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MAINTENANCE AND CHANGING MASCULINITIES AS SOURCES OF GENDER CONFLICT IN CONTEMPORAY JOHANNESBURG

Grace Khunou

A thesis submitted to the Faculty of Humanities and Social Sciences, University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Doctor of Philosophy.

Johannesburg, 2006

ABSTRACT

This study attempts to understand the nature of the state and its relationship with its citizens. It explores this question through the study of one of the state's institutions – the maintenance system; its conception of gender identities and relationships is examined. Through a close analysis of this system, and its effects on men and women, the thesis explores the making of contemporary gender identities in South Africa. The study also pays particular attention to current conceptions of what it means to be a man.

The study examines men's views of maintenance laws as they experience it, with a focus on the differing conceptions of fatherhood held by a range of men, and how they relate to hegemonic conceptions of masculinity espoused by the maintenance system. The study also looks at how these hegemonic understandings of masculinity limit the chances for men to be 'successful' fathers and fulfilled persons.

The central premise of this thesis is that masculinity exists outside the realms of the natural and biological. Rather, it asserts that masculinity is embodied in social relations, which are constantly changing and are context-bound. Naturalised definitions of masculinity are limiting to fathers in a social, political and economic context which is shifting. This study is driven by the question: what options and alternatives are available to men and fathers with regards to role formation, especially in their interaction with the maintenance system and their relationships with their children?

DECLARATION

I declare that this thesis is my own unaided work, and has never been published elsewhere or submitted to fulfil the requirements of any other degree. It is submitted for the degree of Doctor of Philosophy in Sociology in the University of the Witwatersrand, Johannesburg.

_____
Grace Khunou

_____ day of _____, 2006

This thesis is dedicated to those who departed too soon,
My brothers
Abel bros Khunou,
Anthony Montana
Mokgoetsane
and
Phaswane Mpe

Robalang ka kgotso bana ba mmu

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LIST OF ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
COSATU	Congress of South African Trade Unions
DoJ	Department of Justice
DVA	Domestic Violence Act
GEAR	Growth, Employment and Redistribution [strategy]
HIV	Human Immunodeficiency Virus
HSRC	Human Sciences Research Council
ID	Identity document
NGO	Non-governmental organisation
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SA	South Africa, South African
SPSS	Statistical package for the social sciences
STD	Sexually-transmitted disease
WISER	Wits Institute for Social and Economic Research
Wits	University of the Witwatersrand

Chapter One

INTRODUCTION

In 2001, while involved in fieldwork for research on the impact of globalisation and restructuring in South African (SA) textile industries on household livelihoods,[1] I came across interesting conceptions of masculinity by retrenched men. Most of these men were worried about how they could continue being fathers and husbands if they were unemployed. They raised questions about masculinity, work and money in maintaining their role in households, and their respectability among their family members. This is similar to Hunter's (2006) finding that due to increasing unemployment rates men are unable to pay *ilobola* (bride wealth), and that as a result they cannot marry and have traditional control of their children.

These led to the birth of my fascination with masculinities/fatherhood and their relation to money. Since I had also been a student of social policy during my honours and masters years, I became interested in how the state, through its legislation, perceived men and interacted with them in these changing times. These influenced the research questions for this thesis: What impact does maintenance have on gender relations in the household? To what extent do these state legislations influence ideas of what it means to be a man?

However, my understanding of gender suggested that I could not study men in isolation from women, since these gender identities are shaped in relation to each other. Xaba (2001) maintains that masculine and feminine genders determine each other. In other words, masculinity cannot be studied separately from femininity.

[1] The research was undertaken for the Sociology of Work Unit (SWOP) based at the Sociology Department, University of the Witwatersrand (Wits).

Most men live with women and narrate their life stories with reference to these women. Daly and Rake (2003:37) also argue that "if one adopts a broad understanding of gender relations as social practice, it is clear that an analysis focusing on women alone or men alone will provide limited insight". As a result the thesis involves the analysis of men's and women's relations to each other with regard to the maintenance system.

One of the major challenges I faced during the proposal writing stage for this thesis was the lack of literature on fatherhood in South Africa. This lack has recently been partially addressed by a most relevant and interesting publication, Baba: Men and Fatherhood in South Africa edited by L. Richter and R. Morrell (2006). However, there had been a growing fascination with, and literature on, masculinities both in South Africa and internationally since the early 1990s. The thesis aims to contribute to these debates on masculinities in South Africa and, most importantly, to conceptions of fatherhood after 1994. Using the maintenance system as a lens is important in understanding how the state conceives of men as fathers and how, through interactions with the maintenance system, women and men define and redefine their relationships with each other and within the maintenance system. I found these connections to be lacking most in South African literature on gender relations and parenthood.

The maintenance system is based on the 1998 Maintenance Act (RSA, 1998), which stipulates that parents are obliged to provide for their dependents' accommodation, food and other necessities, including health care and education. This is to be provided on a scale in line with the social position, lifestyle and financial resources of both the mother and the father.

The implementation of this Act relies on maintenance officers, who are willing to assist in its execution but are faced with daunting challenges. These include lack of proper training and capacity, coupled with lack of interest in family matters for some of these officers. These challenges are compounded by systematic problems which include, among others, delays in finalising matters, non-execution of court

orders pertaining to maintenance and allegations of disappearance of files by members of the personnel. These challenges have also influenced interest in studying this institution as a way of examining the modus operandi of the state.

The research had two aims, which continued to develop as the research process developed. Firstly, the intention was to study how household income impacts on gender relations, and how the entry/exit of money (especially from/for maintenance) shapes relationships and gender identities. Secondly, the objective was to investigate how the maintenance system, as a specific structuring of income and resource distribution within society and the household, impacts on the configuration of gender relations. The most important issues, at least for this thesis, are the construction of men as fathers, husbands, brothers and breadwinners, involved in the control of money and resources. This is in addition to the construction of women as mothers, wives and girlfriends, among others.

The thesis contributes to broad debates that have acknowledged changing gender relations in South Africa and elsewhere in the world. It also shifts away from gender studies that have focused only on women in households, women in the political struggle and women entering the labour market. The result has been a neglect of men's concerns or questions of masculinity. This work is intended to take the notion of male supremacy and female subordination as a point of departure.

Arguments for gender studies that focus only on women's experiences include the fact that, to a large extent, women have been left out of history, which is undoubtedly true (Amadiume, 1987; Farrell, 1993; Connell, 1995). This is if one reads history as being the story of societies from men's perspective. This male perspective does not necessarily mean the same as being 'about men' – that is, about men's experiences and hopes for change. There has been an assumption that the patriarchal system in general works and benefits all men in the same ways. This one-sided assumption led to a lack of men's studies and how changes in women's positions impact on society in general, thus doing an injustice to the task

of addressing past inequalities. This also limits our understanding and interrogation of gender relations.

The study seeks to examine men's views of maintenance laws as they experience them. Literature in South Africa and Southern Africa on maintenance tends to focus on the experiences of women. Much of this work views women as victims, and focuses more on the maintenance system than on relationships within this system. As a result, they deny women a voice and their agency. Furthermore, it is limiting to argue that women are generally victims without looking at their respective experiences. Amadiume (1987) makes this point in her account of Igbo women and their power in society. These misconceptions dictate that men are immune to emotional strain. In this thesis, the interest is on what conceptions of fatherhood different men hold and how they relate to the "hegemonic" conceptions of masculinity espoused by the maintenance system and by other people influencing their existence. In addition, I examine the way in which these dominant expectations of masculinity limit and enhance the chances for men to be 'successful' fathers, and fulfilled as social and individual persons.

The late 1980s and early 1990s saw the proliferation of studies on masculinities with an emphasis on the changing nature of men's experiences. However, these changes have not altered the notion of what it means to be a father. Fathers are still seen as key providers even when they are unemployed or 'deadbeat'. Traditional definitions of the father have focused on provision more than on nurturing and other 'mothering' attributes. This research seeks to define masculinities outside the realm of the natural and biological. Rather it is interested in asserting that such definitions are embodied in social relations, which are constantly changing and are context-bound. It is interesting, however, how natural and legitimate patriarchal definitions of masculinity are limiting to fathers in a shifting social, political and economic context. These conceptions do not acknowledge the idea of masculinities advocated by Connell (1995). He speaks of four categories of masculinities – "hegemonic masculinity", "subordinate masculinity", "complicit masculinity" and "marginal masculinity". He tries to

show that not all men experience masculinity in the same way. Yet, he asserts that at certain points all men consciously benefit from the domination of women. Hence, I am interested in the options that men/fathers have with regards to role formation, especially when considering fatherhood and relations to women as experienced in the maintenance system.

This study investigates the challenges faced by men as members of households and in playing the various masculine roles that are expected of them and negotiating new ones. It relies on the premise that the concept of fatherhood as delineated by the maintenance system reflects broader societal notions of masculinity and speaks to fundamental questions of masculine identity in general. Furthermore, the thesis seeks to draw out the assumptions that underlie the existence of the maintenance system as such. In other words, it explores assumptions that the system makes about relations of gender and sexuality, but also about childhood and what children need from a family structure.

The main argument of this thesis is that through the use of force, 'justice', financial support and state administration, the South African government intervenes in shaping the family/household, in conceptualising gender identity, and in shaping the nature of gender relations through the maintenance system. However, these interventions are not without contestation and contradictions. The discussions in this thesis centre on the nature of these paradoxes. This is done through an analysis of women's and men's 'love' relations, the household, the ways in which they relate to money and make meanings of it, and how all these factors play a central role in shaping these relations.

The impact that the maintenance system has on gender relations in the household and the extent to which it influences ideas of what it means to be a man or a woman are central questions in this thesis. Consequently, it is argued that although the process of claiming maintenance might be formal and uncomplicated, in reality it is marred by complications. This is because the process is a social act, and while claiming maintenance might seem easy on the

surface it is nevertheless complicated by its social embeddedness. It is further asserted in this thesis that this limitation is a result of the lack of interest of the policy maker in the uncertainties presented by social life.

In developing this argument, this study illustrates the manner in which the complex nature of relationships manifests itself, through engagement with relevant literature. This is followed by a presentation of the findings, building on identified strengths in the literature and further developing the main argument. The thesis will also demonstrate that gender relations are not simple identities, but are complex and are influenced by a number of social factors. Central to these relations are interaction with institutions, individuals and ideas about identity. Nevertheless, these are socially constructed and therefore continually in flux. The following structure is followed in building this stated argument.

Chapter Two, which is the literature review and theoretical framework, is based on an examination of four bodies of literature. The first one examines the social welfare debates, and is interested in conceptualising the state as gendered. It shows that the maintenance system is gendered in its transactions with men and women users of the system. The second body of literature deals with gender relations and examines the ways in which they are displayed in love relationships. These theoretical underpinnings are important in helping us to understand the basis of the relationships in which men and women users of the maintenance system are involved prior to using the system. It also sheds light on ways in which these women and men will relate as they interact with the maintenance system. Thirdly, the theoretical framework goes on to theorise masculinities. The intention here is to show that there is more than one type of masculinity, a sense of masculinities (Morrell, 2001). Theorising here also conceptualises fatherhood. One interesting theory that emerges from this section of the review is from Mkhize (2006). His work gives a useful conception of “social fatherhood”. This is done through a critique of individualism, which is what drives notions of fatherhood espoused in the maintenance system. Lastly, this chapter examines the social meanings of money. The discussion here tries to show that there is more to

money than the coins used to acquire goods and services in the market. It shows that social relations, emotions and beliefs influence how money is acquired and used.

Chapter Three, focuses on methodology and reflects on the fieldwork process as well as the mirrored experiences of writing. It tries to capture the dynamics of doing gendered research while being a gendered subject. It also presents some of the field notes which include thoughts and feelings that I went through as I interacted with different aspects of the research process.

Chapter Four contextualises the making of the Maintenance Act of 1998. It looks at aspects that influenced the shape of this Act, and its impact on the everyday running of the Maintenance Courts. This takes us to Chapter Five, which focuses on how the Act works in everyday life. This chapter uses quantitative data derived from court files and interviews with key informants to try to understand the working of the Act.

Chapter Six focuses on men's accounts of what it means to be a man and the way in which these conceptions are challenged in the maintenance system. Their understanding of the maintenance system and its purpose are also captured. The differences between white men's and black men's experiences is also described, illustrating the significance of social factors such as race, class and history in shaping masculine identities.

Chapter Seven engages with the experiences of women. These include experiences of motherhood, love relationships and the maintenance system, among others. Their accounts are interesting in comparison to men's accounts. The way in which they share their experience of the maintenance system seem to be from completely different worlds – alluding to the gendered nature of society.

Finally we have the conclusion, which is presented in Chapter Eight. This chapter sums up the discussions and addresses the sociological significance of this thesis.

It also makes recommendations for future research and for improvement of the everyday running of the maintenance system.

Chapter Two

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This review engages with four bodies of literature. Firstly, it looks at broader social welfare debates in preparation for theorising about gender and the welfare state. Its relevance is to position the maintenance system as a particular form of state intervention in everyday gender relations. This section is essential in that it begins to elaborate on the challenges and limitations of this system. This is with an interest in the conception of the state as gendered and therefore an understanding of the maintenance system as gendered in its treatment of the men and women who use it.

Next, this review goes on to a discussion of theories of gender which will lead to broader discussions of masculinities. Discussions here will also touch on important conceptualisations of changing masculinities and fatherhood. These issues are relevant for this research because they begin to map out the limitations of all-encompassing theories on gender identity formation, which have characterised most studies of gender. This will lead to a section that explores 'intimate relationships', which tries to show the nature of relations between men and women and how these are changing in contemporary societies. These discussions will allude to debates that critically engage with definitions of the family and households; it will further highlight the limitations and strengths of using such definitions in social research.

Finally, the chapter will engage with literature dealing with the social meanings of money. This literature is of interest here because it helps position the role of money in gender relations acted out in association with the maintenance system.

2.2 Gender and the Welfare State

2.2.1 Overview

A number of theorists on the state have illustrated that the state favours the interests of women and undermines those of men. Reynolds (2000) on the other hand argues that, "the state nowadays determines where and how families constitute themselves, through legislation". These leads to definitions of what fatherhood and motherhood means in families and broader communities. Hoffman (1995) argues that states are intrinsically patriarchal. Patriarchy has been defined as society's organisation of its affairs to cater for and sustain male supremacy over women (Masinjila, 1994). It has been shown that societal institutions – the family, the church, the school, heterosexual practices, work processes and the structure of the state – work towards entrenching this patriarchal system. However, others have argued that the patriarchal system does not benefit all men in the same ways, taking into account that there are socio-political factors that lead to differences (Horrocks, 1994; Kabira, 1994; Connell, 1995). Hoffman (1995:12) clarifies that the use of patriarchy is based on a more historical conceptualisation of the term and that he does not imply that "men simply because they are men, have always dominated women". Furthermore, he rightly asserts that the fact that states are patriarchal does not necessarily mean they are exclusively patriarchal; he acknowledges that "among the identities that states marginalize are those of women" (Hoffman, 1995). This theory is important to the way in which this thesis develops.

Daly and Rake (2003:38) argue that:

> Welfare states help to determine the form and meaning of social roles by, for example treating men as the providers for their families. Welfare states also affect the choice of roles available to

> people, not least because they help to set out the rewards and penalties attached to particular roles. Their effect on social roles is therefore an important aspect of the agency of the state.

Of interest in this review is the conceptualisation of the welfare state as gendered, since the maintenance system falls under the legislation of provision for the welfare of mothers and children.

2.2.2 The gendered welfare state

The concept of the "welfare state" has been generally used in social policy research to mean the provision, by government, of extensive social security to its citizens (William et al., 1999). However, there are diverse definitions of welfare states advanced by many theorists, which are influenced by different factors related to the specific social, political and economic contexts where social policies develop.

One of the important theorists on state provision was John M. Keynes, who advocated increased state intervention in the welfare of the nation, leading to full employment policies and support for domestic demand (Mattick, 1969). Full employment would lead to active state involvement in economic and social affairs. Keynes held that the capitalist economy could function better when regulated rather than when left on its own, while maintaining its capitalist character (Mattick, 1969:3). As a result, 'reformed capitalism' was seen by both left and right politicians as preferable to "laissez-faire capitalism". The latter system was based on the idea that the market mechanisms of demand and supply work to regulate the market best when left on their own, and that intervention to control prices and other forms of intervention will disturb this system. Nonetheless, such a system should not be mistaken for a transformation of the capitalist system. Mishra (1999) points out that the full employment welfare state was seen as an accommodation of a market society to collectivist values and aspirations, a middle way between capitalism and socialism. It ensured consumption stability for a mass workforce in less repressive ways than those used by the socialist state (Sullivan, 1994:58). This type of system later influenced

the formation of welfare states around the world including that of South Africa although racially skewed. The assumptions here are full employment of the economy, and the idea of a male worker and a female care-giver.

William Beveridge[2] (in Silburn, 1995) argues that unplanned change is disruptive to societal everyday functioning. In his view poverty does not arise because capitalism is unable to produce sufficient wealth, but because it does not adequately distribute wealth. Beveridge's welfare encouraged the idea of a male-centred and female-dependent system. In agreement with these sentiments, Silburn (1995) argues that the state must act as an agent of redistribution. He points out that Beveridge's principle of universalism was based on the premise that "all confront the same basic human needs" and, expresses an implicit democratic and socially unifying spirit. These conclusions lacked gendered understanding of welfare needs, particularly for women.

On the basis of these universalist arguments, social security has been defined as "the protection which society provides to its members through a series of public measures against the economic and social distress that would otherwise be caused by the stoppage or substantial reduction in earnings" (Coewenson, 1997:2). This takes the form of cash payments which replace income lost due to old age, unemployment, death, invalidism, employment injury and sickness. Such schemes can also cover medical care, maternity benefits, settlements for survivors and family benefits. There is a masculine dimension to this, given that secure workers have always and are still today usually men.

For Marshall (1963), social security is the responsibility of a welfare state. It "is the responsible promoter and guardian of the welfare of the whole community" (Marshall, 1963:246). This is done through "state provision of benefits and social services intended to improve the well being of citizens" (Jary & Jary, 1995:729). Jary and Jary (1995) point out that the aim of the welfare state is to provide equal opportunity in a society characterised by inequality of wealth and social status.

[2] William Beveridge was a founder of the welfare state in the UK as much as he was a contributor to the academic debate on the issue. See the Beveridge Report, 1942.

The concept of equal opportunity reconciles different class backgrounds with access to the same opportunities, irrespective of the inequalities. This blanket conceptualisation of need and accessibility creates challenges and raises issues of inclusion and exclusion.

Esping-Andersen (1992), on the other hand, believes that welfare states have modified the capitalist system and are an expression of socialist aspirations. Marxists, however, argue that welfare states are merely an attempt to ameliorate the worst excesses of capitalism. "For them the state in its interventionist activities acted to protect, reinforce, and reproduce the economic, social, and political relationships of capitalist society" (Sullivan, 1994:60; Walby, 2001). Pinker (1971) also shows that, for Marx,

> in all capitalist societies there was a contradiction between the professed aims of welfare and available resources, 'between public and private life; between general and particular interests'. Consequently, the actions of the state could never be more than 'formal and negative' (emphasis in the original).

This is a pessimistic over-generalisation of the impact of states on society.

According to this sceptical view, "the accumulation process is further assisted through state intervention in the provision of services such as housing and health to groups in the working population. One of the functions of these services is to reduce the cost of labour power to capital and to keep the work force healthy" (Ham et al., 1993:36). O'Connor (in Jessop, 1984) classifies three different forms of state expenditure: firstly, "social investment", which increases labour productivity through the provision of infrastructure; secondly, "social consumption", which lowers the costs of reproducing labour power through the provision of social insurance; and lastly, "social expenses", aimed at maintaining social harmony. These state functions are seen as part of a legitimising process based on compromises between the working class and the ruling class.

Other Marxist theorists such as Mishra (1999) argue that the welfare state came about because of workers' struggles to reform the capitalist state. "The threat to

private ownership of the means of production and property more generally presented by socialism, and the labour movement compelled the compromise – the relative de-commodification of certain of the life-chances of capitalist society" (Mishra, 1999:2). This includes the provision of social protection by the state. Teeple (1995) also argues that reforms are both an "answer" and a "solution" to class conflict in the form of concessionary state policies and class compromises when the political and economic preconditions make it possible.

For Marxists, the fact that the welfare state accords citizens a "modicum of social rights" does not contradict the state's nature, which is "to act in the long-term interests of a dominant class in society" (Sullivan, 1994:59). This concept is present in Marx's view of the duality in the nature of the state. Marx appears to argue that the state is no more and no less than the organising committee of the capitalist class and that it always acts to promote, foster and protect its economic cultural and ideological interests. In other places, he accurately argues that "the state has a degree of autonomy from society in general and from a ruling class or elite in particular" (Sullivan, 1994:57). This is especially so because the functions of the state are divided according to different departments staffed by different individuals who represent conflicting interests. However, with regard to women and their place in society, Marx, like other economists, held that they were merely responsible for the household and the rearing and bearing of children, which was not valued through Marx's theory of exchange. This also suggests that the place of men in the household and the rearing of children was underplayed.

On the other hand, Marshall (1963) links the concept of de-commodification to social citizenship. He argues that this principle underpins the concept of democratic welfare capitalism and inhibits the in-egalitarian tendencies of the free-market. In addition, he argues that citizenship is not just about political and civil rights. Rather, the welfare state is designed to service the social needs of its citizens. It should be noted that social citizenship is accorded to all social classes, as a way to contain their conflicts since there is inequality. According to Marshall (1963), a citizen is entitled to particular basic rights, which include a basic income

grant, access to social goods such as health and education, a safe environment and access to heritage.

Citizenship rights are central to Marshall's (1963) link between de-commodification and social citizenship. Citizenship rights have been defined as "a set of practices that define membership in society and consequently shape the flow of resources to persons and groups. The political, civil and social components of citizenship are closely interwoven" (Lalloo, 1998:440). Marshall identifies three types of such rights. firstly, there are civil rights, which refers to a composition of "rights necessary for individual freedom – liberty of the person, freedom of speech, thought, and faith, the right to own property and to conclude valid contracts, and the right to justice" (Marshall, 1998:94). Secondly, political rights refer to "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body" (Marshall, 1998:94). Finally, there are social rights, which have been defined as "the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society" (Marshall, 1998:94). These rights are tricky to access. Stofile (1998) demonstrates that the exclusionary history that was part of the development of these citizenship rights still, to a large extent, influences its accessibility today. Summers (1998), on the other hand, illustrates that Marshall's discussion of citizenship assumes men's experiences to be the definitive ones, and as a result excludes the experiences of women. Consequently, it is important to translate these rights into reality by acknowledging that not all men and women from all races were part of its conceptualisation. I find Summers' (1998) argument useful in trying to understand the persistence of women's reproductive work and the challenges they continue to face in the maintenance system.

Although the discussion of citizenship rights is important in formulating the notion of citizens, there are inherent weaknesses in focusing on only one component of the concept. For Halisi, Kaiser and Ndengwa (1998), a

comprehensive conceptualisation of citizenship should include obligations. They argue that this inclusion should aim to ground, balance, and develop the relationship between rights and obligations at individual, group and societal levels. This point is important here since the relationships in the maintenance system reflect on the individual, group and society, and their identification with obligations in relation to rights.

Hobson (2000) emphasises the importance of shared duties and responsibilities between men and women which is implied by democratic citizenship. She continues to say that "government policies encourage men to avoid care-work", and Cass in Hobson says "… men should not be accorded full citizenship if they do not fulfill their responsibility for care giving work" (Hobson, 2000:56). The argument that rights without obligations do not lead to equality between women and men is appealing for this thesis, especially with regard to state policies which perpetuate these inequalities, as in the case of the maintenance system. Men here are given reason to continue avoiding care work because this is assumed to be the specialty of women.

On the other hand, Esping-Andersen (1990) takes Marshall's concept of de-commodification to a more systematic definition. Esping-Andersen prefers the phrase "welfare regime" to "welfare state". This is because for him the former expression is better able to accommodate different kinds of social policy arrangements, acknowledging the fact that "they owe their origins to different historical forces, and they follow qualitatively different developmental trajectories" (Esping-Andersen, 1990:2). According to this approach, one can define or measure a welfare regime depending on its level of de-commodification. This includes the amount and type of benefits provided and whether their coverage is universalist or selective. The mere presence of social assistance or insurance may not necessarily bring about significant de-commodification if they do not substantially emancipate individuals from market dependence (Esping-Andersen, 1990:22).

On the basis of his concept of de-commodification, Esping-Andersen identifies three types of welfare regimes. The first is the "liberal" welfare regime, present in the United States, Canada and Australia. This system is based on the market as the dominant mechanism of distribution of resources and on means-tested welfare provisions. Then there is the "corporatist" welfare regime, which has a moderate degree of de-commodification and accepts the notion of social welfare as a right of citizenship. This system recognises benefits mainly on the basis of status and employment positions. Midgely (1997) argues that these rights exist within traditional authority structures such as the family and negotiated corporatist arrangements. The third welfare regime is the "social democratic" regime, which is present in the Scandinavian countries. This system is based on the idea of universalism and high levels of de-commodification. Here, everybody qualifies for welfare benefits as attached to citizenship status.

Feminist critiques of Esping-Andersen point to his neglect of the differential positions of men and women in these welfare regimes (Duncan & Edwards, 1999). Duncan and Edwards (1999:40) argue that "…the relative and gendered importance of unpaid domestic and caring work is missed, and the various ways in which familial position shapes individual positioning vis-à-vis markets and states is underplayed". They further show that the countries in Esping-Andersen's typology which are more de-commodified – that is, the social democratic regimes – are more so for men than for women. They argue that "for mothers such countries are the most commodified – the gendering of social policy concepts" (Duncan & Edwards, 1999:37). In agreement, Nyberg (2002:80), in her study of the position of women in relation to welfare and paid work in Sweden, succinctly points out that:

> … lone mothers' capacity to form and maintain an autonomous household has been upheld by transfers from the welfare state. However, the capacity of lone mothers to support themselves and their children through paid work has decreased. Overall, by the 1990s, women in Sweden were more economically independent from men than they had been in the 1970s. Similarly women's capacity to form and maintain an autonomous household had become greater; however, this is through higher transfers, not higher earnings from the labour market.

