

# CHAPTER 11

## REALISING ACCESS TO JUSTICE FOR THE POOR: LESSONS FROM WORKING WITH RURAL COMMUNITIES

Victoria Balogun\*

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### Abstract

*Access to justice for impoverished communities is a complicated phenomenon given that many factors come into play. A critical feature of the problem is equal access to amenities. Although constitutionally everyone has the right to equal protection of the law and other human rights, many poor people are excluded or ignorantly shy away from using state tools, including the rule of law, made available to them to their advantage. In a democratic state access to the courts and resources in poor communities is an impetus for the promotion, protection and fulfilment of the rights of the poor. There is a great need for state protection of the right of access to the judiciary, including the level of engagement with poor communities to be examined, in an effort to ameliorate problems faced by the poor living in marginalised communities in South Africa and beyond. This chapter attempts to examine this problem by critically looking at some of the experiences of people in poor rural communities, with a brief reference to the Centre for Community Justice and Development, a non-profit organisation delivering access to justice services to poor communities in the KwaZulu-Natal province in South Africa.*

### 1 Introduction

Many may ask what the correlation is between poverty and access to justice, or whether there are any implications for the poor in marginalised rural communities where access to justice is disregarded. The answer is in the positive, simply because the enforcement and enjoyment of human rights, including access to courts and resources, becomes highly remote and inaccessible for this particular group of people. According to the United Nations Development Programme (UNDP) access to justice requires that 'laws and remedies must be just, equitable, and sensitive to the needs of the poor and marginalised'. As alluded to by McQuoid-Mason, factors such as the limited number of lawyers representing the poor are problematic for this group of people and their legal interests are exposed to abuse.<sup>1</sup>

\* Lecturer, University of KwaZulu-Natal (UKZN); balogun@ukzn.ac.za  
1 D McQuoid-Mason 'Access to justice in South Africa: Are there enough lawyers?' (2013) 3 *Oñati Socio-Legal Series* 564-565. See D Dewar 'Too many attorneys? Oversubscription to the attorneys' profession (2011) 509 *De Rebus* [online] 23.

It follows, therefore, that there is a significant correlation between poverty and access to justice. Research has shown that where the incidence of poverty is high, the issue of justice and the enjoyment of the right of access to justice and other or related human rights are undermined in marginalised poor communities. Prolonged economic instability and financial crises destabilise citizens' security generally with many requiring adequate financial resources to pay for legal representation and civil court costs. Such economic hardships have created a new group of individuals that face harsher economic circumstances which have reinforced the vulnerability of many people living in poverty today. Over the years, the challenge for both the state and the courts has been to provide access to justice when citizens have inadequate financial resources.

Some of the rights affected are the right to dignity (section 10 of the 1996 Constitution); housing (section 26); education (section 29); equality (section 9); health care (section 27(1)(a)); property (section 25); and legal representation (section 35). Although the Constitution permits the progressive realisation of rights, including property rights (sections 25(2)-(9)) based on the availability of state resources, states are obliged to take legislative measures to realise these rights. Non-compliance may result in injustice and indigents' social and legal needs will remain unmet. It therefore is critical that poor communities and the challenges facing them are taken seriously, to minimise the further marginalisation of the poor in the poor areas of South Africa. Besides, according to Blair, 'legally enforceable rights and duties underpin a democratic society, and access to justice is essential in order to make these rights and duties real'.<sup>2</sup>

There are different dimensions of access to justice. In an attempt to try and understand the concept, one can look at a legal system in the context of access to justice either broadly, which involves the rule of law, law making, legal interpretation and implementation of law. It can also be conceived narrowly by looking at available facilities that are made accessible to survivors or victims, including legal services such as legal representation, the administration of justice, access to affordable medical care, counselling services and other state services aimed at promoting access to justice for the poor and the protection of their constitutional rights at large.<sup>3</sup>

The reason is that access to justice not only improves the rights of the poor and those marginalised, but grants them access to state structures and services in their interests, such as legal representation at state expense, access to courts by ensuring that an equitable and just legal and judicial outcomes in a democratic state are realised with limited or no hurdle. It is on this basis that this chapter will examine the role of access to justice in poor communities with reference to service providers serving the poor in such communities.

