family cannot afford a school uniform, students are not allowed to attend. In poor schools, principals are often given that position without any training, teachers are absent several days a week, or there are extreme levels of violence between students (Interview Doron Isaacs; Cappy 2016). Even in poor public schools, there are many educators who want to do good work, but are limited by these difficult situations (Interview Barbara Dale-Jones). In sum, the quality of education and the educational environment vary substantially in South Africa depending upon where a child lives and how much money their family has.

The problems with educational quality are based both on the poor infrastructure and resources that existed at the end of apartheid and the amount and quality of labor needed to educate students. These concerns about quality of the school buildings parallel the concerns about the quality of government-built housing, which makes sense because buildings share many

of the same material attributes. Bad planning, shoddy workmanship, or poor materials can quickly have negative impacts on the people in a building, whether it is a school or a home. Moreover, many of the concerns raised about quality for various utilities also parallel criticisms of educational quality in schools. This similarity is not simply that schools also have water, electricity, and sanitation—though ideally, they do—the similarity is that all of the utilities require ongoing provision and maintenance to be considered fully realized, and education also requires ongoing provision and maintenance. Whether we are focused on a utility or education, these rights all require ongoing service, which means that they are labor intensive and that there can be lapses in coverage and poor-quality service even when people technically still have access.

The other main criticism is that the overall lack of educational quality perpetuates social inequalities, and has implications for employment, empowerment, and the overall ability for people to provide for their own ESR realization. Despite high levels of access and attendance, education is a central mechanism for inter-generational inequality in South Africa (Seekings and Nattrass 2005). The low quality of education limits the ability for people to break the cycle of poverty, which is particularly troubling from a rights-based perspective.

Dr. Salim Vally is a Professor of Education at the University of Johannesburg and the Director of the Centre for Education Rights and Transformation. He told me that, although education is constitutionally guaranteed and almost universally provided, “you can't divorce education from the socioeconomic context... Education is not the great leveler, and this is the problem in a general sense with all policies and constitutional rights. It's a limitation of a human rights approach, which is largely legalistic because it speaks, as if there are no class differences in society that we all want these consensuses” (Interview Salim Vally). Dr. Vally is making the

argument that a human rights approach in South Africa uses a lens of formal equality rather than substantive equality and inclusion. Equal spending on education will not result in equal outcomes, because the students are starting from very different places in terms of their home environment, parent's education, school facilities, existing educational materials, classroom environments, and quality of instruction. To achieve similar outcomes would require devoting substantially more resources to the lower quintile schools. In other words, critics call for substantive equality and acknowledge that formal equality in a substantially unequal context will reinforce that substantive inequality.

Despite extremely high levels of rights realization in terms of access, education in South Africa is far from an economic and social rights success story. Instead, the education system in South Africa perpetuates reliance on the state to provide other economic rights. This happens because many students who go to public schools grow up to be adults who are inadequately educated, underemployed, and unable to afford the basics. This ultimately limits their ability to be gainfully employed and pay for their own basic goods and services rather than relying on state ESR realization.

Additionally, this disconnect between the experiences of different South Africans based on their incomes has large implications for the involvement of non-state actors. Since rich South Africans send their children to private schools and public schools in upper-middle-class areas are far better than the lower quintile schools, there is an absence of both elite awareness and elite pressure to improve education (Gauri and Brinks 2008). Since wealthy South Africans do not rely on the same educational institutions, even if wealthy taxpayers are pushing to improve the schools in their areas, they are not likely to advocate to improve schools more widely (Gauri and Brinks 2008). The result is that when people and organizations with resources are involved in

improving education in South Africa, they are generally involved through charity work. They support progress by filling in the gaps, rather than applying pressure to improve the government process.

### ***Involvement of Other Organizations***

The realization of education is highly decentralized compared to the other ESRs in this study, in part because it is so reliant on the educators who provide the services, and not just the physical infrastructure. This decentralization creates more opportunities for schools to create formal partnerships with companies and nonprofits through the tender system. This also creates more opportunities for other organizations to informally fill the gaps outside of what happens during the school day, through tutoring and extracurricular programs that improve the overall quality of education that children receive, rather than seeking to improve the quality of instruction within schools. However, similar to the other socio-economic rights, schools also rely on physical infrastructure and bureaucracy to function properly. Infrastructure and bureaucracy can be valuable resources for schools to leverage when they build new partnerships, especially with nonprofits that can provide volunteer labor but lack other resources.

### ***Vendors***

Vendors are largely responsible for most of the materials involved in building and maintaining schools as a physical space, as well as the labor involved in that building and maintenance work (Rendall-Mkosi et al. 2013). Additionally, vendors are responsible for supplying the majority of school supplies and typically provide food through the NSNP (Rendall-Mkosi et al. 2013). Since in some provinces the contracting decisions are often made at the school or district level, this means that the quality can vary greatly between schools, and also

that the system has less oversight and thus is more susceptible to corruption (Rendall-Mkosi et al. 2013).

### *Nonprofits*

There are a great number of nonprofits involved in education, specifically in filling the gaps, and in this section I highlight just a few to represent the breadth of education nonprofits in South Africa. It seems that there is an overall belief among the many different players in education that every bit counts and that every organization and every individual can make an impact on improving a child's education. Nevertheless, scaling that impact is a substantial challenge, in part because education is so labor-intensive.

South Africans are well aware that despite high levels of school attendance, the education system is in crisis (Interview Joy Olivier). There are many nonprofits working to improve education, though most are focused on augmenting education outside of the classroom through tutoring, sports, and leadership training rather than getting involved in the schools. This means that these nonprofits do not reach all of the students who attend schools, and only reach the students who choose (or whose parents or guardians choose for them) to be involved in this supplemental education. Nevertheless, success in these extracurricular programs may encourage students to stay in school longer and to pursue higher education. For the small community-based nonprofit Kliptown Youth Programme (KYP), as of 2017: "17 KYP members graduated from university (with more on the way); ... Over 40 former members [are] now employed in the formal economy; [and] 83% of KYP members, ... pass their high school matric exams" (Kliptown Youth Program 2019). For the larger Ikamva Youth Nonprofit, which operates in 2 provinces and 30 townships, they have had 1,500+ youth complete grade 12, 84% passed their high school matriculation exams, and 85% have accessed post-secondary opportunities

(IkamvaYouth 2019). Programs like these operate in part thanks to thousands of volunteers, and a shared sense that ordinary people can help improve education by tutoring.

Government is the largest and most significant stakeholder in the education system, so nonprofits working outside of the schools and government play a minor role in the overall contribution of resources. Many interventions in South Africa are happening outside of the system, and they become very resource intensive (Interview Barbara Dale-Jones). Barbara Dale-Jones is the CEO of the nonprofit organization BRIDGES, which is focused on creating cooperation between education stakeholders. She told me that there has been a move towards collaboration among some of these organizations so that they can work with each other and the Department of Education to become more efficient (Interview Barbara Dale-Jones). Yet nonprofits still face many challenges in terms of both funding and resources, and capacity and scale.

Funding for extracurricular education programs generally comes from businesses engaging in Corporate Social Investment (CSI), from foundations, and from government grants. There is a great deal of CSI (Interview Barbara Dale-Jones). Joy Olivier is the co-founder and director of IkamvaYouth, a tutoring nonprofit with branches in several provinces, and she explained that from her perspective, the funding environment is “sturdy” and increasingly impact-driven (Interview Joy Olivier). IkamvaYouth seemed to be somewhat exceptional and is quite large compared to most educational nonprofits in South Africa. Ikamva’s funders, as of 2014, include Coca-Cola and Estee Lauder, and Olivier told me that they had not had any trouble securing funding and growing their organization (Interview Joy Olivier; IkamvaYouth 2019). She told me that in her experience, the nonprofit environment is more collaborative than competitive.

But that is not always the case. Joy continued, “It is so much easier for money to go where things are working. I guess the sense of competition [between education nonprofits] comes when money is spent inefficiently or often these massive programs that are not based on any evidence and are driven by some policy person and are huge before they got any type of proven impact. It's a massive waste of money and irresponsible, and there is a lot of that” (Interview Joy Olivier). Other sources of funding can be harder to secure. Foundation funding for nonprofits in South Africa has decreased overall since the end of apartheid, though it remains a major source of funding for some education nonprofits (Interview Joy Olivier; see also the discussion on the nonprofit environment in chapter 2). The process for getting government grants for education nonprofits is very slow and bureaucratic. As Thulani Madondo, the executive director of the Kliptown Youth Program explained, “the sad thing is that you submit an application form and then an acceptance letter of your proposal three months later then that tells you that you have to wait another five or six months for you to hear if you get the funding or not” (Interview Thulani Madondo). Ultimately, business funding, especially as part of a company’s Corporate Social Investment work, is the most promising option for many nonprofits involved in tutoring and extracurricular education because it can be attained relatively quickly.

Education nonprofits also rely on businesses and the government for non-monetary resources, both physical materials and educational spaces. For example, the Ikamva Youth nonprofit receives support in a variety of ways. Ivamva’s Director, Joy Olivier told me, “In terms of companies it is not just funding that many of corporate donors provide, but also huge amounts like a whole range of different kinds of support ranging from like coming to refurbish our centers and giving us computers, and running careers days, sports days, with staff being involved as

mentors for our learners, to helping the strategic input at a board level, and helping us develop policies that make us an organization like a professional organization” (Interview Joy Olivier).

Using school facilities and classrooms before and after the school day is also crucial for some education nonprofits. Joy explained, “Although we're yet to get significant funding from the government, they are enabling what we do by providing us free space” (Interview Joy Olivier). This is a mutually beneficial relationship because the nonprofit needs a location and furniture to provide tutoring thanks to volunteer labor, and schools already have this infrastructure and materials but do not supply the labor to continue educating outside of school hours. This is an example of a cooperative relationship between actors that is informed by complementary material conditions. These non-monetary resources that come through partnerships and collaborations are important for aiding extracurricular education, but these partnerships must be forged school by school and the tutoring is labor-intensive, which leads us to the next set of challenges.

While funding is a perennial concern for nonprofits, the consensus among education nonprofits is that capacity and scale are the largest challenges in their work (Interview Barbara Dale-Jones; Interview Thulani Madondo; Interview Joy Olivier). The education system is simultaneously dysfunctional and full of good practice and innovative work – it is a problem of scale (Interview Barbara Dale-Jones). This is especially true because so many educators, tutors, and mentors are needed to successfully educate young people. Students at local universities, and especially tutoring alumni, are the main sources of tutors for these organizations (Interview Thulani Madondo; Interview Joy Olivier), but remain limited in capacity and scale, given the extent of education needs in South Africa.

Looking at what these educational nonprofit leaders are saying through the lens of materiality shows that the material requirements for *access* to education are quite different than the overall materials and resources required to ensure that students receive a *high-quality* education. While access to the classroom may be a relatively easy problem to solve, ensuring effective education both in and outside the classroom is far more challenging because it is labor intensive.

The synergies between education and food are also present in the nonprofit setting. The Kliptown Youth Program (KYP), which operates both before and after school, began feeding students once they realized that the children would not do well in school if they were hungry (Interview Thulani Mandondo). At KYP, they have found that feeding students increases participation in their tutoring program, and so providing food has become their second priority. As of 2017, their “food program provides all members with 2 meals per day, over 150,000 meals per year” (Kliptown Youth Program 2019). As the program’s executive director, Thulani Mandondo, told me, “without any doubt, education is our first priority within the organization, you know, and I think the second one is the food program. That’s how we align them.”

Yet they try to keep the focus on education. Thulani continued, “We really needed to be straight on how we screen our members so that we—yes we acknowledge that people have to be given food, which is a basic right, over here it has become a privilege—but we need to be sure that people don’t come here for food. Food will be an extra thing that they will get in the program. The main thing is education” (Interview Thulani Mandondo).

Part of how KYP ensures the focus stays on education is by tracking and enforcing attendance. Thulani explains, “We have made sure that no one would ever come and get a meal and not attend the after school academic tutoring. Because the main reason why we serve food is

so they are active when we run academic tutoring” (Interview Thulani Mandondo). I also found evidence of this synergy with other education nonprofits. For example, some weekend reading clubs to encourage youth literacy also include a meal for participants (Guzula et al. 2013). This may be especially useful since the NSNP and thus the schools do not feed students on the weekends (Rendall-Mkosi et al. 2013).

### *Activism and Social Movements*

There is just one main social movement for education in South Africa, which again reflects how little work is occurring to hold education providers accountable. Equal Education (EE) is a social movement that works to mobilize both students and parents to improve school conditions and resources. The premise of EE is that the material requirements to ensure access to education are not sufficient to provide a high-quality learning atmosphere, and building awareness and then fostering activism are key to transforming the educational environment. EE has not focused on advocating to improve the quality of instruction in schools in part because there is an overall shortage of teachers. Instead, EE has prioritized advocating for all classrooms to have a teacher and also has advocated for the dismissal of teachers who have engaged in illegal behavior (Equal Education 2019).

Equal Education supports both student activism and parent activism, pushing for national change while building community strength for local changes (Interview Dali Weyers). EE has played the important roles of taking government to task (Interview Barbara Dale-Jones) and developing students’ political consciousness (Interview Doron Isaacs). Here is their process, as explained by Doron Isaacs, Equal Education co-founder and coordinator:

When we first started Equal Education we would say to young people, “Are you happy with your school?” And they might say yes or no. If someone says no, [we asked], “what is wrong with your school?” The kind of thing that they would say is, “my teacher’s horrible to me, my teacher shouts at me.” Without a basis for comparison, without any

political framework, it's things are the way they are. "Of course we share textbooks, how else would it work?" "Of course we often miss the first period." We did things like take students on outings to other schools to see what they have, and then even that's not enough. It takes discussion, ... and that opens people to say it's not natural that some have more than others, it's wrong.  
(Interview Doron Isaacs).

Equal Education's work is important to increasing awareness among both students and parents who are experiencing inequality but do not know anything different than the educational experiences they have grown up with. EE holds weekly 'Youth Group' with high school students in public schools; these are facilitated conversations and activities focused on raising political consciousness and mobilizing young activist leaders (Equal Education 2019). The organization also organizes parents, attends government briefings, uses traditional and social media to apply pressure, lobbies members of parliament, and at times coordinates with the Equal Education Law Centre (EELC), is a separate organization that is the main legal advocate for students experiencing poverty in South Africa (Equal Education 2019).

Many of the problems with the physical environment in schools require maintenance rather than building something new, so the key is accountability and pressure to do the maintenance and improve the school conditions (Interview Doron Isaacs). EE has organized and inspired most of the school-related activism happening in South Africa, and has been largely effective at mobilizing communities and realizing school facilities improvements. These material improvements to places of learning are easier targets for change because they are more objective, quantifiable, and permanent changes than work to improve instructional quality.

Other than the activism coordinated by Equal Education, there simply is not much activism around education. Jared Sacks, the Executive Director of Children of South Africa, a nonprofit focused on supporting vulnerable children, has been deeply involved in activism to support housing and other basic services. He told me that while education may be even more

important than housing in the long run, because education has the potential to break the cycle of poverty, education does not feel nearly as immediate as housing, and there are not many education protests (Interview Jared Sacks). Sack's point about education not feeling like an immediate need, combined with Isaacs' point about the lack of political consciousness of the poor quality of education, may at least partially explain the scarcity of activism pertaining to education with the exception of activism organized by EE.

### *Courts and Litigation*

Similarly, there is not much litigation or rights talk about education. The first Constitutional Court decision to provide an analysis of the right to a basic education was the Juma Masjid 2011 decision (McConnachie, Skelton, and McConnachie 2015). In this instance, the Constitutional Court allowed for an independent school that had not been paying rent to be evicted from privately owned land, however it made this order only after the member of the Executive Council for education secured alternative schools in the local area for all of the students to ensure that their access to education would not be interrupted (McConnachie et al. 2015; *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011]).

The second Court decision to define the right to a basic education was the case of *Madzodzo v Minister of Basic Education*, in which the Eastern Cape High Court confirmed that, "the state's obligation to provide a basic education as guaranteed by the Constitution is not confined to making places available at schools. It necessarily requires the provision of a range of educational resources: schools, classrooms, teachers, teaching materials, and appropriate facilities for learners" (*Madzodzo and Others v Minister of Basic Education and Others* (2144/2012) [2014]). Around the same time, but in the Limpopo Province, a large group of

school governing bodies brought litigation against the Department of Basic Education for failing to provide students with textbooks. The High Court ruled, and the Supreme Court of Appeals confirmed, that every student has the right to an appropriate textbook during the school year<sup>60</sup> (Basic Education For All and Others v Minister of Basic Education and Others (23949/14) [2014]; Minister of Basic Education v Basic Education for All (20793/2014) [2015]).

All of these decisions are about very basic material requirements for education – the land on which schools are located; having adequate chairs, desks, and basic teaching materials in the buildings; and providing students with textbooks. When I interviewed Professor Vinodh Jaichand, who at the time was head of the University of Witwatersrand Law School, he confirmed that there is little rights talk, litigation in South Africa rarely is focused on education, and there has been no litigation at all about the *quality* of education (Interview Vinodh Jaichand).

The Equal Education Law Centre (EELC), which is a separate organization from Equal Education (EE), is the main legal advocate for students experiencing poverty in South Africa (Interview Doron Isaacs). Doron Isaacs, who attended law school before founding EE, serves on the board of the EELC and told me that, in his view, using the courts is not the best way to improve the quality of education. Rather, according to Isaacs, activism and public engagement are more effective at improving quality (Interview Doron Isaacs). He said, “The ultimate long-term force for transforming society can only be a building of the strength of people through knowledge, through organization; those are the two most important elements and there is, at the end of the day, no substitute for that and shortcuts around that. And there is very much in South Africa a tendency to try and shortcut that” (Interview Doron Isaacs). Isaacs went on to

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<sup>60</sup> The fact that the Department of Basic Education engaged in litigation in an attempt to avoid providing textbooks and then appealed the High Court’s ruling adds credence to the sentiment discussed in chapter 5: the government challenges everything.

explain that when progressives rely on courts, they are relying on the weakest branch of government due to a total lack of faith in the other branches of government. Equal Education typically prefers to push for systemic change at the parliamentary and executive branches through a combination of pressure, discussions, and negotiations because ultimately “there are no shortcuts around these two most significant branches of government by utilizing the third” (Interview Doron Isaacs). Additionally, Doron Isaacs told me that, even when there is a blatant violation of a student’s rights, “we would actually see this as an opportunity to build an organization, we would actually see it like a missed opportunity if we just went to court” (Interview Doron Isaacs).

Thus, in terms of improving the quality of education in South Africa, it seems that legal pressure is a last resort and that activism and public engagement are the preferred methods. This sentiment is similar to Rosenberg’s (1991) finding that elite political actors are necessary to bring about social changes, and thus court victories are superfluous since the support of political actors is necessary, regardless of what happens in court. Isaacs takes this argument one step further and says that if you need elite political actors’ support for change to happen, making the relationship contentious by going to court should be the last resort.

One example of this type of collaborative engagement that Isaacs prefers is that EE conducted research on school infrastructure in the Eastern Cape in collaboration with the Education Department (Soon-Shiong 2018a). EE then released the resulting report on the school infrastructure at a public event with a variety of government agencies and nonprofits (Soon-Shiong 2018b). The Director of the Eastern Cape Education Department attended and publicly praised the process and the report, saying “This is the outcome of our approach to collaborate. We have been presented with all our inefficiencies and we are now able to respond to them. We

are going to act on all of the recommendations mentioned here” (Soon-Shiong 2018b). This outcome was particularly notable because the Eastern Cape is known for having the worst school conditions in the country (Soon-Shiong 2018a), and so working in collaboration with the Director of the Education Department is a far better option than getting the EELC involved and engaging in a legal battle or other conflicts with the Education Department.

### *Summary*

Access to education is excellent and attendance levels are high, thanks to schools using food as an incentive for attendance and as a mechanism for improving students’ attention while they are at school. This focus on food as a means to an end for education is the other piece of the answer to Puzzle 3. The South African government does not provide food at schools because the state is motivated to feed hungry children or is trying to uphold the right to food. Instead the NSNP program remains key for increasing and maintaining school attendance in quintile 1-3 students where food can incentivize attendance and improve students’ ability to learn. Additionally, the synergies between education and food transcend formal classrooms and there is evidence of this synergy appearing in a variety of organizations that help to educate young people. This mutually beneficial relationship between education and food is shaped by the materiality of these rights. Schools and educational facilities are typically central locations where there are often hungry students, and food can both motivate students to show up by a specific time and help ensure students are capable of focusing and engaging with their studies. There is also a synergy between social grants and education, and specifically there is evidence that households spend their grant funds on school fees and school uniforms. These school requirements can become barriers to education for low income households if they are unable to afford the cost.