In other words, this means that wage-work is not as emancipatory as it has been made out to be for women, especially those with child-care responsibilities. As a result, contributions from state transfers and non-custodial fathers become essential.

A contrary argument to Nyberg's (2002) postulation has been made by Walby (2001:5), who argues that:

> … while the de-commodification involved in the interventions of the state into the market are of a collective and egalitarian form, the non-commodified form involved in the household is based on personal ties and hence lacks autonomy, so that the move from housework/care-work to paid-work is more social and hence emancipatory.

Williams (2000), on the other hand, presents a more convincing argument. She believes that personal autonomy is only achieved through collective effort. Her argument takes into account the debate on dependency, suggesting that the notion of independence as market-based, and the notion of dependency as behavioural rather than enforced or resisted, is narrow and obscures the struggles against dependency of women with children, disabled people, and older people. I find Williams' (2000) argument useful, especially her insistence on the recognition that a worker's independence is achieved through hidden systems of support by those who care for that worker's children and his/her other needs. This argument makes particular sense for the maintenance scenario in many South African courts.

The development of the welfare state was seen as a move towards "embedding" the state in the sphere of everyday life. However, free-market critics argued that state intervention acts as an imperfection and distorts the efficient allocation of resources by the market. This argument is based on the assumption that markets, when operating freely, are in a position to reach equilibrium and provide a framework for automatic adjustment mechanisms. This provided the theoretical

basis of a “trickle down” approach, which has come to challenge views based on state intervention.

With the crisis of the welfare state in the 1970s, there were moves by governments to restructure state activities in the economy. What used to be rights are now defined as costs and rigidities, therefore redefining the social consensus politics of the 1940s and 1950s. This was the case mostly because, as Block (1994) has argued, “states are often distrusted for being parasitical and wasteful”, they are seen to be using more resources than they need to, and therefore are seen as inefficient. The assumption behind this is that private corporations are better off. This is not necessarily the case, especially because their motive is purely to make profit for the individual owners and no one else. It is also assumed that state employees will be far less productive than private employees when producing goods, and as a result the market is preferred.

These sentiments have been more strident in the United States and Britain. Spicker (2002) shows that Tony Blair holds negative perceptions of the welfare state and wrongly equates its workings to the views held of the poor laws of the 1870s. The poor laws treated the claims of the poor not as an integral part of the rights of the citizen, but as an alternative to them. They were seen as claims which could be met only if the claimants ceased to be citizens in any true sense of the word (Marshall, 1963). This perpetuates the stigma that is still linked to claiming social benefits. Blair is said to associate the welfare state with “fraud, abuse, laziness, a dependency culture, [and] social irresponsibility encouraged by welfare dependency” (Spicker, 2002:32). The idea that welfare leads people, especially women, to dependency has been severely criticised by feminists in particular and by other welfare theorists in general. The dependency sentiments have been upheld in particular by the United States and other proponents of laissez-faire capitalism. The United States welfare reform green paper of 1998 argues that “the welfare system … often fails to offer the kind of support needed in today’s world. It claims people to passive dependency instead of helping them realize their full potential” (Spicker, 2002:32).

Spicker (2002:35) offers three points of critique in relation to this view. Firstly, he contends that welfare does not considerably affect unemployment but that the economy does. He takes as an example that "in the depressions of the 1870s and the 1920s people didn't work because the economy was depressed". With regard to the more recent past he points out that "long-term unemployment mushroomed because of the collapse of traditional patterns of employment, particularly in the manufacturing industry and not because of welfare". This then makes the dependency arguments unfounded and misleading.

The second point of critique is that the problems welfare systems confront are created by the systems themselves by focusing on the poor. This is with particular reference to the selectivist welfare requirements. These requirements include means testing, thus requiring people to be poor as a condition of receiving welfare benefits. Spicker (2002:35) argues that "this is the 'poverty trap': the highest marginal rates of tax in Britain are experienced by poor people because of the combined effect of tax and benefit withdrawal". Focusing on the poor leads to situations where gender relations, sexuality and morality could be regulated, and this is what motivates these arguments.

The third and final point of critique offered by Spicker (2002) is that "welfare does not foster dependency". He asserts that although it is not impossible, it is unlikely that people stay for too long on welfare. In his summary, he rightly points out that poverty is an economic risk that affects almost all members of society and that welfare should be seen as a necessary social protection for all citizens. Williams (2000:342-3) takes this argument further by suggesting that interdependence, unlike dependency or independence, creates the basis for autonomy that acknowledges "… that we are all necessarily dependent on others, but that there is a need to challenge the institutions, structures and social relations which render some groups unnecessarily dependent". This for me is the direction that most women's advocacy movements should be pushing with regard to the maintenance system and how it works.

As a result of the 'less state intervention' arguments of the early 1970s, social security funding has been increasingly shifted towards individuals and their families. This is in a situation in South Africa where capitalism increasingly produces joblessness, growth fails to bring more employment, and decreasing public finances are unable to compensate for this situation. This primarily means that women are taking care of the bulk of this responsibility.

The debates in this section are important in illustrating that the maintenance system exists within a gendered welfare state. Although most of the literature reviewed here is not necessarily South African it captures the essence of gender and welfare in South Africa. Central in this section is the arguments put forward by Spicker (2002) that welfare does not necessarily lead people or women in particular into dependence. And the acknowledgement by Williams (2000) that the idea of interdependence should be more central to welfare provision, since we are all dependent on others at different points in our lives. Finally this section asserts that state intervention through welfare provision enables equitable allocation of resources. This intention is also true of the maintenance system. The section that follows reviews the literature on gender and intimate relationships.

2.3 Theorising Gender and Intimate Relationships

A gendered society fosters gendered individuals, who in turn create gendered relationships (Wood, 1993:50).

2.3.1 Debates on gender

Gender is not constituted by biological make up, but by a set of norms and relations embedded within social structures. Daly and Rake (2003) argue that gender can be defined through three elements: resources, social roles and power relations. Resources refer to goods and capacities available to one. These are said to influence lifestyle and social status. However, these goods and capacities are also contested. Social roles, on the other hand, refers to "the extent to which

norms and behaviours are social and patterned for women and men" (Daly & Rake, 2003:38). Power relations are said to "derive from and are closely associated with roles as well as other social phenomena" (Daly & Rake, 2003:39). Jary (1995) asserts that power relationships may involve interdependence and conflict. Parsons (1963, in Jary, 1995:260) defines power as "the capacity to achieve social and societal objectives, and as such can be seen as analogous to money, i.e. is the basis of a generalized capacity to attain goals". Power has also been argued to represent an important sociological analysis tool by Giddens (1985), especially when looked at as an aspect of all relationships.

Similarly, Schlyter (1998) argues that gender can be regarded as a basic social system that organises society, a system that is continuously constructed and reconstructed by both women and men at all societal levels. Jary (1995: 260) defines it as "culturally and historically relative, that is, the meaning, interpretation and expression of gender varies both within and between cultures, and is subject to historical modification". Horrocks (1994:25), having done extensive therapeutic work with men, argues that gender is "the tissue of fantasies about how men and women should act, dress, move, speak, feel and think", which in some ways does not represent 'reality'. The body and sexuality in particular seem to be central issues in the shaping of these identities. An example of this would be the penis as part of the body and as a sexual symbol which is seen as important in defining certain aspects of masculinity. Clare (2001:9) says that "phallic refers not merely to the penis but incorporates notions of potency, virility, manliness, strength and power". These are some of the concepts that have essentialised masculinity.

Wood (1993:47) argues that "profoundly entrenched social practices and structures define femininity as decidedly subordinate to masculinity". This was the case mainly because, as Jary (1995:227) points out, the historically (mostly masculine) study of femininity documented feminine identity as "… passivity, nurturing, co-operation, gentleness and relation to motherhood". These notions were, however, challenged by feminists and sociologists alike by pointing to their

constructionist nature and patriarchal underpinnings. Due to gendered socialisation girls have been defined as having "a stronger sense of gender identity, but a weaker sense of their autonomy and individuality", while, boys are conceptualised as being "more capable of independent action, although the emotional price to be paid for this capacity is high" (Giddens, 1994:125). Wood (1993) also suggests that men and women use differential methods to reach the same goals, especially in close relationships. He argues that "men use power to gain control whereas women rely on pleasing others as a route to the same end" (Wood, 1993:47). These gender differences are claimed to be influenced by the split between home and work – that is, the polarisation of gender roles with the result that love became a feminine quality. Finally, "relationships became the essence of what women did and who they were" (Wood, 1993:30). In cases where such relationships fail, women are held responsible by themselves and by others.

In showing these gendered differences in behaviour, Wood (1993:48) points out that "the responses most characteristic of women are voice (initiating talk about problems) and loyalty (standing by during times of trouble without actively intervening), both of which enact the feminine injunction to sustain connection". Men, on the other hand, are said to use "exit (leaving physically or psychologically) and neglect (denying or minimizing problems), both of which reflect masculine ideals of protecting self, not being too connected to another, and exercising control especially by refusal to talk with others" (Wood, 1993:48). These gender characterisations should be looked at with caution, and heterogeneity of behaviour among men and women should be expected. However, this argument could be helpful in understanding how relational issues such as the care of one's children are handled in the Maintenance Courts. These differences can also be helpful in understanding relationships between men and women, and explaining the direction and nature of conflict in these relationships. Having heterogeneity in mind could be helpful in cases where neither men nor women perform according to their 'appropriate' genders. On the same note, Giddens (1992) contends that sex differences do not have to conform to a clear break in behaviour and attitude.

Daly and Rake (2003) give a useful definition of the concept of heterogeneity among the genders. They argue that when studying gender relations it is important to take note of the heterogeneity that exists among women and men. They suggest a consideration of different statuses, different characteristics and differential access to resources. This leads them to the conclusion that it is important to investigate how gender norms and practices are experienced both in the family and outside the family since they traverse the public and the private.

For this thesis, it would be an oversight to assume that particular behaviours show only the relational experiences of men or women. However, it would be more interesting and fruitful to assume a heterogeneity of experiences among the genders. The following chapters will attempt to show this.

2.3.2 Theorising intimate relationships

According to exchange theorists, social and personal relationships are commercial arrangements in which participants calculate rewards, costs and outcomes to determine whether to remain involved or not (Wood & Duck, 1995). On the contrary, Wood and Duck (1995) contend that, in the 'private sphere' of home and family, different ethics have been central to relations. They argue that "communality replaces individuality, particularly in Hispanic and black families. Cooperation eclipses competition as a modus vivendi" (Wood & Duck, 1995:18). Although there might be an element of truth that personal and intimate relationships are governed by much more than economic exchange, blindly arguing that black and Hispanic families are governed by co-operation and communality is essentialising, especially in situations where there have been historical changes, hybridising of cultures and economic hardships that challenge the idea of households as unified.

The general description and media depiction of 'normal' intimate relationships as only positive is unrealistic and misleading. Wood and Duck (1995:15) make a case that this tendency to "obscure or pathologize less pleasant types of

interaction yield a false model that invites scholars, students, and laypersons to assume unrealistic standards for relationships and normality". They point out that "disregarding the dark side of interaction or separating it from normal, ongoing relationships" is misleading and limiting to the complexities of personal relationships (Wood & Duck, 1995:15). Like all social life experiences, "no matter how it is experienced, love is a social construction, and one into which a good deal of cultural 'work' is crammed" (Allan, 1993:17). This makes love a complicated and uncertain endeavour.

Problems, conflict and unloving feelings are said to be part of 'normal' relationships. Wood and Duck (1995:17) insists that "less than pleasant, less than loving thoughts, feelings, and interactions lace most normal enduring relationships". This, she argues, "runs counter to general tendencies to view conflict, for instance, as a deviation from intimacy, and problems as impediments to closeness" (Wood and Duck, 1995:17). Wood and Duck (1995:15) argue that because "problems, and tensions are ever present in relationships, defining and responding to them is a continuous activity in normal relationships". As a result, it is important to look at relationships as ongoing processes where people respond to a variety of changing circumstances. This reflects clearly the relations as enacted in the maintenance system.

Wood and Duck (1995) call this process responding to the rough and the smooth, sickness and health, richer and poorer, and better and worse. In these relationships,

> partners continually experience tensions between gratifying and frustrating experiences, hope and fear, anger and affection, excitement and boredom, connectedness and distance, and disappointment and anticipation. The process of relationships is how partners work out and/or live within these tensions and the way in which they frame and ascribe to them" (Wood & Duck, 1995:15).

Intimate relationships represent avenues for individuals to sort out their problems, to deal with their history of attachment or lack of attachment.

Wood (1993) shows that, like all other social experiences, intimate relationships are also gendered. He identifies the following gendered differences:

> Because women almost universally assume principal responsibility for relational maintenance and define relationships as central to their lives, and especially because women typically hold inequitable positions in close relationships, they are likely to see problems and to seek changes. However, men, who generally notice and attend less to relationship processes and who benefit from the inequities institutionalized in heterosexual relationships, have much to gain by maintaining the status quo and resisting changes (Wood, 1993:48-9).

These differences lead to misunderstandings of individual intentions in most relationships. In turn, this leads to situations where one partner, especially the woman, is over-burdened with the responsibility of maintaining the relationship.

Since it is a societal expectation that women will work at keeping relationships going, women tend to get all the blame when these relationships fail. Therefore, their relational competence is questioned. Klein and Milardo (1993:55) define relational competence as, "consisting of three elements: the task that has to be accomplished or the problem needing a solution; a set of behaviours that are appropriate in response to the problem; and criteria that indicate whether the task has been accomplished successfully". Their study focuses on third-party influences on the management of personal relationships. They assert that "once you know how to manage your relationships successfully, a prosperous and perhaps a very profitable life will result" (Klein & Milardo, 1993:55). If not, an unhappy and unfulfilled life might result, especially so for the woman who is not supposed to fail at keeping relationships.

As a result of the misunderstandings in relationships and the relational behaviours and expectations of women, the latter usually feel "hurt in relationships with men because they totally expose their beings and do not receive respect and exposure in return … knowing and being known are of the utmost importance" (Giddens, 1992: 197). For most women, 'masculine' types of advice and analysis in response to stated problems might be perceived as patronising displays of

superiority and insensitivity to feelings regarding the matter under discussion. It has been pointed out that "typical feminine displays of emotional support and empathy often strike masculine partners as intrusive and oblique to the topic at hand" (Wood, 1993:36). On the other hand, Giddens (1992:199) argues that "a combination of imbalanced gender power and engrained psychological dispositions keeps dualistic sex divisions quite firmly in place, but in principle matters could be organized quite differently. As anatomy stops being destiny, sexual identity more and more becomes a life-style issue". However, this is not the case for everyone and in all societies.

Wood (1993) emphasises the gendered need for autonomy and connectedness. He claims that they are

> basic and positive human needs, which interact dialectically. While all humans seem to seek both autonomy and connectedness, the relative amount of each that is preferred appears to differ rather consistently between genders. While the genders agree in valuing both autonomy and connection, they tend not to agree on how much of each is ideal (Wood, 1993:37).

Linking either of the two to one gender as Wood seems to do is a limitation. It may be argued that both men and women deal with these attributes at one time or the other. For me it is in the nature of relations to want autonomy or connectedness at particular times of one's life and during the life of particular relationships.

For Wood (1993), the manifestation of autonomy and connectedness among the genders is like a tug of war. He contends that "the more a feminine partner tries to enhance closeness with her partner, the harder the masculine partner has to work to create the distance needed to feel safe; the more the masculine partner moves towards autonomy, the harder the feminine partner pursues connection" (Wood, 1993:38). This captures absolutely what could happen in relationships at particular times in individuals' lives. However, the situation can be the same for women and men at these specific times. This is especially evident in maintenance cases, as will be shown in the coming chapters.

Allan (1993) looks at the forms taken by different kinds of relationships. He points out that relationships that parents have with their dependent children can be recognised as being quite highly institutionalised and tightly framed: "There are many social and legal obligations that parents have to their children" (Allan, 1993:12). These at times influence the relationships between parents. For example, to support a child through the legal system impacts on the relationship between the parents and between the child and parent.

Giddens (1992), on the other hand, is fascinated by the changing nature of relationships. This he shows by looking at how marriage has changed. Marriage for Giddens (1992) once represented a natural condition whose durability could be taken for granted. However, now it is a feature of the pure relationship that can be terminated, more or less at will, by either partner at a particular point. He contends that

> marriage as the pure relationship – individually constructed to meet the emotional and personal needs of the two individuals – is patterned by social conventions and material relations that lie well outside the dominion of individual couples, so in modern society the different transformations – that have been in the ideology and reality of marriage captured quite neatly by the linguistic shift from spouse to partner – are themselves framed within a much broader canvas (Allan, 1993:16-7).

According to him, the decrease in marriages and the increase in cohabitations attest to this change. Therefore, the socio-political and economic contexts in which relationships develop influence the type of relationships they will become. For example,

> what is taken for granted at one time later becomes contentious as social and economic conditions shift – for example, while most couples continue to prioritize husbands' employment over wives', the division of domestic labour and child care tasks has become an issue of some debate, even if overall responsibility in most households is little altered (Allan, 1993:17).

This could be the case in situations where the couples are not married. For example, when the issue of responsibility for children is not discussed and when

children are born, problems in the relationship emerge which sometimes lead to break-ups.

Allan (1993:16) makes an interesting assertion, that "marriage in modern societies, for all the emphasis there is on individual choice and freedom, is still shaped by structural characteristics embedded in other features of social organization, that is, the gender order and class". The structured access males and females have to material resources within the wider social formation strongly influence the division of responsibilities and tasks within marriages (Allan, 1993:19). This is with particular reference to Britain, where there has been equal opportunity legislation for 20 years; nevertheless many women are still employed in female-dominated occupational categories which typically pay less than most of the jobs held by men. This is especially interesting in the context of this thesis because access to resources plays an important role, as we will see, in how gender relations are played out in the maintenance system. The point that Allan (1993) is making is that the organisation of marriage is social in as much as it is individual, and so is patterned by external social and economic configurations. The same argument is made by Hunter (2006) in the context of unemployment in KwaZulu-Natal and changing conceptions of masculinities in relation to marriage and fatherhood.

It has also been argued that violence plays a major part in intimate relationships. Physical violence or abuse is strongly linked to gender. "Relationships in which women are abused are not unique but, rather, exemplify in extremis the stereotypical gender arrangements that structure intimacy between men and women generally" (Wood, 1993:49). On violence in relationships, Giddens (1992) is critical of the portrayal of violent men in therapeutic literature. He asserts that instead of saying men are unable to express feelings and are out of touch with their emotions we should say, "… many men are unable to construct a narrative of self that allows them to come to terms with an increasingly democratized and reordered sphere of personal life" (Giddens, 1992:117). For Giddens (1992), now more than in the past male violence against women could be attributed to power

struggles. He contends that "… a large amount of male sexual violence now stems from insecurity and inadequacy rather than from a seamless continuation of patriarchal dominance. Violence is a destructive reaction to the waning of female complicity" (Giddens, 1992:122). This is why public discourse suggests that women should feel the pains of financial support as punishment for equality and constitutionality in South Africa.

Both men and women seem to be angry about something, writes Giddens (1992), but they are angry, about different things. He asserts that "men's anger is against women's self-assertion in the home, the workplace and elsewhere. Women are angry at men in turn because of the subtle ways in which men deny them material privileges claimed for them" (Giddens, 1992:122). Interestingly, Giddens suggests the notion that economic poverty is for women, and emotional poverty is for men. This thesis further develops this question by focusing on the maintenance system and its impact on gender relations.

Giddens argues that we should not undermine the economic and social constraints which keep women as caregivers, since these play a major role in their inability to have the same economic and social stability that men have from achieving equality in the private or public worlds. This observation would interestingly question the arguments that democratic equality should make it possible for women to take care of their children without the financial, emotional and familial assistance of the fathers. The fact that South Africa has a constitution that champions equality does not mean that equality has been achieved.

Contemporary intimate relationships, for Giddens, are now based on the ability of one to commit with the understanding that it is not for life, that the relationship can change or end at any time. For Wood (1993), human relationships reflect personal choices including values, expectations, roles and lines of interpretation that organise the communities within which individuals and relationships exist. Contemporary societies are showing signs of accepting the uncertainties that are

in the nature of social life. However, accepting these in individuals' personal lives might not be as smooth.

Socialisation into societal norms and values teaches men and women different ways of interacting with others, especially where love is concerned. Wood (1993:42) shows that men are discouraged "… from openly expressing emotion and vulnerability, therefore those who adhere to the code of masculinity are frequently misjudged to be less affected and to feel less hurt when intimacy ends". On the other hand,

> women as relationship specialists appear more finely attuned to the subtleties of communication within intimate relationships – more women are generally more sensitive to interpersonal dynamics and thus see themselves and are seen by others as the experts at keeping relationships healthy (Woods, 1993:39).

In agreement, Giddens (1992:125) maintains that "the reliance of men upon women for doing the work of intimacy is expressed, not only in the domain of sexuality, but also in friendships".

This is referred to as "the feminization of love" by Wood (1993) who makes the case that feminine individuals tend to be skilled at, and interested in, talking about relational issues, openly stating feelings, disclosing personal information, and using conversation to sustain a sense of connection. The chapter on method engages with the extent of this connecting through talk and its significance for gendered research. In contrast, masculine individuals are socialised to think that relationships consist of things done for and with a partner, and commitment does not require – and may be diminished by – explicit talk. "Thus masculinity highlights shared activities, instrumental action and concrete forms of assistance as ways of caring" (Wood, 1993:41). This is obviously different from ways of being and loving illustrated by women.

Woods (1993:42) asserts that the feminization of love "… not only devalues the ways masculine people show care but also diminish the likelihood they will get the kind of caring they value". These situations leads to circumstances where there

is “a feminine bias which carries over into misinterpretations of responses to break-ups, where the criteria used to assess depression reflect feminine, but not masculine, expressions of distress: crying, talking about unhappiness, eating disorders, expressing misery, and feeling sad” (Wood, 1993:44). Giddens agrees, pointing out that

> men have problems with intimacy: this assertion we hear again and again in the therapeutic literature as well as elsewhere. …we can not simply say that women tend to be more capable of developing emotional sympathy with others than are most men. Nor, to repeat a banality, can we accept that women are in touch with their feelings in a way that men typically are not. Intimacy is a matter of emotional communication, with others and with the self, in a context of interpersonal equality (Giddens, 1992:130).

Consequently, the following question begs to be asked: when feminised forms of intimacy are the only ones counted, is it any surprise that men are found to be less intimate than women? Wood (1993:44) summarises by making the point that “men are persecuted for not living up to a standard that from the start ignored masculine modes of experiencing and expressing closeness”. As a result, men never get credit for loving actions that are typical of their ‘masculine’ up-bringing. For example, the fatherhood role in the maintenance system is defined through feminine needs and aspirations, and undermines the contributions and expectations of fathers.

Giddens (1992) attributes men’s difficulty with intimacy to two things: firstly, he asserts that it is from “a schismatic view of women that can be traced to an unconscious reverence for the mother”; secondly, he argues that it is because of “a lapsed emotional narrative of self” (Giddens, 1992:130). This, then, makes it difficult for these men to engage in the reflexive process needed in contemporary relationships. Giddens (1992) also speaks of intimacy as democracy, where the possibility of affection means the promise of liberty. He defines this democracy as a situation where the individuals involved are concerned about securing free and equal relations between individuals in such a way as to promote the following outcomes:

- The creation of circumstances in which people can develop their potential and express their diverse qualities. A key objective here is that each individual should respect others' capabilities, including their ability to learn and enhance their aptitudes.
- Protection from arbitrary use of political authority and coercive power. This presumes that decisions can in some sense be negotiated by those they affect, even if they are taken on behalf of a majority by a minority.
- The involvement of individuals in determining the conditions of their association. The assumption in this case is that individuals accept the authentic and reasoned character of others' judgements.
- Expansion of the economic opportunity to develop available resources. This includes the assumption that individuals are best able to achieve their aims when they are relieved of the burdens of physical need.

Giddens (1992) argues that autonomy links these various aspirations. This, he insists, is the capacity of individuals to be self-reflective and self-determining, which includes the ability to deliberate, judge, choose and act upon different possible courses of action. This is particularly so in the arena of heterosexual relations, because of the gender differences that lead to conflict and misunderstandings. Given the Eurocentric nature of these claims, it is not clear how they capture the relational nature of relationships between women and men as acted out in the South African context in general and in the South African maintenance system in particular. The chapters that follow will however, engage with the possibility of such a semblance.

Like a democracy, this intimate relationship is governed by personal autonomy which, according to Giddens (1992:190), means

> the successful realization of the reflexive project of self – the condition of relating to others in an egalitarian way. The reflexive project of self must be developed in such a fashion as to permit autonomy in relation to the past, this in turn facilitating a colonizing of the future.

When personal autonomy is achieved, it becomes easy for the individuals concerned to gain respect for themselves and for others, and to function in a democratic arrangement. When this respect has been gained, the ability to develop one's capability is seen as important as the development of the other's ability.

To clarify further, Giddens (1992) also makes use of the democratic language of rights and obligations. This means that "intimacy should not be understood as an interactional description, but as a cluster of prerogatives and responsibilities that define agendas of practical activity". According to Giddens, rights are significant in marriage for the achievement of intimacy and equal status. This could be understood, for example, to mean that women have the right to initiate divorce. Looking at the reasons for this action and actually taking the action has major equilibrating effects on the intimate relationship. Having such rights "limit the capability of the husband to impose his dominion and thereby contribute to the translation of coercive power into egalitarian communication" (Giddens, 1992:190). This could be limited in situations where the women does not feel empowered to take such a step. This is especially true in cases where abuse and economic instability are issues in the lives of women.