2 T Blair 'Foreword' in D Bean (ed) *Law reform for all* (1996) xiii.

3 Y Ghai et al 'The rule of law and access to justice' in Y Ghai & J Cottrell (eds) *Marginalised communities and access to justice* (2010) 3.

## 2 What is access to justice for the poor?

The initial Millennium Development Goal (MDG) of halving poverty by 2015 was intended to reduce the negative impact of poverty and poor socio-economic standing of the poor and poor communities at large. The problem, however, is that where poverty strives, access to justice and many justice factors remain unattainable for the majority in that group. In poor areas, despite the availability of legal access to some services, access to and the enjoyment of legal protection often are limited and the realisation of such rights remains a dream for those living within the poverty margin or below the poverty line.

Research has shown that over 10 million people around the world do not enjoy the protection of the law.<sup>4</sup> On a daily basis many face corrupt activities, including corrupt officials extorting money from the already poor, unlawful evictions, land grabbing,<sup>5</sup> an inability to access timely healthcare services when ill, restricted or overregulated access to preventive or palliative care because most services remain too expensive or unavailable to the poor as was the case in *Minister of Health & Others v Treatment Action Campaign & Others*.<sup>6</sup> Consequently, the poor remain highly marginalised and unable to access or seek justice when aggrieved.

The continuous marginalisation and a lack of access to justice or equity can result in public protest or demonstration, including xenophobic attacks. It therefore is critical to ensure that the rule of law applies equitably to all uniformly and justice institutions must function efficiently, encompassing even those with the least means and resources in our societies – the poor in poor communities. In addition to recognising government efforts in attempting and sometimes successfully ameliorating the impact of poverty on the poor and promote access to justice, one cannot underestimate the role of non-profit organisations (NPOs) or non-governmental organisations (NGOS). It therefore is crucial to recognise and appraise state efforts with cognisance, given the role played by NGOs in lobbying for the eradication of poverty and empowering the poor in South Africa.

## 3 How are non-profit organisations such as the Centre for Community Justice and Development promoting access to justice in South Africa post-1994?

As alluded to earlier, access to justice for the poor is best achieved through

4 E Rosenberg 'Poverty alleviation through sustainable development', [http://www.enviroopaedia.com/topic/default.php?topic\\_id=199](http://www.enviroopaedia.com/topic/default.php?topic_id=199) (accessed 12 January 2015).

5 Blair (n 2) 25; *Nkuzi Development Association v Government of the Republic of South Africa & Another* 2002 (2) SA 733 (LCC).

6 (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002).

a founded collaboration between the state and NGOs in a coincided effort to reduce poverty and marginalisation at all costs. This not only will strengthen and encourage citizens to aspire to but to ensure that resources, including access to the rule of law, becomes easily accessible for the poor in poor communities around the country. Although the national framework for including the poor and the ability or commitment to ameliorate the impact of poverty is the function of the state, a holistic approach to justice and its accessibility to poor and marginalised groups needs to be adopted with the help of NGOs and NPOs in South Africa, particularly those that provide services to poor communities.

Working in partnership with state stakeholders gives a profound insight into the plight of citizens falling in this category. Looking at, for instance, the work of the Centre for Community Justice and Development (CCJD) in the KwaZulu-Natal (KZN) province, a clear picture is presented of what can be achieved through NPOs, and this also demonstrates a tangible example of how access to justice and the promotion of human rights can bring about positive supportive development in poor and rural communities.