Yet despite improvements in access and attendance, the quality of education and school facilities remain extremely unequal. These inequalities are due to a combination of already poor educational infrastructure, limited scale and capacity due to a reliance on educators, and a lack of activist and legal pressure. These problems of improving quality are directly related to the specific material requirements for providing education. Education is a service-based right in which the ongoing labor required to sustain the provision of a great education is far more challenging than simply getting students to attend. While the quality of instruction is quite low at many public schools in South Africa, simply getting teachers to show up to work and having enough teachers to teach all of the classes remains the top priority. In a parallel situation to the discussion of utilities in chapter 6. There we saw as well that there are some disagreements over what quality counts as adequate, and the skilled labor required by government employees to sustain service is substantial. These parallels reveal how the materiality of very different ESR can result in similar criticisms, dilemmas, and gaps in provision.

## **Food**

The percent of the population who have experience hunger has decreased in South Africa since the end of apartheid, but food insecurity has increased, in part due to increased commercialization of food and resulting price increases (GHS 2002 – 2014; Joynt 2017). While social grants and the NSNP have decreased incidents of hunger, the volatility of the implementation of both programs can still result in periods of hunger for people who are usually fed indirectly by the government (Beesley and Ballard 2013). Additionally, large portions of the population do not qualify for social grants and are not currently in school, so many people who are food insecure are not fed by either of these government programs. Moreover, as the price of

food has increased in recent years, both individuals and organizations have had more limited purchasing power (Joynt 2017; Interview Andrew Bennie).

The story of realizing the right to food in South Africa is shaped by all of the possible ways that people can receive or acquire food. There are many possible pathways to obtaining food, though some pathways do not apply to all potential recipients (Haglund and Aggarwal 2011; Stryker and Haglund 2015). Yet thanks to how materially easy it can be provide food, most of these pathways to providing food can be used by different kinds of actors. This material flexibility provides many opportunities for non-state actors to be involved with realizing the right to food even if they do not see their work as rights realization. Nevertheless, most pathways to receiving food are vulnerable to breakdown when actors fail to deliver or when prices increase, and this reality is reflected in South Africa's statistics on food security. This section builds on what was established in the earlier sections to answer Puzzle 3, by further explaining how the materiality of food shapes the synergies between social grants and food and between education and food.

### ***Materiality***

Food is materially quite different from the other socio-economic rights discussed in this dissertation. Food is the most transient and, in many ways, “informal” of these socio-economic rights because it can be acquired at so many different locations and in so many ways. The location of realizing the right to food can be almost anywhere. While there are certainly substantial space requirements to create food via agriculture and production, once the food is in an edible format, most foods can be acquired and consumed almost anywhere. The material attributes of food vary substantially and can be quite complex when regarded through the lenses

of nutrition or agriculture. Yet at its core, food is organic matter that is consumed in relatively small amounts several times a day.

Almost any organization can be involved in providing food at a small scale, but there are more requirements as the number of recipients or the complexity of the food increases. Any organization with even a small budget can occasionally provide pre-packaged food like chips or candy. Though intermittent provision of packaged snack food can be very simple, the ongoing maintenance required to provide continual access to food is an entirely different challenge. There are substantial material requirements for implementation to provide hot or cold prepared food at a large scale. Ideally, food is provided at multiple times throughout the day and is highly nutritious. This type of provision likely involves both storing the food and preparing meals, thus requiring appliances to keep the food cold, space to prepare the food, different appliances to heat the food, and often electricity or other sources of energy to run the appliances.

Maintaining consistent access to food for all South Africans truly involves the entire system of food production, including land, water, and climate, agriculture and livestock, and food production and sales. For households or communities that grow their own food, these same aspects can matter for maintaining their food supply, but on a different scale. Finally, the quality of food—specifically material differences in the adequacy of the food—matters to some extent, both in terms of whether it is safe to eat and if it is nutritious. A wide range of food is safe and meets basic standards of nutrition<sup>61</sup>; moreover, the element of time in which food is still edible and safe to eat is an aspect of materiality that comes into play for food in a way that is not relevant to other ESR. That amount of time during which a food product is edible varies

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<sup>61</sup> Taste is also a matter of quality, but not one that is prevalent in this discussion—similar to how I did not discuss the style or décor of government housing nor the aesthetics of various sanitation options.

substantially depending on the type of food. For example, most fresh produce or meat will be entirely inedible after a week or a month, while canned or packaged foods may last for years.

Ultimately, what is important to know about the materiality of food is that it can be both easy to help provide, yet demanding to maintain at a good quality and ideal frequency given that the need for food is ongoing. While other ESR that are utilities typically have a one-time large implementation of infrastructure such as pipes or wires to ensure access and then ongoing provision of the water or electricity, none of the infrastructure around food procurement, storage, and preparation is provided by the government or by government entities. The result is that access to or the provision of food can fluctuate rapidly because it is rare to establish or guarantee any permanent access or maintenance. In short, even with the synergies enhancing the realization of the right to food, and consequently reduced hunger over time, we have food insecurity because the existence of food depends on an entire production and distribution system rooted in the political economy of capitalism. If that system of production fails, the right to food will not be realized no matter how many synergies there are between social grants and food or education and food.

Work in this area has established how easy it is for people to slip between periods of having adequate food and times of scarcity, which is why there is an increasing focus on food security, not just hunger (FAO 1997, Ecker and Breisinger 2012). The multiple pathways to providing or receiving food create an environment in which there are many different opportunities for organizations to get food to hungry people, and many possibilities for partnerships. At the same time, the fact that the need for food is so ongoing means that it can be hard to prevent people from going hungry every now and again, even if there are many systems and safety nets in place to provide food, or money for food.

### *Constitutional Promise*

Section 27 of the Bill of Rights says that, “Everyone has the right to have access to... sufficient food and water... The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(Constitution of the Republic of South Africa 1996) This section includes the word “sufficient” which hints at the idea of a minimum standard, while also including moderating language that the state’s work only needs to be “reasonable” and “within its available resources” so that the right has “progressive realization.” What is particularly interesting here is that Section 27 guarantees the rights to food and water side by side within the same Section and clause, yet this section of the dissertation will show that the level of effort the state expressly puts towards the realization of food is far less than the work that it has done to ensure the right to water.

Additionally, Section 28, ensures the right to food for children *without* a reasonableness clause. Section 28 says, “1. Every child [person under the age of 18] has the right... to basic nutrition, shelter, basic health care services and social services” (Constitution of the Republic of South Africa. 1996). This sets up the legal promise of more food provisions for children. However, Section 28 does use the word “basic,” which is also open to substantial legal interpretation.

Nevertheless, despite these openings for legal interpretation in the text of the Bill of Rights, there is very little litigation or legislation about the right to food in South Africa (Interview Vinodh Jaichand; Interview Sasha Stevenson). According to both Sasha Stevenson, the attorney working on the right to food at Section 27, a public interest law center, and Dr. Vinodh Jaichand, then head of the University of Witwatersrand Law School, as of 2014, there were not any Constitutional Court or High Court decisions about the right to food (Interview

Sasha Stevenson). While other socio-economic rights have additional legislation that defines what the right means, as of 2014 there was no legislation on the right to food (Interview Sasha Stevenson). Instead, food-related legislation is focused on large agricultural policies<sup>62</sup> rather than on getting food to people experiencing hunger or a minimum standard of food provision for adults or children (Interview Vinodh Jaichand). The result is that the Constitutional promise of the right to food is the full extent to which the right has been defined (Interview Sasha Stevenson).

### *Progress After Apartheid*

Since the end of apartheid, there has been a substantial drop in the percent of households that had a person go to bed hungry. In 2002, 23.8% of South Africans experienced hunger, and by 2014 only 11.4% of individuals had experienced hunger within the past year (GHS). Yet despite progress at reducing hunger, food security is a growing concern in South Africa (Altman, Hart, and Jacobs 2009). A more sensitive measure of food security that asks about modifications to diet or eating patterns due to limited food availability revealed that in 2009, when it was first asked in the General Household Survey, 19.6% of South Africans had limited access to food (GHS 2009). By 2014, that percent increased, revealing that 26.2% of people had limited access to food (GHS 2014) (I explain the reasons for this change in the upcoming section on Progress after Apartheid).

Even more people are considered food insecure—meaning they lack reliable access to a sufficient quantity of food—because their financial or farming situation is volatile, even if they

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<sup>62</sup> It is very likely that agricultural policies indirectly shape the realization of food rights, however further exploration of these indirect effects are outside the scope of this research. Nevertheless, the broader political economy of food production, including subsistence agriculture and environmental situations such as droughts, floods, and climate change certainly contribute to decreased food security.

are not currently going hungry or modifying their diet or eating patterns. Food security is more likely to be a transient issue when compared to the other socio-economic rights in this research because it is more common for people's food situation to fluctuate than it is for their grant status, access to education, or to housing and utilities to fluctuate. Social grants are the most important way that the state has reduced food insecurity, though many households that are food insecure do not receive social grants (Aguero et al. 2006; Van der Berg 2006). Ultimately, while both social grants and school feeding programs have reduced hunger and improved food security, many people who are food insecure are not fed through either of these pathways – many unemployed working-age adults are outside of these synergies that typically feed students and grant beneficiary households. There are many possible pathways to obtaining food, but some do not apply to all people, and most of these pathways are very vulnerable to interruptions and breakdowns.

Food security comes and goes, especially when people lose their jobs or, in the case of the 18.3% of South Africans involved in agricultural production, in the event of bad weather, which can cause them to lose their crops or livestock (Interview Anonymous at Foodbank South Africa; GHS 2014). For families involved in agriculture, the crops they grow and livestock they raise may be their main source of food, or may simply be their main source of income to purchase food. Either way, this means that for some households, especially in rural areas, access to food is not as dependent on having an income as it is on having land, water, a reliable climate, and low levels of pollution. The implication is that for some people, the elements of the materiality of food that matter most are simply having the funds to purchase foods, but for others who are closest to the production of food, there are a variety of material elements that are required and must properly come together to ensure that they have adequate food. This

introduces environmental concerns about land use for commercial purposes, since mines and power plants create inhospitable environments for people to grow their own food.

Additionally, food is shared within communities and distributed to members of various organizations such as schools and churches<sup>63</sup>, which can reduce hunger but increase unpredictability and thus contribute to food insecurity. The diverse ways of accessing food through organizations and social groups can be inconsistent and irregular, which can allow people who depend on these organizations for food to ‘fall through the cracks’ on occasion. Perhaps what is most notable about this situation is that many of these organizations that happen to provide food do not regard the provision of food as their central mission; it is more of an extra benefit or a means to another end. This shows just how easy it can be for an actor to be involved with realizing the right to food without any conception of their work being about reducing hunger or ESR realization. When this is not an explicit mission of the organization, that organization may be unaware of how important its food provision is to the people it serves.

Another reason for food security volatility is that the agricultural sector has commercialized and globalized since the end of apartheid (Interview Andrew Bennie). Thus, food prices have increased dramatically (Joynt 2017). For example, in just one year, “between 2013 and 2014 there was a 12.4% [price] increase in a basic food plate of maize [corn meal],

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<sup>63</sup> According to both a Catholic priest and a longtime church employee, churches are another type of nonprofit that played an important role in the anti-apartheid struggle, but after the transition to democracy most churches turned their focus away from politically supporting the poor and back to supporting their members (Interview Father Charles Prince; Interview Paddy Kearney). Advocacy within the church was structured around apartheid, but without apartheid as a single unifying grievance, many churches ceased to be involved with the politics of service delivery (Interview Father Charles Prince). For example, the Catholic Church in Langa, the oldest township in Cape Town, was very involved in the anti-apartheid struggle, yet complaints about government and service delivery ceased to be brought to church after the end of apartheid (Interview Father Charles Prince). While that particular church had a preschool and a soup kitchen after the end of apartheid (and still does today), those services were provided as normal church charities rather than seen as filling a rights gap or as a commentary on the government’s inability to provide basic services (Interview Father Charles Prince).

brown bread, white sugar, tea and milk” (Pillay 2015). This type of price increase has substantial negative impacts for people experiencing poverty in South Africa.

There are three ways that the South African government indirectly provides food to South Africans experiencing poverty: 1) by providing SASSA grants, which recipients overwhelmingly use to purchase food for themselves and their households; 2) by funding the nonprofit Foodbank South Africa, which distributes rescued food to families in need, as identified by partner organizations; and 3) by funding the NSNP which feeds students in quintile 1-3 schools (Rendall-Mkosi et al. 2013). Additionally, politicians and elected officials sometimes provide food directly by distributing food at political events prior to elections<sup>64</sup>. These pathways all involve synergies with other economic and social rights, and/or involve the participation of non-state organizations.

### *Synergies*

As was discussed in the section on social grants, SASSA grants increase recipients’ access to food and improve child nutrition (Ardington and Lund 1995; Case and Deaton 1998; Lund 2002; Gertler 2005; Booysen and Van der Berg 2005; Van der Berg 2006; Agüero et al. 2007; Lund 2007; Delany et al, 2008; Tanga and Gutura, 2013; Gutura and Tanga, 2014). It is not surprising that if people with a low household income receive grants, they will use the money to buy food. What is noteworthy is how much of the social grants go towards purchasing food, especially compared to other basic goods and services.

I was told that families rarely pay for much other than food using SASSA grants. Rudi Hillerman, a long-time civil servant who is Senior Manager at the KwaZulu Natal Department of

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<sup>64</sup> The chapter will discuss how this work is done by the ANC party, yet the work of ANC politicians or the party is often seen as synonymous with government given the ANC’s position of power as the majority party since the end of apartheid.

Cooperative Governance & Traditional Affairs, told me, “Anecdotally the stories you hear are that [old age pensions are] only used for food really. Obviously the mother buys her clothes with [child support grants] but the gran will only use [her old age grant] for their food. It’s not enough [to cover other goods and services].” (Interview Rudi Hillerman). Similarly, receiving social grants does not guarantee food security. As my contact at Foodbank South Africa explained, “Social grants help, but it’s not enough for people to cover all of their expenses” (Interview Anonymous at Foodbank South Africa). While SASSA plays an important role in enabling recipients to buy food for themselves and their families, the funds are not consistently used to pay for other basic needs.

Looking at the relationships between grant funds and food in the field of ESR realization through the perspective of materiality and synergies, it becomes easier to understand why the majority of grant recipients spend the majority of the grants on food for their families rather than on other basic necessities. While SASSA does not limit what the funds are spent on, food is the basic human need with the least government provision and that people least expect the government to provide. Moreover, food is the ESR that is most easily acquired simply with money on the private market—purchasing and consuming food does not require any specific dwelling, location, infrastructure, or permissions, so it is more within the control of the individual or the household.

I argue that this relationship between grants and food is more than just a logical choice by grant recipients, it is a synergistic relationship for the government. Looking through the perspective of the neoliberal capitalist government, providing grants is a way to ensure that people who are not expected to work purchase food and thus engage in capitalism while having their basic needs met. At the same time, by not generally providing grants nor food to people

who are of working age and not disabled, the state apparatus is at least theoretically pushing unemployed adults to find employment and earn money to purchase their own food<sup>65</sup>.

As was discussed in the education section, there is a synergy between education and food. One of the main examples of this synergy is the National School Nutrition Programme (NSNP), which “provides meals to nearly 9 million learners per school day in all nine provinces. The NSNP serves one cooked meal that consists of a protein dish, a starch and a fresh vegetable to each learner” (Rendall-Mkosi et al. 2013). The Department of Basic Education estimates that in the 2010/2011 school year, the NSNP program fed 70% of all students enrolled in public schools in South Africa (Rendall-Mkosi et al. 2013). The NSNP is clearly the largest way that the government directly provides food to people in South Africa, and this effort is exclusively focused on feeding school children in quintile 1-3 schools.

Since the primary goals of the NSNP are to improve education by incentivizing attendance and improving student attention and behavior, the program only feeds students on weekdays during the school year, not on weekends, holidays, or school breaks (Rendall-Mkosi et al. 2013). The focus is not to feed children because it is a constitutional right, or simply the right thing to do, but rather because providing food is a means to improving education. While feeding roughly 9 million children a meal 191 days a year has clear benefits for education and certainly helps prevent hunger, the NSNP is not enough to ensure that the right to food is realized for all children in South Africa (Rendall-Mkosi et al. 2013). “The schools will almost always say there is never really enough [food]. And the schools really want to feed on the weekends because they say, ‘well what’s happening on the weekends?’” (Interview Anonymous at Foodbank South

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<sup>65</sup> I say theoretically because we know that in reality, some households with working age adults rely entirely on a household member’s grant and do not have earned income (GHS 2002-2014).

Africa). This indicates a disconnect between the goals of the NSNP program to improve education, the teachers' motivations to care for their students, and Section 28 of the Constitution that promises basic nutrition to children, without a reasonableness clause.

This tension around when the government should be feeding children reveals that the synergies between education and food can exist with several different organizational motivations. In the case of the NSNP, the motivation for feeding students is to improve education (Rendall-Mkosi et al. 2013). There are other education and food synergies that happen in schools beyond the NSNP. Some schools have food gardens which are used to supplement school meals, and to educate students (Seakov and Vally 2010; observation Food Garden Tour). Some extracurricular education programs—such as the Kliptown Youth Project discussed in the education nonprofit section—also make a point of feeding children, but again the priority is on education (Interview Thulani Madondo). Although the NSNP only operates in primary and secondary schools, early childhood development programs often include a nutrition component and it is common for them to feed children even though they are not government funded (Biersteker 2013). Additionally, the Peninsula School Feeding Association is a nonprofit that is driven to feed children because the Association believes this is the right thing to do, and has done this work in schools since long before the NSNP because schools are an efficient way to reach a large number of children in one location to ensure they get food (I discuss this more in the upcoming subsection on nonprofits) (Interview Mark Walker). There are countless other organizations—including corporations and nonprofits—that work at the intersection of education and food. This is likely in part because there is funding for this work and also because it is a clear opportunity to efficiently do good.

In short, the synergies between education and food are not the result of a single motivation. Rather, food is materially a good that is relatively easy to provide, or at least supplement, regardless of whether the motivation is simply to feed children or, as is often the case, to use food to achieve something else. Children need both education and food, and it is relatively easy for organizations to provide both in small increments outside the home. This synergistic work cannot guarantee food security, but it does help to supplement food that children receive at home.

To summarize, the right to food can be realized via the greatest number of pathways of all the ESR in South Africa. Beyond simply using a privately earned income to purchase food, South Africans can acquire food using social grant income; food may be grown, shared communally, or provided at school, church, or a whole host of community organizations. Moreover, it is common for people to receive their food from multiple sources – sharing a meal is a common human experience and food is a good that is relatively easy to realize. Many people, groups, and organizations participate in feeding people, regardless of whether the recipients need assistance or whether the organizations know about or believe in the right to food. But for many hungry or food insecure South Africans, access to food *relies* in large part on access to social grants, education, and community organizations. Conversely, the value or power of social grants, education, and community organizations is often partially linked to their ability to provide food. Food is the arena for which I found the greatest involvement in synergistic relationships among economic and social rights.

### ***Criticism of the Government's Progress***

There are very few criticisms of the government's progress to realize the right to food. This is in large part because many South Africans are not aware that the right to food is

enshrined in the Constitution and food is rarely considered a right that the government should provide (conversation with participants at Feminist Table conference; Siyakhana Food Garden Project Tour; Interview Andrew Bennie; Interview Dale McKinley; Interview Richard Pithouse; Interview Sasha Stevenson). Without awareness that people have a right to food, people are unlikely to have criticisms of the government pertaining to hunger and food security.

Additionally, there are few criticisms because many people do not see food as a right that government can or should provide for everyone. It seems that food is so basic that people should be able to provide it for themselves, while at the same time, the nature of food is too complicated and personal for the government to be responsible for feeding people. Dr. Dale McKinley, independent academic and activist, was a member of the South African Communist Party before, as he puts it, “being expelled for trying to be a communist,” and was a co-founder and executive member of the now-defunct Anti-Privatisation Forum social movement (McKinley 2015). McKinley has an excellent understanding of what many South Africans think should be socialized rather than privatized, and he told me, “Government cannot provide food to everybody, at least in most people's minds. That's not the thing the government does, but it is supposed to provide all of the other things.... Electricity, water, housing, health, education; these are the five basic things that people expect” (Interview Dale McKinley).

Food is materially unique in how it is created, distributed, prepared, and consumed when compared to other economic and social rights. All of the other economic and social rights McKinley listed—his list does not include social grants—require some type of infrastructure that government actors or government contractors install, but the infrastructure for food is far more diffuse. Ensuring that people have daily food is fundamentally different from providing a house

with utilities and ensuring the utilities stay on. It is also quite different from building schools and medical facilities, or employing service providers.