Finally, Giddens equates intimate relationships with both accountability and authority. He makes a case that

> … pure relationships are deeply bound up with trust. Trust without accountability is likely to become one-sided; that is, to slide into dependence. Accountability without trust is impossible because it would mean the continual scrutiny of the motives and actions of the other. Trust entails the trustworthiness of the other – according 'credit' that does not require continued auditing, but which can be made open to inspection periodically if necessary (Giddens, 1992:191).

Interestingly, this notion of intimacy as democracy seeks to shift from the racial and gendered conception of provision and access to resources and opportunities in non-democratic states, and also in previous relationships where gender relations were seen as natural.

Evans (2003) says that the evidence given by Giddens (1992) as proof of the democratisation of intimacy is a demonstration of the erosion of a distinction between the private and the personal. Evans (2003:35) also argues that the only way the argument about the democratisation of intimacy could be convincing is if, "both men and women are economically active and fully participant members of the public, civic, world". This suggests that in a context where women are still to a large extent primary caregivers and men are primarily seen as providers, intimacy in democracy will not be achieved.

The debates in this section are important in making links between the maintenance system and everyday relationships between the men and women who use it. This is important in helping us understand the different ways in which men and women deal with the maintenance system, each other and the parenting role. The debates here also illustrate the complexities reflected in how different relationships are constituted and how they in turn affect one another. This is especially so with regards to how the organisation of intimate relationships later impact on the workings of the maintenance system. The discussion will now shift to a debate of the literature on masculinities and fatherhood, to set the stage for a discussion of the experiences of fathers in the maintenance system.

2.4 Masculinities, Fatherhood and the Law

2.4.1 Conceptualising masculinities

Morell (2001) has attempted to identify and explore the different forms in which masculinity, as a collective social form, is expressed in South Africa. He has investigated the ways in which masculinity is implicated in gender inequalities and how masculinities are changing. This research is interested in similar questions, although particularly at the level of the maintenance system and gender relations.

Masculinity is to a large extent tied to patriarchy and its rules. In his conclusion, Horrocks (1994) makes three interesting points: firstly, that patriarchal masculinity damages men; secondly, that female power is palpable and potent in certain areas of life and that men are in awe of it; and finally, that masculinity is not innate. This study is interesting in that it uses a multidisciplinary perspective which draws on different concepts and reflects a broad discussion of issues on masculinity. It demonstrates that, as the socio-political and economic systems undergo changes, masculinity too changes. As argued earlier, interest in studying masculinities proliferated in the late 1980s and early 1990s. Horrocks (1994:27) points out that "it is not men who create harsh and conflict-torn cultures, but those cultures which create the cult of masculinity, and propel men, whether they like it or not, into the traditional male roles". Blake (1995) argues that the point is not only awareness of masculine tendencies towards violence, alienation from nature and people and dominance, but the need to actively reconstruct such an identity. This study hopes to rethink the relationship between men and women in South Africa through the study of men and their life experiences in relation to the issue of maintenance.

Blake (1995) shows that although the feminist movement asserts what men cannot be, it does not say what they can be, therefore limiting the scope for reconstructing masculinities. This lack is somewhat addressed in the South African context by research and the publication of the book Baba: Men and Fatherhood in South Africa (Richter & Morrell, 2006), which focuses on positive masculinity and fatherhood in particular. Farrell (1993) also shows that while women have role models toward alternative femininities, most men do not have alternative models of masculinity. Although the acknowledgement of structural changes helps us to understand entrenched senses of masculinity with regard to control, it does not say how lack of income, for instance, limits these men's sense of self-worth and new ways of being. Giddens (1992) makes an interesting contribution to the discussion on why it has been difficult to see change with regard to what it means to be a man. He says,

> … male sexuality appeared unproblematic in the context of the 'separate and unequal' social circumstances that prevailed until

> recently. Its nature was concealed by a range of social influences, all of which have now been, or are being, undermined. These include the following:
> - The domination of men over the public sphere;
> - The double standard;
> - The association schism of women into pure (marriageable) and impure (prostitutes, harlots, concubines, witches);
> - The understanding of sexual differences as given by God, nature or biology;
> - The problematising of women as opaque or irrational in their desires and actions;
> - The sexual division of labor (Giddens, 1992:111).

Without these social circumstances, what characterises masculinities? Ramphele (2000) shows that black men during the apartheid era were categorised as belonging to a status below that of white women and children. The use of the term 'boy' to refer to the majority of African men captures the symbolic position they were meant to occupy in the power hierarchy of racist South Africa. Their unfortunate escape from complete powerlessness is the control they exercise over African women and children. This conception follows the general over-encompassing definition of patriarchy without taking into account different experiences[3]. Morrell (2001), on the other hand, talks in terms of "masculinities". He argues that "being a man … conferred power. But not all men shared this power equally and not all were individually exploitative" (Connell, 1995:79 in Morrell, 2001:7). Morrell (2001:7) points out that "minorities defined in terms of race, class, ethnicity or sexual orientation, all characteristically understand what being a man means differently from members of the ruling class or elite and from each other too". Masculinity is not the same for black men and white men in different classes. Therefore, different households will have different conceptions of, and narratives to tell about, masculinity. Consequently, fatherhood means different things to different fathers.

These points of difference are captured by Ramphele (2000), who says that the myth of the man as supporter, protector, provider and decision maker was carefully nurtured in an attempt to protect the community from a moral/ethical

[3] See interesting critiques by Posel (1999), Ramphele (2000), and Mckee and O'Brien (1982).

breakdown during the struggle years in South Africa. These issues are also captured in American black feminist thought (Collins, 1990). Morrell (2001) argues that race-class loyalties and political agendas are often stronger than gender subordination. Thus, the underplaying of gender conflicts does not mean they are experienced homogenously throughout society. He argues that

> masculinity is not automatically acquired; it is also true that boys and men are not entirely free to choose those images which please them. Their tastes and their bodies are influenced, some would say shaped, by discourses of gender, which they encounter from birth. Human agents cannot stand outside culture and wield power precisely as they wish. Power is always limited and shaped by systems of knowledge, which also shape the subjects and objects of power … power/knowledge position, us as subjects of particular kinds. They put pressure on us to adopt particular identities … in this particular sense; power and knowledge as discourse construct social identities" (Morrell, 2001:8).

This suggests that, men are faced with challenges when they have to choose who to be, and the decision is not as clear-cut as it has always been assumed to be.

2.4.2 Work and masculinity

It has been argued that the realm of paid work is extremely important for the social construction of men and masculinity. While increases in unemployment may mean that men spend more time at home, this does not necessarily mean a change in men's behaviour (Williams, Popay & Oakley, 1999). It has also been shown that loss of status leads to increased frustration, domestic difficulties, and even the reassertion of specific or new forms of masculinities through violence. "It is only by taking a wife, having children, and building a homestead that men can begin to assume the privileges and responsibilities of a homestead head" (Carton, 2001:134). However, very little research has been done on how such changes impact on notions of fatherhood and support of children. This thesis has taken up this task as its main purpose.

Paid work has been important in defining masculinity, yet increases in unemployment have meant that more and more men are unable to find work.

Furthermore, there has been growing access to employment by women. The increased employment of women, although in informal and low-paying jobs, is impacting on and challenging the male breadwinner status. What can men be if they cannot be providers for their families? Mkhize (2006: 184) argues that unemployment in South Africa among African men has been higher compared to whites, "which means many African males are unable to assume the social responsibilities associated with fatherhood".

These employment trends are a result of broader changes in society which have an impact on households and affect traditionally defined gender roles. Men's loss of breadwinner status does not necessarily undermine the association between masculinity and the control of money (Gwagwa, 1998). How do men deal with this reversed role, with emphasis on the control of money in particular? In response to this question, Ramphele (2000) suggests that the desertion of fathers, predominant in African families, is often a reflection of the inabilities of most fathers to provide.

It has been argued in public discourse that it is impossible to establish adult status in situations where men can neither work nor marry. There are no incentives and very few opportunities for young men to build a positive sense of self (Mamphele, 2000). If work is not the only way to build a positive sense of self, what other ways are there for these men? Although it is acceptable for women to deviate from gender norms, it is not the same for men (Farrell, 1993). "The fact that most men cannot adequately support a family financially without the addition of female earnings, and the fact that women spend a far greater proportion of their lives in industry than in full-time maternity, has not invalidated the distinction between man the breadwinner and woman the wife and mother" (Hunt, 1980:15; Gwagwa, 1998). In maintenance, this explains the limited number of men who lay charges against their wives and girlfriends to force them to support their children. Is this an option for fathers who are primary caregivers?

The male breadwinner ideology provides men with an authority which transcends individual circumstances and limitations. Hunt (1980) shows that the male breadwinner ideology can conflict with reality. In cases where women earn more than men and are sole-income providers in their households, who is the breadwinner? This makes it difficult for men to do household work when they are unemployed. Women, unlike men, even when working in the formal sector, always find other work in the community or household. The reverse attitude, prevalent among men, makes them extremely vulnerable: when they are unemployed or made redundant they suffer acutely and have nothing to fall back on (Hunt, 1980:44). This is because men put all their eggs in one basket, but what happens when the basket tumbles down? One must come up with new ways of being; this is what men are faced with today. Mkhize (2006) suggests that we should move away from essentialising accounts of fatherhood as provider. He also argues that failure of a father to fulfil his responsibilities as a father should not be reduced to the person, but should be looked at from a historical, cultural and class perspective. This would make room for notions of collective or social forms of fatherhood.

2.4.3 Fatherhood

"Fathers are a biological necessity but a social accident"
(Margaret Mead, 1950: 183).

Fathers tend to play their family role through their work and their social responsibilities rather than through direct care for their children (Colman & Colman, 1981). Most of the material on fatherhood has been from the psychology discipline which addresses gaps in the sociological literature. What is the task of this research? For many families in the past and today, having a successful father meant having a man who could earn enough money to provide for the family's needs. This was also based on the biological contribution by the father to conception. The father as provider has been central to the definition of fatherhood and has influenced the direction that social policy on families has followed.

More recently, that is from the 1970s, some of the stereotypes on sex-role behaviour within the family have been challenged by new social values (Farrell, 1993). Fathers and the experience of fatherhood were largely taken for granted both in popular culture and in the literature generally. Fathers have been accepted as necessary figures in family life, but few people really expected them to be deeply involved in day-today parenting activities. It has been argued that this is confusing for men, where "the behaviour of fathers is under attack, but the concept of 'father' has remained relatively stable" (Colman & Colman, 1981:1). Mapetla, Larsson and Schlyter (1998:41) argue that

> men, especially fathers, are generally perceived by themselves and expected by other household members and society to be central determinants of household survival. This they are mainly expected to achieve through being formally employed and contributing their incomes to the household.

These views are true even when men and fathers are unemployed and women are the breadwinners.

Men who become nurturing in the family often feel that they are 'mothering' rather than 'fathering'. It is difficult for them to feel like a gentle, caring parent and like a man at the same time (Colman & Colman, 1981; Farrell, 2001). Over the years fathers have struggled with their inherited image of fatherhood and have altered it as social values have changed. The question then is, are these altered images of fatherhood integrated into broader societal institutions, norms and values?

2.4.4 Traditional fathers

Colman and Colman (1981) show that definitions of fatherhood almost always start with biological definitions – that is, the father as being the one who contributed half the genetic material to the child. However, the function of fathers has been more of a social one than a biological one, as is the case with motherhood. The roles of mother and father have been looked upon as separate entities, with the father's functions generally described in the following terms:

Firstly, he is seen as the protector of both mother and child, providing them with the necessities of life and fighting for their safety against dangers from the outside world if necessary. Secondly, he trains the male child for a masculine role in the community and sets a pattern of masculinity in relation to femininity for the female child. These definitions are limited in that they do not acknowledge the heterogeneous nature of experiencing fatherhood, which is influenced by different cultures, characteristics of families and individual preferences.

Mckee and O'Brien (1982) show that in France and England in the nineteenth century many fathers enjoyed uncontested and unshakable authority over all members of their households. Here, paternal authority resembled that of the absolute monarch and mirrored the social reality that itself was characterised by hierarchical social relations and by the governance of the father, the husband, the master and the lord.

Beliefs about what fathers should do limit what they actually do to what they think they should do and not to what they want to do. Their roles have been limited to providing a solid economic base and to assisting their children, especially sons, to acquire appropriate sex-typed behaviour, and to perform as breadwinners and authority figures (Robinson et al., 1986:41). However, many fathers experience deep fulfilment in providing for their families. These fathers believe they make a better contribution, usually financially, to their children's lives by focusing on their careers. However, other men resent that they are shadowy figures in the backgrounds of their children's lives. Consequently they seek other ways of being fathers. Some feel pressured by others – wives, family members and peers – to participate only as providers. Are these constraints considered when dealing with maintenance cases? Is there space for fathers to be fathers in new ways? These questions and others will be investigated throughout the thesis.

2.4.5 Androgynous fathers

Androgynous fathers differ from traditional fathers in that they try to protect their children from the influence of sex-role stereotypes (Robinson et al., 1986). They spend the same amount of time caring for their children as do mothers. Colman and Colman (1981) show that these men start being involved as fathers from pregnancy, at birth and then during the growth and maturity of their children. "Fathering does not have to begin when the child becomes 'civilized', that is, when it can walk, talk, play ball and be a buddy" (Colman & Colman, 1981:144).

Traditional and androgynous fathers represent the extremes of fatherhood. The typical father is less clearly defined by research studies. Colman and Colman (1981) found that the unconventional fathering and mothering trends do not last for long since they become too burdensome in an environment which is not open to them. "Those ancient parental voices and conservative societal traditions have a way of counterattacking when least expected" (Colman & Colman, 1981:155). Consequently, parents tend to go back to the traditional definitions of fathering based on sex roles.

This discussion shows that there are contradictions between what is expected and what fathers prefer. Furthermore, it should be noted that most of these fathers have more than one role, and such roles might be contradictory to each other. Milloy (1959:59) argues, "How well a man can give support to his wife and be father to his child depends on his capacity for integrating internal and external demands and on his ability to carry the variety of social roles required of him as an adult and as a male". His success will reflect the degree to which he can mobilise adequate defences to protect himself from whatever feeling of danger he may experience in carrying out his various roles. Milloy also argues that there are varying degrees of self-investment, of conflict and of anxiety in men's ability to fulfil one role and whether this will inevitably have an effect on his ability to fulfil others. She asks interesting questions which will have a bearing on this research: How comfortable and adequate is he in other roles, which impinge on his

fathering role? What is his concept of masculinity? What were his motivations for becoming a father? What specific emotional problems does he have?

2.4.6 Social fatherhood

Mkhize (2006), Richter and Morrel (2006) and the fatherhood project run by the Human Sciences Research Council (HSRC) put forward a definition of fatherhood that emphasises what they call social fatherhood. Their intervention in gender and masculinities studies has been most interesting and relevant to the social sciences and to social life in South Africa generally. Richter and Morrell (2006) start by arguing that fatherhood is a social role. Mkhize (2006:188) argues that the individualistic paradigm of fatherhood holds that

> a person has reached moral maturity (in terms of individual development) when he is deemed capable of discerning the rights and wrongs of being a father. Failure to assume one's responsibilities as a father is reducible to what is inside the persons. The deficit resides in the individual. Cultural, historical and class differences are not taken into account.

Interestingly, these ideas are the ones that tend to shape understanding of fatherhood, motherhood and parenting in the Maintenance Courts. These notions in the maintenance system do not fully appreciate the idea that "child-rearing is the collective responsibility of the extended family as a whole" (Mkhize, 2006:187).

Mkhize (2006) raises four interesting problems with the individualistic paradigm in relation to fatherhood which I found relevant for this thesis. Firstly, he identifies "the tendency to draw sharp distinctions between our 'inner' and 'outer' lives" (Mkhize, 2006:189) – here he points to how, in African communities, the care of children was not in the hands of individual parents. He also shows that shifts in this regard might have contributed to the negative experiences of fatherhood experienced today.

Secondly he identifies, "the failure to account for contradictions in self-understanding and changing family patterns" as contributors to negative

experiences of fatherhood (Mkhize, 2006:190). He argues that "fatherhood is not a single, unchanging concept. It needs to be understood in context and time" (Mkhize, 2006:190). He also maintains that "essential accounts of fatherhood cannot help us deal with questions of fatherhood in the context of change" (Mkhize, 2006:190).

Thirdly, Mkhize (2006:191) identifies "the inability to account for culturally varied understandings of fatherhood" as part of the problem. He maintains that collective fatherhood is still practiced in some settings, where maternal uncles, aunts and grandparents play a significant fatherly role in the upbringing of children. However, there is a rapid decline in this practice due to urbanisation and HIV/AIDS-related poverty. The economic injustices of the apartheid era also continue to make their presence felt in African communities. He shows that

> in South Africa a further breakdown of family ties and support systems occurred during the violence that preceded political emancipation. All these factors make it difficult to meaningfully enforce the concept of fatherhood as a collective responsibility of male members of the family. Nonetheless, where it is still feasible, collective fatherhood can be, and is being, used to complement the traditional biological/essentialist model of fatherhood" (Mkhize, 2006:191).

Finally, he identifies "the tendency to discount the relationship between history, colonialism and masculinity" as a problem when trying to understand fatherhood (Mkhize, 2006:192). This refers to the history of colonialism and apartheid, where the presence of the 'father' was challenged. Mkhize argues that for African males the position of the father, which was revered, was under serious challenge during colonisation. The upward and economic mobility of women also continues to challenge men. He asserts that fatherhood should not be seen in essentialist terms, but with reference to these challenges. The question is: how do men define and redefine themselves in response to these realities? In essence, he argues that "when men act in their capacity as fathers, their engagement with children and other family members needs to be understood holistically rather than simply as the actions of one individual relating to another individual" (Mkhize, 2006:195). Although Mkhize's thesis is appealing it is important to note that taking personal

responsibility and being accountable to one's children as a father is not optional. This is so even in contexts where social fatherhood is the norm.

2.4.7 Fatherhood and the state

Authority has been defined as "power which is legitimized in terms of the hegemonic ideology of the society in question – power which is therefore defined by the law, dominant media and other key socializing institutions, as right and just" (Posel, 1991:12). Through its policies, the state has supported particular family types, ones in which there was a male breadwinner and a female caregiver who was not paid. Support for this type of family meant that social policies contributed to restricting women's place to the private world and denying men's responsibility in the intimate world of the home, and as a consequence entrenching the traditional masculine versus feminine role.

The maintenance system and the state here could be defined as influencing hegemonic masculinity as Morrell (2001:9) defines it:

> masculinity which does not rely on brute force for its efficacy, but on a range of mechanisms which creates a gender consensus that legitimates the power of men.

It further perpetuates ideas about man as breadwinner, therefore the pressure on men to look at themselves through one lens, that of wage earner. This argument is interesting for this thesis: When all the structures that support this single-minded view of men crumbles, what becomes of them? How do they continue to be breadwinners when this is not valued in the same way? Engagement with maintenance experiences of men and women interrogates these questions, as will be illustrated in chapters that follow.

Legally fathers have long stood in a dominant position with regard both to their family in general and to legitimate children in particular. In the nineteenth century in Britain and England such laws did not take into consideration the mother's and children's interests. Louw and Hardy (1992:27) argue that "the law did more than

reflect the general attitude of the time. Many judges genuinely felt that it was in the children's interest to be under their father's control". This was mostly with regard to legitimate children. With regard to 'illegitimate' children, the law held that fathers had no rights; the right to control was vested with the mother.

However, in the 1800s this tended to change, with a bias towards the mother. "This legislative concern for mothers was part of a general response to pressure for reform from the upper and moneyed classes to improve the legal position of wives" (Louw & Hardey, 1992:29). In the late 1800s a shift emerged towards a child welfare principle. This was not to be measured only by money or by physical comfort. The word welfare was to be taken in its widest sense. The moral and religious welfare of the child was to be considered as part of its well-being, nor could the ties of affection be disregarded (Louw & Hardey, 1992:31). Thus, the legal demand for fathers to pay maintenance is argued to be based on structural economic inequalities. Collins (1992) argues that these are premised on inequalities within the family connected to the gendered division of labour.

Maintenance studies in Southern Africa show that, due to the varied experiences of colonisation, there is more than one law in operation.[4] Armstrong (1992) shows that in these countries there are two sources of law which determine legal obligations and rights in family law matters. These are the general law and customary law. The general law could either be based on Roman-Dutch law or on English common law. Customary law is based on each ethnic group; and is therefore influenced by customs. Armstrong (1992:32) shows that "customary law at all levels is characterized by diversity and ambiguity. In addition customary law is changing rapidly as social conditions change". However, it has been shown that, as in Britain and England, the legal status of fathers is the same when compared to traditional law; whatever this was in relation to custody. The parent who had custody was supposed to maintain the child. A man was expected to maintain his legitimate children.

[4] The countries studied by Armstrong (1992) include Botswana, Lesotho, Mozambique, Swaziland, Zambia and Zimbabwe.

Farrell (2001) asserts that it is imperative for society to shift attitudes about the future of fatherhood.[5] He argues that we should recognise that the rigid roles of the past were not necessarily designed by men to serve only men, and that this will assist in shifting attitudes about fathers (Farrell, 2001:239). Furthermore, he asserts that there should be studies on challenges faced by fathers. For example, Armstrong (1992:145) concludes in her study of maintenance in Southern Africa that "men are not opposed to the obligation to maintain their children, but to enforcement of that obligation through the courts, involving women obtaining control over their money and imposing duties without corresponding rights over the children and the woman". Therefore, it is important to learn what it means to be a father from fathers themselves so as to address the problems faced by both mothers and fathers on parenting and for the state to assist in its child support enterprise.

This section dealt with questions of masculinities, manhood and fatherhood in a range of scenarios. It puts forward discussions which are relevant for understanding the title of this thesis – changing masculinities. It is also important for making the necessary links between the maintenance system and masculinities by dealing with debates on fatherhood in general and fatherhood and the law since the maintenance system addresses men as fathers. The central argument here is that men and fathers have varied experiences and deal with these in diverse ways even though they are often understood through a distinct patriarchal lens. The section that follows will locate the maintenance debate in discussions about the meanings of money in everyday life.

2.5 Money and its Everyday Meanings

The love of money has been said to be 'the root of all evil'. Money is a symbol of the relations between the sexes over the course of life. It enters very early into the

[5] He writes about the reunion of the father and child, some interesting things about child support and the relationship between the mother, the father and child support money, and how these perpetuate the unattached nature of masculinity and increased suicide by men.

relations between parents and children. It measures status, friendships and social standing between men and between women. De Brunhoff (1976:46) quotes Marx on money and social power as follows:

> Money is impersonal property. It permits me to transport on my person, in my pocket, social power and social relations in general: the substance of society. Money puts social power in material form into the hands of private persons, who exercise it as individuals.

Benedict (1982) and Zelizer (1994) argue similarly that money not only buys the necessities of life, but also symbolises the relationships that give life meaning. Zelizer (1994:200) further argues that

> … we have seen people constantly deploy a social lexicon of monies, creating phrases, sentences, paragraphs, whole books as they manipulate their currencies, earmarking certain monies for particular uses, distinguishing others by how they were earned, designating special users of official currencies, or converting non-monetary exchanges into media of exchange.

What Zelizer is referring to here is earmarking. This, she asserts, is the process where individuals and societies personalise and differentiate monies. As a result, social relations play a role in shaping, and also being reshaped by, money. This process, she argues, goes deeper into social relations, to "… domestic transactions, the bestowing of gifts, and charity, both public and private" (Zelizer, 1994:201). Consequently, families start passionately differentiating their monies, and this differentiation goes through the following distinctions: "food money from rent money, school money, or charity money as well as funds for burial, weddings, Christmas or recreation" (Zelizer, 1994:201). Interestingly, these earmarking arrangements are not always met with agreement by husbands, wives and children, leading to deceiving strategies so that individual family members can control their separate monies.

Unlike economists, the social anthropologists point out that instead of being neutral and impersonal, money became meaningful. Furthermore, it became important who gave gift money and who received it, when it was given, how it was offered and eventually how it was spent. This was shaped and in turn shaped

social relations and meanings attached to them and to money (Zelizer, 1994; De Brunhoff, 1976).

The maintenance system in turn challenges widely held views on gender relations, parenting and money. Men realise that by giving money to their wives, ex-wives and girlfriends for the support of their children, they are losing their power to control them, or to receive sexual favours, or to force them to perform wifely duties.

Traditionally money relations between women and men have followed a particular pattern. Benedict (1982) reports that in the Seychelles, manhood and obligation from women is obtained through the exchange of money gifts. She contends that "a man always makes his woman beg for money, it is a symbol of his dominance and her subservience" (Benedict, 1982:188). A man gives his woman a 'gift' of money every month. In accepting the money, the woman accepts a whole range of unspecified obligations to care for the man. Benedict points out that this practice shapes relations between the men and 'their' women, because if such gifts are not continued, the obligations might cease. In addition, the man might withhold the gift if he finds the woman's performance of the obligations unsatisfactory or if competing demands swallow up his earnings. It could be argued that the Seychelles dynamics are true of maintenance in particular and of relations between men and women in general. As pointed out by Armstrong (1992), many men in her study of maintenance admitted that the transfer of money to women threatened their authority. She noted that "maintaining control over his money is one way a man has of maintaining control over a woman" (Armstrong, 1992:58). This is further discussed later in the thesis.