Twenty-six years ago CCJD was funded by staff of the School of Law, University of KwaZulu-Natal, particularly by Professor Matthews. It was originally aimed at promoting research and promoting and protecting human rights in the criminal justice system, and the prevention of political violence in the Pietermaritzburg area of KZN during the apartheid era. The Centre was once known as the Centre for Criminal Justice (CCJ). It is an NPO based in KZN which supports approximately 15 community-based advice offices throughout KZN. The Centre works closely with impoverished rural communities and provides various community services and assistance through local women recruited from their communities to selflessly serve the poor by enlightening them about their human rights and access to justice for the disadvantaged. Briefly, the advice offices play a crucial role in promoting human rights and maintaining a link to justice services and legal redress.

The Centre and its commitments were conceived during the democratic struggle and born with a vision to promote the broad range of rights: access to courts and legal assistance for the rural poor. Outreach and research endeavours have shown that for many South Africans access to adequate justiciable benefits remains remote and challenging, particularly for those living in very remote and poor areas, as many cannot afford adequate housing, a balanced diet and legal representation. Although evidence from the field has also shown that access to justice is not limited to access to adequate legal representation and courts but the ability to enjoy other related rights, including the right to education, development, health, life and so forth.

In addition, in order to efficiently serve the poor community, the advice offices and staff are well equipped to identify and understand some of the

challenges faced by the poor when accessing the legal system and social services, including social grants. One of the main obstacles is 'ignorance' and a loss of identity, as many in the poor communities in the province still are not fully aware of their constitutional rights and the constitutional changes brought about by the 1996 Constitution. Therefore, it is important to understand the social diversity and challenges facing the poor as they approach the outreach centres or advice offices for help.

In so doing, poor communities, including women and children, will be able to use state services and private organisations, including available funding, to gain unrestricted access to the legal system, enforce their legal rights and improve their standard of living, and also use legal instruments, including the law, to solve problems affecting them collectively or individually in their various communities.

At CCJD, the issue of access to justice is multifaceted and the problems identified and the assistance needed may present themselves in different ways, both to the communities or the marginalised seeking specific assistance in a community. For instance, many women are breadwinners and often fear to report intimate abuses, crimes and indiscriminate violations of their rights. Many complain that the police often are insensitive to their plight and therefore they are ignored when violated, which more often than not results in further victimisation and justice being denied as the legal remedies are taken further away from them. Equally, a man that is being abused or sexually violated may shy away from pursuing the violation or reporting the matter as the system is reluctant to assist and his human right is further undermined by, for example, the police.

In poor communities there are also cultural and historical constraints such as pressure to endure domestic violence, fear of the police, the cost of litigation, a lack of money or geographical/remoteness of some communities from social and legal amenities or services that continue to discourage poor people from coming forward or pursuing justice for themselves and those they love.

One of the roles of centres such as the CCJD serving the poor in poor communities is to work earnestly towards removing barriers to access to justice and bridging the gap between members of the community and their human rights, including their right to justice and the rule of law in a democratic state. In an effort to mitigate the impact of poverty and the barrier to the enjoyment of the aforementioned right, there is a need to provide legal advice in communities, mediation and negotiation services, free counselling and educational and arbitration services to the poor and on their behalf in matters warranting such intervention. Furthermore, it is essential to develop community-specific ways, including indigenous ways of sensitising the people on how to use the judicial formal systems to their own benefit and state structures to promote access to justice and solutions to some of their social problems.

Some of the issues affecting the poor that need to be addressed in order to promote justice in marginalised areas identified above include but are not limited to domestic violence; monetary claims; property grabbing after the death of a loved one; pension or grant claims; the enforcement of labour rights often encountered by miners or farm workers; unlawful dismissal or eviction; social problems; child abuse; and maintenance. Many of the people are poor and cannot afford the legal costs of realising their rights through the formal system. The situation is further compounded by the fact that many, especially women, are breadwinners and do not have the time to go to court and back, since they have to generate an income for their dependants. Also, the majority of women directly and indirectly afflicted are old and also burdened with various care-giving roles such as looking after or providing for children orphaned by HIV/AIDS and families members, including grandchildren suffering from one kind of disability or the other.