Sasha Stevenson, the attorney responsible for the right to food work at Section 27, a public interest law center, shared a similar opinion that food is complicated to realize because it “implicates both public and private parties” whereas these other ESR can be publicly provided (Interview Sasha Stevenson). Stevenson continued, “everyone realizes that the state can’t just be responsible for handing out free food” (Interview Sasha Stevenson). This comment not only validates McKinley’s statement, it reaffirms that even the one person in South Africa whose job involves legally advocating for the right to food believes that the government should not be responsible for directly providing the right to food in a parallel way to how it is responsible for providing water and other ESR. This sentiment is based on a belief that food is simultaneously absurd for government to provide and easier for non-state actors to provide or for individuals to purchase. This common opinion is shaped by how and by whom food rights can be realized, and thus we see that the materiality of food shapes the expectations as well as the legal action (or lack thereof) around how this right is realized. Moreover, the unique attributes of food distribution are what can make it so difficult to ensure on its own, yet such an easy right to realize synergistically with other economic and social rights.

The main criticisms of how the government provides food are about the implementation of the NSNP and government procurement. These criticisms mostly come from people within government and academics, not activists or public debate. The NSNP relies on contractors to complete the work, and so companies and nonprofits bid for government contracts to provide food to the local schools. The five most densely populated provinces (Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga and Western Cape) use a centralized model in which the suppliers are

contracted and paid by the provincial office (Rendall-Mkosi et al. 2013). The other four provinces (Eastern Cape, Free State, Northern Cape and North West provinces) have a decentralized procurement system in which the schools directly receive all the funds to cover the food, worker stipends, gas, and transportation (Rendall-Mkosi et al. 2013). The national NSNP officials prefer the decentralized model (Rendall-Mkosi et al. 2013). However, there are problems with both methods of contracting because the tender process is open to abuse and simply breakdowns of partnerships.

Most of the decentralized feeding programs rely on contractors to provide the food, and on volunteers—often mothers of students—who are paid a small stipend to serve the food. This creates the possibility to help the community by paying mothers and creating co-ops. Yet these groups are also less regulated and have varying capacities, so there are more opportunities for things to go wrong and substantial concern about cost-cutting. When personnel or regulatory problems arise, students go hungry (Seakov and Vally 2010; Interview Salim Vally). For example, in KwaZulu-Natal, the provincial government tried to use the NSNP to fund women's cooperatives as a way to create more income opportunities for marginalized women (Beesley and Ballard 2013). Yet Beesley and Ballard (2013) found that, in cases where the small business contractors were replaced with women's cooperatives, the co-ops were dysfunctional and students ended up going hungry. This is particularly disappointing because the government had decided to use cooperatives in order to further social and economic development, but the top-down way in which these cooperatives were formed—coupled with a lack of skills among members—led to ineffective service delivery (Beesley and Ballard 2013).

Generally speaking, there are a variety of concerns about using contractors to provide food. Professor of Education Salim Vally summed up these findings from his research when he

told me, “speaking to the for-profit concerns – quite a few of them are not suitable and they just tender for sake of making money” (Interview Salim Vally). He continued, “It’s also the quality of food, there is a set menu, but corners are cut to save on cost and a range of problems of [this] nature. There’s also significant impropriety or even corruption in the management [that] leaves a lot to be desired” (Interview Salim). More specifically, there are also reports of corruption, theft, and improper storage that can prevent students from being served (Seakov and Vally 2010). Finally, to save costs, the food is often low-quality and schools without proper kitchens can only serve cold meals (Seakov and Vally 2010).

There have been recommendations for how to get the best contractors within the existing NSNP system. One recommendation is to have a decentralized procurement structure to promote local partnerships, but a centralized payment system to avoid corruption (Zwane 2015). Another recommendation from the director at the nonprofit Peninsula School Feeding Association is to contract with nonprofit organizations, since they are organized without being profit-motivated, and thus less likely to cut corners (Interview Mark Walker).

### ***Involvement of Other Organizations***

The involvement of non-state organizations in the realization of food creates an interesting paradox. Most of the organizations that are involved in realizing the right to food are not primarily focused on food, and most of the organizations that focus on food are not involved with providing food as a right rather than a commodity, nor in putting pressure on the government to realize the right to food. This situation ultimately shows just how much food provision relies on its synergies with grants and education, and not explicit work to realize the right to food.

Most civil society organizations which focus on food in South Africa are concerned with environmentalism, socialism, co-ops, education, and altering the system of production to create long term change rather than being concerned with feeding hungry people now (Interview Andrew Bennie; Interview Atish Kirun; observation at Feminist Table conference). For example, I interviewed Andrew Bennie and Atish Kirun at the Co-operative and Policy Alternative Centre (COPAC); they work with rural and township communities to promote food sovereignty and create co-ops as a solidarity economy alternative to the capitalist production and consumption of food. COPAC's work is instrumental in creating long-term changes to the means of food production. However, COPAC is not focused on feeding more people in the near term, nor on serving as a watchdog pertaining to the government provision of food.

Since about 2012, there has been an increased focus on food security and food sovereignty internationally that also has been present in South Africa. Much of this new focus stems from middle class professionals and as of 2014, had yet to translate into policy and/or on the ground changes. For example, I attended a three-day conference on Feminism and Food called Feminist Table that brought together academics, nonprofits, farmers, co-op members, and activists. While the diversity of attendees was commendable, it quickly became clear that there was a major disconnect between the middle-class women who were approaching food security from a structural and theoretical standpoint, and the working-class women who had experienced and were actively combating food scarcity on the ground (observation at Feminist Table conference).

Ultimately, civil society is aware that food security is a growing problem in South Africa, despite gains in hunger reduction since the end of apartheid. However, it is primarily corporations, farmers, and government funded-organizations—not activists nor many

nonprofits—that are focused on providing food. The next several sections build the case that a mix of corporate, nonprofit, and government-funded organizations are primarily doing the work of feeding hungry people despite an absence of public, social movement, or other watchdog pressure.

### *Vendors and the Private Sector*

Companies are the main direct providers of food, to the extent that food is a good that they sell directly to South Africans for profit. Money to buy food generally comes from employment or through SASSA grants. The means to pay for food remains precarious for many South Africans due to job instabilities, high rates of unemployment, and dependence on SASSA grants typically intended for an elderly family member or for child support. Additionally, the price of food has increased substantially in South Africa compared to incomes and inflation, largely due to the increasing industrialization of the agricultural sector (Pillay 2015; Joynt 2017). An anonymous interviewee who works at a major food company in South Africa told me that these price increases are largely due to the cost of materials, and that there is a smaller profit margin on food sold in South Africa given the small incomes of so many clientele (anonymous interview). This interviewee also shared that many large food retailers do large donation drives around holidays because they want to have a reputation for being in touch with the community, and so their corporate social responsibility work does periodically lead to them giving away food (anonymous interview).

Additionally, private contractors are heavily involved with carrying out the National School Nutrition Programme. As the criticisms section explained, there are many concerns about the reliability and quality of those services, as well as general corruption in places where the contracting is decentralized (Beesley and Ballard 2013; Rendall-Mkosi et al. 2013; Seakov and

Vally 2010; Zwane 2015; Interview Salim Vally). Yet it is also notable that these concerns included problems with various types of contractors, including both co-ops and for-profit companies.

### *Nonprofits*

This section is primarily about food-focused nonprofits. While there are many nonprofits that are not focused on food but nevertheless are involved in providing food due to synergies between food and their areas of focus, these nonprofits were already discussed in the education nonprofits section earlier in this chapter.

Foodbank South Africa (FBSA)<sup>66</sup> is the country's national nonprofit food banking network. FBSA was established in 2009 in partnership with the Department of Social Development and is financed through a mix of government funding, large corporate donations, and individual donations (Interview Anonymous at Foodbank South Africa). Foodbank South Africa was created when three previous nonprofits that provided food merged, and so the organization has built on the previous networks and infrastructure of its predecessors that were established during apartheid. FBSA is part of the Global FoodBanking Network, an international nongovernmental organization based in Chicago that has partner food banks in more than 30 countries on 6 continents (The Global FoodBanking Network 2017). I visited FBSA's Cape Town location and interviewed a manager there who chose to remain unnamed.

Foodbank South Africa's organizational model is designed to be as efficient as possible. FBSA is mostly active in the large cities of "Johannesburg and Cape Town because that is where most of the food suppliers are. And so the low hanging fruit is literally in the main cities in the

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<sup>66</sup> As of 2019, Foodbank South Africa is now called Food Forward South Africa. This section reports on FBSA as of 2014, and thus uses the organization's name in 2014.

country” (Interview Anonymous at Foodbank South Africa). Foodbank South Africa’s system of obtaining the food is called food rescue, because they acquire food that is nearing the expiration date and cannot be sold to for-profit companies. I visited the Foodbank Hub and walked through its giant warehouse in Cape Town, which is on the same street where all of the food suppliers convene to sell to distributors (observation FBSA). This location provides Foodbank SA easy access to large volumes of food and is key to the organization’s efficiency, given that bulk food is materially intensive to transport and that getting produce to people in time for consumption is time-sensitive. Food rescue work has a double impact, because not only does the food feed hungry people, but if the food can reach consumers fast enough, it is saved from the landfills (Interview Anonymous at Foodbank South Africa).

Rather than distribute the food to individuals, FBSA delivers the food to organizations that either belonged to preexisting networks or that meet the new bureaucratic standards set by the Department of Social Development. Many Foodbank South Africa partner organizations previously partnered with one of the three food distribution organizations that combined to become Foodbank SA. Other new partner organizations were identified by the Department of Social Development (Interview Anonymous at Foodbank South Africa). As of 2015, each month Foodbank South Africa sent food to 287 nonprofit organizations spread across five provinces (FoodForward South Africa 2015b). These organizations include early childhood centers, support groups, shelters, home-based care, aged care, skills development programs, disability care, HIV/Aids care, youth development, and school aftercare (FoodForward South Africa 2015b). These organizations do the work of either providing food parcels for recipients to take home or preparing and serving the food at their organizations. These partnerships speak to the

material synergies of feeding people at or through organizations that are not focused on food provision, but that benefit from providing food to the people they serve.

Foodbank South Africa's system shows how government, corporations, and nonprofits work together to feed hungry South Africans through a model that is focused on efficiency, by ensuring that each organization has a specific role in the chain of food production. This model leverages the capacities of FBSA's partners to keep FBSA's role focused so that it can be cost-effective and scalable. In 2015, FBSA provided food to about 86,000 people daily and roughly 250,000 people at some point during the year, all with an annual operating budget of just over R15 million, which is less than \$2 million USD (FoodForward South Africa 2015b, 2015a). FBSA is extremely efficient, and the organization's ability to leverage partnerships with different types of organizations is commendable. Yet in a country in which roughly 14 million people are food insecure, and 6 million people experience hunger annually, FBSA's work still plays a small role in realizing the constitutional right to food in South Africa (GHS 2014).

There were more nonprofit organizations involved in food provision during apartheid, in part because feeding students at school was a common gap that nonprofits could fill before the NSNP began 1994 (conversations with participants at Feminist Table conference). "During the apartheid era, school meals were provided by private enterprises, donors and non-governmental organizations" (Rendall-Mkosi et al. 2013). However, since its creation, the NSNP has influenced how those partnerships are formed and where organizations try to fill in the gaps. For example, Foodbank South Africa does not partner with schools because it knows that they are largely already taken care of through the NSNP (Interview Anonymous at Foodbank South Africa). Some of the nonprofit organizations that provided food during apartheid continue to feed students either by contracting with the NSNP to provide food in quintile 1 through 3 schools, or

on the periphery (Rendall-Mkosi et al. 2013; Interview Mark Walker). Some nonprofits seek to fill in the gaps by feeding the poorer students who attend quintile 4 and 5 schools (Interview Mark Walker) or providing meals to poor private school students before and after school, since only public schools participate in the NSNP (Interview Thulani Madondo). Given the nonprofit funding crisis, many of the nonprofits that previously fed students simply no longer exist (Interview Mark Walker).

One example of a nonprofit that has both contracted with the NSNP and filled in the gaps is the Peninsula School Feeding Association (PSFA). The PSFA was founded during apartheid in 1958 with individual donor support (Interview Mark Walker). In 2014, I interviewed their director at the time, Mark Walker, and he told me that from 2009 to 2013, the PSFA provided meals to students as part of an NSNP contract, and as of June 2013 the PSFA fed about 33,000 children daily (Interview Mark Walker). But then the NSNP contract was awarded to a private company, likely on the basis of price (Interview Mark Walker). After the private provider took over, the PSFA heard many complaints about a drop in the quality of food in those schools (Interview Mark Walker). As a mission-driven nonprofit, the PSFA continued to provide meals, just at a much smaller scale, by feeding poor students who attend quintile 4 and 5 schools where the NSNP program does not apply<sup>67</sup> (Interview Mark Walker). While PSFA has survived, the organization's trajectory is an example of how the NSNP has changed the field for food-focused nonprofits in South Africa, especially given the nonprofit funding environment.

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<sup>67</sup> While schools are categorized by the overall income quintile of the families they serve, there are students experiencing poverty who attend quintile 4 and 5 schools. These are the students who PSFA serves through donor support.

*Political Parties*

It is a common practice for ANC politicians and government agencies to give out food at political events prior to elections to gain political support (Interview Rudi Hillerman; Interview Richard Pithouse; Foster 2012). This is actually the most direct way that the government provides food to citizens, but it is infrequent, not rights-driven, and it is highly fraught because it involves clientelism that creates opportunities for corruption. In May 2014, the Democratic Alliance political party applied to the Western Cape High Court to stop SASSA and the ANC from distributing state-funded food parcels at ANC election rallies, but the High Court dismissed the case (News24 2014). Despite the High Court's dismissal of that case, several people I interviewed remained critical of politicians' use of food as a means of political control or bribery, because using food as a source of political power puts hungry people in a difficult situation.

As Dr. Richard Pithouse, senior researcher at Rhodes University and activist, explained, "Desperate people have to have food. Everyone has to have food, but desperate people are in no position to refuse charity. There's something very, very insulting about the idea that you can just buy votes by giving people food" (Interview Richard Pithouse). This way of providing food also has parallels to the concerns that Dr. Dale McKinley raised about the ANC's use of social grants creating dependence and winning favor for the ANC (Interview Dale McKinley). Overall, while these are instances of the ANC government directly providing food to people who need it, doing this work in the context of party politics prior to elections is a standout example of realizing the right to food for all the wrong reasons. Moreover, as Dr. Pithouse mentioned, the fact that people are in desperate enough situations that providing them with a food parcel once is enough to win

their vote speaks to how poor a job the government is doing at regularly ensuring that all South Africans have adequate food.

### *Activism and Social Movements*

As of 2014, activism around the right to food was non-existent. This is unsurprising given that many South Africans are unaware that they have a right to food and do not expect the government to feed them (conversation with participants at Feminist Table conference; Interview Andrew Bennie; Interview Dale McKinley; Interview Richard Pithouse; Interview Sasha Stevenson). Based on his research on political struggles in South Africa and personal involvement with community activism, Dr. Richard Pithouse confirmed the absence of activism around food:

I've never ever heard of a protest or participated in a protest for food... I've sat in hundreds of meetings over the last ten years or longer, if not thousands in Durban, in small towns in Kwazulu Natal, sometimes in Cape Town, Cape Julian, Johannesburg. I cannot recall ever having food emerging as a demand. Land, housing, electricity, school fees, or access to schools, safety, you know women's safety, speed bumps, opposition to police brutality, opposition to local councilors, demanding better policing just from general crime. But no, not food.  
(Interview Richard Pithouse)

This rang true at the community protests and organizing meetings I attended, and all of the activists I interviewed or spoke with confirmed that food was not a demand, even though people in their communities certainly experienced hunger and were not food secure. The lack of awareness and protests about the right to food can be attributed to humiliation and the transient nature of hunger.

Experiencing hunger often leads to internalizing humiliation that divides rather than unites. Boyce Tom is the researcher at the Trust for Community Outreach and Education (TCOE), which is a nonprofit that works with farmers and women's groups around land access and food security. Boyce explained, "Hunger can humble you in such a way that you even

internalize your condition as something that is meant for you. You've got nothing that you can actually do to change that situation. So that is the kind of consciousness that it builds in people" (Interview Boyce Tom). In addition, Dr. Pithouse told me that in a discussion of housing development layouts, people were opposed to creating communal cooking areas. "The reason for not wanting to cook together was because it will be too humiliating for other people to see actually how little food and how bad it was, you know, how little food they had. It was just too humiliating. Food is something intimate in the family" (Interview Richard Pithouse). This extreme amount of shame around food and hunger compared to other economic and social rights is likely part of why communities do not join together to fight for food security.

The transient nature of hunger also prevents people from uniting around this grievance. In South Africa we see service delivery protests about long term issues, but as the person I interviewed at Foodbank South Africa put it, hunger is "not necessarily a long-term issue. People go through it in patches" (Interview Anonymous at Foodbank South Africa). On the other hand, inadequate housing and utilities tends to be experienced by people who live in the same shack settlements and townships, and those material conditions are visible within the community (Interview Anonymous at Foodbank South Africa). These living conditions do not come and go, whereas hunger is more transient and easy to temporarily fix (Interview Anonymous at Foodbank South Africa).

For example, "You have been living [in a shack that floods in the winters] for 10 years, but you probably haven't been hungry for 10 years. You might have been hungry and then you can go find food, but I can't just go and find a house" (Interview Anonymous at Foodbank South Africa). These differences in the material nature of these rights result in different experiences of material inadequacy and different levels of consciousness around whether these are community

or individual problems. “I think that gathering a whole bunch of people together that didn’t get houses is different that gathering different people who didn’t have food last week—they are all over the place, in different places” (Interview Anonymous at Foodbank South Africa). Even within poor communities, at any point in time most people have money for food so they are not all experiencing hunger at the same time, even if many occasionally experience hunger or modify their eating habits to avoid hunger (Interview Anonymous at Foodbank South Africa). The exception is in cases like a strike where entire communities are affected, but then they will protest about the wages, not protest about the lack of food (Interview Anonymous at Foodbank South Africa).

### *Courts and Litigation*

While the right to food is explicitly listed in Section 27 of the Constitution alongside the right to water, there has been essentially no litigation about the right to food. There was one case brought by the South Africa's Competition Commission against four bakeries that were price-fixing and the Competition Commission won the case in the Constitutional Court. Yet the case was brought for corporate reasons and was not argued on the basis of the right to food.

As Professor Vinodh Jaichand, then head of the University of Witwatersrand Law School, confirmed, most of the rights talk and litigation in South Africa is focused on land and housing, then water, and a small amount for education; it is basically non-existent for food. Part of that is because effective legal advocacy requires a good client, and often a funding opportunity. There is not much funding for food rights, and the answer to the question of “who is responsible for my hunger” is unclear (Interview Vinodh Jaichand)<sup>68</sup>. The result is that food is

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<sup>68</sup> This situation has evolved since I conducted my fieldwork. The bread price-fixing case paved the way for a civil case for damages brought by several civil society organizations (<http://www.bakeryandsnacks.com/Markets/South-Africa-s-Premier-reaches-settlement-over-bread-cartel-claim>).

the only ESR in the Constitution that has not been litigated on in the Constitutional Court or any High Court (Interview Sasha Stevenson). This again shows that the life that a right takes on certainly is not defined by how it is promised in the constitution. Water and food are promised side by side with identical phrasing in the constitution, yet the litigation, legislation, government effort, public awareness and pressure, and the realization of the two rights have manifested in very different ways (see the water section in chapter 6).

As of 2014, only one public interest law center had even begun to do work on the right to food. I interviewed Sasha Stevenson, an attorney at Section 27, a public interest law center named after the Section of the Bill of Rights. Stevenson's work focused on the right to health and she had recently also become the one person responsible for beginning Section 27's work on the right to food. She told me that people are always talking in South Africa about how odd it is that people involved in the work of rights realization have not mobilized around the right to food when there have been bread riots in other countries<sup>69</sup> (Interview Sasha Stevenson). Stevenson believes that the complete absence of litigation and legislation around the right to food is part of the reason why there is a lack of awareness and thus a lack of mobilization around the right to food<sup>70</sup> (Interview Sasha Stevenson). As of 2014, Section 27 was developing its strategy around the right to food and considering focusing on how to get the Department of Health to enforce

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This points towards an increase in civil society involvement pertaining to food, however I am unable to adequately speak to this evolution without additional fieldwork.

<sup>69</sup> This raises the point that it is not only the materiality of rights that influences opinions about who is responsible for providing food. However, this also raises the question of what prompted these riots and based on some cursory research, most of these food riots followed large political and economic changes that resulted in widespread price changes or economic downturns, and the riots were a reaction to those changes. The bread riots were not demanding that the government feed people directly, but rather that the government create the economic conditions that allow for people to purchase food.