Benedict (1982) found that in the Seychelles money was the cause of continual fights between men and women. It engendered bitterness and resentment and often led to the break-up of households. Money has also been found to be one of the biggest causes of domestic violence. Women report that when they ask for money, they are, in fact, asking for violence (Khunou, 2003). Women's need of

money for child support and for general household maintenance is thus closely linked to domestic violence.

Anthropologists, on the other hand, focus most of their work on the 'gift' in particular, and on giving and receiving in what they call primitive religions, economies and everyday life. It has been argued that when studying the gift, three obligations are important: to give, to receive and to reciprocate. Therefore social meanings of exchange have been inscribed in cultural norms and values – money is linked to social rights and obligations.

In her study of shifts in social and moral norms embedded in emerging local views of agency in Sri Lanka, Gamburd (2004:167) found that "migrants and their families currently use discourses about the agency of money (both metaphoric and fetishized) to justify new financial strategies and decrease their obligations to distant kin". She asserts that "how people earn money affects how they think to spend it". What happens when the way in which they spend it is dictated to them by the state through the use of Maintenance Courts? Does this affect other relations like father-child and intimate relations with the mothers who use the Maintenance Courts in a negative way? These are some of the questions that are of interest in this thesis.

Gamburd (2004:169) argues that "money is at the same time an aspect of relations between persons and a thing detached from persons… [It is] an impersonal medium of exchange, a store of wealth, a standard of value, a unit of account, and a means of deferred payments". She also makes mention of moral notions of money which refer to money as 'dirty money'. This considers where money comes from and how it was acquired. This is said to affect how people think about it and therefore how they spend it. Gamburd (2004:169) also shows that economists consider money as having a "frictionless surface to history", meaning that no one knows or cares who has owned it or how it has changed hands. However, Ruth, as well as a number of sociologists and anthropologists, have found a contrary situation. The moral discourses of money influence what objects

and services should be or not be exchanged for money. Could supporting one's children through the courts be one of them, according to a community of men who refuse to have this system work? Gamburd (2004:169) argues that the "symbolic and structural properties of money reveal complex cultural logics".

Cultural concepts of value relate closely to those of personhood, agency, social relations and morality (Gamburd, 2004). Notions about the nature of money that govern proper and improper modes of exchange shape actors' sense of themselves and the world around them. Individuals always act within restrictive structures, and these tend to limit the range of the choices they perceive as possible.

Through the Sri Lankan study, Gamburd (2004) drew out two interesting definitions of money. The first is money earned by "sweat and tiredness", which is referred to as "good money". This type of money is said to bring luck and prosperity: "A fraction of it may go to waste, but the rest will prove fruitful and useful for the family" (Gamburd, 2004:173). Secondly, there is "burning money", money earned out of exploitation or through sheer chance. This money is believed to have the ability to disappear without a trace; it cannot bring prosperity to the family. "With this sort of money you're happy for the day, but it's bad for tomorrow" (Gamburd, 2004:173). How people earn money influences how and when they decide to spend it. People use up "burning money" right away, lest it disappear and harm the domestic sphere in the process.

Giving money with "burning hearts" or "sighing", as is the case when asked to pay a bribe to a government official, affects the money paid and makes the money "burning money". Gamburd argues that the concept of "burning money" is used to define bribes. She asserts that this type of definition "… provides a defence for the poor and powerless against the rich and influential in an economic system rife with exploitation and inequalities" (Gamburd, 2004:173). This is because those who usually ask for a bribe are mostly employed and earning a salary and those who pay the bribe might be poor and unemployed.

In talking about money lending, gambling, stealing and selling illicit liquor, Ruth found that the exchange was riddled with feelings of anger, fear and greed. As a result, it led to a conceptualisation of money in which "fates worse than destitution await those who run afoul of the morality of economic exchange" (Gamburd, 2004:174). This is because "if you steal or cheat, then even if you are doing it to bring food for your hungry children, it won't be good" (Gamburd, 2004:174). For example, the Sri Lankans believed that "if you steal a hundred rupees and bring food, your kids will eat it and get sick, and you will have to pay three hundred rupees for medicine. This is because the person who lost the money or the item is cursing the robber" (Gamburd, 2004:174). Ruth concludes that monetary exchanges express a local awareness of inequality and a sense of social justice. For that reason, the way in which money is earned influences what it means to people and how it will be used. Furthermore, meanings attached to money tend to shape relationships between individuals involved in different exchange processes.

Zelizer (2005), in her new study on The Purchase of Intimacy, is interested in how intimate relations generate their own forms of economic transfers and, interestingly, on the persistent mingling of the economy and intimacy. She also looks at the challenges these relations to money continue to pose to social practices, judicial doctrines and sociological explanations. The arguments she makes in the study and the questions she raises are of central importance to this thesis and will be discussed more as the chapters develop.

The discussions in this section are important in understand the maintenance system as a system that transfers money resources from mainly fathers to mothers. It is therefore important to understand how money is played out in social relationship and how the intervention of the maintenance system in reallocating it impacts on these relationships. This section asserts that although money is an impersonal thing it is personalised in how it is used and interpreted in social relations.

2.6 Conclusion and Theoretical Framework

This chapter has discussed a number of literatures that are key to the thesis as a whole. This section of the chapter aims to bring together some of the ideas raised above so as to help understand and set a basis for the chapters that follow.

The idea of welfare state, it was argued, was formed in a particular social economic and political milieu with particular interests in mind. Appropriation by nations around the world did not necessarily question and adjust these contexts but based them on untested assumptions. These have to do with the portrayal of women and men and how they relate to each other. Their needs have also been at the centre of some of these assumptions. So, as students of the welfare state, we should be careful how we use some of these concepts. We should not to take their universality for granted.

The post-1970 era presents a period in which the idea of a welfare state has been questioned and forced to change. This asserts the view that states in their entirety are continually being made and remade. In their continued conceptions, their relationship with society is also continually changing.

The review on gender and the welfare state shows that the development of the welfare state was based on a particular context, and that the interests of women in particular were not taken into account. Furthermore, different social, political and economic contexts influence the shape welfare will assume in different countries, as shown in the regime debates put forth by Esping-Anderson (1999). The arguments put forward by Summers (1998), that not all women and men are citizens in the same sense, are of interest to the thesis. The concept citizen was conceptualised in a particular context therefore its particularity should be taken into account and not used uniformly. Race and gender differences should be accounted for when using this concept. This is especially so in the South African context taking into account its apartheid history. These distinctions in understanding the idea of citizenship are important in locating the experiences of

different women and men in the maintenance system. This is so in relation to the African and white men's shared experiences of, and aspirations towards, fatherhood. Hobson's (2000) argument is of special interest to this thesis since it is interested in how rights and obligations are played out in the maintenance system between mothers and fathers.

In general, the argument is that women's dependency on welfare is not all bad, and defining it in a negative light assumes that wage work would be most relevant and empowering for them. The main contention in this thesis is that most welfare arguments place an important role on empowering women to get out of abusive and stressful situations, such as underemployment and violent relationships with men they might dependent on financially, without looking into the stresses they might experience when entering wage work.

The discussion of literature on gender and intimate relations was interested in showing the importance of the gendered nature of relations between men and women. In particular, this thesis is interested in the position put forward by Daly and Rake (2003) that gendering relations is part of social practice. The forthcoming discussions of the findings will try to show how this is so in relation to the argument that "… gender is continually created and reconstituted by the activities of women and men, as well as of social institutions …" (Daly & Rake, 2003: 37). By focusing on the maintenance system, the thesis will interrogate the changing nature of gender relations in relation to one state institution – the maintenance system. Furthermore, since the relations in the maintenance system come up due to 'love' relations between men and women, it is important to theorise these relations so as to be able to talk about them. Thus, the concepts of Giddens (1992) and Wood (1993, 2003) in relation to intimate relationships will be useful in engaging with the findings. The concept of the feminisation of love as coined by Wood (1993), is significant in facilitating the discussion of women's persistence in maintenance cases and trying to give explanations for this persistence. As much as women are primary care givers and nurturers these roles extend to love relationships. They are seen as relationship experts and are

therefore encouraged by society in general to endure and work on their relationships. This might help explain their continued use of the maintenance system even when it does not work efficiently.

The chapter goes further to discuss masculinities and fatherhood. This is of interest here since the idea of masculinities in social science research is very new. The purpose is also to try to understand where ideas about masculinities come from, what challenges are embedded in them, and what changes impact on them. This will help us understand the experiences of men in the maintenance system. Of particular interest in these discussions is Mkhize's (2006) problematisation of the individualistic paradigm in understanding fatherhood. This conceptualisation will be used to understand the conception of fatherhood as underplayed in the maintenance system, and how this impacts on relationships between fathers and their children.

The literature on money and its social meanings is interesting in creating the connection between intimacy, the state and economics, as shown in Zelizer's (2005) discussion in the Purchase of Intimacy. It will help also in bringing light to the meanings attached to maintenance money and why the maintenance system is fraught with problems, especially high defaulting rates from fathers. In the chapters that follow, I will show how the maintenance system is seen to be using its authority to influence what it means to be a man or father, and what it means to be a woman or mother, and how gender relations are experienced in general.

The following chapter deals with issues of method and offers a reflection on the fieldwork process.

Chapter Three

REFLECTIONS ON METHOD

3.1 Introduction

In doing research for this thesis, I have drawn on the interpretative approach, which is generally opposed to positivism. Central to this approach is the assumption that social action is meaningful action. The critical theory approach, which has its roots in theories put forward by Marx (1818-1883) and Freud (1903-1969) among others, is important in this thesis. It is critical of both positivism and the interpretative approach, although it agrees with the latter to an extent. It is historical in its inquiry and does research for purposes of changing the status quo. These are important because this thesis holds that social action is the action to which people attach subjective meaning and for the reason that research techniques should take into account social context. This research also assumes that reality is shaped by social, political and cultural factors, and that people shape their destiny, but not always under conditions of their own choice. This will be demonstrated throughout the thesis, especially during the discussion of the findings.

The primary aim of this thesis is to investigate how the maintenance system – as a specific structuring of income and resource distribution within society and the household – impacts on gender relations and the general formation of masculinities and femininities. The most important issues in this thesis are the construction of men as fathers, husbands/boyfriends, brothers and breadwinners, and involvement in the control of money and resources in relation to women as mothers, sisters and wives/girlfriends. In addition, the research is interested in the construction of women as dependent citizens. The question of interest is how

these conceptions shape who these men and women users of the maintenance system become in the everyday interactions with each other in general and in the maintenance system in particular. The last chapter has discussed existing literature as a foundation to speak to the questions raised. This chapter reflects on the methods used and challenges experienced in the field. Through a discussion of experiences in the field, it also offers a gendered perspective of doing fieldwork.

By the end of fieldwork 17 African men, 20 African women, 10 white men, and 17 key informants had been interviewed; in addition, about 12 unrecorded interviews on maintenance, mostly with African men, had been undertaken.[6] These were complemented by an analysis of 237 maintenance files which are presented quantitatively in Chapter Five. The files were chosen from files opened in 2002. The rationale for the period took into account the time lapse between the passing of the Maintenance Act 99 of 1998 and its implementation. The analysis will show trends in cases with regard to maintenance amounts, the use of provisions in the Act, reasons for postponements of cases and the number of times cases were postponed. These theoretically capture the idea of the state as regulator and whether this regulatory function is achieved through the enactment of the Maintenance Act.

The interviews were taped; permission was sought at the beginning of the interviews, which was usually granted. However, there were a few times when the interviewees asked me to turn the tape recorder off or did not want it on at all. I found that most people said interesting and in-depth things at the end of the interview when the tape was turned off and I was on my way out. The taped interviews were later transcribed, coded and analysed.

3.2 The Qualitative Approach

This study used qualitative research methods. The strength of these methods lie in the richness and depth of the data collected. Field notes, verbatim transcripts from

[6] See Appendix B for a detailed list of interviewees.

in-depth interviews, document analysis, and participant observation provided a wealth of information which helped to answer the questions raised in this research. Furthermore, the qualitative approach allowed the participants to give responses that revealed how they see the world, rather than as the researcher sees it (Neuman, 1995; Bernard, 2000). As a result, it made possible a deeper understanding of the research topic.

Furthermore, it is important to note that this research has been done on the epistemological premise that knowledge is not value-free. Mama (1995:2) argues that "the goal of intellectual rigor can best be served not by claiming objectivity and ignoring the values underpinning one's intellectual work, but rather by acknowledging the commitments, motivations and conditions that are likely to have played a part in its production". Thus this chapter is a presentation of the commitments, motivations and conditions that shaped the research process for this thesis.

Qualitative approaches are not interested in studying frequency and statistics. They are mostly interested in meaning formation and giving weight to interviewees' interpretations of their social world. Here the interest is not to count the number of men and women exhibiting some characteristics but to understand how these women and men involved with the maintenance system give insight into the meanings of such experiences.

Of central interest in this thesis is the nature of the relationship of fathers and mothers to the maintenance system and to each other. This research takes into account that these relations are social in nature and as a result are constantly changing and are at times contradictory (Mama, 1995). It also aims to capture these as a reflection of how the question of gender is addressed in the maintenance system.

3.3 Sampling

The main intention of this research was to explore the meanings attached to the term father by the fathers and the mothers involved in maintenance cases and by the state and its officials. Consequently, a non-probability sampling method was used. This method is the opposite of probability sampling, which is based on random sampling. This method is usually used by quantitative researchers; it is a process of systematically selecting cases for inclusion in a research study. Purposive sampling has been used here as one form of non-probability sampling.

Such a procedure could be used in three ways (Neuman, 1995). Firstly, it is used to select unique cases that are especially informative. For example, since this study was centred on the maintenance system, it was more informative to select people who already had a relationship with the system or who had experienced the system. Although this procedure was helpful it was also very problematic in the sense that the issues dealt with here are sensitive, and thus potentially ones which people would not want to share with total strangers. As much as it was easy to identify these individuals at the Maintenance Court, it was difficult to actually get interviews with them. This was especially true for the men. My experiences with them suggest that they linked me to the system, and because of that they did not trust me. Although initial talks with them about sharing their experiences was received positively, this was followed by excuses and no interviews.

Secondly, purposive sampling is said to be useful when choosing hard-to-reach populations (Neuman, 1995). Initially I thought that it would be difficult to go to a particular residential area and try to find households who have experienced the maintenance system. Thus, it made more sense to use the institutions and places where people experience the maintenance system. These included the Maintenance Courts, maintenance pay points and non-governmental organisations (NGOs) dealing with maintenance. Using these institutions had its own limitations, however: it was interesting and easy to interact with some of the relevant people if one was seen to be working with one of these institutions but once research for a PhD was mentioned people became wary and resistant. Most

of the time it felt as if people were wondering what was in it for them. This was particularly difficult for me. I could see that most of the women I spoke to were struggling, and asking them to share their stories made me feel that I was contributing to their pain. These feelings of guilt I remedied through advocacy: I referred the women to organisations and individuals who could help them with their maintenance cases.

For men, the situation was different. Being approached at the Maintenance Court for interviews was uncomfortable. They thought I was spying for the system, because for them being at the court was about 'us and them'. Being at the court and being a woman made me the 'other', making the interview process with men very difficult.

Thirdly, this method is said to help one identify specific cases for in-depth investigation (Neuman, 1995). Through the perusal of court cases and newspaper articles I was able to trace cases of maintenance which were interesting to study and follow through. However, the reality of doing this proved to be a challenge. Although many cases were identified, it was difficult to convince people to participate. Most men felt that they were going to be judged or informed on[7] – the question of trust was very central and of interest to many of them. I remember that one man I met at the court agreed to be interviewed and even chatted to me about some of his experiences. I followed him for three months before he eventually told me he was uncomfortable doing the interview with me. This I think was linked to the fact that I was a woman and I had met him at the court.

The only way to address such difficulties was through persistence and looking for referrals to people who would be interested, and then developing their trust. I ended up using contacts particularly in Soweto and in the court for referrals to people they knew who would be interested in sharing their experiences. Although this was eventually very helpful, it took longer to get contacts and to get the

[7] Most of the men experienced the maintenance system because the mother, the child or the caregiver had opened a case against them; hence they saw the court as a punisher of some sort. As a result they took on a different persona when at the court.

interviews done. These experiences of the field show that not all people respond in the same way to the researcher's needs and interest. People are different, and they all want to do things their own way and are sensitive about sharing certain aspects of their lives.

3.4 Encountering the Maintenance Court

Participant observation was used as a method of capturing data, and especially as a way of getting to know the workings of the Maintenance Court. It has been defined as awareness of the physical environment, contrasting experiences, and of social openings and barriers, where the participant observer is interested in meanings of the experiences of the group being studied from each of the many different perspectives within it (Neuman, 1995). Using this method was very helpful in inserting myself into the general experiences of the maintenance system and what it means for its users and officials. This was done through observation of general conversations and interactions on maintenance issues in the courts and in my everyday life. This included times when I was not necessarily doing research but just, for example, waiting in a queue to pay my rent.

The focus of this research has been the Johannesburg Maintenance Court. This court has been recorded as the biggest Maintenance Court in the country, and it has been the focus of much organisation around the issue. It is the only court where NGOs work with courts on the issues. This is where I spent most of my field work, sitting with women in the corridors, waiting for an interview with one maintenance officer or the other, or sitting in the court manager's office waiting to discuss my research. Through such experiences and just being at the court I observed the language used, procedures followed, problems experienced and pondered how far these reflected societal stereotypes about gender roles and about fatherhood in particular. These experiences were further shaped by reading the maintenance files and other related documents.

My first visit to the court changed my initial perceptions about the workings of the court and the general level of assistance users receive from the courts. My initial assumption about the court was that it worked solely for the interests of women, and that the men who used the courts were charged and called to order most of the time. I discovered that this was wrong. The following is an excerpt from my field notes:

> The grey building looks depressing from the outside. When you approach it there is a green fence and gate which has come to represent space post 1994 in a lot of institutions including Wits. As you walk past the gate there are security guards who make the place look official. Then there follows the stairs which go in a circle and never seem to end. When you get to the top of these stairs you have to find your way; there are no clear signs telling you where you need to go for what. It seems like the assumption made is that people who come there know the drill. The first door you come across leads to a room filled with rows of wooden benches with women and children waiting with a number of papers and brown files in their hands. Then there is a counter which is filled with rows of files and a few personnel who will put you in your place as soon as you approach them for help.

On this first visit, I was also put in my place, so to say. The clerk in charge told me to say what my problem was as all the women there were there for the same thing, and that I was not special and should not expect special treatment.

This experience gave me insight into the workings of the courts and altered my assumptions about the experiences of the men and women who use the courts. Experiencing the maintenance system led me to a number of new hypotheses about its workings and its reach. These challenged some of my initial assumptions about women and what they are able to achieve by using the maintenance system, their relationships with the fathers and their parenting skills.

This observation led me to a perusal of feminist literatures in an attempt to understand how they understand the gendered experiences I saw so clearly in the Maintenance Courts. I clearly observed the different treatment of women and men. These were influenced clearly by long-held assumptions about the ‘natural’ differences between the two.

During the fieldwork, I remember that I became distinctively alert to anything about maintenance and women's relation to it. I realised for the first time that this was a topic everyone talked about in taxis, in queues at the bank. Everywhere I went, it seemed, two or more people would be talking about maintenance and how men dealt with it and how women reacted. Most interesting of all was talk about whose side the Maintenance Courts took. This made my interest grow in the topic, and I became engrossed.

Initially, I intended to visit other informal institutions where maintenance cases are undertaken, such as family meetings. This was in order to compare the procedures used in the different institutions. In her study of maintenance in Southern Africa, Armstrong (1992) shows that in Lesotho women use other, non-official structures to help with maintenance problems. These structures include: the church, community leaders and employers. It would have been interesting to observe what happens in such settings in the South African context, so as to understand how the idea of fatherhood and maintenance is understood. However, most of my interviewees had only used the maintenance court at the time of the interviews, making it impossible and irrelevant to observe and include these informal institutions in this study.

I attended workshops and discussions held by NGOs working on maintenance issues. In these workshops, I established relationships with individuals involved in maintenance issues which proved helpful during the fieldwork. I was able to trace the language and the focus of these workshops so as to ascertain the direction maintenance issues were taking. Through a few training sessions by Tswaranang Legal Advocacy Centre, an NGO working on maintenance and other women advocacy issues in Braamfontein, I was able to get the general views of communities on maintenance. This improved my knowledge of a system I was going to study for four years. One of the first training sessions I attended was on the new Marriages Act and the provisions in the Maintenance Act. These sessions also elicited the challenges individual men and women experienced with these

particular Acts, and most importantly, whether they understood their rights and responsibilities. Attending these training workshops helped me to understand the Acts and gave me a general overview of how people on the ground understood them.

3.5 The Interviewing Process

> The motif of successful interviewing is 'be friendly but not too friendly'… the contradiction at the heart of the textbook paradigm is that interviewing necessitates the manipulation of interviewees as objects of study/sources of data, but this can only be achieved via a certain amount of humane treatment. If the interviewee doesn't believe he/she is being kindly and sympathetically treated by the interviewer, then he/she will not consent to be studied and will not come up with the desired information. A balance must then be struck between the warmth required to generate 'rapport' and the detachment necessary to see the interviewee as an object under surveillance (Oakely, 1981:33 in Mama, 1995: 70).

In this extract, Ann Oakely, a feminist author, succinctly demonstrates the limitations of structured interviews. In my experience, the interview process was both stressful and interesting. I remember telling my supervisors how stressful the process was because of the highly emotional nature of the issues involved. My supervisors did their job and encouraged me to continue with the interviews and not let the issues discourage me. I devised a strategy to detach from the feelings of my respondents and concentrated on getting the data – an act I greatly regret. It robbed me of the social experiences, bonding and interactions that I could have had from the process. This was mostly so with regard to the interviews with women. I did not allow myself to interact with them beyond the interviews. I created an artificial persona who wanted to believe that she was not affected by what they were telling her.

On the contrary, I was immensely affected by the interviews. For example, one interview I did in Diepkloof with a young mother – whose family was not talking to her at the time of the interview because her ex-boyfriend and the father of her

younger child was being disrespectful – left me emotionally exhausted for days. This was mainly because I felt I could not give her any tangible, immediate help. At such points in the interviewing process I really felt I could do with some therapy to justify to myself that this research process was important to me and to the academic world.

Mama (1995:71) writes:

> Within this paradigm, proper interviewing is about creating a highly artificial social relationship in which the interviewer asks the questions and the interviewee answers and does not ask questions back. The interviewer is not to give away his or her own opinions, values or ideas, lest these influence the interviewee in some way and lead to what is regarded as 'bias' in the results. If asked, he/she is to evade giving any straight answers, at least until the interview is over.

I found Mama's (1995) experiences to be true at the end of most of the interviews I conducted. When the tape recorder was turned off, then a more relaxed account started. Afterwards, I would go and sit somewhere nearby and try to capture these latter accounts in my notebooks.

Mama (1995:71) further argues that "traditional interviewing's protocol has been about excluding subjective factors, which are viewed as sources of distortion and bias. This disempowers the researched and allows researchers to direct the production of data". My experience of women in the everyday world, as humans with feelings, and my distanced experience of women in the field created a conflict within. I could not just rub aside their experiences and objectify them as research usually demands. As a result I felt disempowered during the research; I kept on feeling that I could do more, but was I in a position to do so? I was driven by the need to allow them the space to tell me what they felt appropriate and comfortable with, but I still felt that I was invading their privacy and at the same time wanted to learn more of their experiences. It felt like I had objectified the interviewees and was not going to be able to fully reflect their experiences in this thesis. This was mostly felt during the writing process where my position and agenda as a researcher was continually interrogated. It felt as if there was an

increased distance from what the women and men experienced and how I thought I should articulate these experiences. This is true to a certain extent: how I wove together the data from interviews, court files, the literature review and other documents and conversations was influenced by my own interests and history as an African woman in post-1994 South Africa.

3.6 Personal Characteristics of the Researcher and the Research Process

Peil (1993) shows that characteristics such as the social position, marital status, sex, age and religion of the researcher may affect the fieldwork. In the context of my research, my gender gave rise to a particular set of issues. This is especially true with regard to men opening up to a woman on questions of masculinity, money and personal relationships that have to do with not paying maintenance. However, the fact that I was unmarried and childless may have encouraged some of the men to talk more easily about these issues, and indeed this proved true with a few of the men.

One important advantage I had was the ability to speak more than one South African language. Language has been said to be important because "subjects base their opinion of researchers on how they speak and behave" (Peil, 1993:37). The knowledge of local languages is important in that one will understand the connotations of different words and therefore the cultures of language used between men and between men and women. I found this to have disadvantages as well, especially in cases where I was too conscious of what was not allowed with regard to conversations between men and women and between the old and the young. In such cases I censored myself from asking questions, particularly those linked to sexuality, money and those that would suggest disrespect in any form. This knowledge is important in guarding against offending those being interviewed. It also proved useful when euphemism was used during the interviews. One father made reference to HIV/AIDS and sex without really using

the words. I had to know the language to understand his reference. The extract below captures what was said:

> I: You never got married again?
>
> R: No, no, no, no. Are you recording? I wanted to say something. I am scared of marriage. You know mos [At this point he did not say anything; but he raised three fingers, the sign used to refer to HIV] (Interview, Rockville, Soweto, 28 June 2004).

Having had previous experiences of this way of communicating helped me to understand without difficulty what was meant.

During the interview process, I observed differences between the interviews with men and interviews with women. Kosygina (2005:87) argues that the reason for this difference has to do with "… mutual gender categorization of interacting people and construction of their behaviour according to this categorization". This included the general interaction and the openness with regard to responses on their side and probing from my side. Kosygina (2005) points out three differences which coincide with the differences I experienced. The first one is a difference in the length of the interviews – those with women lasted longer whereas those with men were shorter.