In order to ameliorate some of these hardships, the CCJD advice offices provide free legal education to those too poor to pay for such services and inform the public of their existent rights, and the benefits of the new constitutional disposition. They also provide out-of-court mediation, arbitration and negotiation services to the poor in an effort to promote alternative dispute resolution mechanisms, particularly in cases of domestic violence, small claims, eviction and maintenance. Furthermore, there is a need to promote ubuntu (the spirit of togetherness and unity) among the people, regardless of their socio-economic and financial standing. The CCJD, therefore, conducts presentations and focus groups in poor communities to educate and sensitise the marginalised about their rights and the empowerment opportunities that are available or can be made accessible to them in order to solve their problems collectively or individually. Many of these services are provided through free community development programmes and training projects specifically designed for targeted poor communities. Although funding often is a limiting factor, by working in partnership with state departments and private institutions, access to justice rights and services are gradually reaching more communities throughout KZN and South Africa at large.

It is worth noting that paralegals play a very important role in ameliorating the negative impact of poverty on poor people and the marginalisation of their communities. Paralegals participate actively in the outreach programmes and selflessly serve the poor community. Research has shown through the CCJD programmes that communities are fond of and comfortable with the paralegals serving them and that the services they provide are of high quality and standard as many are trained in the basic knowledge of the law and are trained regularly to bring them up to date on newly-enacted legislation.



In the words of Nelson Mandela:<sup>7</sup>

After 1994, although all South Africans technically had all sorts of civil rights (civil and political, as well as socio-economic), it remained difficult to actually access them, providing a new role for paralegals to attempt to translate the new Bill of Rights into reality (in no small part due to the educational work of paralegals) there has been an ever-growing need for paralegal assistance in claiming them.

Mandela's statement simply highlights the significant and crucial role played by paralegals in the realisation of access to justice rights and how they educate the public, including the poor, on their constitutional rights. It therefore follows that their role and contribution cannot be understated and that is why NPOs such as the CCJD and many more have relied on their services in poor communities to provide reliable services to the poor for many years.

The majority of poor people living in low-income communities are unrepresented in civil litigation when compared to criminal representation, for instance, divorce issues, maintenance, health and reproductive health matters, property and land rights. Due to financial, health and transport constraints many people therefore cannot afford to travel to the nearest cities to seek or access formal legal assistance established by the state. It follows, therefore, that the availability, geographical accessibility and economic affordability of the paralegals located in many of these advice centres and the different options of conflict resolution mechanisms, including free assistance provided to them, are highly rewarding and economical as no one is turned away and the rights of those accessing the free services are respected with privacy and confidentiality maintained at all times.

#### **4 Are there any barriers to access to justice and do they have any implication(s) for the poor in poor communities?**

There are several barriers preventing the poor from accessing justice and their human rights both in South Africa and beyond. Many countries are wrestling 'poverty', as Statistician-General Pali Lehohla alluded to recently when commenting on their latest report:<sup>8</sup>

30,4 million of South Africa's 55 million citizens in 2015 – three million

7 J Dugard & K Drage 'To whom do the people take their issues? The contribution of community-based paralegals to access to justice in South Africa' *The Justice and Development Working Paper Series* (2013) 9.

8 Statistics South Africa 'Poverty trends in South Africa: An examination of absolute poverty between 2006 and 2015' Statistics South Africa (2017). See also M Merten 'StatsSA Poverty Report 2017: Policies fail the people of South Africa' *Daily Maverick* 23 Aug 2017, <https://www.dailymaverick.co.za/article/2017-08-23-statssa-poverty-report-2017-policies-fail-the-people-of-south-africa/#.WaJO5YiGO00> (accessed 26 August 2017).

more than in 2011 – lived in poverty, or below the upper poverty line of R992 per person per month. One in three South Africans lived on less than R797 per month, or half of the country's 2015 mean annual household income of R19 120, with more women affected than men, and children and the elderly hardest hit.