<sup>70</sup> Sasha Stevenson's belief is that litigation leads to an increase in awareness that a right exists. This is distinct from, and does not necessarily contradict, Equal Education co-founder Doron Isaac's belief that litigation is not an effective way of increasing awareness of quality disparities or of improving conditions in schools. While there is not yet substantial litigation on the right to food in South Africa, this is an area to watch for to determine whether future litigation pertaining to food serves to increase overall awareness of the right to food in South Africa.

regulations that require nutrient fortification (Interview Sasha Stevenson). Section 27's hope was that this enforcement work would have a large impact on ensuring that everyone eating prepared foods get adequate nutrition, while also increasing awareness about the right to food (Interview Sasha Stevenson)<sup>71</sup>.

### ***Summary***

While there are multiple pathways to realization for almost all of the ESR in the Constitution, food is exceptional because the different pathways to realization are much more numerous. Food is the only ESR that the South African government does not have a system in place to provide to everyone who has the right. Instead, the state provides food indirectly through social grants, the National School Nutrition Programme, and by funding Foodbank South Africa. There is little activism around food security and, with the exception of Foodbank South Africa, most of the nonprofits focused on food in South Africa are primarily concerned with environmentalism, socialism, and altering the system of production to create long term change, rather than feeding hungry people now. Yet many nonprofits are involved in providing food not as a goal, but rather provide food synergistically as a means to achieving their primary mission. The result of this patchwork system is that while hunger has decreased in South Africa, there are still many people who fall through the cracks and a growing portion of the population is food insecure.

### **Answer to Puzzle 3**

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<sup>71</sup> As of 2019, I cannot find any records of Section 27 engaging in litigation or other work around the fortification of food. However, Section 27's website still identifies the right to sufficient food as a priority work area and says: "We work for appropriate regulation of and accountability in the food industry and for the availability of food to all, including in particular children, who are granted the constitutional right not just to access to food but to basic nutrition" (Section 27 2019).

This chapter has centered around answering *Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food rights?* The realization of rights to social grants, education and food are not bundled together for the sake of providing food. With the exception of the Social Relief of Distress (SRD) grant which is typically administered in the form of food parcels, SASSA grants can be spent on whatever the recipients choose, and so the increased access to food via grants is at the discretion of the recipients. Yet given the field of ESR realization and the material requirements to realize different rights, it becomes logical that grant recipients spend the majority of their funds on food.

Moreover, we see that providing social grants as a proxy for realizing the right to food is synergistic for the government because it allows the state to effectively feed poor people who are not expected to be able to feed themselves with minimal government infrastructure and through a capitalist system. In the case of the NSNP, the government is choosing to bundle access to education and food together, but the Department of Education has made it clear that food is simply a means to an educational end, and they are not providing food because it is a right (Department of Education 2013). Food is simply an incentive for attendance and a way to keep students more focused (Department of Education 2013). Moreover, the rights to education and to food do not have to be realized in the same place like the rights to housing and utilities, due to both the multiple pathways to the realization of food and the many different actors that can be involved with providing food.

This chapter has built the case that the synergies between social security, education, and food exist because some are inherent, based on the material attributes of the different rights.

These important aspects of their materiality include the necessary infrastructure to realize the rights, the appropriateness of sharing the goods and services, and mutual benefits to providing these rights together. These synergies often happen as the result of the relationships between the rights themselves rather than because of synergistic partnerships between organizations.

The synergies between grants and education and between grants and food are both the results of choices made by grant recipients. But these also are logical choices based on the material requirements to realize each ESR. This bundling of grants, education, and food is not required; it happens because the recipients decide to spend their grant funds on food and on their children's or grandchildren's education-related expenses.

Given what we know about South Africans' awareness and expectations around which basic needs are rights that should be fulfilled by the government and include a free basic minimum, coupled with knowledge that many basic needs require substantial infrastructure for implementation and fulfillment, it seems that the material attributes of the different rights likely factor into grant recipients' decisions about how to spend their social security funds. Within this context, it also makes sense that recipients of the old age grant use the funds to purchase food and pay for educational expenses for their extended family rather than using the entirety of the funds to cover their own housing and utilities. Since there is an expectation that the government will eventually provide housing and utilities, but no expectation of the government feeding everyone, it is logical that elderly family members will use their grants to provide for the basics that they believe households are responsible for and able to provide for themselves with their grant funds. Moreover, this use of the grant funds is still synergistic in the eyes of the neoliberal capitalist government because it results in people purchasing their food in the market rather than relying on the government for the direct provision of goods and services.

While the synergies between grants and the other ESR are realized by individuals or households receiving funds from the government, the synergy between education and food is often realized by organizations. In these instances, food is provided to increase student attendance, support student engagement, and improve learning outcomes. This synergy between rights is not typically a partnership between food organizations and schools, but rather is either a contractual relationship funded by the NSNP where food is provided by a contractor for the sake of education, or a situation where educational organizations take on the work of feeding students.

### **Conclusion**

This chapter has focused on three economic and social rights that can be realized outside the home: social grants, education, and food. By not being tied to the home as the only or ideal location for their realization, these rights are somewhat more materially flexible than the housing and utilities discussed in chapter 6. Yet these rights come with another set of material challenges. Much like utilities, these rights outside the home often require more ongoing provision and the more frequent the provision, the more labor intensive they are to realize. The flexibility of these rights can lead to more pathways to their realization – this is especially true with food, and true regarding supplemental education. On the other hand, this material flexibility can make these rights more transient because there is the potential for people to slip through the cracks. When these lapses in rights realization occur—such as when a person occasionally skips a meal or a student is absent from school or has an absent teacher—they are rarely seen as a substantial problem the same way that an overall lack of access would clearly be failure of rights realization. This begins to reveal how the materiality of these rights also shapes expectations about their provision.

This chapter has analyzed how the location where rights are made real can shape expectations about rights overall: awareness about whether they are rights at all, considerations of what “counts” as part of these goods and services, and beliefs about who is responsible for their realization. Moreover, the various locations and ways that these rights are realized can reduce awareness of social inequalities for how these rights are realized – students are often unaware that their education is low quality, or neighbors may be unaware that others in their community are also occasionally skipping meals or also worried about how to feed their children on the weekends. This lack of awareness combined with the transience of these problems means that people are less likely to mobilize around these rights than around the more permanent and visible gaps in ESR realization such as living in a shack or not having adequate sanitation.

This chapter has also shown how ESR realization can occur despite little pressure from the public and non-state organizations. While outside pressure generally helps ensure rights realization, and certainly played a role in transforming the social grants system, the level of outside pressure is low or at best inconsistent for all three of the ESR discussed in this chapter. Ultimately, activism, watchdog organizations, and litigation are not what is driving continued access to these rights, though perhaps they could play a role in spurring future progress. Nevertheless, the mutually beneficial nature of these ESR leads to their realization—though often limited in quality and consistency—thanks to the synergies across rights.

All of the examples of synergies between education and food that I found occurred through the work of organizations. The National School Nutrition Programme that operates in quintile 1 through 3 schools feeds students to improve educational outcomes. Yet many other organizations provide food because it is beneficial for them and the people they serve. Food is

materially easy for them to provide, especially when they already have a location and recipients at the location who would like to be fed.

The synergies between grants and the other rights are not dictated by SASSA, but instead are up to the grant recipients to decide how to spend their funds. Yet the fact that these ESR are basic human needs makes them a priority for how to spend household funds, and moreover the materiality of these different rights informs what rights may even be considered options. Given the level of poverty of many grant recipients, they are unlikely to save up their grant funds to purchase a home or try to get utilities installed at their dwelling, instead they are going to prioritize the rights they can purchase in small yet regular quantities. This explains why food, and then school fees and uniforms are the top items that grant recipients purchase with these funds. This use of grant funds is a success for the neoliberal capitalist government, because it allows the state to indirectly support market capitalism and, when coupled with the extensive use of contractors, keep government relatively small.

## CHAPTER 8 CONCLUSION

The overarching goal of this dissertation has been to understand what drives and shapes the insufficient and unequal access to constitutionally guaranteed economic and social goods and services in South Africa. Drawing from the socio-legal perspective on rights realization, the political-institutional perspective focused on rights and the state, and the institutional perspective focused on organizations and markets, the literature suggests that these constitutional rights are simply a tool which must be used by a variety of actors to create changes. South Africa has many of the elements that the literature says are important for increased economic and social rights realization: 1) a rights basis for ESR realization, 2) government financial commitment, and 3) public pressure for rights realization. When looking at South Africa's national context and actual patterns of rights realization through the lens of the literature, it became clear that, although this literature was relevant to help explain economic and social rights realization in South Africa, the patterns of realization revealed by the data I analyzed did not match up fully with what these perspectives would predict. This focused my research especially on solving three specific puzzles:

*Puzzle 1: Why, despite the government making housing a top priority and despite plentiful activism, do a larger percentage of households live in shacks now than at the end of apartheid?*

*Puzzle 2: Why, despite a mix of public and for-profit providers, has utility progress been so slow?*

*Puzzle 3: Why does the government play such a large role in indirectly feeding people through the provision of social grants and education, especially when there are few civil society actors applying pressure for the realization of food?*

In chapter 5, I advanced our understanding regarding puzzles 1 and 3—consistent with more general arguments about right realization made by socio-legal scholars—by showing how limits on political and legal mobilization can help explain the gap between economic and social rights

on the books and ESR rights realization in practice. I argued that, although the Constitution is quite progressive, legal mobilization has a limited ability to increase access to ESR. Instead, litigation in South Africa has been a useful tool for reducing slippage by helping to ensure the maintenance of rights that have been realized and ensuring that the rights that are realized are, at least procedurally, of adequate quality.

The field-level approach I took to answer these puzzles allowed me to uncover and highlight the linkages across rights and the relationships between rights to understand their patterns of realization. I found that there are relationships between rights that are fundamentally shaped by the rights' material characteristics and material requirements for realization. I argued that this materiality of rights is an antecedent variable that influences the roles and type of involvement of various state actors, non-state actors, and rights-bearers.

In chapter 6, I answered puzzles 1 and 2 by showing how the materiality of rights that are ideally realized at home are constrained by their material requirements:

*Answer to Puzzle 1: Housing must be located on land, yet there is limited available residential land. Additionally, even if residential land were plentiful, complete houses are resource-intensive to build. Those material constraints, combined with population growth, migration from rural to urban areas, and protections of squatters on land that is scheduled to be built on, have resulted in a situation where the government has not been able to build houses fast enough to keep up with the demand.*

*Answer to Puzzle 2: Utilities are ideally located in or very near homes, and thus the slow pace of housing progress has limited the installation of permanent utilities – housing has been a gatekeeper for utilities. Additionally, the actors responsible for installing utilities have been reluctant to install temporary utilities, and thus reinforced that gatekeeper relationship.*

The result is that even though the courts, politicians, and the poor want to realize the right to housing and the utilities that are a legal requirement for housing to be adequate, the material requirements for realizing these rights have limited the rate of this progress.

The materiality of housing, water, sanitation, and electricity are at the core of this gatekeeping relationship, and shape a variety of trade-offs that actors make when doing the work of ESR realization. How actors reacted to these trade-offs explains how ESR realization in South Africa has furthered unequal access to housing and utilities. For the most part, the government has reinforced the gatekeeper phenomena by prioritizing formal housing and permanent infrastructure over *in situ* shack upgrading, and has increased efficiencies through integrated (utility) service provision. This in turn has both expedited utility progress and resulted in an all-or-nothing scenario.

Additionally, the ANC government has created and perpetuated the housing waiting list myth, which has limited public awareness of the material realities of the situation and kept most people patiently waiting for a home. That hope for government housing, combined with an ambitious constitution and a judiciary that prioritizes procedural adequacy over both material progress and measurable outcomes, has prolonged and intensified the government's focus on doing a lesser amount of housing and utility realization well, rather than attempting more widespread incremental progress. Finally, specific bureaucratic policies—specifically historical budgeting and not planning in advance to have alternative accommodations for squatters—have created a situation where protection from illegal evictions has further slowed housing progress. Again, by reinforcing the gatekeeper relationship, the government actions that have slowed housing progress have in turn limited the realization of the rights to water, sanitation, and electricity.

Yet the materiality of rights can also provide opportunities for their realization. Chapter 7 revealed how rights that are realized outside the home can have synergistic relationships with

each other that aid in the mutually beneficial realization of both rights, regardless of the actors' motivations.

*Answer to Puzzle 3: The right to food is not a driving force for the actors that work to improve food security or that provide food. Moreover, many South Africans are not even aware that they have a right to food. Yet the material qualities of food make it the ESR that is easiest to realize through social grants and an important tool for increasing school attendance and learning outcomes. These synergistic relationships between the rights are the reasons why both the government and so many other organizations devote substantial resources towards providing food without being motivated to realize the right to food or even necessarily trying to prevent hunger.*

The more flexible, intermittent, and/or labor-intensive reality of these rights outside the home shape the overall patterns of their individual realization as well as the synergies between these rights. Social grants are often used for food, school fees, and school uniforms because these goods are so easy to purchase when compared to all the other basic human needs that are economic and social rights. This system of transferring funds that people use to purchase goods in the free market is a clear win for a neoliberal capitalist government that is not interested in building its capacity and providing goods directly to the people and is thus, albeit from a neoliberal capitalist perspective, a synergy. The mutually beneficial coupling of education and food takes a different form and is realized in a very different format, again based on the materiality of these two rights. Organizations seem to be fundamentally involved in this provision of food to children as a means to educational ends, regardless of its status as a right and despite a lack of political or legal mobilization for food provision.

### **Theoretical Implications**

This research has demonstrated the value of looking at economic and social rights realization as a field, to understand the patterns of rights realization and relationships between these rights. This is the first comprehensive study of the ESR realization field in South Africa, which is a contribution in itself, and I make the novel theoretical contribution that there are

relationships that exist between economic and social rights themselves. Given the focus in extant perspectives on the roles of actors in realizing rights and creating other types of social change, the notion that these social goods and services can influence each other, regardless of how actors are involved with their provision, reaffirms the value of looking at economic and social rights realization as a field.

Through this field-level approach, I have thoroughly developed our understanding of the materiality of rights by specifying and analyzing the roles of their 1) location, 2) material, and 3) organizational factors mentioned by Klug (2015a), and their material 4) implementation, 5) maintenance, and 6) quality that were introduced by Stryker (2015). Through my analysis of these seven different ESR and their relationships with each other, I have drawn out the explanatory implications of each of these concepts of materiality and shown how they result in varied opportunities for ESR realization, levels of involvement from different types of actors, and conditions and constraints for political and legal mobilization. This is another contribution.

Yet I have gone further to argue that materiality is more than an independent explanatory factor or variable as Klug (2015a) indicates, and instead have shown how the materiality of economic and social rights is an antecedent factor or variable that often shapes or influences the other factors that influence ESR realization. Scholars have well established that there are a variety of mechanisms, actors, and pathways (MAPs)—including legal interpretation, political-institutional factors, and social movement activism—that play important roles in influencing rights realization (Haglund and Aggarwal 2011; Haglund and Stryker 2015). I have shown that materiality is a variable that is relatively fixed and typically precedes other variables in an explanatory model. Thus, materiality works to shape or limit the MAPs that in turn influence rights realization. This understanding of materiality as an antecedent variable is theoretically

important because it provides a framework for understanding which mechanisms, actors, and pathways can realistically play a direct role in the realization of a specific economic and social right based on its material characteristics. Additionally, it reaffirms the point that these relationships between rights can exist regardless of actor relationships, and that these linkages exist between the rights themselves.

### **Broader Contributions and Best Practices**

This research has highlighted several opportunities for South African government agencies to update their bureaucratic practices, which could have large implications for increasing future ESR realization. These include moving away from historical budgeting to ensure that setbacks that prevent spending the entire budget do not have to limit future ESR realization, and beginning to plan in advance for alternative accommodations for squatters who will likely need to be evicted so that the government can keep construction timelines on schedule.

Looking beyond South Africa, this research provides encouragement that progress in the provision of goods and services is possible regardless of the rights basis for their provision. Any practitioner can benefit from considering the materiality of the goods and services they seek to deliver, and especially whether the materiality is likely to result in or lead to field-level synergies or gatekeeper relationships.

Simply put, for goods and services with more stringent material requirements, especially those that are bound to a specific location or are usually realized at the home, identifying the gatekeeper(s) might be necessary to prioritize what to realize first or in a specific order, or to find alternative means of or places for realization that can mitigate the gatekeeper effect. On the other hand, for goods and services with more flexible material requirements, there may be untapped

opportunities for synergies that may increase practitioners' overall effectiveness and impact. I am optimistic that the perspective of materiality, gatekeepers, and synergies can be used to consider and even promote opportunities for more cross-sector work and partnerships, and help practitioners more adeptly navigate these complex relationships. Additionally, I hope that this framework for understanding relationships among rights based on their materiality will encourage practitioners to consider how changes that improve efficiency may have unintended consequences, and to consider how to prevent inadvertently perpetuating or exacerbating inequalities.

### ***Limitations***

This study was bound by several analytical and practical limitations. First, my focus on the national field of ESR realization in South Africa simultaneously obscured some regional and local nuances that exist in this diverse country, while also limiting the study to the South African context. Second, in setting the boundary of the research as the field of ESR realization, I did not code and analyze all the information that my informants stated in interviews nor all of the secondary materials they shared with me, but only the information that I judged to be at least indirectly relevant to ESR realization. Notably, while I did not systematically study the right to health, I still coded for mentions of health care when it was discussed in interviews and used the example of the Treatment Action Campaign's trajectory and court victory to analyze differences between health care and other ESR. Third, by limiting the scope of this dissertation to economic and social rights in South Africa, I purposely did not look for other relationships between government goods and services that might be guaranteed elsewhere or that are not constitutionally guaranteed (for example: public transportation and transportation infrastructure). Finally, my focus on this specific time and place mean that even though I tried to be explicit

about what was specific to the South African context at what point in time, there are some nuances to this research that are unlikely to be generalizable.

### **Recommendations for Future Research**

For scholars of rights realization, this dissertation prompts further research on the specific differences that play a role in realizing different types of economic and social rights, relationships among a given right and other economic and social rights, and relationships between the same economic and social rights in different places and times. Looking at the discipline of sociology more generally, I believe that this research has the potential to spark ideas about how the material nature of economic and social goods and services shapes when, where, how, and to whom they are provided - as well as how they interact with each other. The concept of the materiality of goods and services could be of use for researchers interested in economic sociology, the state provision of goods and services compared to cash transfers, or studies of development, urbanization, and/or gentrification. Below I describe three recommendations for future research that develop these more general ideas and help to account for this study's limitations:

#### ***The Social Construction of Materiality***

While this dissertation has treated the materiality of rights (or simply goods and services) as largely static and universal, many attributes of these goods and services are socially constructed and bound by current—and at times culturally-specific—technology. One area for future research is analyzing which aspects of materiality are universal and which are culturally specific, and then researching whether and how the process of changing cultural understandings of what are acceptable or possible material characteristics for these goods and services can provide actors with more agency in the work of ESR realization.

### ***An Update on the ESR Field in South Africa***

This dissertation essentially froze time in South Africa in 2014. Yet much has happened—and much has stayed the same—since 2014, and as time goes on the status of the realization of the seven ESR in this dissertation will continue to evolve. In the almost five years since my fieldwork, South Africa has experienced a financial downturn, a severe water crisis in the Western Cape, and an increased focus on food security. Eskom (the national electricity provider) is in more debt than ever and being split into three organizations, SASSA has continued to be criticized for corrupt contracting, the government has begun funding substantial repairs to RDP housing which likely changes the calculation on the maintenance requirements for homes, and I have not seen any news of a move towards more *in situ* upgrading. This dissertation has laid the groundwork that would allow a researcher to focus in on one of these rights (and appropriately acknowledge the involved gatekeeper right or synergistic rights without having to research all of them) to update and add further nuance to our understanding of how the materiality of rights shapes their realization.

### ***Relationships Between Public Goods and Services, Not Just Rights, Not Just in South Africa***

Though I limited the scope of this research to economic and social rights in South Africa, I found that these relationships between ESR and patterns of their provision were only minimally influenced by their legal promises. I suspect there are also relationships with and between other public goods and services, especially health care and transportation, and this is an area for further research. Assuming these relationships between public goods and services do exist more generally and are informed by their materiality, this could pave the way for even further research on how the privatization of public infrastructure and rise of public-private partnerships may

shape the landscape of inequality and disparate access to, use of, and qualities of a variety of goods and services.