The second difference shown by Kosygina (2005) is "format of communication". She argues that the interviews with the women "were taken up by monologues". The interviews with women were more detailed in describing experiences and expressing feelings. They were more insightful; they allowed me to enter a space that I would not have been able to enter otherwise. On the other hand, the interviews with the men tended to be what Kosygina (2005: 88) describes as "question/answer dialogues". I found the men's voices to be hesitant when dealing with more personal details of their experiences. Percy was a father from Soweto who at the time of the interview was living with a woman who had mothered four of his children, and was supporting his first child whom he fathered when he was

a teenager. The extract that follows shows some contradiction and hesitation in communicating his uncertainty with regard to the paternity of this child. He said:

> R: She took me to court and they told me, because there, they just tell you that you have to maintain the child. It's your child. They do not talk about DNA tests, of which it's expensive. If I had money I would do the test. So I ended up maintaining that child.
>
> I: So you did not do the test because you did not want to, but because it is expensive?
>
> R: It is expensive to do it. And you know if a girl comes and tell you that you are the one who impregnated her, you cannot say it is not me blah, blah, blah. You have to accept everything that she tells you. She knows because it is the mother who knows who impregnated her (Interview, Mapetla, Soweto, 28 June 2004).

The interviews with white fathers were different in that they were longer, with an interest in sharing that, to an extent, made me uncomfortable. My observation attributes their openness to the fact that their experiences of maintenance and divorce had led them into mediation, where talking about their experiences was necessary. They also interacted with the organisation called Childs, where sharing of their different encounters was encouraged.

Finally, there is reflectiveness, which means that interviews with women were more reflective as compared to those with men (Kosygina, 2005). Finch (1984) argues that the reason why other female researchers have also experienced these kinds of differences is because talking is central to the social experiences of women, and talking to another woman leads to feelings of trust and assumptions of understanding by the woman researcher. My experience here proves this to be true; for example, most of the women would use words like 'you know mos', especially when making reference to their relationships with men. On the other hand, men are generally reluctant to share, "firstly because they are less used to being questioned, and secondly, because they do not expect the researcher to understand them because she does not have the same social experiences as they have" (Kosygina, 2005:89). As a result, doing interviews with men and women

will inevitably draw out different experiences of the interview process, depending on the gender of the researcher.

3.7 Doing In-depth Interviews

3.7.1 Overview

The use of in-depth interviews is relevant in assessing the impact of maintenance on gender identities. This research acknowledges the interrelatedness of the formation of gender identities. Neuman (1995:373) says that "researchers ask open-ended questions to capture how the person understands his or her own past". Exact accuracy in the story is less critical than the story itself. It is recognised that the person may reconstruct or add present interpretations to the past.

For this thesis, experiences of the maintenance system were captured through interviewing fathers and mothers involved in the system, and through discussions with other household members where they were available and willing. This could be called a family interview. Daly (1992:72) argues that "families are groups that construct individual and shared meanings". This is of interest here because the meanings of fatherhood and of manhood are constructed in men's relationships with women and in the household generally. This method is important for this research because it provides long-term perspectives on socio-historical contexts of fatherhood identity formation and everyday life experiences of men in relation to women and the maintenance system.

3.7.2 Interviewing key informants

The use of key informants was essential in gaining insight into the issues. Key informants have been defined as key actors in the field. Neuman (1995: 374) points out four characteristics that define key informants: firstly, "as a member who is totally familiar with the culture and is in position to witness significant events"; secondly, as a member who is currently involved in the field; thirdly,

someone who can spend time with the researcher; lastly, a member who does not use an analytical perspective when referring to the culture and workings of the institution or social setting. Key informants for this research included maintenance officers, social workers, academics, community leaders and members of other organisations dealing with the issues. These included the Tshwaranang Legal Advocacy Centre; the Maintenance Action Group and the Maintenance Forum who have a working relationship with the Johannesburg Family Courts. Bernard (2000) argues that the choice of key informants allows for insight into something that they are best able to talk about this might include their job, community or everyday life experiences.

Usually, the challenge in interviewing a key informant is agreeing on a time and actually honouring it. This, I suspect, relates to the nature of the positions they occupy – most of them are busy, attending meetings, and providing services. This was a particular challenge with regard to the interviews with maintenance officers, since I interviewed most of them during working hours, and I had to appreciate the pressures on them in the running of the Maintenance Court. These interviews seldom went without disturbance from people who needed one service or the other. Although this was problematic at times, I came to appreciate the insights I got from the interactions between maintenance officers and court users.

One such interaction happened during one of my first visits to the court. I had written to the Director of the Court department in the national government to ask for permission to conduct the research, and I was later informed that a letter giving me permission had been sent to the manager of the Johannesburg Maintenance Court. In her office, I came to understand the operation of the Maintenance Courts. This was especially so with regard to the corruption of selling files to men who were not interested in paying maintenance. A woman had come in complaining about a file that kept getting lost every time she was to appear. Another woman had been called by someone claiming to be a maintenance officer at the court, telling her that her date to appear had been changed. She did not believe it and came on the day of the hearing and found out

that it was still on. These are some of the varied challenges I came to understand which faced the Maintenance Courts and their users.

The questions addressed to key informants were tailored to suit the informants' expertise in the system. A semi-structured interview format allowed informants to take the interview into areas of individual experience. The general themes that directed the questions to different key informants included:

- the role that the individual and their organisation plays in relation to maintenance issues;
- their views on the making of the Maintenance Act of 1998;
- their views on the implementation of the Maintenance Act;
- experiences of women and men; and
- how identified problems of the system could be remedied.

3.7.3 Interviewing women

Some of my female respondents 'forgot' that my prime identification was as a researcher and began to treat me as female friend. At some point during the interviews, certain women began to construct a friend dialogue; others began to see me as a daughter. Most of them looked for moral support and advice on how best to deal with their cases, where to go and who to talk to. The advice scenario took over and made me feel better about using their life stories to complete a PhD. This was the only gift I could give to them and it made the whole process a bit more bearable for me.

Three of the mothers had been divorced, and had been married for 6 to 12 years. They were between the ages of 26 and 45, with the majority of them in their early to mid thirties. One of the mothers, who at the time of the interview was 52, had her first experience of maintenance in the late 1970s. The Maintenance Act of 1963 was operational at that time. The women I interviewed had between one and four children. They were claiming maintenance for one or two of the children depending on which of the fathers was not helping out with support. In cases

where the fathers refused to pay or were deceased, the mothers claimed the state child grant. All of the mothers were unemployed, with the exception of four who were in formal employment. Among those who were unemployed, a few were running informal businesses, such as a salon at home, or selling small things like sweets or cigarettes. They received between R200 and R400 maintenance.

The maintenance system was seen by most of these women as an opportunity to get justice done. However, this belief changed as the processes of accessing maintenance became frustrating and unresponsive. A disturbing factor, at least at a personal level, was the hope my presence in these women's lives presented with regard to improving their situation in the maintenance system. This remained so, even after I had explained to them that my research was for a PhD at the University. This hope suggested to me that even though most of these women experienced challenges accessing maintenance money and good service they remained optimistic that they would get help and that it was not their sole responsibility to raise their children. Their constant appearance and demands for service in the Maintenance Courts suggest that they were actively demanding assistance from fathers and from the state.

The following issues generally influenced the directions the interviews with women took:

- time spent interacting with courts;
- definitions of the relationship with the father;
- challenges faced raising the child;
- household expenditure; and
- reasons for using the courts as a solution.

3.7.4 Interviewing African men

My interviews with men took a different format. I did not want to give them the impression that I was flirting. This led to controlled conduct on my side. This avoidance influenced many things about the interviews with men, including where

I met with them and whether or not I had someone accompany me. In most of the cases when I interviewed men, I had someone with me[8].

It became testing to convince the men to open up about their experiences, especially where they were bad ones, including arrests and unemployment. My general observation was that most men did not like experiencing the Maintenance Courts. Sharing their feelings and general experiences seemed to be very difficult. I remember one man kept quiet about the fact that he had been sent to the court by two women. He later revealed this to me long after we had completed our initial interview – this was at a time when he was having trouble from another woman whom he had not mentioned and he needed advice. I kept wondering why it was so difficult to share these experiences. Would sharing these experiences challenge their masculinity? As I pondered this question I came to the conclusion that this avoidance and silence represented shame, that a 'man' was unable to support his own children. Although at another level being able to play the system is applauded, at a point when a woman is asking these questions it might be interpreted negatively by these men. Was the issue related to the use of the Maintenance Courts? Receiving a subpoena to go to maintenance courts is always viewed negatively by men – it is usually linked to the law and criminal law in particular. As a result it is never taken very well.

Most of the men interviewed were not married to the mother of the child or children for whom they were paying maintenance. Out of the 17 fathers I interviewed, three were married to women other than the mother at the time of the interview. One father was separated from his wife. The rest were unmarried. The men had between one and five children. Half of the men were unemployed. The other half were in precarious jobs (taxi industry, running a shebeen and other small businesses). Four of the fathers were in formal employment, including one who was in a management position and had acquired a tertiary education. They paid between R150 and R400 maintenance.

[8] My brother drove me to some interviews; however he remained in the car. With other interviews Lele, helped me contact some fathers. As a result he accompanied me, and introduced me to the fathers before the interviews.

All these men had been to the Maintenance Court more than once. All except two had been arrested for defaulting at some point since they had started paying maintenance. The relationships they had with the mothers at the time of the interviews were referred to as "okay", although for a few of them such a relationship was non-existent. This obviously had a negative impact on the relationships they had with their children. Their ages ranged from the early thirties to early fifties. Most of these factors influenced what the fathers shared with me and what they held back. For example, most of these men were unable to share everyday experiences of fatherhood with the particular children because most of them did not have access to the children. I suspect that my gender and position as a researcher also impacted on what they shared with me. For example, the extract from the interview with Percy suggests that he was cautious not to say negative things about women and their ability to lie about who the real father was, but was more diplomatic at saying this.

The following information was also gathered from the interviews with African men:

- time spent interacting with courts;
- definitions of the relationship with the mother;
- relationship with the child; and
- feelings about the use of the court as a solution.

3.7.5 Interviewing white men

Interviewing white men presented challenges in relation to understanding research across the racial line. The 'us and them' dichotomy crept in and made the analysis and presentation of findings a challenge for me. Mama (1995: 51) shows that "studies of oppressed groups have generally done them a disservice by taking the dominant group as the norm". I was excited when I did my first interview with a white father, and this was mostly because it was not the norm. However, once I had encountered the differences in experience and the challenge of how to present

these differences without making general statements about the homogeneity of any of the groups, I found the process more difficult.

Another thing which struck me in these interviews was the openness. These men tended to take authority in the interviews. I remember that I would introduce the topic and briefly explain what the project was about and they would go on. It sounded like they had rehearsed and were just going through a script. One of the interesting things I found was that I was more uncomfortable with these interviewees than with the African men I interviewed. I think this has much to do with the racial history of this country; my only real encounter with white men had been through television and at university as professors and lecturers and some fellow PhD students. They have always been distant in various technical and authoritative positions. The difference here was that these men had lives, they had pains and frustrations. This realisation brought contradictions. These men also, through their race and social positioning, had access to resources and networks that the African men did not, their views of fatherhood was more grounded in the idea of nuclear family whereas with my African interviewees their idea of father was more incorporate into an idea of an extended family/social fatherhood.

One other interesting difference was that in defining their experiences as fathers and as men they evoked ways in which they were different from African men. This was striking since none of the African men refereed to white men and the kind of fathers they were in narrating their own experiences of fatherhood. Was this because of their social positioning in South Africa? Did my race play a role in this regard? A black young woman doing research for a PhD is not the norm in South Africa, most white men encounter black women in service, subordinate positions like domestic workers, did these dynamics impact on how they related to me? Did it compel these men to clarify that they were nothing like my brothers? I suspect that these might be a representation of the complex South African racial history and a challenge to get beyond the "brutal dualistic opposition between black and white" which is refereed to by Paul Gilroy (in Morrell & Ouzgane, 2005:8).

The white fathers were interviewed between June 2003 and August 2004. They were contacted through CHILDS. An organisation working with fathers who have access problems. They were between 39 and 50 years of age, and were both Afrikaans-speaking and English-speaking. Looking at the amount of maintenance they paid – which ranged from R3 000 to R12 000 per month – and the jobs they held, I came to the conclusion that almost all of them were middle class with one or two in the upper working class. According to their accounts, there were times during the divorce proceedings when one or two of them were unemployed; however, at the time of the interviews all of them were employed. All the fathers had been married at the time their first child was born, with the exception of one; this man was married to someone other than the mother of his son at the time of the interview. Nine of the fathers had gone through or were still going through the process of divorce when I interviewed them. This process decides issues of custody and access as well as child maintenance. All of them defined fatherhood as more than financial support and protection of their children. They had a strong sense of family and belief in the father-child bond. They all argued that the Department of Justice (DoJ) prevented them from nurturing the bonds that they had with their children. Most of these men had been battling to get access to their children for two to more years at the time I interviewed them.

With one exception, none of the fathers had custody of their children; however they all had rights of access. These rights were limited, largely as a result of the divorce negotiations which had taken place when their relationships with their ex-partners had been strained. At the time of the interviews, it seemed that the fathers were coming to a point where their relationships with their ex-partners were improving with regard to communication about access and maintenance. In cases where the relationship was still poor, the relationships between children and their fathers remained very difficult.

3.8 Analytical Approaches

3.8.1 Documentary analysis

Information from court proceedings and documents from the maintenance office held in court files was analysed. This was important in positioning the Maintenance Act in relation to the everyday reality of the court process. This process elicited quantitative data on trends and processes of the Maintenance Courts. I felt that this would not provide all the data needed to develop the questions effectively. When I started this process, it seemed to be one of the easiest aspects, especially because I was experiencing problems with access to interviewees. However, I later on found this to be dry and less interesting than the interview material. This process of using both qualitative and quantitative data analysis is called triangulation

Furthermore, the Maintenance Act; the Fathers of Children Born Out of Wedlock Act and the Domestic Violence Act (DVA), among others, were read in detail as an entry into the issues and assumptions made by the system and how these affect the process of being a father and a mother in South African society. In addition, other discussion documents were analysed to ascertain the state's assumptions underpinning the definition of gender relations. This is an acknowledgement of the heterogeneous nature of the state, which here refers to the particular workings of the maintenance and/or justice system.

3.8.2 Data analysis

According to Neuman (1995) and Kelly (1999), data analysis refers to a search for patterns in data. For purposes of this thesis I used a variety of coding, thematic and content techniques and analysis to identify patterns in the data. Neuman (1995) shows that coding qualitative data is both a mechanical and an analytical process of identifying themes, situating them in relation to the research question. This process is continual and takes place throughout the field work. This listing of

themes assisted in generating an overall idea of what data the research generated. Once these patterns were identified, then interpretation took place, which helped bring together different dimensions of the material collected into a composite whole. These different dimensions included key informant interviews, in-depth interviews, participant observation in the court, the quantitative data from court files and related information from informal conversations.

This process seemed to be the longest and most challenging. I found myself questioning my intentions and my contribution to the research world. These questions are still very active in my head and will continue to come up as I develop as an academic. However, these questions became bearable and manageable as interesting themes and patterns emerged from the data. I found the writing to be a process of constant self-analysis and scepticism. Apparently this is something that everyone goes through when dealing with a major academic project such as a PhD.

3.8.3 The use of descriptive statistics

The research also makes the use of statistical information for purposes of ascertaining the socio-economic status of the claimants, their gender and how many are using the system. These statistics were gathered from a reading of court files. 237 files were read for this purpose.

With regards to choosing the court files I used probability sampling. Here each unit of analysis has exactly the same chance as every other unit of being selected (Bernand, 2000). They were chosen randomly from +160 boxes from the year 2002. The year 2002 was chosen due to the time lapse between the passing of the Maintenance Act of 1998 and the implementation process. From these 160 boxes every fifth box was chosen. On average each box contained 60 files. The files were never all available at a time; this is because files were constantly in use since maintenance cases are mostly ongoing.

The process of reading and analysing the files was relevant for gathering information on the following issues:

- who opens maintenance cases;
- how long it takes to finalise such cases;
- the nature of the loopholes between the Act and the actual process; and finally
- to capture the general trend with such cases.

The data from the files was analysed using the statistical package for the social sciences (SPSS). This package was particularly useful with the arrangement and distribution of interesting cases. The most interesting part of this process was the triangulation process. Making the data from court files speak to the interviews and literature review was challenging but also satisfying. This is mainly because I have always been terrified of numbers, and this fear made it more taxing to deal with the data; however, it eventually paid off.

3.9 Ethical Issues

Disclosure of the purpose of the research and what the information would be used for was central to the formation of relationships with key informants and respondents for this research. A consent form was produced for the three categories of respondents (see Appendix A). This was read by the respondents and signed before the interviews proceeded. Thus consent to participate in the research was made foremost in the process, and this was further informed by willingness of individuals.

Because of the confidential nature of the research questions, confidentiality informed the formation of relationships with all the interviewees. Some interviewees, especially the fathers, required anonymity, which was guaranteed by using pseudonyms to refer to most but not all of the respondents.

3.10 Conclusion

This chapter shows the commitments, motivations and conditions that shaped the process of doing this research. It also shows the gendered nature of doing research. This was especially captured in the discussion about the personal characteristics of the interviewer. Furthermore, this chapter demonstrates the centrality of different research methods in obtaining insight into the different facets of social research.

Another issue of interest in this chapter is that of doing research across the racial divide. This was especially evident with regard to interviewing members of the 'dominant' racial group and the way in which everyday racial issues impact on how interviewees position themselves in relation to the research question, other racialised research subjects and the racial dynamics of the researcher.

The chapter that follows will begin by contextualising social security (the maintenance system) into the broader South African society. This will be followed by an examination of the Maintenance Act No. 99 of 1998. This will be done in respect of its conception of masculinities (fathers) in relation to femininities (mothers) and children. This analysis will evoke other relevant Acts that make the function of the maintenance system whole.

Chapter Four

THE MAINTENANCE ACT IN CONTEXT

4.1 Introduction

Essential to the maintenance system and social security is the idea of the family and those who comprise it. Notions about the role of men and women in families and the broader society are significant in influencing the state's provision of social welfare. Their perceived needs are central to how social security is addressed in particular countries. This, however, is influenced by the presumed role of the state.

Given that the patriarchal history of the idea of welfare states is at the core of social provision, it is imperative to note that the way in which welfare systems handle and describe the family is reinforced by ideas of a traditional family[9]. Central to these arguments are questions about whose interests are served by the welfare state: is it those of men or women? Could it be the interest of the capitalist class and maybe those of social service providers? Hence it is important to study how the South African state has positioned women and men in relation to production and reproduction in the family after 1994. These questions and elucidations constitute the concern of this chapter.

The previous chapter addressed issues of method, arguing that social action is central to subjective meaning-making. Since this action is relational, this chapter is interested in showing how the state conceptualises the interaction it will have with men and women users of different state institutions.

[9] See Daly and Rake (2003) for a discussion of relations between the welfare state and gender.

This chapter is interested in evaluating the Maintenance Act No. 99 of 1998. This assessment is important if we are going to understand how the maintenance system works. Furthermore, an appreciation of the configuration of the social security and welfare system is essential to understanding its function. This will be achieved through a discussion of the post-1994 social security context, the labour market context from the early 1990s, and the socio-political and economic context in which the Maintenance Act No. 99 of 1998 was made. Some aspects of the processes followed in articulating this Act will be part of this debate. The discussion will then give a detailed examination of the Act. This analysis will focus on an inspection of the state's notion of gender relations and the positionalities of men and women.

4.2 Social Security in Post-1994 South Africa

It is important to acknowledge that the idea of welfare in different countries is influenced by different factors related to the specific social, political and economic contexts in which social policies develop (Marshall, 1963; Midgely, 1997; Esping-Anderson, 1999; William *et al.,* 1999; Fine, 2000). These theories of welfare and social security ignored the gendered nature of these developments. Thanks to feminist theorists, gender has become an important aspect of theories on welfare states (Manicom, 1992; Williams, 2002; Daly & Rake, 2004; Hassim, 2004). As socio-economic and political situation of welfare state change, so too do their ideas concerning the direction of welfare changes.

One such change occurred in the 1970s when the idea of a crisis in the welfare state emerged. It shifted how governments addressed social security issues. These shifts emphasised neo-liberal ideologies of organising. This type of organising emphasises reduced state intervention, fiscal discipline, and the shift from a state emphasis on welfare provision to the individual. This general development of welfare represents the broader progression of the welfare system in post-1994 South Africa. Presently contradictory aspirations to welfare with a neo-liberal macro-economic strategy are emerging.

In 1994 the ANC government inherited an economy which had developed in a racially skewed way. In addition, this welfare system was inefficient, ineffective and disjointed. The economy was characterised by wide-spread poverty and unequal distribution of resources. The apartheid state welfare system protected white workers from the negative effects of the cyclical dynamics of the market economy[10]. This was primarily because race was an important factor in the allocation of welfare resources. For example, the Lund Committee (Dept of Social Development, 1996) found that the state child maintenance grant was racially skewed, with coloureds claiming close to 50 per cent of the grant.

Just after the 1994 democratic election, the ANC government introduced the Reconstruction and Development Programme (RDP) as a means to address the injustices caused by apartheid. The RDP represented an attempt by the ANC government to address the inequalities of the past through a Keynesian way of redistribution. This programme argued for 'growth through redistribution' to respond to challenges in addressing the inequalities of the past. The RDP was said to be successful in articulating the main aspirations of the movement for post-apartheid South Africa – that is, growth, reconstruction and redistribution – in a consistent macroeconomic framework (Adelzadeh, 1996:66).

In 1996 a new macroeconomic policy – the Growth Employment and Redistribution (GEAR) strategy – was introduced. Many authors argue that GEAR represents a fundamental departure from the principles of the RDP. The GEAR strategy is mostly based on neo-liberal principles. These include reduced government spending, privatisation and labour market flexibility (Dept of Finance, 1996). One of the central contrasts between GEAR and the RDP is the argument that growth had to come first and welfare second.

Three crucial implications of GEAR on social welfare have been noted. Firstly, "spending on social welfare would remain (at best) static as a proportion on social

[10] See Patel (1991) for a discussion of social welfare options for South Africa.

government expenditure". Secondly, "the overall size of the budget would tend to contrast as a proportion of overall economic activity as the deficit was reduced and as revenue from taxation fell". Finally, "the de-racialisation of social welfare would take place through reallocation within the existing budget" (Van der Walt, 2000: 72). The seeming embrace of neo-liberalism by the ANC government impacted somewhat negatively on the social security system. However, it has been argued that this embrace led to the abolition of a generous child maintenance grant and the introduction of a new system of child support set at lower levels of benefit. At the same time, the old-age pension declined by one-fifth in real terms (Seekings, 2002). By far the greatest part of welfare spending had been devoted to social grants, which by 2003 were assisting 5.8 million elderly, disabled persons and needy children (Dept of Social Development, 2004).

These state transfers play a vital role in poverty alleviation, especially in rural areas. In real terms, though, social grants are subordinate to the fiscal discipline clause of the GEAR strategy. This means that state spending on child maintenance, for example, has gone down in real terms, with an increased emphasis on the private maintenance system which burden parents, especially those who are unemployed or underemployed. Prof. Vivian Taylor, who heads the Committee of Inquiry into a Comprehensive System of Social Security, also argues that GEAR does not promote gender justice and that it could follow a path that might reinforce inequality and exacerbate already unacceptable levels of poverty (RSA, 2002). The emphasis is placed on women since they spend most of their time caring for others. It has been reported that employed African women spent more time on caring for household members and on collecting food and water than do men or women in other races (Budlender, 2002). From a general social expenditure point of view, the South African government spends high amounts on social assistance compared to Europe and the rest of the world. This is said to be mainly because the aged are primarily the responsibility of the state and not the family (Seekings, 2002).

Current macroeconomic orientations have determined conflicting expectations in the South African government since 1994. Firstly, the Constitution encompasses ideas of citizenship reflected in the Bill of Rights, whereby “everyone has the right to access health care, including reproductive health care, sufficient food and water, and social security if they are unable to support themselves and their dependants” (RSA, 1996: Sec 7). The Constitution further argues that the state must take responsible legislative measures, within its available resources, to achieve the progressive realisation of each of these rights. At the centre of this provision is the limiting of this obligation to the fiscal discipline clause entrenched in the GEAR strategy.

The government’s White Paper on Social Welfare advocates a "social developmental" welfare approach (Dept of Welfare, 1997). The White Paper points out that”

> the welfare of the population will not automatically be enhanced by economic growth. Economic development has to be accompanied by the equitable allocation and distribution of resources if it is to support social development. Social and economic development are therefore interdependent and mutually reinforcing (Dept of Welfare, 1997:15).

Here vulnerable groups (rural poor, women, the old and children) are targeted in a context of limited resources. It has been argued that the White Paper “reinforce[s] the view that the family is seen as a whole unit and is not adequately disaggregated by gender, age, generation, role expectations, kinship relations, economic and political access” (Hochfeld, unpublished). This is especially so with regard to specifications on motherhood and fatherhood.

Although this document acknowledges motherhood and the reproductive roles mothers play in the family, it fails to interrogate the burden associated with the performance of this role. On the other hand the discussion of fatherhood and men’s roles is minimal. Hochfeld (unpublished) interestingly argues that the position of men is invisible and normative in this policy document. Fathers are mentioned with regard to their failure to provide economically for their children.

The White Paper captures fathers in relation to the financial support that they do or do not give to their children. It says:

> Many families are placed under additional financial strain because of the inadequacy of the private child maintenance system, where fathers in particular do not pay regularly, or do not pay at all.
>
> There is a high rate of defaulting by fathers (Dept of Welfare, 1997: 10)

Chapter Seven of the White Paper goes on to state the family and women's plight, without going into detail as to what it means, and to the role of men in these families. It describes the family as "a unit in which children are raised to healthy adulthood", and encourages "the promotion of policies to fully integrate women into the economy" (Dept of Welfare, 1997: 7). This linkage of the family and household in relation to women seems to cast women uncritically into the sphere of the family, as if that is the only sphere to which they belong. This silence on men and their position in the family clearly states the traditional positioning of women's and men's role in relation to the family and broader societal institutions.