Obviously, where poverty is rife, the cost of justice becomes far more unattainable for the poor. Historically, some of these factors were created before 1994 and, despite many attempts to transform the system, the justice margin has remained unresolved, for instance, racial profiling, an increase in the number of pupils dropping out of school for socio-economic reasons, poverty, and so forth. Over the years, many more problems are becoming more visible as the gap between the rich and the poor continues to widen and pressure on access to national resources is becoming more pronounced.

Despite the existence of the Bill of Rights in the 1996 Constitution and the positive affirmation of these rights through a committed and progressive judiciary, the social and justice gap remains and many affected by poverty remain marginalised. As indicated earlier, access to justice can either be examined broadly or narrowly. The problem, however, is that no matter which lens the examiner wears, the reality remains unchecked or unresolved, as the poor will remain the most affected as long as there remain poor communities in the country.

In South Africa, for instance, as in the case of many of its African counterparts, there are still too few service providers for a large number of indigents waiting for and hoping to access fundamental services provided by the state. Thus, it is quite challenging to provide legal aid assistance to everyone in need of such assistance or charged with crimes. Sadly, many are left out and only those fortunate enough to buy the services or those aware of where and how to access free services are assisted. Yet millions of South Africans are left out with their rights unprotected, unprompted and unfulfilled by the same state obliged to cater for the preservation and furtherance of their human rights.

Factors such as scarce resources, illiteracy, a lack of or poor information dissemination, poor state commitment, inequality, poor transparency, lack of accountability and sometimes poor funding all undermine the productivity of legal aid mechanisms and provisions such as paralegal assistance. These factors undoubtedly undermine the observer's effort to access a state's human rights structures and assess to what extent such structure(s) protects the rights of poor people living in poor communities. Geographical factors, economic factors and lost identity (including racial factors) remain profound, given that some people still are not documented even today, despite the attempts made by the state, including the Departments of Home Affairs and of Social Development.

The poor socio-economic standing of the poor also fuels poor access to justice by those in desperate need of assistance. For instance, many



poor people still struggle to pay the small fee the Home Affairs charges for obtaining an identity document (ID), sometimes as little as R300. This goes to show that the poor are highly constrained and the enjoyment of basic human rights such as the ability to afford paying for an identity card can mean a struggle where the applicant is financially and economically constrained. Furthermore, there is a significant gap in peoples' legal knowledge.

Many of the poor living in poor communities still do not understand what the Constitution involves and how to enforce their human rights. Consequently, they are unable to enforce their rights against individuals and the state when there is a violation of their rights, and only a few approach the legal aid offices for help or other advice offices where they can get free legal assistance or counselling, especially when traumatised by an unfortunate experience.

## **5 The intersection between poverty and access to justice for poor communities**

What does access to justice mean to the poor in poor communities? For many poor communities, the enjoyment of the right of access to justice is far-fetched and beyond their reach. Factors such as access to health care and services, including sexual and reproductive health services (SRH), education, access to clean water, sanitation, good roads, the use of interpreters in court, access to courts and the ability to understand the litigation process are practically non-existent. In poor communities, some remain uneducated and ignorant of their rights with little or no motivation to break through the barrier of perpetual marginalisation. When there is insufficient or inadequate protection of human rights, there hardly is any consolation or redress for the poor fleeing from gender-based violence or domestic violence. In poor communities, those facing criminal charges sometimes may remain in detention until the date of trial or even throughout the trial process as they are not familiar with the bail process and cannot afford the cost of hiring an attorney.

## **6 Access to justice, the role of legal aid offices and the commitment to serve the poor in poor communities**

In various countries, including in South Africa, organisations such as NGOs, NPOs and Community Based Organisation (CBOs) are often committed to alleviating some of the problems facing poor people and some state institutions are set up to help reduce some of the barriers to access to justice for the poor in poor communities. In South Africa, for instance, there are the Chapter 9 institutions. There is also the Legal Aid Board and more paralegals are working with NGOs to promote access to

justice for the poor. Some of these state-funded bodies are established to bring justice to the poorest of the poor in society.