**APPENDIX A – COURT DECISIONS CITED**

Abahlali Basemjondolo Movement SA and Another v Premier of the Province of Kwazulu-Natal and Others (CCT12/09) [2009]

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013]

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2) [2014]

Beja and Others v Premier of the Western Cape and Others (21332/10) [2011]

City of Johannesburg and Others v Mazibuko and Others (489/08) [2009]

Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others (CCT 29/10) [2011]

Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000]

Joseph and Others v City of Johannesburg and Others (CCT 43/09) [2009]

Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development (CCT 13/03, CCT 12/03) [2004]

Legal Aid Board v S and Others (363/09) [2010]

Lindiwe Mazibuko & Others v City of Johannesburg & Others, Case CCT 39/09, [2009]

Minister of Health and Others v Treatment Action Campaign and Others (No 2) (CCT8/02) [2002]

Mkontwana v Nelson Mandela Metropolitan Municipality (CCT 57/03) Bissett and Others v Buffalo Municipality and Others (CCT 01/04) Transfer Rights Action Campaign and Others v MEC for Local Government and Housing Gauteng and Others (CCT 61/03) [2004] (Justice Yacoob wrote one decision for all three cases)

Ngalo v South African Social Security Agency (SASSA) (2740/11) [2013]

Rademan v Moqhaka Local Municipality and Others (CCT 41/12) [2013]

S v Mazibuko (A1246/2006) [2008]

Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another (CCT 23/12) [2012]

Treatment Action Campaign v Rath and Others (2807/05) [2006] ZAWCHC 8; [2007]

Xinwa and Others v Volkswagen of South Africa (Pty) Ltd (CCT3/03) [2003]

## APPENDIX B – INTERVIEW INVITATION TEMPLATES

### Template 1: To a Specific Individual

Dear <name>,

My name is Kate Gunby and I am a PhD candidate in Sociology at the University of Arizona in the United States.

I'm in <city> interviewing professionals and activists for my dissertation research on service delivery in South Africa. The premise of my research is that the government does not operate alone in providing social services. The legal system, companies, nonprofits, the media, and civil society all play a role in service delivery. My dissertation tries to explain how and why these different organizations cooperate or compete to bring about more or less service delivery, and how changes in one service area can affect other types of service delivery.

I'd like to interview you to learn your professional understanding of how these different organizations interact and how <your organization/group> fits into this bigger picture. Would it be possible to set up an interview sometime <date> to <date>?

Thank you,

Kate Gunby  
PhD Candidate  
School of Sociology  
University of Arizona

### Template 2: To an Organization

Hello,

My name is Kate Gunby and I am a PhD candidate in Sociology at the University of Arizona in the United States.

I'm in Johannesburg interviewing professionals and activists for my dissertation research on service delivery in South Africa. The premise of my research is that the government does not operate alone in providing social services. The legal system, companies, nonprofits, the media, and civil society all play a role in service delivery. My dissertation tries to explain how and why these different organizations cooperate or compete to bring about more or less service delivery, and how changes in one service area can affect other types of service delivery.

I'd like to interview someone at <organization> to learn their professional understanding of how these different organizations interact and how <organization> fits into this bigger picture. Who should I contact to set up an interview?

Thank you,

Kate Gunby  
PhD Candidate  
School of Sociology  
University of Arizona

Template 3: To a Government Agency  
Dear <recipient name or title>,

My name is Kate Gunby and I am a PhD candidate in Sociology at the University of Arizona in the United States.

I'm in Pretoria interviewing professionals for my dissertation research on service delivery in South Africa. I'd like to interview someone at <government agency> to learn their professional understanding of <government agency>'s successes in improving <service area> and <government agency>'s relationships with other types of organisations that are also involved in service delivery. Please let me know who I should contact to set up an interview.

Thank you,

Kate Gunby

**APPENDIX C – INFORMED CONSENT FORM**

Principle Investigator  
 Kate Gunby  
[gunby@email.arizona.edu](mailto:gunby@email.arizona.edu)  
 Phone (SA): 027-071-715-5647  
 Skype: kategunby

Office for the Responsible  
 Conduct of Research  
[VPR-IRB@email.arizona.edu](mailto:VPR-IRB@email.arizona.edu)  
 Phone (US): 001-520-626-0433

## Information Letter for Research Study

You are invited to take part in a study about service delivery in South Africa. This study is conducted by Kate Gunby, PhD Candidate in Sociology at the University of Arizona.

Participation in this study is voluntary. You may refuse to participate or withdraw from the study at any time without penalty. If you agree to this study, you will be interviewed for approximately one hour about service delivery issues.

There are no known risks to participating in this study. The only direct benefit of participating is knowing that you have helped increase understanding of service delivery. Please talk with Kate about other ways that she can help your organisation.

You may choose for any or all of your interview responses to be confidential. If you choose to keep your responses confidential, you will be assigned a number that will be used in place of personal information on all materials. Only Kate will have access to the name/numbers list, and this list will be destroyed after the study is completed.

If you agree, Kate will record your interview audio. Please let Kate know if you would like the recorder to be turned off at any time during the interview and she will stop the recording. You may review the recording and the subsequent transcript and request that any portion or all of the records be destroyed. All recordings and transcripts will be encrypted and password protected. All recordings and confidential transcripts will be destroyed when the research project is complete.

If you have any additional questions or wish to report a research-related program, you may contact Kate at any time. For questions about your rights as a research participant, or if you feel you have been placed at risk, you may contact the Human Subject Protection Program at the Office for the Responsible Conduct of Research by email at [VPR-IRB@email.arizona.edu](mailto:VPR-IRB@email.arizona.edu) or by phone at 001-520-626-0433.

Kate will provide a copy of this document for you to keep. Thank you for your participation!  
 Statement of Consent

I consent to participate in this study.

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 Name (Print)

---

 Name (Signature)

---

 Date

Kate may audio record this interview.	yes ___ no ___
Kate may use my name.	yes ___ no ___
Kate may use my organisation's name.	yes ___ no ___

## APPENDIX D – INTERVIEW INSTRUMENT

### Questions for All Interviewees

*(Shouldn't need to ask these)* I'm going to begin with some basic questions about your organization and its role in service provision.

- When was your organization founded?
- Where was your organization founded?
- What is your role in relation to the organization?
- Which of the following services does your job relate to: education, food, housing, social security, and/or water/sanitation? (interviewees with jobs involving multiple service areas will be asked the same list of questions for each service area)
- What are your organization's top priorities?
  - mission statement, goals, and priorities (of goals, tactics, or this year)

To begin, *(or Now,)* I want to get your feedback on my understanding of how <service area> provision has changed over time, why, and how your organization fits into this bigger picture. My data indicates that *(talk briefly about national and provincial changes in their service area since the end of apartheid to now, include when worst and when best)*.

- Does this seem accurate? What else should I know?
- What primarily accounts for these changes in <service area> service delivery over time? *(save this for later?)*
- What needs to happen in order to increase <service area> service delivery?
- What role does <your organization> play in <service area> service delivery?
  - How has this changed over time?
- How well does <your organization> play this role?
  - How has this changed over time?
- What are the major constraints you face when trying to increase service delivery?
- What would need to change to enable your organization to improve <service area> service delivery?
- If you were going to counsel someone starting out in <your organization type>, what would you tell them?

Now I'm going to ask about different types of organizations and stakeholders, their impact on service delivery, and how they interact with your organization and other *organizations like yours*.

- What role does <organization type> play in <service area> service delivery?
- How well does <organization type> play this role?
- Has this changed over time?
- How does your organization relate to <organization type> in relation to <service area> service delivery?
- How do other <their organization type> interact with <organization type from list below> in relation to <service area> service delivery?
  - government (national, provincial, local)

- the courts and judges
- attorneys
- legal centers
- nonprofit organizations
- for-profit companies
- activists and civil society
- the media
- *(ask after activists and civil society questions)* Have you ever encountered protesters while working?
  - What happened?
  - What did you do?
  - How often does this happen?

Now I've got some questions about who is prioritized in <service area> service delivery.

- Who receives most of the <service area> service delivery when resources are scarce?
- How are these priorities determined?
  - probes: urban vs. rural, ages, races, provinces, class, gender, household structure
- Who receives most of the <service area> service delivery when resources are plentiful?
- How are these priorities determined?
  - see above probes

Now I'm going to ask some questions about how <their service area> impacts and is impacted by other service areas.

- Do advances in one service area tend to either bring about or delay advances in other service areas and why?
- Have there been times when your organization has aided in a different type of service delivery?
  - When did this happen?
  - How did this happen?
  - Which other organizations were involved?
- Do you think that your organization may aid in different types of service delivery in the future?
  - What conditions would allow this to happen?

I've got some final questions before we conclude the interview:

- What should I have asked you that I didn't?
- Is there anything else you would like to add?
- Do you have any relevant documents that you would be willing to share or that are public that you recommend I look at?
- Who else would you recommend that I interview?
- Is it ok if I follow up with you via email if I have further questions?

Common Follow-Up Probes for More Information

- How has this changed over time?

- How has this helped or hindered service delivery?

#### Additional Questions for Judges, Lawyers, and Other Legal Professionals

- What is the nature of litigation involving service delivery?
- What are key cases and precedents in <service area> service delivery?
- Where is litigation and precedent likely to go in the near future?
- Do economic and social rights lawsuits tend to be settled and on what terms?
- What role do settlements vs. judgments play in shaping services?

#### For Judges

- How do you decide which cases to hear?

#### For Lawyers

- How do you decide which cases to pursue?
- How do you decide which cases to appeal?
- How do you decide which cases to try to settle?
- How do you find out about cases?
- Do you work with other legal outfits on the case?
- What is the role of litigation in relation to other activist strategies?

#### Additional Questions for Government Officials

- What role do the different levels of government play in <service area> service delivery?
- How do these different levels of government work together to bring about <service area> service delivery?
- What determines the government's budget for <service area> service delivery?
- Does your organization consider the Constitution or other legal documents to be a mandate for service delivery?

#### Additional Questions for Activists

- What do you think that activists and civil society can do to increase <service area> service delivery?
- In addition to increasing activism, what needs to be done to increase <service area> service delivery that is outside of the scope of activism and civil society?
- Where do you see activism going in the future?
- What have you learned from past activism that has influenced current and future strategies?

#### Additional Questions for Nonprofit Employees

- Where does your organization get its funding?
  - follow up: % from different sources
    - government (grants vs. contracts)
    - individual donors
    - corporate donors (sponsors = advertising for company, gift for nonprofit) (business partnership)
    - sales (commercial income) (vouchers???)
    - other

#### Additional Questions for Businesspeople

- Does engaging in service delivery effect your company's public reputation?
- How does your organization balance its money-making objectives with its commitment to public service?

## APPENDIX E – INTERVIEWEES

<b>Name</b>	<b>Title and Organization</b>	<b>Area(s) of Expertise</b>
Alex Jongens	Project Manager, Safety Lab	Government Contracting
Andrew Bennie	Co-operative and Policy Alternative Centre	Food, Nonprofits, Activism
Athish Kirun	Co-operative and Policy Alternative Centre	Food, Nonprofits, Activism
Barbara Dale-Jones	CEO, BRIDGE	Education, Nonprofits
Boyce Tom	Researcher, Trust for Community Outreach and Education (TCOE)	Agriculture, Land, Nonprofits
Carin Runciman	Senior Researcher at the Centre for Social Change, University of Johannesburg	Activism
Father Charles Prince	Parish Priest, Archdiocese of Cape Town	Catholic Church
Dale McKinley	APF before, now PhD and independent writer, researcher and lecturer	Service Delivery, Activism
Dalli Weyers	Confidential	Activism
Doron Isaacs	Deputy General Secretary at Equal Education	Education, Nonprofits
Elaine Gandhi	former MP and community activist	Government, Activism
General Alfred Moyo	Makause informal settlement	Service Delivery, Activism
Jared Sacks	Co-founder and Board Member, Children of South Africa	Housing, Children, Activism, Nonprofits, Journalism
John Reynolds	Head Neil Aggett Labour Studies Unit, Institute of Social and Economic Research at Rhodes University	
Joy Olivier	Co-Founder and Director, Ikamva Youth	Education, Nonprofits
Karam Singh	Head of Research at the South African Human Rights Commission	Human Rights
Kate Tissington	Senior Researcher, Socio-Economic Rights Institute of South Africa (SERI)	ESR, especially Housing Nonprofits, Housing and Utilities
Kathryn Hoeflich	Director, Cape Town Refugee Centre	
Kiru Naidoo	Senior Manager: Communications, Ministry of Human Settlements and Public Works, KwaZulu-Natal Province	Government
Liza Cirolia	Confidential	Housing
Luvo Vanyaza	Secretary, Mandela Park Backyarders	Housing, Activism
Marie Huchzermeyer	School of Architecture and Planning, University of Witwatersrand	Land
Mark Byerley	Manager: Research & Policy at eThekweni Municipality (Durban)	Government

Mark Walker	Director, Peninsula School Feeding Association	Food, Nonprofits
Lindela (Mashumi) Figlan	former Deputy President of Abahlali base Mjondolo (AbM, translation: people who live in shacks)	Housing, Activism
Maurice Smithers	National Coordinator at Awethu! A People's Platform for Social Justice	Nonprofits, Activism
Paddy Kearney	Project Coordinator for a community centre, former anti-apartheid activist, teacher, and long-time church employee	Catholic Church, Nonprofits, Activism, Education
Patricia Matolengwe	South African Homeless People's Federation (SAHPF), break away from Shack Dwellers International (SDI)	Housing, Nonprofits
Richard Ballard	Development Studies, University of KwaZulu-Natal	Development, Food
Richard Pithouse	Senior Researcher and Programme Coordinator at the Unit for Humanities at Rhodes University	Housing, Activism
Rudi Hillerman	Department of Cooperative Governance & Traditional Affairs	Rural Development, Government
Ryan Barfield	Senior Business Manager, Pick n Pay (Supermarket) Johannesburg area	Food, Business
Sasha Stevenson	Attorney in the Public Health Team, Section 27	Food, Law
Salim Vally	Associate Professor, Faculty of Education and Director: Centre for Education Rights and Transformation at University of Johannesburg	Education, Law
Simon Delaney	Owner and Director, Delaney Attorneys	Human Rights Law
Thulani Madondo	Director at Kliptown Youth Program	Education, Nonprofits
Trevor Ngwane	APF before, now a PhD student	Service Delivery, Activism
Tristan Taylor	Earthlife South Africa	Energy, Activism, Nonprofits
Tumi Ramahlele	Marikana Land Occupation	Housing, Activism
Viniyak Bhardwaj	Researcher and writer with Amabhungane - M&G's investigative outfit	Media
Vinodh Jaichand	Head of the Law Department at Wits	ESR, Law
Anonymous	Marikana Land Occupation	Housing, Activism
Anonymous	ESKOM	Electricity
Anonymous	Foodbank South Africa	Food, Nonprofits
Anonymous	Former Programme Manager at the Department of Public Service and Administration	Government, Nonprofits

Anonymous	Soweto Electricity Crisis Committee (SECC)	Electricity
Anonymous	Confidential	Electricity, Nonprofits, Activism
Anonymous	Confidential	Electricity, Nonprofits, Activism
Anonymous	Confidential	Nonprofits, International Donors
Anonymous	Confidential	Social and Environmental Justice

## APPENDIX F – ETHNOGRAPHIC OBSERVATIONS

<b>Description</b>	<b>Rights and/or Sectors</b>
Awethu! meeting at Wits The University of the Witwatersrand (Wits)	Activism, Nonprofit
Children’s homes visits to donate supplies	Children, Nonprofits, ESR
Democratic Left Front (DLF) meeting at Wits (#1)	Activism
DLF meeting at Wits (#2)	Activism
Feminist Table three-day workshop	Food, Nonprofits, Activism
Fundraiser for striking miners	Activism
Fundraiser for Susan Forgives	Nonprofits
Gauteng Strike Support Committee meeting at Wits	Activism
General Alfred Moyo court appearance and movement to postpone trial at Germiston Regional Magistrate's Court (see also SERI 2017)	Activism, Law and Courts
High School Leadership Programme in Pimville, Soweto	Education
Hillbrow walking tour	Housing and Quality of Life, Nonprofit
Johannesburg inner city walking tour	Housing and Quality of Life
Kliptown Youth Programme tour and observations	Nonprofit, Education
Mandela Week Community Outreach week visit in Mandeni Municipality	Government, ESR
Marikana Walk-Through final planning session	Activism
MES (Metro Evangelical Services and Mould Empower Serve) tour	Nonprofit, Housing and Utilities, Social Security, Education, Food
National Union of Metalworkers of South Africa meeting + Miners Shot Down video screening	Union and Activism
Picket for miners	Activism
SAHPF South African Homeless People’s Federation tour	Nonprofits, Housing, Utilities
Siyakhana Food Garden Project Tour	Food, Nonprofit
South African Sociological Association conference panel talks	Government Contracting, ESR, Activism and Academia
Soft Vengeance documentary screening and Q&A with former Constitutional Court Justice Albie Sachs	Law and Courts, Government, ESR
Soweto Electricity Crisis Committee meeting	Electricity, Activism
Strike Support Committee meeting	Activism
Tsakane Community Protest (traveled with SECC/OKM members)	Activism and ESR
UN Habitat III Planning Meeting Workshop	Development and ESR, Government, Nonprofits
World Design Capital pitching session	Nonprofits and Fundraising, Housing, Food, Education

## APPENDIX G – COMPLETE CODING LIST

Table G.1 Field Level Codes

Sensitizing Construct	Code	Sub-code	
Field's Opportunities and Constraints	Economy/Market		
	Geo-Political Climate		
	Historical Context		
	Natural Resources		Land
			Water
	National Policy, Rule, Regulation, or Procedure		Constitution
			Economic Policy
			Program

Table G.2 Rights-Level Codes

Sensitizing Construct	Code	Sub-code
Economic and Social Rights	Education	
	Electricity	
	Food	
	Health Care	
	Housing	
	Sanitation	
	Social Security	
	Water	
Materiality	Location	Public
		Private
		Home
	Material (Physical attributes)	Electricity
		Infrastructure
		Land/space
		Water
	Organizational (Technical)	Labor
	When/How Important	Implementation
		Maintenance
Quality		
Outcomes	Type of Outcome	Promised Outcome
		Expected Outcome
		Realized Outcome
	Gap in Outcomes	Gap Between Promise and Expectations
		Gap Between Promise and Reality
		Gap Between Expectations and Reality
	(Dis)Satisfaction	Dissatisfaction
		Satisfaction

	Change Over Time	
Relationships Between Rights	Relationship Between Rights	Gatekeeper
		Synergistic
	No Relationship Between Rights	

Table G.3 Actor-Level Codes

Sensitizing Construct	Code	Sub-code	Sub-sub-code
Actor	Government		Civil Servant
		Elected Office	Elected Official
		Legal System	Court
			Judge
			Attorney
		Local Department	Civil Servant
		Local Government	Civil Servant
		National Agency/Department	Civil Servant
	Political Party	Politician	
	Program		
	For-Profit	Law Firm	Attorney
		Private Company	Employee
	Civil Society	Activism (no Social Movement)	Activist
		Nonprofit	Employee
			Legal Center (SSSC: Attorney)
		Social Movement	Activist
	Union	Employee	
		Member	
	Public	People Without Formal Housing	
		Poor People	
		Specific Community	
		Wealthy People	
	School	Public	Teacher
Private		Teacher	
University		Teacher	
Contractor/Vendor	(co-occurs with other actor codes)		
Interests	Goal		
	Interest (generic)		
	Mission		
	Motivation		
	Priority		
	Strategy		
Value			
Capacities	Type of Capacity	Ability	
		Autonomy	
		Bureaucracy	

Tactics	Capacity (general)	Capacity (general)	
		Money	
		Partnership	
		Power	
		Skilled Personnel	
	Adequacy of Capacity	Good/Sufficient	
		Misallocated/Uneven	
		Not Enough	
		Too Much	
	Action (pertaining to the provision of an ESR)	Augment	
		Avoid	
		Build/Install	
		Buy	
Collect Data			
Corruption			
Discuss			
Donate			
Exhaust Options Sequentially			
Focus on Easy/Quick Solutions			
Get			
Maintain			
Provide			
Pursue Multiple Pathways at Once			
Sell			
Wait			
Interact (with another actor)		Compete	
		Coopt	
	Hire		
	Influence		
	Partner		
	Pressure		
	Resist		
	Siloed		
Train/Teach			
Law and Policy	Administer Law/Policy		
	Create Law/Policy		
	Enforce Law/Policy		
	Go to Court		
	Legal Implementation		
	Legal Interpretation		
Opportunities and Constraints	Constraint		
	Irrelevant		
	Opportunity		

## WORKS CITED

- Abahlali baseMjondolo. 2018. "Abahlali BaseMjondolo Website." Retrieved February 18, 2018 (<http://abahlali.org/>).
- Act, Housing. 1997. *Housing Act 107 of 1997*. Department of Human Settlements.
- Aguero, Jorge M., Michael R. Carter, and Ingrid Woolard. 2006. "The Impact of Unconditional Cash Transfers on Nutrition : The South African Child Support Grant." *Southern Africa Labour and Development Research Unit Working Paper Series 39*.
- Alexander, Peter. 2010. "Rebellion of the Poor: South Africa's Service Delivery Protests - a Preliminary Analysis." *Review of African Political Economy* 37(123):25–40.
- Alexander, Peter, Carin Runciman, and Boitumelo Maruping. 2016. "The Use and Abuse of Police Data in Protest Analysis South Africa's Incident Registration Information System (IRIS)." *SA Crime Quarterly* 58(1):9–21.
- Alter, Catherine and Jerald Hage. 1993. *Organizations Working Together*. Newbury Park, CA: Sage.
- Altman, M., T. G. B. Hart, and P. T. Jacobs. 2009. "Household Food Security Status in South Africa." *Agrekon* 48(4):345–61.
- Altman, Miriam, Tim G. B. Hart, and Peter T. Jacobs. 2009. "Household Food Security Status in South Africa." *Agrekon* 48(4):345–61.
- Alvarado, Leonardo J. 2015. "Advances and Ongoing Challenges in the Protection of Indigenous Peoples' Rights within the Inter-American System and the United Nations Special Procedures System." in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.
- Amable, Bruno. 2011. "Morals and Politics in the Ideology of Neo-Liberalism." *Socio-Economic*

*Review* 9(1):3–30.