The White Paper has a section dedicated to women, which states the position of women in society and with regards to access to social services. This type of focus is important in giving the socio-economic and political context of women and therefore avoids making ahistorical claims about their needs and experiences. It interestingly captures the position of women in the following manner:

> Women's contribution to development has generally been invisible to social planners and policy makers and has been under-reported in social development studies. In the main, women are the key providers of unacknowledged social care to the sick, the physically and mentally disabled, the young and the elderly. In addition to their roles in the family, women in communities contribute voluntary time to social and development programmes (Dept of Welfare, 1997: 2).

A section of this nature does not exist with regard to men and their needs, and their experiences of social security. This assumes men's experiences to be the norm and not in need of further interrogation.

Although the White Paper calls for developmental welfare and state intervention, means tests remain part and parcel of the document's approach. The concept of means testing is based on the assumption that the goods and services to be provided by the welfare state – such as health care and education – are indistinguishable from market goods and services (Pratt, 1997). State provision prioritises people with special needs who lack market access. These assumptions reveal a selectivist conception of welfare provision. These measures have negative consequences on welfare users. These include: stigma, low take-up rates, unnecessarily high administrative costs, the creation of poverty traps and a negative impact on economic and social change. The stigma associated with targeted welfare has to do with ideas that recipients are lazy. As a result of this negativity, people targeted are discouraged from claiming benefits, also due to the fact that the process can be too bureaucratic and time-consuming. Those targeted for entitlement are scarcely motivated to develop themselves. This has negative consequences for economic and social change. Selectivist welfare measures are known as targeted welfare, where means testing for social provision is central.

Daly and Rake capture the consequences of a selectivist welfare system as follows:

> Where entitlement is conditional on means testing, the well being of recipients is placed in the hands of bureaucrats and the individuals involved are therefore subject to control and regulations (Daly & Rake, 2003:29).

As the ones who mostly access these social services, women are constantly under moral scrutiny by government officials in social security institutions. This makes accessing these services emotionally challenging.

The realisation of these inadequacies in the present social security system has facilitated the adoption of the concept of a "comprehensive social security system" by the Congress of South African Trade Unions (COSATU), introduced at its policy conference in May 1997. The federation argued that "by providing a social wage to working people and the poor, this agenda would address the direst conditions of poverty in society, [and] empower people to progressively improve

their living standards" (COSATU, 2000a:44). For COSATU (2000b:10), a social wage is important because “payments to all individuals also benefit women and young people directly. That would increase their power and autonomy within the household economy, which in the long run should help reduce the abuse of women and children…..”

This acknowledges the gendered inequalities in South African society and the need to redress them. Like the state’s document, the position of men is only assumed and not reiterated. The concept of a “comprehensive social security system” follows a universalist conception of welfare provision. This assumes that the nature of the goods at the heart of social provision is such that their distribution through market mechanisms is inappropriate. Access and experience of social services like health care, education, income maintenance, housing and so on is so important in determining the nature and quality of life that allocation cannot be left to the markets. As a result social services should be regarded as ‘merit goods’. The proponents of universalism argue against means testing in particular and selectivism in general. These debates were not influenced by gender concerns, and they raise important questions for this research. Is the South African welfare system interested in defining the relationship mothers and fathers have with the social security system outside traditional notions of gender? Will that be helpful in facilitating access for both mothers and fathers? These questions are central to this thesis.

Due to the fragmentary and racial nature of social security during apartheid, the Taylor Committee of Inquiry into a Comprehensive System of Social Security was set up in 2001 to look into expanding and integrating social security in the country. A comprehensive report was released in 2002 which looks at these shortcomings (RSA: 2002. The report calls for the creation of a comprehensive social protection package that will address income poverty, asset poverty and special needs. Furthermore, the report argues that means testing is an ineffective way of targeting social grants, which is an interesting view considering the macro-economic strategy of the country..

It is important to note that the maintenance system operates under a broader social welfare system which is still fragmented and selectivist. The experiences of users reflect this disintegration and it further shapes how they understand the state. The following section addresses specific processes that influenced the present shape of the Maintenance Act.

4.3 The Labour Market Context

Since the early 1990s, the removal of international sanctions and the liberalisation of South Africa's import controls have affected employment and employability for both women and men. This has led to increased and sudden changes in the organisation of production and employment relations. In such situations companies tend to restructure to meet challenges posed by global competition. This leads to retrenchments and increasing employment flexibility (Standing, 1997). As a result more jobs are created in the form of casual or atypical positions. Standing *et al.* (1996) and Naidoo (1999) point out that flexibility is often used to mean different things. "For employers flexibility means a capacity to make change speedily and at relatively less cost" (Standing *et al.,* 1996:6). For workers and worker representations flexibility means insecurity. What has happened is that "in the name of flexibility, demands from some quarters have been made to remove or emasculate employment protection, freedom of association and various other labour rights" (Standing *et al.*, 1996:7). Three types of flexibility have been identified, including numerical flexibility or changes in the number of workers. Standing *et al.* (1996) explain this as employment flexibility, which generally means the easy hiring and firing of workers. They also point out that "there has been an international trend in recent years to greater employment flexibility, in which the extent of regular protected employment has been declining relative to temporary and casual employment, while many of those in regular employment have had less security of employment tenure" (Standing *et al.*, 1996:6).

Wage flexibility involves changes and differentials "between sectors or wider wage differentials between occupational job groups" (Standing *et al.,* 1996:7). "For workers work-process flexibility conjures up an image of the managerial capacity to shift workers between sets of tasks easily and at low cost and to alter working time and working practices easily and at low cost" (Standing *et al.*, 1996:7). Naidoo (1999) also defines it as a situation where there is a shift from uniform pay for hours worked to wages linked to performance, therefore leading to competition between workers.

Standing (1997) argues that work and employment flexibility disadvantages the majority of workers and benefits only a tiny stratum of highly paid professionals and technicians. The sectors of the labour market which are most vulnerable are the farm workers and domestic workers. These two sectors comprise mostly women, the unskilled, Africans and coloureds (Bhorat *et al.,* 2001:104). The remaining sectors, which include mostly the formal sector, are, therefore, faced with new forms of inequality in wages and working conditions, the erosion of previously guaranteed forms of security (employment, representation, wages) and a destruction of class solidarity that weakens the role of unions.

Work process flexibility "refers to the way in which production and grading is organized" (Naidoo, 1999:45). An example of this would be multi-skilling, which involves a situation where workers could be shifted to different tasks at the discretion of the employer. It has, however, been said to be the most rare form of flexibility in South Africa, and is argued to be more worker-friendly. However, Naidoo warns against this uncritical description. He argues that "certain forms of team work can also undermine worker solidarity, for example, where different work teams compete against each other for performance bonuses" (Naidoo, 1999:45).

"Flexible" employment conditions are expanding, and they tend mostly to affect women (Mosoetsa, 2001). This is emphasised by the reduction in state-provided social services. These cuts would make the situation of women even worse as they

coincide with job losses. Women represent the most vulnerable group and are further discriminated against when it comes to social security. In fact, unemployment tends to push them towards unprotected and informal jobs. Therefore, due to the link between formal employment and social security, most of them are not covered in the same way as their male colleagues.

Although these sentiments are true they tend to assume that women's disadvantages are a result of men's advantage. Men are also affected by unemployment and flexible employment in unprecedented ways. Mkhize (2006) shows that the link between masculinity and the ability to provide financially leads to challenges in situations of unemployment. In such situations the core of what it means to be a man are seriously challenged.

COSATU (2000a:41) argues that

> the call for labour market flexibility should be seen for what it is: an attempt to turn the clock back and remove basic rights and protections for workers. This will lead to the entrenchment of apartheid's economic rigidities, which have acted as a fetter on the development of our country - in particular the suppression of the creativity and potential of the majority of citizens. This type of 'flexibility' has led not to dynamism, innovation, and the unleashing of our human and natural resources, but to stagnation, and destruction of our human and natural resources".

Labour market flexibility is evident through the increased casualisation and subcontracting of work, which leads to atypical employment conditions. Vlok (1999) points out that job seeking is increasingly orientated towards forms of employment with a high level of variation in working times, tasks and with very little benefits. Kenny and Bezuidenhout (1999) point out that such workers are often not organised; therefore, their demands are more easily dismissed by employers.

Due to labour market competition in the era of high unemployment, the relationship between atypical workers and permanent workers is often antagonistic. The people who work in these conditions are usually women, the

unskilled and mostly Africans (Torres, 1995). It could be argued that there has not been a fundamental change to these workers, looking at the increased unemployment rate. For example, agricultural workers are reported to be the most poverty-stricken, looking at their income of less than R293 per month (Bhorat *et al.,* 2001:81).

4.4 The Making of the Maintenance Act of 1998

The South African Constitution (RSA, 1996) as the supreme law of the country placed a number of responsibilities on the state. The first one is the Bill of Rights which is at the heart of the development of gender-equal policy agendas in the country (Hassim, 2003). The second interesting provision, contained in Section 28 of the Bill of Rights, states that every child has the right to family or parental care, and to basic nutrition, health care and social services. This is in line with the World Declaration on the Survival, Protection and Development of Children (UNICEF, 1990) and the Convention on the Rights of the Child (UNICEF, 1989). As a result a commitment was entered into by the South African government to make sure that the country's policy framework followed these lines.

A number of measures were taken to fulfil these constitutional commitments. The first was the appointment of the Lund Committee of 1996[11]. The Committee's purpose was to:

- undertake a critical appraisal of the existing system of support in all departments to children and families;
- investigate the possibilities of increasing financial support through the private maintenance system;
- explore alternative policy options in relation to social security for children and families as well as other anti-poverty, economic empowerment, and capacity building strategies;

[11] The Lund Committee was appointed by the Committee of the Minister of Welfare and the Provincial Members of the Executive Council.

- develop approaches for effective targeting of programmes for children and families; and
- present a report giving findings and recommendations (Dept of Social Development, 1996).

The Committee identified the following problems with the administration of the Maintenance Act of 1963:

- delays, long queues, lack of prescribed forms;
- shortage of personnel;
- securing the respondent's attendance at court;
- failure of courts to use civil executions; and
- lack of compliance from employers with the attachment of emoluments.

The constraints of the Committee influenced the direction their inquiry took and the findings and recommendations they made. The Committee's recommendations were based on a fiscally constrained scenario influenced by the macro-economic strategy. The policy directives were: "do not ask for too much more, save money through more effective management and through downsizing the bureaucracy; and redistribute within the present envelope" (Hassim, 2003:518). Hence an emphasis on individual and family self-reliance was accentuated. It has been argued that "the juxtaposition of self-reliance with the recognition of the importance of social security highlights the differing and sometimes contradictory discourses on the socio-economic place and position of the family within a single policy position" (Hochfeld, unpublished:7).

The recommendation that maintenance responsibility should be taken on by parents and shifted from the state was expected. This they did in situations of increased poverty, violence, unemployment and ineffective state social services. "The Lund Committee proposals were therefore seen as further entrenching women's poverty rather than alleviating it" (Hassim, 2003:520). This was also at a time where gender equality was at the core of South African public discourse.

Interestingly, it led to increased gendered representation in the policy-making process. However, this has not necessarily led to increased gains with regard to reducing gender inequalities.

As much as the provision of maintenance is a social security measure, it happens under the rubric of the law. Therefore, the justice system is central in determining whether its provision is successful or not. In order to address the challenges of ineffectiveness, inefficiency and fragmentation experienced in the justice system, in 1997 the government introduced the Justice Vision Policy 2000. This attempted to redesign the justice system so as to facilitate better access and to uphold respect for human rights. The Justice Vision 2000 document envisioned the transformation of the justice system through a focus on the following areas:

- an integrated, efficient and representative Department of Justice;
- a legitimate, service-oriented and efficient system of courts and other structures administering justice, staffed by people who represent everybody in South Africa;
- safety, security and freedom from crime for everybody;
- fair and equal access to justice for all, taking into account the diversity of people's needs;
- effective and efficient human resources development systems;
- a well-trained, broadly representative, accessible and evenly distributed legal profession; and
- effective and efficient provision of legal and legislative services to the state (Dept of Justice, 1997).

Given the gender-specific problems related to the implementation of the Maintenance Act of 1963 identified by the Lund Committee, the aspirations of the Justice Vision 2000 document have been argued to be too broad (Singh *et al.,* 2004). With regard to the more structural problems of the maintenance system, the document seems interesting although only on paper.

As a result of these limitations the Department of Justice went on to draw up yet another document, the Gender Policy Statement. Its central purpose was to give a clear reading of the Justice Vision 2000 with a more gendered perspective and more specific identification and resolution of gendered challenges in the justice system in particular and the maintenance system in general. The broader reading of the Gender Policy Statement suggests that it is interested in making the following provisions:

- improvement of the maintenance system through legislation, administration and other reforms;
- ensuring that all persons involved in the delivery of maintenance services attend professional development programmes to improve their skill, diversity, awareness, attitudes and commitment to customer care;
- development of an integrated policy framework of maintenance; and
- provision of efficient and effective service delivery (Singh *et al.,* 2004).

At its centre is the acknowledgement of the diversity of needs and experiences of men and women and the need to note these when addressing their legal requirements. Having made that acknowledgement, the document does not include men in its broader provisioning and corrective measures. This is especially true with regard to service delivery and notions of men's/fathers' place in the family and their need for justice. This is an oversight since the specific experiences of men has also been assumed to a large extent; the document acknowledges its bias to the needs and experiences of women. It argues:

> The current Justice system which is facially neutral, tends to fail women. The system generally renders women invisible. This is primarily because the norms and processes were carved by and primarily around the experiences of men. When blindly applied to women, in many instances, these fail to accommodate the gender specific needs arising from the different circumstances and related needs of women (Gender Policy Statement, 1999:Sec 1).

Another assumption that this document makes is that men have benefited equally from patriarchy and that they want to be men/fathers in similar ways. The document argues that the norms and processes of the law were carved in the

interests of men, without acknowledging the heterogeneous experiences of men/fathers and that feelings of discrimination are felt by particular men. This then makes the efforts of the Gender Policy Statement futile with regard to addressing gender equality, especially because gender should not translate as 'women' but as the social practices of men and women in a constantly changing world.[12]

The following section gives a brief description of the maintenance system.

4.5 A Bird's-eye View of the Maintenance System

4.5.1 A historical perspective

There are two sides to the South African maintenance system. There is, firstly, the judicial maintenance system, which is based on the legal duty to support one's dependents. Secondly there is the State Maintenance Grant, which is meant to act as a safeguard by providing support where the judicial maintenance system fails. In South African law the terms 'maintenance', 'support' and 'alimony' are used interchangeably. They mean the duty to support which extends to accommodation, food, clothes, medical and dental attention, and other necessities of life on a scale in line with the social position, lifestyle and financial resources of the parties. Parties here refer to parents or any other individuals with the duty to support. The provision of the Act applies in respect of the legal duty to any person to support any other person, irrespective of the nature of the relationship which gives rise to the duty. The Act must not be interpreted in such a way as to derogate from the law relating to the liability of persons to maintain other persons (RSA, 1998: Section 2(2). At the moment the scope of maintenance is primarily determined by the standard of living of the custodial parent.

In South Africa, women who are divorced, widowed, deserted by their husbands or the fathers of their children, single parents, or whose husbands are in specific

[12] See Chapter Two for discussions of gender relations.

institutions such as jails or psychiatric hospitals, and who are unable to support themselves and their children, have been able to apply for a state maintenance grant (Motara, 1999:11). Women, however, use other informal means to get fathers to pay maintenance (Armstrong, 1992), and when these do not work then they use the formal maintenance system. These informal measures include drawing on other family members, the church and community structures available for such matters.

The Maintenance Act of 1963 was structured in such a way that white families in most cases had access to it, while very few black families accessed it. In fact, until 1995 many African women did not have access to the state maintenance grant or to social security in general (Dept of Social Development, 1996; Patel, 1991). It has been estimated that if all women who were eligible for the grant were to receive it, the estimated cost would be between R5 billion and R20 billion annually (Dept of Social Development, 1996). These estimates were at the centre of the Lund Committee's recommendations to shift maintenance from the state to parents.

The responsibilities of the Lund Committee included examining the problems in the then state child support system, especially the neglect of African children. This was followed by the suggestion that the old state maintenance grant be phased out over a five-year period. The Committee further introduced a flat-rate child support benefit, which was initially set at R75 but is now R170 per child, provided to the primary caregiver. This grant is restricted to children up to the age of fourteen years – the increase of the age to fourteen was implemented in the financial year beginning April 2003. The introduction of children up to this age will be phased in as follows:

- During 2003/2004, children who are seven and eight years of age (turning nine on their next birthday) will be registered. This means that those children who are turning seven in March 2003 will not be removed from the system as was the case before.

- During 2004/2005, children who are nine and ten years of age (turning eleven on their next birthday) will be taken into the system.
- During 2005/2006, children who are between eleven and fourteen years of age will be registered (Department of Social Development, 2003).

During the apartheid years the state maintenance grant was R350 to children up until the age of eighteen. This was specifically for white and coloured children.

The new child support benefit system seems to shift maintenance policy away from the state and attempts to foster parental responsibility. This shift incorrectly assumes that all parents have equal access to resources to enable them to fulfil their duty of support towards their children. The move from the state maintenance grant to the child support benefit indicates that South Africa could be heading for greater economic hardship for single parents, who are usually women. Research done in the United Kingdom, the United States and Australia has shown that the state's emphasis on parental responsibility for child support is not always the best option since families are not economically able to survive without the assistance of the state (Collins, 1992; Motara, 1999). Shifting the alleviation of poverty from the state to individuals becomes highly problematic when fathers are reluctant to pay maintenance and share their income with other family members. This is especially so when the system in place to correct this problem is not working. Higher levels of poverty in South Africa than in England and Australia could mean dire consequences for those who are dependent on social welfare for their survival (Motara, 1999).

The following section will give a brief description of the Maintenance Act No. 99 of 1998.

4.5.2 A reading of Maintenance Act No. 99 of 1998

The intervention of the state outlined above led to the introduction of the Maintenance Act No. 99 of 1998. With regard to the parental duty to support, the Act states:

> Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue (RSA, 1998: Section 15(1)).

Section 15 (3) further says that the maintenance court shall take into consideration the following issues before an order is made:

- that the duty of supporting a child is an obligation which the parents have incurred jointly;
- that the parents' respective shares of such obligation are apportioned between them according to their respective means; and
- that the duty exists, irrespective of whether a child is born in or out of wedlock or is born of a first or subsequent marriage.

It further says that, the amount will be determined as the maintenance court may consider fair for all cases (RSA, 1998).

Maintenance cases are heard in magistrates courts across the country[13]. There are 432 magistrates courts with 1 453 magistrates across South Africa.

4.5.3 The introduction of maintenance investigators

The appointment of maintenance investigators has been heralded as one of the Act's innovations. This is because one of the problems identified with the previous Act was the disappearance of defaulting fathers and the frequency of inaccurate information concerning their whereabouts and their income. This usually led to delays, and at times to the giving up of the case by frustrated mothers.

The duty of maintenance investigators is to:

[13] See the CGE report at http://www.gov.za/structure/justice-admin.htm

- trace defaulters and persons liable to pay maintenance;
- gather information relating to maintenance enquiries, especially information on the financial position of the parties;
- testify in court under the supervision and control of maintenance officers or prosecutors;
- help in situations where the sheriffs have been unable to serve; and
- improve the information before the court with regard to assets and income (RSA, 1998).

At the time of this research two maintenance investigators had been appointed at the Johannesburg maintenance court. This was a limitation since this court heard more than a hundred cases per day. There were a total of 55 maintenance investigators for courts across the country. Due to budgetary challenges the Department of Justice has opted for appointing both the sheriff and members of other groups working in this sphere to the positions of maintenance investigators. It is not clear how these people will facilitate change in a situation where people who offer these services are already ineffective.

4.5.4 Guidelines for the attachment of wages

Before the introduction of this Act the respondent had to go into arrears before a garnishee order could be executed.[14] This Act makes provision to attach wages without the respondent going into arrears. Different courts interpret this provision in different ways, depending on who serves at the particular court. It was found that applicants often had to wait three months to have such an order administered (Moyo, 2003). In many ways, this is in line with the 1963 Act.

The successful implementation of this provision requires the support of employers. Research on this issue has found that employers are usually reluctant to assist in the execution of such orders (Wamhoff, 2001; Moyo, 2003). Some

[14] Garnisheeing is the automatic deduction of maintenance money from wages.

employers collude with their employees to evade the payment of maintenance. Still, the constitutionality of this provision is questioned by those who refuse to comply with it. The Act articulates that employers who do not comply will suffer penalties, which are usually heavy and are unwelcome.

4.5.5 Making orders by default

The granting of court orders in the absence of respondents is seen as a progressive aspect of the 1998 Maintenance Act. However, this can only be done in the event that the respondent has missed appearing in court several times. The Act states:

> If the maintenance court is satisfied on the grounds of sufficient proof, an order may be made:
> - Knows that he or she has been subpoenaed under section 9 of the Act to appear before the maintenance court, and
> - He or she has failed to appear before the maintenance court on the date and at the time specified in the subpoena.

> After considering the evidence, the maintenance court may:
> - Make an order by default for maintenance or the variation or discharge of a maintenance order,
> - Make another order which it considers appropriate in the circumstances of the case, or
> - Make no order.

> A copy of an order made against a person not present at the enquiry must, as soon as possible be delivered or tendered to him or her by a maintenance officer, sheriff or maintenance investigator. The return of service must be in the file to prove that he or she was aware of the terms of the order in question (RSA, 1998:14).

4.5.6 To use or not to use civil procedure

These orders are seldom used by the courts due to the lack of skills and reluctance of the maintenance officers. These procedures allow for maintenance provision for arrears maintenance and future maintenance in cases where the respondent is leaving employment or has income owed to him. The Act states:

> Whenever a person against whom a maintenance order has been made under the Act has failed to make any payment in accordance with that order, the order is enforceable in respect of any amount,

> which that person has failed to pay, together with interest this provision is made in Section 26 (1) of the Act 99/98. This section is enforceable through:
> - The execution against property as contemplated in Section 27,
> - The attachment of emoluments as contemplated in Section 28,
> - The attachment of any debt as contemplated in Section 30.
>
> If any maintenance order made under this Act has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable or any such order was made, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where an order was made.
>
> Furthermore Section 4 states that, notwithstanding anything to the contrary contained in any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under Chapter 5 to satisfy a maintenance order (RSA, 1998:20-21).

A study conducted by Tshwaranang Legal Advocacy Centre found that Section 28 of the Act is not used to its full potential, that most employers do not comply, and that there is no enforcement in most cases. Furthermore, it was found that most applicants do not know about this option, and therefore do not use it.

Research has found that most maintenance courts in Johannesburg have a waiting period of three months before they can follow through on a payment default. This is linked to a number of factors, one of the most interesting being that the system has loopholes, and sometimes the officials can claim the money was not deposited only to find that it got lost in the system. This is for people who pay into the court's maintenance account and for payments from companies (garnishee orders).

The Mngadi case makes a good example of the progressive nature of this section of the Maintenance Act. The case was heard at the High Court in Durban. The matter was between the Applicant, Ruth Nokuthula Mngadi (on behalf of her minor children, Khulelani and Silindile Khanyile), and the Beacon Sweets and Chocolates Provident Fund (First Respondent), NBC Holdings (Pty) Limited (Second Respondent) and Sifiso Philemon Khanyile (Third Respondent).

The judgement was made on 8 April 2003. The applicant had opened a maintenance case against the third respondent, which he consented to, and which was effected from November 2000. The maintenance order was for the amount of R200 per child every month until they were in a position to support themselves. In March 2001 the third respondent defaulted, mainly because he had resigned from his job.

On resignation the third respondent was due to withdraw benefits from the first respondent's provident fund, which is administered by the second respondent. As this process unfolded the applicant filed an affidavit stating that the respondent had advised her that he resigned primarily to avoid paying maintenance to his children. In such situations the Maintenance Act makes the following provision:

> Offences relating to maintenance orders –
>
> (1) Subject to the provision of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine.
>
> (2) If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was due to lack of means on the part of the person charged, he or she shall not merely on the grounds of such defence be entitled to an acquittal if it is proved that the failure was due to his or her unwillingness to work or misconduct.

As a result of the third respondent's default in paying the maintenance ordered by the court, a warrant of execution in an amount of R1 386 was issued in July 2001 and a corresponding amount was attached from the withdrawal benefit held by the first respondent on his behalf on or about 15 February 2001. Later on a further amount of R5 600 was attached from the same benefit to settle arrear maintenance. In 2001 the applicant's attorneys wrote a letter to the first respondent requesting that the third respondents' future pension benefit be attached to secure the payment of future maintenance.

The Maintenance Act Section 26(4) makes provision for the following:

> Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under this Chapter in order to satisfy a maintenance order.

This provision makes it possible for the maintenance court to attach pensions and benefits to settle a maintenance order. The high court declared that the first respondent was to retain the third respondent's benefits (R55 002.82) so as to pay the set maintenance order and will continue to do so as long as the maintenance order is still operational. The applicant has the right to apply for variation of this amount should her life circumstances change.

The court also declared that on condition that there is some money left from the fund when the children are no longer in need of support or maintenance these monies will then be paid to the third respondent.

4.5.7 Criminalising maintenance defaulting: the use of warrants of arrest

This represents the most contested provision in the Act, which is captured as Section 31 of the Maintenance Act. On the one hand, fathers argue that it treats them as criminals. On the other hand, the maintenance officers and police are reluctant to enforce it, questioning its constitutionality and relevance. The role of the police in the implementation of the Maintenance Act is not clearly articulated. It has been argued elsewhere that "attitudes among police hinder the execution of warrants of arrest related to maintenance" (Wamhoff, 2001:17). The police also argue that women misunderstand and abuse the law.