In order to have a full understanding of the fundamental need for the promotion of access to justice and the impact it has on the poor in South Africa, one must examine the role of the Legal Aid Board and its offices. Many writers have written extensively on the South African legal aid services, but it is pivotal at this juncture to briefly highlight the significant contribution(s) made by this office in the furtherance of access to justice, equity and the promotion of human rights, particularly the right to a fair trial and access to legal representation guaranteed by section 35 of the 1996 South African Constitution.

Section 34 provides:

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal of forum.

It follows, therefore, that the Constitution not only provides for the right of access to justice but requires the state to enforce the right and assist indigents in enjoying this right by making it accessible to the destitute. One can also submit that section 34 recognises both formal and informal means of dispute resolution mechanisms, which gives service providers such as NPO paralegals the legal backing to assist the poor even though they are still denied the right of appearance.

Legal Aid RSA is an organisation mandated by the 1996 Constitution to protect the rights of the poor and vulnerable in South Africa.<sup>9</sup> One of their roles is to minimise social exclusion and promote equitable justice.<sup>10</sup> Legal Aid is responsible for ensuring quality justice for indigents focusing on the poor and the marginalised, accessing public services including the courts. By so doing, this office is one of the few offices in the country that provide access to justice for the poor at no cost to the recipient of the service(s).

In order to deliver and promote the right of access to justice for the impoverished in South Africa, Legal Aid has implemented a mixed model of delivery system comprising of justice centres. For instance, in KZN alone there are 10 centres and 11 satellite offices. They deal with civil matters, criminal matters and general advice issues, including labour issues. Legal Aid also provides what is known as 'judicare services'.<sup>11</sup> This is achieved by working closely with accredited private lawyers and firms to provide legal services to those that do not have the means to buy it.

Furthermore, there is what are known as co-operative partners, for

9 Legal Aid Act 22 of 1969; Legal Aid South Africa Act 39, 2014.

10 H Sommerlad 'Some Reflections on the relationship between citizenship, access to justice, and the reform of legal source (2004) 31 *Journal of Law and Society* 349.

11 D McQuoid-Mason 'Challenges in increasing access to justice in the next decade' in M Carnelle & S Hoctor (eds) *Essays in honour of Tony Mathews* (2011) 170.

instance, NGOs, CBOs and campus law clinics established at university premises throughout the country to provide legal representation to the people. The law clinics use trained law graduates known as candidate attorneys to provide these services. They also use the agency agreements model; Legal Aid Advice line (call centre, easily accessible); impact litigation is another adopted model used to facilitate access to justice and deliver legal aid services but this is a standalone unit aimed at promoting litigation and, finally, the *pro bono* model, where members of the law society commit to serving the public free of charge, with no cost to the recipient of the legal services. The problem, however, is limited funding and, consequently, legal aid offices are financially constrained and often provide assistance more in criminal than in civil matters.<sup>12</sup> The negative implications of such one-sided assistance are that it forces the poor looking for free legal representation in civil matters to look elsewhere or give up once they do not pass the 'means test', or when legal Aid cannot assist them for any other reason(s), which often include financial constraints.

## 7 Equality and access to justice for the poor

Section 9 of the 1996 Constitution provides for the right to equal protection of the law. The reality, however, is that access to justice experiences depending on the person accessing or aspiring to access a given service can reflect inequality. This is because inequality that existed pre-1994 still exists in some areas but with problems, guise or name. Many inequalities affecting the poor occur outside the legal frontier and legal institutions, therefore directly or remotely promoting inequality in the system and the marginalisation of the people in poor communities when it comes to the realisation or the protection or enjoyment of the right of access to justice.