- Amenta, Edwin. 1998. *Bold Relief: Institutional Politics and the Origins of Modern American Social Policy*. Princeton University Press.
- Amenta, Edwin. 2005. “State-Centered and Political Institutional Theories in Political Sociology: Retrospect and Prospect.” Pp. 96–114 in *The Handbook of Political Sociology*, edited by R. Alford, A. Hicks, T. Janoski, and M. A. Schwartz. New York: Cambridge University Press.
- Anon. 1996. *South African Schools Act*.
- Atapattu, Sumudu. 2015. “The Role of Human Rights Law in Protecting Environmental Rights in South Asia.” in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.
- Bakker, Karen. 2007. “The ‘Commons’ Versus the ‘Commodity’: Alter-Globalization, Anti-Privatization and the Human Right to Water in the Global South.” *Antipode* 39(3):430–55.
- Ballard, Richard, Adam Habib, and Imraan Valodia. 2006. *Voices of Protest: Social Movements in Post-Apartheid South Africa*. University of KwaZulu-Natal Press.
- Ballard, Richard, Adam Habib, Imraan Valodia, and Elke Zuern. 2005. “Globalization, Marginalization and Contemporary Social Movements in South Africa.” *African Affairs* 104/417:615–34.
- Banton, Vanessa. 2018. “CPS Ordered to Pay Back R316m to SASSA.” *News 24*. Retrieved January 26, 2019 (<https://www.news24.com/SouthAfrica/News/cps-ordered-to-pay-back-r316m-to-sassa-20180323>).
- Barkey, Karen and Sunita Parikh. 1991. “Comparative Perspectives on the State.” *Annual Review of Sociology* 17(1):523–49.
- Bauer, Nickolaus. 2014. “Ramaphosa -- the Comeback Kid of SA Politics.” *ENews Channel*

- Africa*. Retrieved April 21, 2019 (<https://www.enca.com/south-africa/ramaphosa-comeback-kid-sa-politics>).
- BBC. 2008. "SA's Mbeki Says He Will Step Down." *BBC Online*. Retrieved April 21, 2019 (<http://news.bbc.co.uk/2/hi/africa/7626646.stm>).
- BBC. 2013. "Cape Town 'Poo Wars': Mass Arrests in South Africa." *BBC*. Retrieved April 21, 2019 (<https://www.bbc.com/news/world-africa-22853095>).
- Beesley, Alan and Richard Ballard. 2013. "Cookie Cutter Cooperatives in the KwaZulu-Natal School Nutrition Programme." *Development Southern Africa* 30(2):250–61.
- Van der Berg, S. 2006. "Public Spending and the Poor since the Transition to Democracy." in *Poverty and Policy in Post-Apartheid South Africa*, edited by H. Bhorat and R. Kanbur. Cape Town: HSRC Press.
- Berger, Jonathan. 2008. "Litigating for Social Justice in Post-Apartheid South Africa: A Focus on Health and Education." Pp. 38–99 in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, edited by V. Gauri and D. M. Brinks.
- Bernstein, A. 1994. "NGO's and a Democratic South Africa." *Development and Democracy* 7:55–66.
- Bernstein, Marver. 1955. *Regulating Business by Independent Commission*. Princeton: Princeton University Press.
- Berrey, Ellen, Robert L. Nelson, and Laura Beth Nielsen. 2017. *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality*. Chicago: University of Chicago.
- Bester, J. W. and L. M. Austin. 2000. *Design, Construction, Operation and Maintenance of Ventilated Improved Pit Toilets in South Africa: Report to the Water Research Commission*.
- Bhorat, Haroon, Mbongiseni Buthelezi, Ivor Chipkin, Sukhulekile Duma, Lumkile Mondli,

- Camaren Peter, Mzukisi Qobo, Mark Swilling, and Hannah Friedenstien. 2017. "Betrayal of the Promise: How South Africa Is Being Stolen." *State Capacity Research Project*. Retrieved April 21, 2019 (<https://cornerstone.ac.za/wp-content/uploads/2017/07/Betrayal-of-the-promise-How-South-Africa-is-being-Stolen.pdf>).
- Bianco, Silvia. 2013. "South Africa: The 'Protest Capital of the World.'" *The South African*. Retrieved March 27, 2014 (<https://www.thesouthafrican.com/south-africa-the-protest-capital-of-the-world/>).
- Biersteker, Linda. 2013. "Children's Right to Early Childhood Development." in *Education Rights Project*, edited by S. Vally.
- Bilchitz, D. 2007. *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*. Oxford: Oxford University Press.
- Black Sash. 2018. "You and Your Rights: Social Grants." Retrieved January 26, 2019 (<https://www.blacksash.org.za/images/yourrights/aprilseptember2018/allEnglish2018.pdf>).
- Block, Fred. 1980. "Beyond Relative Autonomy: State Managers as Historical Subjects." *Socialist Register* 17.
- Bohatch, Trevor. 2017. "What's Causing Cape Town's Water Crisis? | GroundUp." *GroundUp*. Retrieved August 25, 2018 (<https://www.groundup.org.za/article/whats-causing-cape-towns-water-crisis/>).
- Bond, Patrick. 2002. *Unsustainable South Africa: Environment, Development and Social Protest*. Pietermaritzburg: University of KwaZulu-Natal Press.
- Bond, Patrick and Meshack Khosa, eds. 1999. *An RDP Policy Audit*. South Africa: Human Sciences Research Council Press.
- Bond, Patrick and Angela Tait. 1997. "The Failure of Housing Policy in Post-Apartheid South

- Africa.” *Urban Forum* 8(1):19–41.
- Bonner, Philip. 2012. “Fragmentation and Cohesion in the ANC: The First 70 Years.” in *One Hundred Years of the ANC: Debating Liberation Histories Today*, edited by A. Lissoni, J. Soske, N. Erlank, N. Nieftagodien, and O. Badsha. Johannesburg: Witwatersrand University Press.
- Boulle, Jacqui and Tenu Avafia. 2005. “Evaluation of the TAC.” Retrieved April 21, 2019 (<http://www.tac.org.za>).
- Breckenridge, Tiffany Ann, Christine Black-Hughes, John Rautenbach, and Michelle McKinley. 2017. “HIV/AIDS Orphans in South Africa: NGO Interventions Supporting Transitions to Alternative Care.” *International Social Work*.
- Broadhead, Robert S. and Ray C. Rist. 1976. “Gatekeepers and the Social Control of Social Research.” *Social Problems* 23(3):325–36.
- Brunette, Ryan, Ivor Chipkin, Gumani Tshimomola, and Sarah Meny-Gibert. 2014. “The Contract State: Outsourcing and Decentralisation in Contemporary South Africa.” Retrieved April 21, 2019 (<https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2017/05/PARI-The-Contract-State-01082014.pdf>).
- Butler, Anthony. 2005. “How Democratic Is the African National Congress?” *Journal of Southern African Studies* 31(4):719–36.
- Butler, Anthony and Roger Southall. 2015. “Introduction: Understanding the ANC at Sub-National Level.” *Transformation* 87(1):1–12.
- Case, Anne and Angus Deaton. 1998. “Large Cash Transfers to the Elderly in South Africa.” *The Economic Journal* 108(450):1330–61.
- Case, Anne, Victoria Hosegood, and Frances Lund. 2005. “The Reach and Impact of Child

- Support Grants: Evidence from KwaZulu-Natal.” *Development Southern Africa* 22(4):467–82.
- Centeno, Miguel A. and Joseph N. Cohen. 2012. “The Arc of Neoliberalism.” *Annual Review of Sociology* 38(1):317–40.
- Chance, Kerry. 2010. “The Work of Violence: A Timeline of the Armed Attacks at Kennedy Road.” *School of Development Studies Research Report*, 83. Retrieved February 27, 2014 ([https://web.archive.org/web/20150217013112/http://sds.ukzn.ac.za/files/RR\\_83\\_Chance.pdf](https://web.archive.org/web/20150217013112/http://sds.ukzn.ac.za/files/RR_83_Chance.pdf)).
- Chipkin, Ivor. 2016. “The State, Capture and Revolution in Contemporary South Africa.” *Public Affairs Research Institute (PARI), University of the Witwatersrand, August 2016*. Retrieved April 21, 2019 (<http://47zhcvti0ul2ftip9rxo9fj9.wpengine.netdna-cdn.com/wp-content/uploads/2017/05/08-August-2016-State-Capture-and-Revolution-Working-Paper-2-ilovepdf-compressed.pdf>).
- Chipkin, Ivor. 2017. “The Politics of Corruption in South Africa.” in *Governance, Resistance and the Post-Colonial State: Management and State Building*, edited by J. Murphy and J. Nimruji. London: Taylor & Francis.
- Chitiga-Mabugu, Margaret and Nara Monkam. 2013. *Assessing Fiscal Capacity at the Local Government Level in South Africa*.
- City of Cape Town. 2018. “Think Water.” Retrieved August 25, 2018 ([http://www.capetown.gov.za/Family\\_and\\_home/residential-utility-services/residential-water-and-sanitation-services/make-water-saving-a-way-of-life](http://www.capetown.gov.za/Family_and_home/residential-utility-services/residential-water-and-sanitation-services/make-water-saving-a-way-of-life)).
- Clemens, Elisabeth S. 2003. “Rereading Skowronek: A Precocious Theory of Institutional Change.” *Social Science History* 27(3):443–53.

- Communications, Government. 2017. "South Africa Yearbook 2016/17." Retrieved (<https://www.gcis.gov.za/content/resourcecentre/sa-info/yearbook2016-17>).
- Constitution of the Republic of South Africa. 1996. *Constitution of the Republic of South Africa*.
- CORC, FEDUP, ISN, and UTshani Fund. 2012. "Grey Water Project Starts in Kwa-Mathambo, Durban." *Shack Dwellers International South African Alliance*. Retrieved April 21, 2019 (<https://www.sasdialliance.org.za/grey-water-project-starts-in-kwa-mathambo-durban/>).
- Crane, Diana. 1967. "The Gatekeepers of Science: Some Factors Affecting the Selection of Articles for Scientific Journals." *The American Sociologist* 2(4):195–201.
- Davis, Rebecca. 2017. "National Development Plan: Five Years on, Are Celebrations Really in Order?" *Daily Maverick*, September 13.
- Department of Energy. 2018. "Free Basic Electricity FAQ's." Retrieved September 2, 2018 ([http://www.energy.gov.za/files/faqs/faqs\\_freebasic.html](http://www.energy.gov.za/files/faqs/faqs_freebasic.html)).
- Department of Human Settlements. 2009. "The National Housing Code: Technical and General Guidelines." Retrieved August 25, 2018 ([http://www.dhs.gov.za/sites/default/files/documents/national\\_housing\\_2009/2\\_Technical\\_General\\_Guidelines/1\\_Vol\\_2\\_Part\\_3\\_Technical\\_and\\_General\\_Guidelines.pdf](http://www.dhs.gov.za/sites/default/files/documents/national_housing_2009/2_Technical_General_Guidelines/1_Vol_2_Part_3_Technical_and_General_Guidelines.pdf)).
- Department of Human Settlements. 2015. "National Department of Human Settlement." Retrieved March 28, 2019 (<http://www.dhs.gov.za/>).
- Department of Social Development, South African Social Security Agency, and UNICEF. 2011. *Child Support Grant Evaluation 2010: Qualitative Research Report*. Pretoria, South Africa.
- Department of Social Development, South African Social Security Agency, and United Nations Children's Fund. 2011. *Child Support Grant Evaluation 2010 Qualitative Research Report*.
- Department of Water Affairs and Forestry. 1994. *Water Supply and Sanitation Policy White*

- Paper: Water-an Indivisible National Asset.* Cape Town.
- Department of Welfare. 1997. *White Paper for Social Welfare.* Pretoria, South Africa.
- Devereux, Stephen, J. Allister McGregor, and Rachel Sabates-Wheeler. 2011. "Introduction: Social Protection for Social Justice." *IDS Bulletin* 42(6):1–9.
- Dezalay, Yves and Bryant G. Garth. 1996. *Dealing in Virtue: International Commercial Arbitration and The Construction of a Transnational Legal Order.* Chicago, IL: University of Chicago Press.
- Dezalay, Yves and Bryant G. Garth. 2002. *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States.* Chicago, IL: University of Chicago Press.
- DiMaggio, Paul J. and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields." *American Sociological Review* 48(2):147.
- Dobbin, Frank. 2009. *Inventing Equal Opportunity.* Princeton University Press.
- Dugard, Jackie, Tshepo Madlingozi, and Kate Tissington. 2012. "Rights-Compromised or Rights-Savvy? An Examination of Socio-Economic Rights Claiming by Abahlali BaseMjondolo, the South African Shack-Dwellers' Movement." in *Discussion paper presented at the Law and Society Association Annual Conference.*
- Dugard, Jackie and Kate Tissington. 2009. "Why Cape Legal Twist Looks Like a Demolition of Justice for Poor." *Business Day.* Retrieved April 21, 2019 ([https://www.stbb.co.za/our\\_success/why-cape-legal-twist-looks-like-a-demolition-of-justice-for-poor/](https://www.stbb.co.za/our_success/why-cape-legal-twist-looks-like-a-demolition-of-justice-for-poor/)).
- Dugard, Jackie and Kate Tissington. 2012. "Civil Society and Protest in South Africa: A View

from 2012.”

DWA Directorate: Water Services Planning & Information. 2013. “Strategic Overview of the Water Sector in South Africa.” Retrieved April 21, 2019 (<http://nepadwatercoe.org/wp-content/uploads/Strategic-Overview-of-the-Water-Sector-in-South-Africa-2013.pdf>).

DWAF. 2009. “Water Service Institutions.” Retrieved August 25, 2018 (<http://www.dwaf.gov.za/IO/wsi.aspx>).

Earl, Jennifer. 2011. “Political Repression: Iron Fists, Velvet Gloves, and Diffuse Control.” *Annual Review of Sociology* 37(1):261–84.

Economic Development Department. 2011. *New Growth Path Framework*.

Edelman, Lauren B. 2016. *Working Law: Courts, Corporations, and Symbolic Civil Rights*. University of Chicago Press.

Edelman, Lauren B. and Robin Stryker. 2005. “A Sociological Approach to Law and the Economy.” Pp. 527–51 in *The Handbook of Economic Sociology*, edited by N. J. Smelser and R. Swedberg. Princeton University Press.

Edwards, Bob and John D. McCarthy. 2004. “Resources and Social Movement Mobilization.” Pp. 116–52 in *The Blackwell Companion to Social Movements*, edited by D. A. Snow, S. A. Soule, and H. Kriesi. Blackwell Publishing Ltd.

Egan, Anthony and Alex Wafer. 2004. *The Soweto Electricity Crisis Committee*.

Electoral Commission. 2016. “Electoral Commission on 2016 Municipal Elections.” *Electoral Commission of South Africa*, June 6.

Electoral Commission of South Africa. 2018. “Electoral Commission of South Africa Website.” Retrieved April 18, 2019 (<https://www.elections.org.za>).

eNCA. 2013. “Thousands of Unqualified Teachers Are Teaching SA Children | ENCA.” *ENCA*.

- Retrieved March 30, 2019 (<https://www.enca.com/south-africa/thousands-unqualified-teachers-sa-schools>).
- Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago, IL: University of Chicago Press.
- Epp, Charles R. 2009. *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. Chicago, IL: University of Chicago Press.
- Equal Education. 2013. "School Infrastructure." Retrieved March 30, 2019 (<https://equaleducation.org.za/campaigns/school-infrastructure/>).
- Equal Education. 2016. "Press Statement: Upcoming 2015 Matric Results Require Careful Scrutiny!" Retrieved March 23, 2019 (<http://old.equaleducation.org.za/article/2016-01-03-upcoming-2015-matric-results-require-careful-scrutiny>).
- Equal Education. 2019. "Our Movement." Retrieved March 31, 2019 (<https://equaleducation.org.za/our-movement/>).
- ESCR Caselaw Database. 2010. "Joseph v. the City of Johannesburg 2010 (4) SA 55 (CC) | ESCR-Net." *ESCR-Net*. Retrieved August 27, 2018 (<https://www.escr-net.org/caselaw/2011/joseph-v-city-johannesburg-2010-4-sa-55-cc>).
- Eskom. 2011. *Appliance Usage*.
- Eskom. 2017. "Eskom Load Shedding." Retrieved March 25, 2019 (<http://loadshedding.eskom.co.za/LoadShedding/Description>).
- Eskom. 2018. "Homepage." *Eskom Website*. Retrieved April 21, 2019 (<http://www.eskom.co.za/>).
- Eskom. 2019. "Illegal Connections." Retrieved March 25, 2019 (<http://www.eskom.co.za/AboutElectricity/PubSafety/Pages/Connections.aspx>).

- ESRC. 2002. "Summary: Minister of Health v Treatment Action Campaign (TAC) (2002) 5 SA 721 (CC)." *ESRC-Net.Org*. Retrieved March 14, 2019 (<https://www.esrc-net.org/caselaw/2006/minister-health-v-treatment-action-campaign-tac-2002-5-sa-721-cc>).
- Evans, Peter B., Dietrich Rueschemeyer, and Theda Skocpol. 1985. *Bringing the State Back In*. New York: Cambridge University Press.
- Evans, Rhonda and Tamara Kay. 2008. "How Environmentalists 'Greened' Trade Policy: Strategic Action and the Architecture of Field Overlap." *American Sociological Review* 73(6):970–91.
- Felstiner, William, Richard Abel, and Austin Sarat. 1981. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law and Society Review* 4(3–4):631.
- Finn, Meghan. 2016. *AllPay Remedy: Dissecting the Constitutional Court's Approach to Organs of State*.
- Fleming, Samantha, Collette Herzenberg, and Cherrel Africa. 2003. *Civil Society, Public Participation and Bridging the Inequality Gap in South Africa*.
- Fligstein, Neil. 1991. "The Structural Transformation of American Industry: An Institutional Account of the Causes of Diversification in the Largest Firms, 1919-1979." in *New Institutionalism in Organizational Analysis*, edited by W. W. Powell and P. J. DiMaggio. University of Chicago Press.
- Fligstein, Neil and Doug McAdam. 2011. "Toward a General Theory of Strategic Action Fields." *Sociological Theory* 29(1).
- Fligstein, Neil and Doug McAdam. 2012. *A Theory of Fields*. Oxford University Press.
- Fligstein, Neil and Alec Stone Sweet. 2002. "Constructing Politics and Markets: An Institutional Account of European Integration 1." *American Journal of Sociology*

107(5):1206–43.

Food Action Research Center. 2008. “Children Nutritional Fact Sheet: Breakfast for Learning.”

FoodForward South Africa. 2015a. *FoodBank SA Annual Financial Statements 2015*. Cape Town, South Africa.

FoodForward South Africa. 2015b. *FoodBank SA Annual Report 2015*. Cape Town, South Africa.

Foster, Douglas. 2012. *After Mandela: The Struggle for Freedom in Post-Apartheid South Africa*. New York: W. W. Norton & Company.

Fourcade-Gourinchas, Marion and Sarah L. Babb. 2002. “The Rebirth of the Liberal Creed: Paths to Neoliberalism in Four Countries.” *American Journal of Sociology* 108(3):533–79.

Frye, Isobel. 2017. “Social Grants Falling as Share of State Expenditure | GroundUp.” *Ground Up*. Retrieved February 18, 2019 (<https://www.groundup.org.za/article/shrinking-share-social-grants/>).

Galanter, Marc. 1974. “Why the ‘Haves’ Come out Ahead : Speculations on the Limits of Legal Change.” *Law & Society Review* 9(1):165–230.