4.5.8 Provisions related to paternity tests

This order is important when starting the procedure of negotiating maintenance. Before maintenance officers can proceed with the inquiry towards the payment of

maintenance, they must determine paternity. The Act states that:

> In situations where the paternity of the child is in dispute, the Act makes provision for tests to be performed to ascertain paternity (Sec 21 (1) Act 99/98). Section 21 (2) gives powers to the Maintenance Officer to put the process into motion. It states that an inquiry could be made into:
> - The means of the mother of the child as well as the person who is allegedly the father of the child, and
> - The other circumstances which should in the opinion of the maintenance court be taken into consideration (RSA, 1998:15).

Paternity is relevant to the question of whether or not a respondent is in fact legally liable to maintain the children in question. Once a presumption of paternity has been established, the man will be responsible for support. This does not mean that fathers – especially in situations where children are born out of wedlock – will have more access and say in how their children are raised. These issues are said to be separate from maintenance and are dealt with in the Fathers of Children Born out of Wedlock Act.

This shows the lack of co-ordination in the different sections that have to actualise the administration of gender equality and the best interest of the child. This fragmentation is captured thus:

> Coordination of functions may be problematic, mainly because these issues overlap in many cases and there is little if any communication between the component courts about parties who are involved in more than one component at the same time. It may be that the denial of maintenance is being used as a way to mete out revenge for the denial of access, while the denial of access was used as revenge for the divorce, and the divorce was the result of domestic violence. There is no way for these issues to be dealt with in one comprehensive process in the family court today. If parents begin to argue about access to the children in front of the maintenance officer, they are told that maintenance has nothing to do with access and they need to approach the children's section for a dispute over access (Wamhoff, 2001:23).

At the implementation of this Act in 1999 there was no budget allocated to make these provisions a reality. This lack of resources has contributed substantially to the challenges the implementation of this Act has faced.

4.6 Conclusion

This chapter has tried to show the socio-political and economic context in which the Maintenance Act No. 99 of 1998 was enacted. This context shaped the direction the Act took and the interests it serves. The Act assumes a neutral stance on gender, and assumes the experiences and needs of men and women to be the same. Yet, in their everyday attempts to access the system women and men have gendered experiences which shape and are shaped by notions of gender articulated in state policies discussed here. The state discourse on gender tends to assume that women's role as mothers should be privileged over men's role as fathers. This was captured in all the scenario's discussed in the chapter. This continues to place men and women in separate spheres with regard to their needs and experiences.

This chapter also shows that the policy directions discussed tend to take the role of fathers as self-evident without further interrogation. This is done in the name of gender equality. By taking the needs and experiences of fathers for granted, these corrective measures will fall short of achieving their goal. This is because where men and women feel unequal, co-operation will cease to exist, consequently creating the same imbalance they are trying to equilibrate.

The following chapter interrogates how the maintenance system is experienced through an examination of court files from the Johannesburg Maintenance Court and accounts of key informants. It is also about the construction of the state.

Chapter Five

THE CONSTRUCTION OF THE STATE

5.1 Introduction

Scholarly debates on the state have been divided in their conceptualisation of what the state is and how it functions. Most present the state as coherent and tight, and pretend that the contestations and re-imaginings that are a constant feature in the making of the idea of the state are non-existent. This chapter aims to evaluate the notion of the state as a regulator of social life. As such, it acknowledges that the state tries to make itself real through a number of processes. These processes include the use of symbols, texts and iconography. One of these is the development of policies.

This chapter moves from the premise that the notion of the 'state' is contested. It has been defined as patriarchal, as welfare in terms of how it intervenes in the lives of its citizenry, as bureaucratic, as gendered and as a regulator. The regulatory conception of the state has been utilised to understand state policies and legislation. This regulatory function has been argued to be interested in continued state formation:

> … the valorization of particular social and political relationships and identities and the marginalization of others, in their own worlds 'a project of normalizing, rendering natural, taken for granted, in a word "obvious"', what are in fact ontological and epistemological premises of a particular and historical form of social order (Manicom, 1992:456).

This function is not necessarily interested in men and women as concrete historical subjects, but in the gender categories of 'man' and 'woman' as defined and constructed within the particular discourses and practices of ruling. Recent

South African gender historians have revealed that different policy discourses and legislation refer to African women in a variety of ways:

> … as mothers, as blacks, as workers. … In doing so, state policy and practice are also constructing 'women' as objects of rule, reproducing or restructuring normative gender meanings and subordinate social and political identities in the same process (Manicom, 1992:456).

These constructions are not only true of women but of men as well.

These gender constructs are acted out in the practice of different institutions and policies of the state. This is because the state is not a unified social actor. As a result of this understanding, the lens used in this thesis to understand state notions of women and men as parents is the Maintenance Act and the system that puts it into practice.

The preceding chapter showed the different factors that go into the policy-making process and how these present the various interests that influence what we call 'the state'. The chapter argues that the encounters that officials and users have with the apparatus of the state yield insight into how normative structures of gender inform the way maintenance is administered and contested.

This chapter invokes the three symbolic languages that are said to produce the state as a centre of authoritative power, and asks the question – does the state succeed in putting forward its authority through the maintenance system? The three languages referred to above are, firstly, "… the institutionalization of law and legal discourse as the authoritative language of the state and the medium through which the state acquires discursive presence and authority to authorize", secondly, "the materialization of the state in a series of permanent signs and rituals: buildings, monuments, letterheads, uniforms, road signs, and fences", and thirdly, " the nationalization of the territory and the institutions of the state through inscription of a history and a shared community on landscapes and cultural practices" (Hansen & Stepputat, 2001:8). All these factors are captured in how the maintenance system is organised and works.

This chapter examines how the state is encountered by men and women users through a reading of court files and the evaluation of the processes followed in making a maintenance claim. The accounts of maintenance officers and other key informants are also important sources for what follows. Does the state succeed in reaching its aspirations as a regulator and an all-powerful entity? This is one of the questions with which this chapter engages.

Of interest here is the implementation of the Maintenance Act in relation to gender relations and how they are played out in the everyday workings of the maintenance system. This process will reflect to a large extent how the Act is interpreted in the everyday use of the maintenance courts, by officials and by the men and women users of the maintenance system. This inquiry also shows the tactics and contestations that mothers and fathers engage in, in relation to the system and each other. The main argument of this chapter is that encountering the Maintenance Act through court files suggests that the state does not present concrete processes that define who the users are and what the powers of the state are. This lack of definite systems leads to different interpretations and experiences of the state, making the regulatory function of the state unattainable.

The court files that inform this section are from the Johannesburg Maintenance Court. The exploration is based on a presentation of a statistical examination of court files which shows the use of maintenance courts and broader interpretations of the reach of the state, by both the users and officials. This analysis is done through the presentation of different themes, all addressing issues relevant to the workings of the maintenance court.

5.2 Claiming Maintenance: Going Through the Process

The data gathered suggests that in 2002, 90.3 per cent of those who initiated maintenance claims were mothers, 1.7 per cent were fathers, and about 9.5 per cent were other caregivers, including older children who made claims against their

fathers. As pointed out in the previous chapter, the process of claiming maintenance is fraught with complications and delays. Other research on maintenance and my own fieldwork observations suggest that the following procedures are usually followed when claiming maintenance:

- The applicant (usually the mother) fills in a form.
- A court date is set and the respondent (usually the father) is notified by letter.
- Both applicant and respondent are supposed to be told to bring documentation of income and expenses.
- Once the parties appear at the court there is an informal inquiry before a maintenance clerk or officer; here the clerk finds out if the parties can come to a settlement.
- If all the information is available, and the parties come to an agreement, an order could be made at this point.
- If there is information missing and the parties do not reach agreement, the matter is postponed for further inquiry in front of a prosecutor and then a magistrate.
- At this stage, one of several things could happen:
    - an order could be made;
    - if the respondent is unemployed, the court can order him to find employment; if the respondent fails to find employment (and can prove this by presenting a form signed by potential employers indicating that they were approached but were unable to hire him), the case may be reopened after a couple of months for further inquiry.
- At times, when an order has been made the struggle continues because the respondent may pay for a few months and then default.
- When this happens, the applicant has to come back to the court and a summons will be issued calling the respondent to court.
- A warrant of arrest might be issued if the respondent fails to appear.
- When the respondent comes to court, he might be fined, arrested, and/or have his income garnisheed.

- The court could also make an order to attach his property (Burman & Wamhoff, 2003).

This process of claiming maintenance is supposed to be straightforward. However, the contrary is the case. This list does not at all do justice to the number of obstacles faced by mothers and the few fathers who claim maintenance. The provisions listed here are not necessarily available to all who use the courts. This is due to a number of reasons, one very important reason being lack of access to information as to how the system should work for mothers in different situations. Central to the problem at the heart of this thesis is the fact that fathers are not interested in maintaining their children without some intervention by mothers and the state. The reasons are manifold; however, at the centre of the problem of maintenance is the fact that policy makers do not take into account the relational nature of the problem and its many factors. These might not be part of financial support, but surely impacts on whether or not the system works.

Since most of the time the applicant[15] is the one claiming maintenance, most of the demographic data was provided by the applicant. Consequently there are times when information is missing or it is not clear, especially when it is information about the respondent[16]. For example, of the 237 files read, 223 files did not have information about the income of the respondent. This means a lengthy inquiry and increased time spent at the courts for mothers, therefore cutting further into their already burdened time. Ruspini (2000) argues that the amount of time and energy women in particular have put into household production has significant effects on the economy, both in terms of its results and because that time and energy is then not available to use elsewhere in the economy. Lack of this type of information leads to further questions about how the magistrate or official is to legislate for the appropriate maintenance amount. The calculation used to reach the maintenance amount is usually referred to as quantum, which is the different ways of arriving

[15] This is usually the mother but other caregivers do sometimes open cases.
[16] This is usually the father. Even when other caregivers or the child opened the case, it was most often against the father.

at an appropriate maintenance amount, and is supposed to take into account the lifestyles of both parents and the needs of the child.

The form used to open a case or make a claim is not particularly easy to read. It has also been argued that it does not ask for the necessary information[17]. The form assumes that whoever will be using it is literate and will have access to the information needed – for example, the address where the father of the child is employed, their identity document (ID) number and other biographical data. This assumes that the mother has access to the father and to the information requested.

One of the problematic questions in the forms is this one: "The defendant is legally liable to maintain me because….". Firstly, this question assumes that the applicant is opening a case of maintenance for herself; however, in 90 per cent of the cases the claims were opened on behalf of someone else (see Table 5.1), usually the child. Generally the language used in these forms is not appropriate and accessible[18]. This problem leads to situations where, for example, some questions are not answered. As a result, determining appropriate maintenance becomes a problem.

I also found that information on the income, age and monthly expenditure of the respondent was frequently missing. This is because this information is initially asked of the applicant, who in most cases does not have access to the respondent. In situations where respondents are available, they are often reluctant to provide such information. Furthermore, asking for information on monthly income and expenditure assumes that people keep records of what they spend, and that they are willing to openly share this information, especially in situations where they just make ends meet. This issue has been succinctly captured thus:

[17] At the beginning of 2004 there was talk within the Department of Justice Gender Directorate of changing the forms. However, at the time of this research the use of these new forms had not been implemented (Personal discussion with the staff of the Department of Justice – Justice and Gender Directorate).

[18] By the time of this research, the non-governmental organisation Maintenance Forum had set up officer in the Johannesburg Maintenance Court; they assisted users to fill in the forms and to follow up cases. however, most of these users had gone through a number of procedures before they got assistance, and these services do not necessarily reach all those in need.

> …the sensitive nature of the issues – such as power, subjectivity and meanings – often resonate with the subjective or personal meaning of lived experience, making the process of exploring them also a very intricate experience. Lack of income and food or general poverty were sensitive issues and people were mostly unable to talk openly about them (Mosoetsa, 2005).[19]

Another challenge with regards to these forms is the assumption made about literacy. Not all who use the courts can read and write. This is what was said by Ronny Mahlangu a trainer and ex-maintenance officer at Tshwaranang on these issues:

> Some of the mothers of these children who go to court to seek maintenance are illiterate; they can't read and write. You can write IsiZulu or IsiXhosa, but they can't read. What's the use of having that? (Interview, Mahlangu, 24 March 2003).

This is an enormous oversight on the part of the state. Although a number of organisations like the Maintenance Forum assist both mothers and fathers through the process, they do not reach everybody and they are not in a position to address the shame that a confrontation with a world of reading and writing brings to those who are not educated. It has been shown that proportionately fewer women than men can read in at least one language, especially in non-urban areas (Budlender, 2002). Ronny Mahlangu makes another interesting observation:

> You have to blame the Department of Justice, because if you look at the way they disseminate information to the public, it is very biased. Biased in a sense that it's actually in one language, which is English. And if it is in English how many English people go to magistrates courts and claim maintenance? You find three or four, the rest is Africans. The BaPedi, AmaXhosa, BaTswana, AmaNdebele, AmaZulu and whatever. And you cannot find information written in those languages (Interview, Mahlangu, 24 March 2003).

The challenge then becomes how to make sure that the courts carters for the groups who use them, in a total sense. Why is the state assuming that the use of the English language is the way to go in these institutions? The use of a language

[19] Furthermore, there is both the crucial question of where to draw the line and how to conceptualise and measure income and money resources (Daly, 1992).

foreign to court users is not a viable way for the state to reach its citizenry. The use of a language inaccessible to the majority users of these courts confirms the arguments by Stofile (1998) that citizenship has its basis in an exclusionary history. In South Africa this has a racial as well as a gender component.

Khosi of the Maintenance Forum had this interesting point to make about the forms and procedures followed in the courts with regard to the time of women and the treatment they receive from the maintenance officers and the system in general. She said:

> They do not understand anything on the form, and they tell her go to room 104. At 104 they will tell her that you have not completed the form, we will not help you; go to room 305. When she gets to 305, I mean she has been here since seven in the morning; by eight she is given a form, and she is sent somewhere. She was first in the queue, but she will end up leaving here at four because she was unable to fill that form (Interview, Khosi, 11 June 2003).

Another problem with the form is linked to the normative assumptions that the state has of women's and men's positions in society and in relation to parenting in general. The maintenance system assumes that men are uninterested in supporting their children, and that the role of women is to force the men to support their children through the use of the courts. Suzan Mboneni, a maintenance officer, found this lack of flexibility in the forms a problem and an inconvenience to court users, especially fathers who wanted to pay maintenance of their own accord. She said:

> Yah, we have this problem where a man would come and say I have a child with so and so, and I want to maintain my child, but she doesn't want me to maintain my child. The problem comes in with the filling in of the forms (Interview, Suzan, 19 August 2003).

Suzan's account here illustrates that filling of the forms to start a maintenance process is biased towards women. This suggests that it is difficult for fathers to voluntarily start the process. This rigidity according to Suzan leads most maintenance officers to dismiss fathers who want to start maintaining voluntarily. The issue here is that they rather wait until the mother opens a case against them.

Her concerns about the rigidity in how men's and women's roles are defined are spoken with a kind of resentment. She believes that this rigidity makes it difficult to be a father when maintenance is an issue. This is especially so when fathers are responsible and do not want to be peripheral in the lives of their children.

> So we ended up dismissing the applicant and saying this man should wait. You see that's where that comes in that men are being discriminated against. Because then he must wait until that woman comes to court and claim maintenance, whereas they were supposed to have helped him, but they couldn't help him because this thing is working this way that only a woman can come, only a person who stays with the child can come and claim maintenance, not you when you feel like no I want to maintain my child, but I'm being denied to maintain my child (Interview, Suzan, 19 August 2003).

Suzan's account illustrates that the only position acknowledged to be that of men by the maintenance system is that of absent and 'deadbeat' fathers. A different kind of man is not accepted, and provision is not made for men who want to provide for their children voluntarily. It is clear from this account that the only way the maintenance system can deal with fathers is when they are not fulfilling their provider role and are not complying with their responsibilities. Suzan further said the following with regard to men's position in the maintenance courts:

> So we do have a lot of cases lately where a man comes and says no I want to maintain my child and this woman doesn't want me to maintain; and there is nothing we can do. And sometimes you phone the woman, please come to court because this man wants to maintain the child, and she would say no I don't want his money. Just a week ago I had a case where a man was ordered to pay a certain amount of money, and to purchase clothes for the child. And the man brought clothes to the woman's place and she refused to take clothes saying that she – her child doesn't wear clothes from Mr. Price. She came, she made an affidavit that yes, she doesn't want the clothes, because they are of a cheap quality, her child doesn't wear clothing from Mr. Price. So is that woman in need of maintenance? And she even went as far as saying the court can cancel the maintenance order that it made (Interview, Suzan, 19 August 2003).

This account also shows that even though the maintenance system is used by people in need some people do not need this intervention. It is also about maintaining certain standards of living. It also seems that no intervention was

entered into to help this father maintain some contact or continue maintaining his child if that is what he desired. Is this the kind of fatherhood advocated by the maintenance system?

Furthermore the inflexibility illustrated by Suzan shows that the Act fails to take into account the problems experienced by both mothers and fathers in the administration of the law. As much as mothers find themselves waiting in long queues and struggling to access maintenance, fathers are also discriminated against and do not have access. She further states that the Maintenance Act and how it is administered is biased towards women:

> This Act favours women more than men. If you can read through it; it is more in favour of women than men. Why I say this, it is because most of the time when a man comes here to claim maintenance against a woman who does not maintain their child, their cases are not taken seriously. They are not taken seriously, it is like a joke. The man came to court; the woman did not come. A warrant of arrest was authorised for the woman, but the police went and arrested the man. Because they assume that men are the ones who do not maintain their children. The man was arrested, he was brought to court, and in court it was realised that, no, this is the applicant, not the respondent. That is why I am saying it favours women (Interview, Suzan, 19 August 2003).

This clear bias poses a serious challenge to the working of the maintenance system. It might also contribute to the lack of compassion most maintenance officers show when administering the Act to women. This might also be responsible for the continued labelling of women as devious when they use the system, mainly because it does not seem fair and equal when it comes to men.

5.3 Negotiating Maintenance

When you read the Act you get the sense that coming to an agreement on maintenance is straightforward. However, the actual process is filled with delays and tactics from the women and men users of the system. In this regard, women and men intervene in the process to make it work in their interest. Negotiating

means conferring, bargaining, making arrangements, compromising and maybe at some stage reaching some agreement.

I found throughout the files that women's initial request for maintenance was always higher than what they eventually received. These amounts might be influenced by a number of factors, including the fact that mothers know what the child's needs are since they are the primary caregivers. However, another issue at play here has to do with negotiation tactics. My observations in the court corridors informed me that when mothers enter the in-camera session they have strategised, because from sharing with other women they know that their initial request is likely to be rejected. This is usually a closed session between the respondent, the applicant and the maintenance officer. What usually happens here is that the maintenance officer will work as a mediator between the two parents and help them come to an agreement about maintenance. The first thing that needs to be done here, is to make sure that the alleged father does not dispute paternity. Only when this is cleared are issues of maintenance discussed.

Paternity has been defined as the legal determination of who is the biological father of the child. Ncube (1989:92) argues that "it is important to determine paternity for the purpose of attaching liability for maintenance of a child on the man who is found to be the father". This is especially so for children born out of wedlock, because children born in wedlock are automatically presumed to be the children of the man married to the woman. Thami Mdeleke, one of the maintenance officers at the Johannesburg Maintenance Court, made this interesting comment:

> The man would say I am going to give you R100.00. Now the man wants this R100.00 to be debated, because at the end of the day he knows maybe he is going to pay an amount of R300 or R400 or so on. And the woman she knows for the fact that a thousand rand that she is asking for is too much. But also she wants it to be debated, that at least when the court grants her an order it is around the amount of four or five hundred rands. You know, I remember when I asked one lady that why if they come to court they would ask for these exorbitant amounts, they said no its because, if we ask for a reasonable amount then you, the courts, are going to reduce it, so

> we want to start from a higher amount and then go down to a reasonable amount (Interview, Mdeleki, 13 October 2003).

This then marks the beginning of a 'tug of war' between the mother and the father. My own observation revealed that the process of claiming maintenance is not completely in the hands of the state, and that mothers and fathers play a game where one will win at the end of the process. This is shown in how the maintenance amount is negotiated. Data from the files demonstrate that in almost all the cases the mother asked for a large amount which was followed by a detailed justification of what the money would be used for. However, at the end of the case the amount granted was always what the father had suggested he could afford. This, however, is without a discussion of how the suggested costs of the child will be taken care of. The fathers seem to win in this regard. This tug of war continues after the first maintenance amount is granted. Interestingly, in more cases than not, the maintenance amount granted is the one suggested by the father. I found that in almost 75 per cent of the cases, even where maintenance orders were not made, the mother always suggested a high amount which would later be rejected by the father, and the offer made by the father was rejected by the mother (see Table 5.7). This would be followed by a suggestion of a lesser amount. This amount, in most of the cases, ended up being the maintenance order amount. Sometimes this happened after a lengthy inquiry, and sometimes it was just accepted without further discussion and perusal of income and expenditure. It has been found that "… the amount of maintenance awards appears to be made largely at the discretion of the officials concerned"(Wamhoff, 2001:18). Other research shows the gendered nature of this system, and how this impacts on whether the maintenance amounts will be satisfactory or not (Wamhoff, 2001). Wamhoff (2001:18) also found that "magistrates have maintenance orders on their own ideas of reasonableness and their judgments are thought by many to reflect male ignorance of what it takes to run a household".

Disagreements on amount are also one of the reasons for postponement of cases. In the database of this research, 38 cases were postponed because of lack of agreement on amount by the parties involved. Table 5.1 shows that out of 99

cases, 50 maintenance orders were for the amounts between R200 and R349, which shows that people who do claim for maintenance are not doing so for luxuries but for the maintenance of children. This assumes that the quantum is reached through an analysis of the parties' lifestyles, income and expenditure – and most important, the needs of the child.

Table 5.1 Maintenance order amount

Amount	Number of cases	%
R10-R190	9	9.1
R191-R349	50	50.5
R350-R459	11	11.1
R500-R659	19	19.2
R600-R859	8	8.1
R800-R1159	1	1.0
R1200-R1349	1	1.0
Total	99	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Other researchers have found that low amounts awarded for maintenance lead to discouragement and abandonment of cases for many women (Commission on Gender Equality, 2004). This then makes it surprising that women would want to fall pregnant to cash in on such low amounts that fall short of maintaining the child. The struggles and tactics that users engage in impacts on the direction the process follows. These also challenge the assumptions the state makes with regard to who these users are and what their interests are.

5.4 Running Up and Down for Maintenance

One of the challenges that users of the system experience is that the process is not a clear-cut process where you go once and everything is sorted out. Claiming maintenance is a difficult process for most users, both respondents and applicants.

When there is no agreement during the first in-camera visit, then the process goes to the magistrate who is supposed to help them come to an agreement. This is a process that both respondents and applicants despise, because it can go on for months and none of them know how it will conclude, so there is usually a lot of anxiety about it.

A number of processes that applicants have to deal with to access maintenance have been listed, and it has also been argued that the tediousness of this process proves that there is a gap between the 'law in the books' and the 'law in action'. Although the case of study referred to below relates to Zimbabwe, my research suggests that the points it makes apply equally to South Africa. Common problems include:

- the distance to be covered when one has to go back to the court several times during the processing of the claim;
- messenger and other fees, where most applicants may be indigent;
- complicated and lengthy forms requiring information that may not be readily available or known to the applicant;
- investigative efforts on the part of the applicant in locating an elusive respondent;
- long waiting periods for hearing dates, occasioned by the high demand for maintenance claims, and sometimes repeated postponements;
- meagre amounts awarded, falling short of the requirements for decent survival; and
- having to go through the whole exhausting process after a certain period has elapsed, in order to enforce the judgment through garnishee or other enforcement procedures, and also in order to have the amount of maintenance, on acceptable grounds, increased through variation proceedings (Armstrong, 1992).

Let us then consider some of the processes in the South African system and their results.

Table 5.2 Was resolution reached by consent?[20]

	Number	%
Yes	12	5.1
No	223	94.9
Total	235	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.2 shows that only 12 of 235 cases were able to put their differences aside and focus on the issues that the maintenance courts are tasked with, to make sure that children are taken care of financially. The other 223 continued the pulling and pushing which is the norm in these courts. This for me shows the degree of contestation that goes on in this system and poses the ongoing question of whether it will achieve what it has set out to achieve.

Table 5.3: Was resolution made by maintenance order?[21]

	Number	%
Yes	96	40.7
No	140	59.3
Total	236	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.3 could be interpreted in a number of ways. Firstly, one could argue that some cases were just not followed up. Secondly, it could be suggested that other cases were followed up for months without progress – that is, without a

[20] This refers to a situation where both the respondent and applicant come to an agreement concerning the maintenance amount during the first in-camera sessions. In this case a maintenance order is signed without the intervention of the magistrates.
[21] This refers to a situation where the maintenance officer intervenes and a maintenance order is signed as proof that an agreement has been reached.

maintenance order as the end result. Thirdly, the situation might have been that some cases were opened in the wrong jurisdiction, therefore leading to closure of those cases. The 96 cases that resulted in a maintenance order indicate progress and perhaps closure of the case. However, the nature of claiming maintenance is such that the drama never ends for most mothers. The process leading to a signed maintenance order might be followed by long periods of defaulting and continued running up and down, especially for mothers, or it could end with the father continuing to pay without any problems, although this happens in fewer cases.