Consequently, where human rights protection is limited or non-existent, equity and equal access to the protection of this is less attainable and this can destabilise any attempt to promote equality in such a state. Although one must not discriminate against a particular group according to section 3 of the Constitution, the problem is that most states afflicted by poverty do not perceive marginalised communities and the poor as unequal to their economically-stable counterparts in the same country. This gap may fuel socio-economic inequality if left unchecked.

Although this submission is highly debatable, so is the case when looking at the resource made accessible to the elite *vis-à-vis* those available to the poorest of the poor in South Africa. The disparities can only be reduced by furtherance of access to justice and commitment on the part of the state to bridge the socio-economic gap created prior to 1994 by promoting a more justiciable access to national wealth and efficient sensitisation. Therefore, it is important for the state to accelerate programmes promoting socio-economic equality standards and uniform access to, for example, the civil

12 D Holness 'The constitutional justification for free legal services in civil matters in South Africa' (2013) 2 *Speculum Juris* 2-5.

and criminal justice system for all including the poor. For instance, the legal aid offices should be funded properly and encouraged to take up more civil matters in their commitment to promote access to justice for the poor given the fact that many poor people are not only faced with criminal issues but social and socio-economic dilemmas daily.

One of the ways to encourage equality is to ensure equal access to education and educational support. Education is bound to promote socio-economic standards and encourage investment, and this will improve the status of people living in poor communities.<sup>13</sup> South Africa is politically well placed to ensure that the needs of poor communities and the people living in these areas are adequately catered for and state officials should not disregard even the minutest public grievances as this may be regarded as the state not caring enough for the poor. State commitment goes beyond solving problems, such as during a public interest protest, but its ability to prevent such protest from happening by positively affirming the rights of every citizen and their ability to enjoy their human rights. It is submitted that the social distribution of wealth in South Africa varies and, therefore, the negative implication for poor access to resources, including state institutions, will affect various groups differently.

Consequently, some actions firmly institutionalised, such as divorce proceedings, marriage and child custody, will often need to involve the law and court processes that remain unaffordable and inaccessible to the poor. The question, however, is how many of the people needing these services in actual fact turn to law or the formal legal system for help. In such cases, very few poor people living in poor communities will adopt formal legal means, even when they are fully aware of what actions to take and knowing that the services will be free of charge.

This shows that socio-economic factors do not influence the poor, but there are sometimes also social factors, for instance, neighbours may decide to amicably resolve their differences instead of going to court and becoming enemies afterwards, and many people may find the formal system too stressful to go through (backlog, contingent fees, having to pay costs, adjournments, delays) and not being able to proceed. In order to prevent further inequality in social groups, there is a need to radically promote access to justice rights, and promote accessibility and empowerment in poor communities and mitigate constraints created by the system or the affluent in societies and organise an equitable legal environment that is class-neutral and all-encompassing.

## **8 Conclusion**

In conclusion, this chapter has explored the nexus between access to justice and the poor in poor communities, by examining the role of the formal

13 RL Sandefur 'Access to civil justice and race, class, and gender inequality' (2008) 34 *Annual Review of Sociology* 339.

legal system and society, by engaging in a discussion on the convergence between the limitations facing the poor and the same resources that are made easily accessible to their elite counterparts. It focused first on the role of access to justice and the relationship between the lack of realisation of the rights of the poor in a democratic state, as a result of some barriers and social exclusion practices facing this group of people, thereby limiting their ability to enjoy their human rights to the fullest.

The chapter highlighted the need to promote a substantive right of access to law and state structures and resources and the promotion and facilitation of the development of a rights-based form of social order, resulting in equity and uniform inclusion when it comes to service delivery and the right to access justice in poor communities. It has been maintained that the poor are confronted not only with legal obstacles when accessing formal legal means or redress, but that many social and socio-economic factors equally hinder and discourage, even the most objective ones, and participation is hampered. Lastly, the role of NPOs, legal aid offices and the use of paralegals to ensure that the barriers to access to justice and the exclusion problem are addressed and substantive equality paves the way for the poor to be included in the development of the country at large.

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