Gauri, Varun. 1998. *School Choice in Chile : Two Decades of Educational Reform*. Pittsburgh, PA: University of Pittsburgh Press.

Gauri, Varun and Daniel M. Brinks. 2008. *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*.

Gauri, Varun and Daniel M. Brinks. 2015. “The Impact of Legal Strategies for Claiming Economic and Social Rights.” in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.

Gauri, Varun and Siri Gloppen. 2012. “Human Rights-Based Approaches to Development:

- Concepts, Evidence, and Policy.” *Polity* 44(4):485–503.
- Gibson, Nigel. 2011. *Living Fanon: Interdisciplinary Perspectives*. edited by P. Macmillan. London.
- Gibson, Nigel C. 2007. “Zabalaza, Unfinished Struggles against Apartheid: The Shackdwellers’ Movement in Durban.” *Socialism and Democracy* 21(3):60–96.
- Gilbert, Jess and Carolyn Howe. 1991. “Beyond ‘State vs. Society’: Theories of the State and New Deal Agricultural Policies.” *American Sociological Review* 56(2):204–20.
- Gloppen, Siri. 2005. “Social Rights Litigation as Transformation: South African Perspectives.” Pp. 153–80 in *Democratising Development: The Politics of Socio-Economic Rights in South Africa.*, edited by P. Jones and K. Stokke. Kluwer Academic Publishers.
- Gloppen, Siri. 2006. “Courts and Social Transformation: An Analytical Framework.” Pp. 35–59 in *Courts And Social Transformation in New Democracies: An Institutional Voice for the Poor?*, edited by R. Gargarella, P. Domingo, and T. Roux. Ashgate.
- Goldin, Jaqueline Ann. 2010. “Water Policy in South Africa: Trust and Knowledge as Obstacles to Reform.” *Review of Radical Political Economics* 42(2):195–212.
- Goodale, Mark. 2009. *Surrendering to Utopia: An Anthropology of Human Rights*. Stanford University Press.
- Goodale, Mark and Sally Engle Merry. 2007. *The Practice of Human Rights: Tracking Law between the Global and the Local*. edited by M. Goodale and S. E. Merry. Cambridge: Cambridge University Press.
- Goold, Michael and Andrew Campbell. 1998. “Desperately Seeking Synergy.” *Harvard Business Review*.
- Govender, Predeshni. 2016. “The Implementation of the National School Nutrition Programme

- in Addressing Child Poverty in Selected Schools within the EThekweni Region.” Retrieved February 2, 2019 ([https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/14971/Govender\\_Predeshni\\_2016.pdf](https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/14971/Govender_Predeshni_2016.pdf)).
- Graham, Victoria, Yolanda Sadie, and Leila Patel. 2016. “Social Grants, Food Parcels and Voting Behaviour: A Case Study of Three South African Communities.” *Transformation: Critical Perspectives on Southern Africa* 91(1):106–35.
- Grantham-McGregor, Sally. 2005. “Can the Provision of Breakfast Benefit School Performance?” *Food and Nutrition Bulletin* 26(2\_suppl2):S144–58.
- de Greef, Kimon. 2018. “After Children Die in Pit Toilets, South Africa Vows to Fix School Sanitation.” *New York Times*. Retrieved March 31, 2019 (<https://www.nytimes.com/2018/08/14/world/africa/south-africa-school-toilets.html>).
- Guzula, Xolisa, Nadeema Jogee, Mahobe Ntombizanele, and Malusi Ntoyapi. 2013. “Reading Clubs and Community Literacy.” P. 19 in *Education Rights Project*, edited by S. Vally.
- Haarman, Dirk. 1998. “From State Maintenance Grants to a New Child Support System: Building a Policy for Poverty Alleviation with Special Reference to the Financial, Social, and Developmental Impacts.” University of the Western Cape.
- Habib, Adam and Rupert Taylor. 1999. “South Africa: Anti-Apartheid NGOs in Transition.” *Voluntas* Vol. 10(No.1):73–82.
- Haglund, LaDawn. 2010. *Limiting Resources : Market-Led Reform and the Transformation of Public Goods*. Pennsylvania State University Press.
- Haglund, LaDawn and Rimjhim Aggarwal. 2011. “Test of Our Progress: The Translation of Economic and Social Rights Norms Into Practice.” *Journal of Human Rights* 10(4):494–

520.

- Haglund, LaDawn and Robin Stryker. 2015. *Closing the Rights Gap: From Human Rights to Social Transformation*. edited by L. Haglund and R. Stryker. University of California Press.
- Haldenwang, B. B. 2009. "The State of Water in South Africa: Are We Heading for a Crisis?" Retrieved August 25, 2018 (<http://scholar.sun.ac.za/handle/10019.1/42425>).
- Hall, Katharine. 2014. "Children's Access to Housing." *Children's Institute, University of Cape Town* 28(1):2014–16. Retrieved April 21, 2019 ([http://www.ci.uct.ac.za/sites/default/files/image\\_tool/images/367/Child\\_Gauge/South\\_African\\_Child\\_Gauge\\_2015/Child\\_Gauge\\_2015-CC\\_housing.pdf](http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/Child_Gauge/South_African_Child_Gauge_2015/Child_Gauge_2015-CC_housing.pdf)).
- Hall, Katharine, Annie Leatt, and Jo Monson. 2006. "Accommodating the Poor: The Free Basic Water Policy and the Housing Subsidy Scheme." *Children's Institute, University of Cape Town* 57–62. Retrieved March 23, 2019 ([http://www.ci.uct.ac.za/sites/default/files/image\\_tool/images/367/Child\\_Gauge/South\\_African\\_Child\\_Gauge\\_2006/gauge2006\\_accom.pdf](http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/Child_Gauge/South_African_Child_Gauge_2006/gauge2006_accom.pdf)).
- Handler, Joel. 1966. "Controlling Official Behavior in Welfare Administration." *California Law Review* 54(2).
- Handler, Joel. 1978. *Social Movements and the Legal System: A Theory of Law Reform and Social Change*. New York: Academic Press Inc.
- Hertel, Shareen and Susan Randolph. 2015. "The Challenge of Ensuring Food Security: Global Perspectives and Evidence from India." in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.
- Heywood, Mark. 2003. "Preventing Mother-to-Child HIV Transmission in South Africa: Background Strategies and Outcomes of the Treatment Action Campaign Case against the

- Minister of Health.” *South African Journal on Human Rights* 19.
- Heywood, Mark. 2009. “South Africa’s Treatment Action Campaign: Combining Law and Social Mobilization to Realize the Right to Health.” *Journal of Human Rights Practice* 1(1):14–36.
- Hooks, Gregory. 1990. “From an Autonomous to a Captured State Agency: The Decline of the New Deal in Agriculture.” *American Sociological Review* 55(1):29.
- Huber, Evelyne and John D. Stephens. 2000. “Partisan Governance, Women’s Employment, and the Social Democratic Service State.” *American Sociological Review* 65(3):323.
- Human Sciences Research Council. 2017. “The Health of Educators in Public Schools in South Africa Fact Sheet.” Retrieved March 31, 2019 ([http://www.hsrc.ac.za/uploads/pageContent/8248/Fact sheet\\_HAST and DBE\\_14 June 2017.pdf](http://www.hsrc.ac.za/uploads/pageContent/8248/Fact%20sheet_HAST%20and%20DBE_14%20June%202017.pdf)).
- IkamvaYouth. 2019. “Impact.” Retrieved February 19, 2019 (<http://ikamvayouth.org/impact/>).
- Inter-Regional Inequality Facility. 2006. *Policy Brief 1*.
- Jenkins, J. Craig. 1983. “Resource Mobilization Theory and the Study of Social Movements.” *Annual Review of Sociology* 9(1):527–53.
- Jenkins, J. Craig, David Jacobs, and Jon Agnone. 2016. “Political Opportunities and African - American Protest , 1948 – 1997 Political Opportunities and African- American Protest , 1948 – 1997 1.” 109(2):277–303.
- Jones, Peris and Kristian Stokke. 2005. *Democratising Development: The Politics of Socio-Economic Rights in South Africa*. Boston, MA: Martinus Nijhoff Publishers.
- Joubert, Pearlie. 2008. “Grootboom Dies Homeless and Penniless.” *Mail & Guardian*. Retrieved September 17, 2018 (<https://mg.co.za/article/2008-08-08-grootboom-dies-homeless-and->

penniless).

Jung, Courtney, Ran Hirschl, and Evan Rosevear. 2014. *Economic and Social Rights in National Constitutions*. Vol. 62. Oxford University Press.

Kaersvang, Dana. 2008. "Equality Courts in South Africa: Legal Access for the Poor." *Journal of the International Institute* 15(2).

Kaletski, Elizabeth, Lanse Minkler, Nishith Prakash, and Susan Randolph. 2016. "Does Constitutionalizing Economic and Social Rights Promote Their Fulfillment?" *Journal of Human Rights* 15(4):433–53.

Kennedy Road Development Committee. 2009. "Kennedy Road Development Committee Attacked – People Have Been Killed." *Abahlali BaseMjondolo Website*. Retrieved April 21, 2019 (<http://abahlali.org/node/5770/>).

Khosa, Priscalia and Edwell Kaseke. 2017. "The Utilisation of the Child Support Grant by Caregivers: The Case of Ba-Phalaborwa Municipality in Limpopo Province." *Social Work* 53(3):356–67.

Kitschelt, Herbert. 1986. "Political Opportunity Structures and Political Protest: Anti-Nuclear Movement in Four Democracies." *British Journal of Political Science* 16(1):57–85.

Kliptown Youth Program. 2019. "About." Retrieved February 19, 2019

(<https://www.kliptownyouthprogram.org.za/about-20>).

Klug, Heinz. 2000. *Constituting Democracy: Law, Globalism, and South Africa's Political Reconstruction*. Cambridge: Cambridge University Press.

Klug, Heinz. 2010. *The Constitution of South Africa : A Contextual Analysis*. Hart Publishing.

Klug, Heinz. 2011. "Access to Medicines and the Transformation of the South African State: Exploring the Interactions of Legal and Policy Changes in Health, Intellectual Property,

- Trade, and Competition Law in the Context of South Africa's HIV/AIDS Pandemic." *Law & Social Inquiry* 37(2):297–329.
- Klug, Heinz. 2015a. "Achieving Rights to Land, Water, and Health in Post-Apartheid South Africa." in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.
- Klug, Heinz. 2015b. "Constitutionalism, Comparative." *International Encyclopedia of the Social & Behavioral Sciences* 704–9.
- Kriesi, Hanspeter, Ruud Koopmans, Jan Duyvendak, and Marco Giugni. 1992. "New Social Movements and Political Opportunities in Western Europe." *European Journal of Political Research* 22(2):219–44.
- Kumaran, Muthusami, Norma Samuel, and Lauren Winston. 2012. "The Ngo Sector in South Africa: History, Issues and Prospects." *Journal for Development and Leadership* 1(2):31–46.
- Kurzman, Charles. 2011. "Structural Opportunity and Perceived Opportunity in Social-Movement Theory: The Iranian Revolution of 1979." *American Sociological Review* 61(1):153–70.
- Langford, Malcolm. 2008. *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. New York: Cambridge University Press.
- Langford, Malcolm, Ben Cousins, Jackie Dugard, and Tshepo Madlingozi. 2014. *Socio-Economic Rights in South Africa: Symbols or Substance?* New York: Cambridge University Press.
- Larsson, Rikard and Sydney Finkelstein. 1999. "Integrating Strategic, Organizational, and Human Resource Perspectives on Mergers and Acquisitions: A Case Survey of Synergy

- Realization.” *Organization Science* 10(1):1–26.
- Latham & Watkins LLP. 2016. “A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions.” Retrieved March 24, 2019 ([https://www.lw.com/admin/Upload/Documents/Global Pro Bono Survey/A-Survey-of-Pro-Bono-Practices-and-Opportunities.pdf](https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/A-Survey-of-Pro-Bono-Practices-and-Opportunities.pdf)).
- Lempert, Richard. 1999. “A Classic at 25: Reflections on Galanter’s ‘Haves’ Article and Work It Has Inspired.” *Law and Society Review* 33(4):1099–1112.
- Lempert, Richard O. and Joseph Sanders. 1986. *An Invitation to Law and Social Science: Desert, Disputes, and Distribution*. Longman.
- Lodge, Tom. 2002. “The RDP: Delivery and Performance” in “Politics in South Africa.” Pp. 54–69 in *Politics in South Africa: From Mandela to Mbeki*, edited by D. Philip. Capetown: David Philip, an imprint of New Africa Books (Pty) Ltd.
- Lodge, Tom. 2003. *Politics in South Africa: From Mandela to Mbeki*. 2nd ed. Cape Town, South Africa: Indiana University Press.
- Louw, Wim. 2014. “The South African Electoral System.” *Helen Suzman Foundation*. Retrieved April 18, 2019 (<https://hsf.org.za/publications/hsf-briefs/the-south-african-electoral-system>).
- Majavu, Anna. 2009. “Sowetan: City Gives Law Firm the Boot.” *Sowetan*. Retrieved April 21, 2019 (<http://abahlali.org/node/5428/>).
- Mandela, Nelson. 1994. *Long Walk to Freedom*. South Africa: Macdonald Purnell.
- Maphosa, Cosmas, Edmore Mutekwe, Severino Machingambi, Newman Wadesango, and Amasa Ndofirepi. 2012. “Teacher Accountability in South African Public Schools: A Call for Professionalism from Teachers.” *The Anthropologist* 14(6):545–53.

- March, James G. and Johan P. Olsen. 1984. "The New Institutionalism: Organizational Factors in Political Life." *American Political Science Review* 78(03):734–49.
- Marishanee, Koketso. 2017. "Here's Why SA Has More Tenderpreneurs Than Innovators." *HuffPost*, February 8.
- Mbeki, Thabo. 2003. "Bold Steps to End the 'Two Nations' Divide." *ANC Today*, August 22.
- McAdam, Doug. 1982. *Political Process and the Development of Black Insurgency, 1930-1970*. Chicago: University of Chicago Press.
- McAdam, Doug and Ronnelle Paulsen. 1993. "Specifying the Relationship Between Social Ties and Activism." *American Journal of Sociology* 99(3):640–67.
- McCammon, Holly J., Karen E. Campbell, Ellen M. Granberg, and Christine Mowery. 2001. "How Movements Win: Gendered Opportunity Structures and U.S. Women's Suffrage Movements, 1866 to 1919." *American Sociological Review* 66(1):49.
- McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: University of Chicago Press.
- McCarthy, John D. and Mayer N. Zald. 1977. "Resource Mobilization and Social Movements: A Partial Theory." *American Journal of Sociology* 82(6):1212–41.
- McConnachie, Chris, Ann Skelton, and Cameron McConnachie. 2015. "The Constitution and the Right to a Basic Education." Retrieved February 18, 2019 (<http://section27.org.za/wp-content/uploads/2017/02/Chapter-1.pdf>).
- McDonald, David A. 2009. *Electric Capitalism: Recolonising Africa on the Power Grid*. Routledge.
- McDonald, David A. (David Alexander) and Greg Ruiters. 2005. *The Age of Commodity: Water Privatization in Southern Africa*. Earthscan.

- McKinley, Dale T. 2017. *South Africa's Corporatised Liberation*. Cape Town, South Africa: Jacana.
- McKune, Craig. 2016. "How SASSA Paid R316-Million to a Contractor Based on a 'Lie.'" *Mail & Guardian*. Retrieved April 21, 2019 (<https://mg.co.za/article/2016-09-30-00-how-sassa-paid-r316-million-to-a-contractor-based-on-a-lie>).
- Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. University of Chicago Press.
- Mertern, Marianne and SAPA. 2014. "Motlanthe and Manuel Bow Out." *IOL*. Retrieved April 21, 2019 ([https://www.iol.co.za/news/politics/motlanthe-and-manuel-bow-out-1659815#.UyUjhB\\_\\_6b4](https://www.iol.co.za/news/politics/motlanthe-and-manuel-bow-out-1659815#.UyUjhB__6b4)).
- Meyer, D. S. and D. C. Minkoff. 2004. "Conceptualizing Political Opportunity." *Social Forces* 82(4):1457–92.
- Meyer, David S. 2004. "Protest and Political Opportunities." *Annual Review of Sociology* 30:125–45.
- Meyer, John W. and Brian Rowan. 1977. "Institutionalized Organizations: Formal Structure as Myth and Ceremony." *American Journal of Sociology* 83(2):340–63.
- Miya. 2018. "Home Page." Retrieved August 26, 2018 (<http://www.miya-water.com/en/>).
- Morrill, Calvin, David B. Buller, Mary Klein Buller, and Linda Larkey. 1999. *Toward an Organizational Perspective on Identifying and Managing Formal Gatekeepers*. Vol. 22. University of Baltimore.
- Mudge, Stephanie Lee. 2008. "What Is Neo-Liberalism?" *Socio-Economic Review* 6(4):703–31.
- Mvula Trust. 2018. "The Mvula Trust - NGO for Water and Sanitation." Retrieved August 26, 2018 (<http://www.mvula.co.za/>).

- National Treasury. 2015. *Estimates of National Expenditure 2015*. Pretoria, South Africa.
- National Treasury. 2018. "Tender Info." Retrieved April 21, 2019  
(<http://www.treasury.gov.za/tenderinfo/default.aspx>).
- Nattrass, Nicoli. 2011. "The New Growth Path: Game Changing Vision or Cop-Out?" *South African Journal of Science* 107(3/4).
- Nelson, Paul J. 2015. "Social Movements and the Expansion of Economic and Social Human Rights Advocacy among International NGOs." in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.
- Nelson, Robert L. and William P. Bridges. 1999. *Legalizing Gender Inequality : Courts, Markets, and Unequal Pay for Women in America*. Cambridge University Press.
- News24. 2014. "DA Takes ANC to Court Over Food Parcels." Retrieved May 1, 2018  
(<https://www.news24.com/elections/news/da-takes-anc-to-court-over-food-parcels-20140420>).
- Ntuli, Nokuthula. 2017. "'Dead' Pensioner Awaiting Sassa Grant | IOL News." *IOL*. Retrieved March 30, 2019 (<https://www.iol.co.za/news/south-africa/kwazulu-natal/dead-pensioner-awaiting-sassa-grant-8459588>).
- Ntwana, Bukiwe and Darlington Sibanda. 2013. *Social Protests and Water Service Delivery in South Africa: Characterisation of Selected Local Contexts*.
- O'Malley, Pdraig. 2018. "Accelerated and Shared Growth Initiative for South Africa (AsgiSA) - The O'Malley Archives." *Nelson Mandela Centre of Memory*. Retrieved July 14, 2018  
(<https://omalley.nelsonmandela.org/omalley/index.php/site/q/031v02409/041v02410/051v02415/061v02416.htm>).

- Paris, Michael. 2006. "The Politics of Rights: Then and Now." *Law & Social Inquiry* 31(4):999–1034.
- Parliamentary Monitoring Group. 2015. "Department of Social Development and SASSA on Their Strategic and Annual Performance Plans." *Parliamentary Monitoring Group*. Retrieved January 25, 2019 (<https://pmg.org.za/committee-meeting/20670/>).
- Patel, Leila. 2012. "Poverty, Gender and Social Protection: Child Support Grants in Soweto, South Africa." *Journal of Policy Practice* 11(1–2):106–20.
- Pather, Ra'eesa. 2018. "City of Cape Town Eases Controversial Water Tariffs." *Mail & Guardian*. Retrieved April 21, 2019 (<https://mg.co.za/article/2018-09-10-city-of-cape-town-eases-controversial-water-tariffs>).
- Pedriana, Nicholas and Robin Stryker. 2004. "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965–1971." *American Journal of Sociology* 110(3):709–60.
- Pedriana, Nicholas and Robin Stryker. 2017. "From Legal Doctrine to Social Transformation? Comparing U.S. Voting Rights, Equal Employment Opportunity, and Fair Housing Legislation." *American Journal of Sociology* 123(1):86–135.
- Pienaar, J. M. 2011. "Access to Housing in South Africa : An Overview of Dimensions and Mechanisms." *Juridical Science* 36(2):119–40.
- Pieterse, Marius. 2008. "Health, Social Movements, and Rights-Based Litigation in South Africa." *Journal of Law and Society* 35(3):364–88.
- PILnet. 2010. "Pro Bono in South Africa." *The Global Network for Public Interest Law*. Retrieved March 24, 2019 (<https://www.pilnet.org/project-updates/50-pro-bono-in-south-africa.html>).

- Piven, Frances Fox and Richard A. Cloward. 1977. *Poor People's Movements: Why They Succeed, How They Fail*. New York: Pantheon Books.
- Plagerson, Sophie and Marianne S. Ulriksen. 2015. *Cash Transfer Programmes, Poverty Reduction and Empowerment of Women in South Africa*. 4. Geneva.
- Plagerson, Sophie and Marianne S. Ulriksen. 2016. "Socio-Economic Rights: The Right to Social Security in South Africa." *Foundation for Human Rights*. Retrieved February 18, 2019 ([https://www.fhr.org.za/files/3915/1247/0319/Social\\_Security.pdf](https://www.fhr.org.za/files/3915/1247/0319/Social_Security.pdf)).
- Plaut, Martin. 2012. "Behind the Marikana Massacre." *New Statesman*. Retrieved April 21, 2019 (<https://www.newstatesman.com/blogs/world-affairs/2012/08/behind-marikana-massacre>).
- Political Bureau. 2018. "A Timeline of Jacob Zuma's Presidency." *IOL*. Retrieved April 21, 2019 (<https://www.iol.co.za/news/politics/a-timeline-of-jacob-zumas-presidency-13192711>).
- Poppick, Laura. 2018. "What's Behind Cape Town's Water Woes?" *Smithsonian Mag*. Retrieved April 21, 2019 (<https://www.smithsonianmag.com/science-nature/day-zero-looms-cape-town-water-crisis-may-signify-new-normal-180968128/>).
- Pound, Roscoe. 1910. "Law in Books and Law in Action." *American Law Review* 44(1):12–36.
- Powell, Walter W. and Paul. DiMaggio. 1991. *The New Institutionalism in Organizational Analysis*. Chicago, IL: University of Chicago Press.
- Powell, Walter W. and Richard Steinberg. 2006. *The Nonprofit Sector: A Research Handbook*. 2nd ed. New Haven and London: Yale University Press.
- Pritchett, Lant and Michael Woolcock. 2004. "Solutions When the Solution Is the Problem: Arraying the Disarray in Development." *World Development* 32(2):191–212.
- Prodder. 2017. "Homepage." Retrieved August 6, 2018 (<http://www.prodder.org.za>).

- Pule, Albert. 2014. "SASSA Declares War on Corruption." *Vuk'uzenzele*. Retrieved (<http://www.vukuzenzele.gov.za/sassa-declares-war-corruption>).
- PureMadi. 2018. "Home Page." Retrieved August 26, 2018 (<http://www.puremadi.org/>).
- Quadagno, Jill. 1992. "Social Movements and State Transformation: Labor Unions and Racial Conflict in the War on Poverty." *American Sociological Review* 57(5):616.
- Ray, Raka. 1998. *Fields of Protest : Women's Movements in India*. University of Minnesota Press.
- Reddy, Trusha and Andile Sokomani. 2008. "Corruption and Social Grants in South Africa - ISS Africa." *Institute for Security Studies*. Retrieved May 2, 2019 (<https://issafrica.org/research/monographs/corruption-and-social-grants-in-south-africa>).
- Rendall-Mkosi, Kristie, Friede Wenhold, and Nomathemba Brenda Sibanda. 2013. *Case Study of the National School Nutrition Programme*. South Africa.
- Republic of South Africa. 2004. "No. 53 of 2003: Broad-Based Black Economic Empowerment Act, 2003." *Government Gazette*.
- Republic of South Africa. 2007. "Codes of Good Practice on Black Economic Empowerment" 9 February 2007." *Government Gazette*.
- Republic of South Africa. 2014. *National Report by the Republic of South Africa for the Third United on Housing and Development: HABITAT III*.
- Roach, Kent and Geoff Budlender. 2005. "Mandatory Relief and Supervisory Jurisdiction: When Is It Appropriate, Just and Equitable?" *The South African Law Journal* 122(2):325–51.
- Robins, Steven. 2014. "Poo Wars as Matter out of Place: 'Toilets for Africa' in Cape Town." 30(1):1–3.
- Rodrigues, Christopher. 2010. "'Black Boers' and Other Revolutionary Songs." *Mail &*

*Guardian*, April 5.

Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?*

University of Chicago Press.

SA News. 2009. "Minister Clarifies Position on Social Relief of Distress Grants | SAnews."

*South African Government News Agency*. Retrieved January 25, 2019

(<https://www.sanews.gov.za/south-africa/minister-clarifies-position-social-relief-distress-grants>).

Sabatier, Paul. 1975. "Social Movements and Regulatory Agencies: Toward a More Adequate:

And Less Pessimistic: Theory of 'Clientele Capture.'" *Policy Sciences* 6(3):301–42.

SABC Digital News. 2014. "How Government Does Business." *YouTube*. Retrieved April 21,

2019 (<https://www.youtube.com/watch?v=Mk1FqfII5mc>).

Sakoana, Thapelo. 2006. "South Africa: Nearly Half a Million People Probed for Grant Fraud."

*AllAfrica*. Retrieved March 31, 2019 (<https://allafrica.com/stories/200611201645.html>).

Samson, Michael, Una Lee, Asanda Ndlebe, Kenneth Mac Quene, Ingrid van Niekerk, Viral

Gandhi, Tomoko Harigaya, and Celeste Abrahams. 2004. "The Social and Economic Impact of South Africa's Social Security System." *Economic Policy Research Institute*.

Retrieved April 21, 2019

(<https://allafrica.com/download/resource/main/main/idatcs/00010352:3ca37b223f2ad1b0dc6479ccca726034.pdf>).

SANGO Pulse. 2015. "SA to Provide Grants to the Unemployed | NGO Pulse." *SANGO Net*.

Retrieved April 20, 2019 (<http://www.ngopulse.org/newsflash/sa-provide-grants-unemployed>).

Sano, Hans-Otto. 2015. "Social Accountability in the World Bank: How Does It Overlap with

Human Rights?” in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by L. Haglund and R. Stryker. University of California Press.

SASSA. 2008. *SASSA Annual Report 2007/2008*.

SASSA. 2014a. *SASSA Annual Report 2013/14*.

SASSA. 2014b. “SASSA Life Certification for Beneficiaries Using PIN Codes.” Retrieved March 14, 2019

(<http://www.sassa.gov.za/index.php/newsroom/media?download=180:sassa-introduces-life-certification-for-beneficiaries-using-pin-codes&start=18>).

SASSA. 2014c. “You and Your Grants 2014/15.” Retrieved February 18, 2019

(<https://africacheck.org/wp-content/uploads/2015/02/You-and-Your-Grants1.pdf>).

Savelsberg, Joachim J. 1992. “Law That Does Not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law.” *American Journal of Sociology* 97(5):1346–81.

Savelsberg, Joachim J. 1994. “Knowledge, Domination, and Criminal Punishment.” *American Journal of Sociology* 99(4):911–43.

Scheingold, Stuart. 1974. *The Politics of Rights*. Ann Arbor, MI: University of Michigan Press.

Schwab, Klaus. 2014. “Global Competitiveness Report 2014-2015.” Retrieved April 21, 2019 (<https://www.weforum.org/reports/global-competitiveness-report-2014-2015>).

Schwartzman, Kathleen C. and Kristie A. Taylor. 1999. “What Caused the Collapse of Apartheid?” *Journal of Political and Military Sociology* 27(1):109–39.

Scott, W. Richard. 1995. *Institutions and Organizations. Ideas, Interests and Identities*. Thousand Oaks: Sage.

Seakov, Heidi-Jane and Salim Vally. 2010. “School Nutrition and the Rights of Learners.”

*Education Rights Project Book 14.*

Section 27. 2019. "Priority Work Areas." Retrieved February 9, 2019

(<http://section27.org.za/priority-work-areas/>).

Seekings, Jeremy and Nicoli Natrass. 2005. *Class, Race, and Inequality in South Africa*. Yale University Press.

Segodi, Sephiwe. 2018. "Op-Ed: The Never-Ending Housing Challenge – Reflection on Thembelihle." *Daily Maverick*. Retrieved April 25, 2019

(<https://www.dailymaverick.co.za/article/2018-03-13-op-ed-the-never-ending-housing-challenge-reflection-on-thembelihle/>).

Sehlabane, Mahadima Portia. 2014. "Social Relief of Distress as an Effective Strategy in Reducing Food Insecurity: The Perceptions of Social Workers at the Department of Social Development, Johannesburg Metropolitan Area." Retrieved January 25, 2019

([http://wiredspace.wits.ac.za/bitstream/handle/10539/15829/Research Report 18 August 2014.pdf?sequence=1&isAllowed=y](http://wiredspace.wits.ac.za/bitstream/handle/10539/15829/Research%20Report%2018%20August%202014.pdf?sequence=1&isAllowed=y)).

SERI. 2014. "Community Practice Notes: Informal Settlement Series 2. Rooigrond." Retrieved March 28, 2019 ([http://www.seri-sa.org/images/Rooigrond\\_CPN\\_Final.pdf](http://www.seri-sa.org/images/Rooigrond_CPN_Final.pdf)).

Shozi, Phindile. 2018. "Wires of Death- Illegal Electricity Connections Are a Death-Trap." *News24*. Retrieved April 21, 2019 (<https://www.news24.com/SouthAfrica/Local/Hillcrest-Fever/wires-of-death-illegal-electricity-connections-are-a-death-trap-20180918>).

Sinwell, Luke, Joshua Kirshner, Kgopotso Khumalo, Owen Manda, Peter Pfaffe, Comfort Phokela, and Carin Runciman. 2009. *Service Delivery Protests*. Johannesburg, South Africa.

Skocpol, Theda. 1980. "Political Response to Capitalist Crisis: Neo-Marxist Theories of the

- State and the Case of the New Deal.” *Politics & Society* 10(2):155–201.
- Skocpol, Theda. 1992. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* / Theda Skocpol. Cambridge, MA: The Belknap Press of Harvard University Press.
- Skocpol, Theda and Edwin Amenta. 1986. “States and Social Policies.” *Annual Review of Sociology* 12(1):131–57.
- Skocpol, Theda and Kenneth Finegold. 1982. “State Capacity and Economic Intervention in the Early New Deal.” *Political Science Quarterly* 97(2):255–78.
- Skowronek, Stephen. 1982. *Building a New American State : The Expansion of National Administrative Capacities, 1877-1920*. Cambridge University Press.
- Skrentny, John D. 2006. “Policy-Elite Perceptions and Social Movement Success: Understanding Variations in Group Inclusion in Affirmative Action.” *American Journal of Sociology* 111(6):1762–1815.
- Smith, Steven Rathgeb and Michael Lipsky. 1993. *Nonprofits for Hire : The Welfare State in the Age of Contracting*. Harvard University Press.
- Songer, Donald R., Reginald S. Sheehan, and Susan Brodie Haire. 1999. “Do the ‘Haves’ Come out Ahead over Time ? Applying Galanter’s Framework to Decisions of the U.S. Courts of Appeals, 1925-1988.” *Law & Society Review* 33(4):811–32.
- Soon-Shiong, Nika. 2018a. *Implementing Agents*.
- Soon-Shiong, Nika. 2018b. “Statement: Victory! EC Edu Dept Commits to Implementing All Recommendations in Our New Infrastructure Report | Equal Education.” Retrieved February 18, 2019 (<https://equaleducation.org.za/2018/12/04/4845/>).
- South African Government. 2018a. “National Departments.” Retrieved

- (<https://www.gov.za/about-government/government-system/national-departments>).
- South African Government. 2018b. "National Development Plan 2030." Retrieved (<https://www.gov.za/issues/national-development-plan-2030>).
- South African Social Security Agency. 2015. "SASSA Staff Sentenced 7 Years for Fraud and Corruption." Retrieved April 21, 2019 (<http://www.sassa.gov.za/index.php/newsroom/174-sassa-staff-sentenced-7-years-for-fraud-and-corruption>).
- Southall, Roger. 2003a. "Between Competing Paradigms: Post-Colonial Legitimacy in Lesotho." *Journal of Contemporary African Studies* 21(2):251–66.
- Southall, Roger. 2003b. "Democracy in Southern Africa: Moving Beyond a Difficult Legacy." *Review of African Political Economy* 30(96):255–72.
- Sparks, Allister. 1990. *The Mind of South Africa*. New York: Alfred A Knopf.
- Sparks, Allister. 1995. *Tomorrow Is Another Country: The Inside Story of South Africa's Negotiated Revolution*. Random House.
- Sparks, Allister. 2003. *Beyond the Miracle: Inside the New South Africa*. Chicago: University of Chicago Press.
- Statistics South Africa. 2013a. *GHS Series Volume V: Energy 2002-2012*. Vol. V.
- Statistics South Africa. 2013b. *Gross Domestic Product First Quarter 2013*.
- Statistics South Africa. 2014a. "Employment, Unemployment, Skills and Economic Growth." Retrieved April 21, 2019 (<http://www.statssa.gov.za/publications/P0211/P02114thQuarter2014.pdf>).
- Statistics South Africa. 2014b. "Life Expectancy Continues to Rise as South Africa's Population Breaks 54 Million." Retrieved April 21, 2019 (<http://www.statssa.gov.za/?p=2973>).
- Statistics South Africa. 2015a. "General Household Survey 2014." (May). Retrieved April 21,

- 2019 (<http://www.statssa.gov.za>).
- Statistics South Africa. 2015b. "Statistical Release P0211 Quarterly Labour Force Survey."  
Retrieved April 20, 2019  
(<http://www.statssa.gov.za/publications/P0211/P02114thQuarter2014.pdf>).
- Statistics South Africa. 2017a. "*Poverty Trends in South Africa: An Examination of Absolute Poverty Between 2006 and 2015*."
- Statistics South Africa. 2017b. "Poverty Trends in South Africa An Examination of Absolute Poverty between 2006 and 2015." Retrieved April 25, 2019  
(<http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>).
- Stolley, Giordano. 2016. "ANC Councillors Jailed for Activist's Murder." *IOL*. Retrieved April 21, 2019 (<https://www.iol.co.za/news/anc-councillors-jailed-for-activists-murder-2024406>).
- Stone, Christopher D. 1975. *Where the Law Ends: The Social Control of Corporate Behavior*.  
New York: Harper and Row.
- Stryker, Robin. 1989. "Limits on Technocratization of the Law: The Elimination of the National Labor Relations Board's Division of Economic Research." *American Sociological Review* 54(3):341–58.
- Stryker, Robin. 2000. "Legitimacy Processes as Institutional Politics: Implications for Theory and Research in the Sociology of Organizations." *Research in the Sociology of Organizations* 27:179–203.
- Stryker, Robin. 2007. "Half Empty, Half Full, or Neither: Law, Inequality, and Social Change in Capitalist Democracies." *Annual Review of Law and Social Science* 3(1):69–97.
- Stryker, Robin. 2015. "The Materiality of Rights: From Legal Doctrine to Social Transformation." in *Madison Human Rights Conference November 2015*.

- Stryker, Robin, Danielle Docka-Filipek, and Pamela Wald. 2012. "Employment Discrimination Law and Industrial Psychology: Social Science as Social Authority and the Co-Production of Law and Science." *Law & Social Inquiry* 37(04):777–814.
- Stryker, Robin and LaDawn Haglund. 2015. "Conclusion: Emerging Possibilities for Social Transformation." in *Closing the Rights Gap: From Human Rights to Social Transformation*, edited by Ladawn Haglund and R. Stryker. University of California Press.
- Surender, Rebecca, Michael Noble, Gemma Wright, and Phakama Ntshongwana. 2010. "Social Assistance and Dependency in South Africa: An Analysis of Attitudes to Paid Work and Social Grants." *Journal of Social Policy* 39(2):203.
- Sutton, John R. 2001. *Law/Society: Origins, Interactions, and Change*. Thousand Oaks, California: SAGE Publications.
- TCOE. 2018. "TCOE Trust for Community Outreach and Education." Retrieved August 26, 2018 (<http://tcoe.org.za/>).
- The Economist. 2017. "South Africa Has One of the World's Worst Education Systems - South Africa's Schools." *The Economist*. Retrieved February 3, 2019 (<https://www.economist.com/middle-east-and-africa/2017/01/07/south-africa-has-one-of-the-worlds-worst-education-systems>).
- The Global FoodBanking Network. 2017. "Homepage." Retrieved April 22, 2019 (<https://www.foodbanking.org>).
- The South African Civil Society Information Service. 2019. "SAC SIS.Org.Za." Retrieved March 23, 2019 (<http://sacsis.org.za/s/>).
- Tissington, K., N. Munshi, G. Mirugi-Mukundi, and E. Durojaye. 2013. "'Jumping the Queue', Waiting Lists and Other Myths: Perceptions and Practice around Housing Demand and

- Allocation in South Africa.” (June):1–59.
- Tissington, Kate. 2011. “Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice.” 84.
- Tissington, Kate, Marc Dettman, Malcolm Langford, Jackie Dugard, and Sonkita Conteh. 2008. *Water Services Fault Lines: An Assessment of South Africa’s Water and Sanitation Provision across 15 Municipalities*.
- Tolbert, Pamela S. and Lynne G. Zucker. 1983. “Institutional Sources of Change in the Formal Structure of Organizations: The Diffusion of Civil Service Reform, 1880-1935.” *Administrative Science Quarterly* 28(1):22–39.
- Tolsi, Niren. 2009. “Freedom’s Prisoners.” *Mail & Guardian*, December 23.
- Toyana, Mfuneko and Wendell Roelf. 2019. “Eskom Split to Minimize Risks to South Africa, Ramaphosa Says.” *Reuters*. Retrieved March 31, 2019 (<https://www.reuters.com/article/us-safrica-eskom/eskom-split-to-minimize-risks-to-south-africa-ramaphosa-says-idUSKCN1Q32BL>).
- Transparency International. 2016. “Corruption Perceptions Index 2016.” Retrieved April 18, 2019 ([https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)).
- Tushman, Michael L. and Ralph Katz. 1980. “External Communication and Project Performance: An Investigation into the Role of Gatekeepers.” *Management Science* 26(11):1071–85.
- UN Committee on Economic, Social, and Cultural Rights. 1990. *CESCR General Comment No. 3: The Nature of States Parties’ Obligations*. UN Doc HRI/Gen1/Rev1 at 45 (1994) (4).
- Ungerleider, Neal. 2012. “Social Security And Welfare Payments Go Biometric.” *Fast Company*. Retrieved (<https://www.fastcompany.com/3001575/social-security-and-welfare->

- payments-go-biometric September 26, 2012).
- University of South Africa. 2011. *A Broad Review of The New Growth Path Framework With A Specific Emphasis on the Feasibility of Its Proposed Targets*.
- Vartak, Malavika. 2009. "Report: Experiences of Abahlali BaseMjondolo in Durban, South Africa." *Development Planning Unit of University College London, Abahlali Website*. Retrieved April 21, 2019 ([http://abahlali.org/files/AbM\\_and\\_Kennedy Road.doc](http://abahlali.org/files/AbM_and_Kennedy_Road.doc)).
- Venkat, Hamsa and Nic Spaul. 2015. "What Do We Know about Primary Teachers' Mathematical Content Knowledge in South Africa? An Analysis of SACMEQ 2007." *International Journal of Educational Development* 41:121–30.
- Walker, Edward T. 2012. "Social Movements, Organizations, and Fields: A Decade of Theoretical Integration." *Contemporary Sociology* 41(5):576–87.
- Weber, Max. 1978. *Economy and Society: An Outline of Interpretive Sociology*. University of California Press.
- Williams, Lucy A. 2014. "The Right to Housing in South Africa: An Evolving Jurisprudence." *Columbia Human Rights Law Review* 45(3):816–45.
- Wilson, Francis. 2011. "Historical Roots of Inequality in South Africa." *Economic History of Developing Regions* 26(1):1–15.
- Winkler, Susanne. 2005. *Ellipsis and Focus in Generative Grammar*. DE GRUYTER.
- Woolard, I. 2003. *Impact of Government Programmes Using Administrative Data Sets: Social Assistance Grants. Project 6.2 of Ten Year Review Research Programme*.
- World Bank. 2017. "Government Expenditure on Education, Total (% of Government Expenditure) | Data." *World Bank Data*. Retrieved February 3, 2019 (<https://data.worldbank.org/indicator/SE.XPD.TOTL.GB.ZS>).

- World Economic Forum. 2015. "Global Competitiveness Report 2014-2015 - Reports - World Economic Forum." *Global Competitiveness Index*. Retrieved February 3, 2019 (<http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/>).
- Yeager, Peter. 1990. *The Limits of Law: The Public Regulation of Private Pollution*. Cambridge: Cambridge University Press.
- Zarenda. 2013. *South Africa's National Development Plan and Its Implications for Regional Development*.
- Zembe-Mkabile, Wanga, Rebecca Surrender, Rebecca Surrender, David Sanders, Debra Jackson, and Tanya Doherty. 2015. "The Experience of Cash Transfers in Alleviating Childhood Poverty in South Africa: Mothers' Experiences of the Child Support Grant." *Global Public Health* 10(7):834–51.
- Zwane, Meshack Thulane. 2015. "School Feeding Programmes as a Mechanism to Improve Market Access for Smallholder Farmers in Rural Areas of South Africa." University of Pretoria.