Table 5.4 Was the case withdrawn?[22]

	Number	**%**
Yes	12	5.1
No	224	94.9
Total	236	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.4 shows that there are cases where parties misunderstand the role of the state and later agree not to use the courts. However, the fact that only 12 such cases emerged in my data shows that more cases are faced with a great deal of drama and long-term struggles within the system. Then again, many of the cases which are not withdrawn are usually just abandoned: this is an act which many mothers are eventually forced into by the inefficiency of the system.

This abandonment is mainly because the maintenance procedures are fraught with delays and postponements, causing applicants to give up. Ronny Mahlangu spoke about why mothers might give up on the process and not come back, even when they really need the extra money for the survival of their children:

> There are cases whereby you find the magistrate telling a complainant that; oh! You are a customer in this court building, because yesterday she was there for another maintenance case with another father of her child and today she's there with another father,

[22] This refers to a situation where the parties agree that they will resolve these issues outside the court, and they withdraw the case from the court.

> another respondent. So if a magistrate would then say to an applicant, you are a customer here, obviously that person would never come back to that court again. So these are some of the things that we need to deal with (Interview, Mahlangu, 24 March 2003).

This shows not only the reasons why other mothers might find the process unbearable, but also the gender-insensitive nature of some of the officials who are expected to carry out the implementation of this so-called progressive Act. Without proper channels for implementation, the Act does not live up to the grand claims made for it. Another problem with implementation of the Act is that there is a three to four – Month waiting list at many maintenance courts.

Tables 5.5 to 5.7 show the cumbersome nature of using the courts to claim maintenance. They further attest to the claims made in the *Mail & Guardian* article. The Maintenance Act might aim for more efficiency; however, what we see in its operation is the opposite.

Table 5.5 Was the case postponed?

	Number	**%**
Yes	145	61.2
No	92	38.8
Total	237	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.5 shows that 145 cases were postponed, which meant more than one visit to the court for mothers. In most cases this could mean a couple of months waiting for a claim to go through.

In a situation where 61.2 per cent of the files examined showed postponement of the case, the problem of women's time becomes an issue. Research shows that in South Africa women's time is more burdened than that of men (Budlender, 2000).

Table 5.6 for instance shows that 42 of the cases were postponed twice. That means four trips to the courts for mothers, and half the time they go back to the courts because the fathers were absent (see Table 5.7).

Table 5.6 further shows that maintenance cases can be postponed up to ten times. This might explain why some cases are not followed through. This does not even begin to capture the number of times an applicant will go back to the courts to vary the maintenance order, or to make inquiries about a defaulting father, or the amount of times an applicant has to come back to the court because the father does not deposit the money on time. Other research also found that postponement often leads to abandonment of the case because the lengthy procedure usually leaves the women drained emotionally and financially (Armstrong, 1992).

Table 5.6 Number of times the case was postponed

	Number	**%**
Once	32	22.5
Twice	42	29.6
Three times	29	20.4
Four times	12	8.5
Five times	7	4.9
Six times	6	4.2
Seven times	8	5.6
Eight times	5	3.5
Nine times	0	0.0
Ten times	1	0.7
Total	142	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Postponements are obviously a serious problem for users, especially mothers and children, since they are the ones in need in most of these cases. One of the limitations of engaging in so many postponements was captured by Ronny Mahlangu:

> …now for pre-trial he would come and plead guilty or not guilty and it will be postponed again. And it will be postponed again and during that period those arrears accumulate. And now when we look at the court they are busy postponing the case, the R600.00 accumulates, and now the court is not going to entertain that three months, they entertain what is written on the summons (Interview, Mahlangu, 24 March 2003).

At this point the mother loses the arrears accrued over the three-month period, because the court has been postponing the case. If it is not written in the file, they will not consider it. The use of other provisions like the attachment of property is not considered at this point, thus making the inclusion of this provision in the Act inadequate. Furthermore, as the applicant is running up and down for maintenance, no consideration is given to the survival of the child in the meantime. This is so in a situation where the Maintenance Act makes provision for such scenarios.

The clause in the Act that states that it compensates women for the fares used to come to and from the courts is seldom used. The application of this provision might make the situation more bearable, but most of the mothers are not aware of its existence. This is what was said by Ronny Mahlangu with regard to this clause:

> The new Act has a sub-section no. 11.2, which is the payment of the complainant for her money to come to court and a R10.00 lunch out of that money, because you know most of the women they go borrow money from their neighbours, I' am going to court and she gets to court, the matter is not finalised; she doesn't get money and all that stuff. But now if you go to the magistrate's court, the magistrate can make that order and once that order has been signed, it is a court order. But now the accounts department in the courts would tell you that they don't have a budget for such (Interview, Mahlangu, 24 March 2003).

The lack of an implementation plan and a budget for this beautiful piece of legislation seems to continue creating problems with regard to the realisation of

this over-stated beauty. This makes the new Act look very much like the old. There is no point in looking good on paper when the everyday use has not changed a bit.

Table 5.7 shows that 92 cases were postponed because the respondents (mostly fathers) were absent. Furthermore, 53 of the cases were postponed because the maintenance officers and the forms did not help in eliciting appropriate information to make the process easy and efficient.

Table 5.7 also shows the tendency of the state to behave like a father. For example in 10 of the cases the reason for postponement was because the court had suggested that the father should seek employment. This limits the definition of father by the state to financial contribution. Furthermore, the insistence by the state on entering the private lives of individual men by ordering them to find work stands in the way of the ability of the state to provide an efficient service to mothers and children. This shows the contradictory and unilinear nature of the state.

Table 5.7: Reasons for postponement

	Number	**%**
Respondent absent	92	64.8
Court requests proof of income, or further inquiry, or trial	53	37.3
Applicant rejects offer	38	26.8
Both respondent and applicant absent	35	24.6
Respondent is unemployed	19	13.4
Applicant absent	16	11.3
Respondent still to find work	10	7
Respondent offers nothing	9	6.3
Respondent disputes paternity	9	6.3
Respondent seeks legal representation	6	4.2
Waiting for DNA results	4	2.8

Applicant seeks legal representation	3	2.1
Respondent is late	2	1.4
Magistrate not available	2	1.4
Applicant late	1	0.7
Respondent feels ill	1	0.7
Information incomplete (address, police area)	1	0.7

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

5.5 The Use of the "Progressive" Provisions of the Act

The 1998 Maintenance Act has been deemed progressive and the best piece of legislation since the Constitution. Having said that, the question is how well does it work in practice. In the world of policies, the formulation is at times separate from implementation. This creates challenges with regard to reaching the aspirations of the policy documents. This section examines whether the implementation process is as progressive as the Act aspires to be. It shows the use, within my sample, of three key measures provided by the Act for the enforcement of maintenance obligations – that is, warrants of arrest, attachment of emoluments and garnishee orders, and attachment of property.

Table 5.8: How often are enforcement measures used?

	Yes		**No**	
	Number	**%**	**Number**	**%**
Warrant of arrest	26	11.1	209	88.9
Attachment of emoluments/garnishee orders	17	7.3	217	92.7
Attachment of property	0	0	235	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Of the 217 cases, only 17 used attachments of emoluments or garnishee orders. This confirms the findings that maintenance officers prefer not to use this provision, and in fact might not know how to use it (Moyo, 2003). The question is then how progressive is an Act if it does not work? Sandra Burman, an academic and author on maintenance and the family in South Africa, argues that another reason why this might not work with regard to employers is because of the following:

> .. it costs money. And so there is a feeling in a lot of the firms that they don't want to do it, because it's a nuisance. And the magistrates have picked this up, and so they were reluctant to make garnishing orders, too. It's also at the purely practical level. Magistrates don't like having to write out the extra forms, too. You know, they are in a rush; they give them a whole lot of cases to get through in a day. Firms don't like the whole procedure they've got to go through to garnish. It's important; it's the easiest way to get the money, that makes the man pay. And it's the best way for the woman (Interview, Burman, 16 May 2003).

It has been argued that employers suffer heavy penalties if they fail to administer garnishee order payments, fail to notify the court if the employee leaves the job, or fail to deduct maintenance first before other debts (Wamhoff, 2001). This research also found that it would be better if the employers were notified of the order before it is made so that they could defend it. Similar situations exist where the constitutionality of the garnishee order was questioned and therefore the use of this provision was put on hold at the Wynberg Magistrates Court in 2003 (Moyo, 2003).

The officers at Wynberg felt that it was not constitutional to garnishee someone's salary as if they were in debt. This feeling was also true of the employers who were supposed to administer such orders. The general feeling was that it was not 'right' to lose control of one's finances, and for the state to take over in that way. This was especially true in cases where there was no relationship between the man and the woman other than sharing a child.

One of the reasons why the maintenance system does not work efficiently is because the procedures are long and sometimes they include too many people.

therefore, I think that involving the employers as suggested by Wamhoff would impact more on the process and lead to further delays. I think the employers should view the administering of the garnishee order as part of their social responsibility. Although it might be a responsibility they might want to be excused from, it is necessary.

Of the data gathered, only 26 cases utilised warrants of arrest. These are usually issued when the respondent fails to appear in court after being served with a summons. It could also be used in situations where the respondent has been found guilty of violating an order to pay maintenance (Wamhoff, 2001). Although warrants of arrest have been criticised as criminalising an Act which does not deal with acts that are necessarily criminal, and that it wastes resources on issues that are not of central importance to the criminal system[23], it has its benefits. This method has been reported to work best when used with a consideration that fathers or respondents are supposed to earn an income to comply with maintenance orders; therefore it is usually done periodically. Sandra Burman had this to say on the constitutionality of the use of imprisonment:

> Well, if they commit the crime of not paying, then it's perfectly constitutional to imprison them for that crime. And it is a crime (Interview, Burman, 16 May 2003).

The use of the warrant of arrest is a challenging issue. What happens when the father is arrested and is unable to earn maintenance money? On the dilemma of using the warrant of arrest as a measure of enforcement, Ms Burman had this to say:

> There is a thin line between criminal law and civil law. But yes, they have committed an offence, certainly. The thing is, it's completely self-defeating. So no magistrate wants to enforce, to send to prison, because if you send them to prison they can't have the money anyway. So we really need original thinking on this (Interview, Burman, 16 May 2003).

[23] I found that a lot of the people I talked held this view – especially men.

For Suzan, a maintenance officer, the criminalisation of non-payment and the use of imprisonment is not helpful at all and should be done away with. She irritably said:

> I think that act must just do away with Section 31; it's, just a waste of time, because then a warrant of arrest has to be sent out, it takes months before the whole process is completed. It takes like six to seven months. I think section 26 is okay the application takes like a month only. So I don't think it helps to keep section 31. If someone can be helped in a month's time, why wait for six months? Like our courtrooms have proved that most of the people, they prefer to go for section 26 rather than 31 (Interview, Suzan, 19 August 2003).

Section 26 was discussed in more detail in Chapter Four. The issue of using imprisonment has been a controversial matter. However, Magistrate George Classen of the Wynberg Magistrates Court in Cape Town has managed to reduce defaulting by resorting to 'periodical sentencing' –that is, sentencing over weekends (Moyo, 2003).

Sandra Burman suggests that other ways to punish defaulters which are not self-defeating could be found through original thinking. She said:

> As I say, original thinking. Or you can put them under house arrest the whole time that they aren't at work You know, that kind of thing. You want to make life unpleasant for them, to actually want to pay up (Interview, Burman, 16 May 2003).

Ronny Mahlangu felt the following about the use of the warrant of arrest:

> It is very rare whereby defaulters are sent to jail. I do not know, I think it is one case out of ten, because at the end of the day the argument is you send the defaulter to jail and he loses his job and the child is going to continue to suffer. So it is very rare. That is why they instead give a suspended sentence. So now the defaulters are used to these suspended sentences. So they default deliberately because they know they are going to get suspended sentences. That is why the new Act says let us go the route of a single procedure whereby we execute property (Interview, Mahlangu, 24 March 2003).

Mahlangu indicates that the loopholes in the system allow the men to find ways to play the system and get away with not complying with maintenance orders. This

further shows the complex nature of the relations and workings of the maintenance system in relation to the Act and the users.

The challenge here is that when the lives of these men are unpleasant the women and children's lives become unpleasant too. The use of violence when maintenance or money is involved has been recorded in maintenance research[24]. When these men are punished, they find someone else to punish and usually this is the woman claiming maintenance and her children.

Three problems that have to do with the use of the warrant of arrest as a corrective measure to maintenance defaulting have been recorded. It has been argued that its use gives a great deal of discretion to the police: "…The decisions are based in part on the appearance and personality of the respondent as judged by the SAPS personnel charged with executing the warrants" (Wamhoff, 2001:30). Furthermore, the police must execute the warrant insofar as it is 'reasonable' to do so. Finally, Warmhoff notes that there might be few clear incentives for the SAPS to execute warrants promptly. When the police are torn between their responsibilities to the state and their responsibilities as fathers and their allegiance to other men, then the positive implementation of the Maintenance Act faces a serious challenge. There is overwhelming agreement among court users that the police have too much power and sometimes act as if they are above the law. Khosi of the Maintenance Forum noted that:

> When a policeman is supposed to pay maintenance, he threatens her that, yah I will shoot you at court. So most of them [mothers] are afraid to come and open maintenance cases (Interview, Khosi, 11 June 2003).

Mmathari Mashao of the Commission for Gender Equality (CGE) held the same view. She said:

> In the case of maintenance, when police members look at the warrant of arrest they see it as strange to say because you did not appear in court for maintenance you are supposed to be arrested.

[24] Khunou (2003) makes reference to how negative interpretations of the Constitution and rights to equality are recorded in cases of economic and physical abuse of women by the men they live with.

> They sort of question it. It is not yet clear to them that although it is a civil matter where a man must appear in court and he didn't appear in court, you should carry out your job and arrest this man. There was an instance, I think in 2000, where the man was arrested and after he got arrested the employer of the man called the police to say I am coming to pay bail for that man. I have never heard of that. The respondent had to remain in custody of the police until he appears in court. I really think the police do not understand what they need to do with such warrants of arrests (Interview, 31 July 2003).

The lack of co-ordination with regard to who does what to make maintenance law work is disappointing since the smooth working of this law is necessary to relieve poverty and to bring those who do not comply to book.

With regard to attachment of property, no order was made in this regard in the files under review in this study. It is hard for me to believe that out of the 237 cases that were analysed, not even one of them could have benefited from this provision. A number of the key informants referred to in this chapter argued that the lack of use of this provision is linked to lack of training and to the lack of passion for the job demonstrated by some maintenance officers. Once more, although these provisions are progressive on paper, their use in the everyday running of the courts matters most. The discussion here suggests that they are not working to the benefit of the appropriate stakeholders. This is so even after Suzan argued that they are the best provisions compared to the use of warrants of arrests, and that they are more efficient (Interview, Suzan, 19 August 2003).

5.6 At the Heart of the Problem: Why Men Don't Pay

The main reason we have the Maintenance Act is that some men are not interested in the financial support of their children. The assumption is that mothers and other caregivers will use the courts when non-custodial parents do not comply with their duty to support. In reality, a number of issues besides lack of support lead many parents to the courts. It has been argued that men are not necessarily opposed to the obligation to support their children, but to the enforcement of that obligation

through the courts (Armstrong, 1991). Then again, most of the fathers who are taken to court are those who were defaulting anyway. Is this because these fathers are generally bad men? Or is because they are not sure these children are theirs? What is at the centre of this issue? Ronny Mahlangu said:

> But as I am saying, if we had good men who maintained their children regularly we wouldn't even have a Maintenance Act in South Africa. So my understanding of the whole maintenance concept is: there is no sane woman who can go to a magistrate court and say Ronny doesn't support while I am maintaining the child (Interview, Mahlangu, 24 March 2003).

At the heart of the problem is relationship management. Both men and women seem to use different strategies to try to mend their relationships. This was held by both men and women, maintenance officers and other workers in the field that I interviewed. They argue that:

> … they are using children as scapegoats, in terms of trying to win their relationships back (Interview, Mahlangu, 24 March 2003).

There was overwhelming agreement on this fact, which makes the situation troubling because at the end of the day the ones who suffer from withholding maintenance money are generally the mothers and the children involved. My general observation suggested that although some women wanted the men involved to pay for unfulfilled promises, they genuinely needed the support when they approached the maintenance courts.

Sandra Burman's view of what was at the heart of the problem was particularly unique, and none of the other informants held the same view. She said:

> Well, I mean let's put it this way. In the African community, for a start African men have more obligations, I think, than most. It's just the ethos of this society. Workers tell me that the men, if they don't have a girlfriend they invent one, they lie about it. Because you have to be seen to have girlfriends. And the trouble with having girlfriends is, you then have to pay for them, and they have children; and you've got to pay for those maybe or you don't. You know what I mean, but you have the obligations, and so very often it's the poorest people who end up with most obligations. So often they don't have the money; and they don't feel they have the obligations, which is something they've got to be educated into.. They say they won't give the mother the money because she will go

> and spend it on herself. They don't believe it's going to the child, you know. So I think those are the two main reasons (Interview, Burman, 15 May 2003).

I do not believe that all men who have maintenance cases have more than one girlfriend and are unable to get their responsibilities straight. I do understand that a lot of issues are at play with regard to maintenance payments and defaulting, but I am still to be convinced that it is because men lack an education as to what is right and what is not.

Kiba Pooe (Interview, 20 May 2003) of the Maintenance Forum had something completely different to say on this issue. This is interesting for me because through the fieldwork I came to appreciate that treating women as victims in the narrow sense of the word is limiting to the explanations we give and the understandings we have of them and their everyday experiences. Kiba argued that she discourages women from using their children to fight against the men in their lives. This for me is an acknowledgement that when women are faced with life challenges they do everything in their power to find solutions. hooks (1981) asserts that women's daily lives are not characterised by passivity, helplessness and powerlessness. Instead most women find that through struggling to make a living they have to be self-affirming and assertive. Pooe captures her experiences with empowering of women as follows:

> …we know most of the time people who are being abandoned (in relationships) are women. Sometimes after having a child or children, men would dump you and go for a better one. And what I've realised is that most of the women hit back. Do you get my point? Since there is this law, they use it (Interview, Pooe, 20 May 2003).

There is a general perception in feminist research that portrays women as helpless and saint-like. However, in everyday experiences most women use what they have at their disposal to fight back, and in this case they use the maintenance law to get back at ex-partners that did not treat them well. I think there is nothing wrong with this as long as at the end of the day the maintenance money is used to take care of the needs of the child. However, "maintenance is seen as some form of

punishment for men and they are applauded when they are able to avoid paying maintenance or when they pay less than they should" (Biggs, 2003:10).[25] Unfortunately, this situation happens in most of the cases. This further shows the extent to which maintenance evokes personal feelings and issues around women's and men's intimate relations. This could also show, unlike in the case of Giddens (1992), that people are still holding onto the certainty that used to be brought about by marriage and parenthood.

The assumption made by most people and policy makers is that problems related to maintenance of children must be related to children born out of wedlock. However, this social problem does not limit itself according to whether people are married or not. It is a social problem that impacts because men and women want to use their money differently, and expectations about how money might be used can obviously vary with needs and values.

Table 5.9 The relationship between applicant and respondent at time of case

Relationship	Number	%
Married	22	46.8
Parent Child	9	19.1
Separated	8	17.0
Divorced	7	14.9
Living together	1	2.1
Total	47	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.9 shows that of the 237 cases studied, 190 respondents did not respond to this question, and the majority (22) of those who responded were married. This shows that the assumptions the state makes with regard to who claims

[25] Most of the cases with fathers and mothers involved in the maintenance courts subtly pointed to this issue. Although some did not openly say it, it was communicated somehow.

maintenance are flawed. One would assume that people who are married would not need to use the courts to access maintenance money. This shows the extent of silence on economic abuse that is going on in households. Research on the Domestic Violence Act (DVA) conducted in 2003 by the Consortium on Violence Against Women found that 92 injunctions were issued in Cape Town for economic abuse, 45 in Mitchell's Plein and 35 in George. This illustrates that access to men's money for family use is still a major problem for women.

The Maintenance Act does not make provision for other matters to be discussed in relation to maintenance. Issues such as custody, access and relationship issues have no place in the maintenance system; its purpose is to make sure that the financial needs of the child are met. In reality, the opposite is the case – issues of relationships come up 80 per cent of the time in discussions about maintenance (Interview, Suzan, 19 August 2003). Ronny Mahlangu said the following on how relationships feature in maintenance cases:

> Some of the fathers, it is a question of being bitter with the mothers of their children, the way in which the relationship ended and say I'll show her. And he knows that the mother is unemployed, and by not giving her money, obviously it is one of the ways of trying to win her back. So she will come back to beg, obviously I'll get her back. So that is the thing, as I said for some of them they are just bitter (Interview, Mahlangu, 24 March 2003).

Suzan strongly felt that at the heart of maintenance cases are unresolved issues of relationships that never worked or those which are troubled. She also felt that one of the things evident in these relationships and which was of great concern for her was lack of communication. She said:

> The courts are being misused by some of the parties who come here. I will say about 80 per cent of the people really do not need to come here. They are just being spiteful, they just hate each other and they cannot sort out their problems on their own. So they come to court and the courts are being abused (Interview, Suzan, 19 August 2003).

This lack of communication pointed out by Suzan goes further to impact on other factors of the relationship. And, according to her, since there is no basis to

communicate the court is used for a number of such issues. She gives the following example to illustrate her point:

> We are faced with this challenge that the man is the one who is employed, he is the one who is paying the bond, he is the one who is buying food, he is the one who is catering for the family. But the woman would still say no, he is not doing anything. So you see there are some of those situations where you find that the men are being – I'll say abused. Some men do maintain their children, but they are brought here for maintenance. Especially with the parties who are not married, it's not the question of the man not maintaining, it's the question of the standard of living. Women, they want that high standard of living, whereas the man is not earning enough. So when he doesn't maintain according to that standard, then he's brought here, and we make an order against that, whereas I don't think that's fair, it's not fair at all (Interview, Suzan, 19 August 2003).

The question then becomes, is it appropriate for the courts to make space for such cases or do you just throw them out? Suzan pointed out that in the two years she has been working in the maintenance section, at least 30 per cent of the cases she has dealt with are like the one presented above.

5.7 Defining Fathers as Providers

Private maintenance is based on the assumption that the respondent is employed and earning an income[26]. This has been further based on the notion that employed men will generally be happy to provide for their families. Mama (1981) illustrates that this was not necessarily the case in the United States among African-American men. This welfare idea is also based on the idealistic notion that women will be available for nurturing work. As a result the employment and unemployment status of respondents is one of the important determinants of whether or not a father will be able to pay maintenance. Budlender (2002) shows that 43 per cent of African males were in employment in 2001 compared to 36 per cent of African women. The fact that men enjoy the benefits of wage work more

[26] When the notion of the Welfare State came into being it assumed that there was full employment. The South African maintenance system, in line with its welfare aspirations, assumes the same.

than women implies that they take care of the monetary needs of the family. This has been the historical basis of the gendered division of labour in industrial societies. This division has also laid the foundation for definitions of masculinities in relation to wage work and gendered differences in the provision of welfare.

However, what men choose to do with their wage income is not always for the benefit of their families and households. Men's income tends to be predominantly used for their own needs, whereas that of women is primarily for the needs of the family. Other research has also shown that sharing of resources in the family is not necessarily equal. Ruspini (2000) argues that the inequalities which women experience in paid work are mirrored in their different access to, and levels of, income replacement benefits. She further points out that institutional arrangements can negatively affect women's and mothers' access to income and increase their poverty risks, or may limit the number of available alternatives and therefore make it difficult for them to find ways out of poverty. Therefore, mothers are more often burdened with caregiving responsibilities for their children, without assistance from fathers. Table 5.10 shows the employment status of respondents as captured in the maintenance court files.

Table 5.10 Respondents' employment status at time of case

Employment Status	Number	%
Employed	154	65
Private employee	106	44.7
Government employee	30	12
Other	18	7

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Table 5.10 shows that 154 fathers were employed out of the 237 cases. This means, then, that the problem with maintenance is not necessarily because there is more unemployment but that there is lack of interest from fathers or that there is a miscalculation from the side of the state with regards to the interest of the father

or his role. It has been shown that in situations where the father is unemployed, "… the court can order the respondent to look for work and get a form signed by employers indicating that they were approached by the respondent but unable to hire her/him" (Wamhoff, 2001:5). The assumption here is that the particular father wants to work, and when working will be interested in paying maintenance, while the everyday situation is quite different. Kiba Pooe of the Maintenance Forum had this to say:

> … when they realise that an order to maintain has come in, and there is for example a 15 per cent interest, and now the amount is more or less R35 000, what they do is they decide to resign (Interview, Pooe, 20 May 2003).

If some men would rather be unemployed than pay maintenance then the task of the state in this regard is more difficult than we could have imagined. It seems that the assumptions of the state about the ability of fathers to find employment are flawed. Budlender (2002) further shows that in 2001 the unemployment rate among African males was 31 per cent. If levels of employment in South Africa since 1996 have been shrinking, then the apparent assumption by the state that it is easy to find work is clearly wrong.

Other research on maintenance in South Africa found that government employees adhere to the emoluments orders of the maintenance courts better than private employees whose employers' make excuses for them so as to avoid paying maintenance (Moyo, 2003). Consequently, making use of the emolument order as a way of getting defaulters to pay remains a challenge for mothers and the officials who try to enforce the Act. The mother is clearly better placed to obtain maintenance if the father is a state employee.

Thus, it has been established that government departments co-operate more with the enforcement of the Act compared to the private sector. The fact that more respondents are employed in the private sector (see Table 5.10) might mean greater challenges in enforcing certain provisions of the Act.

Besides, the clause in the Maintenance Act that maintenance will match the lifestyle of both parents is still not a reality since most of the children's lifestyles matches that of the mother since in most cases mothers are the custodial parents. This makes the employment status and income of fathers a non-issue when it comes to the reality of maintenance for many children and mothers.

5.8 Defining Women as Nurturers

It has been rightly pointed out that there is a 'gender subtext' in the welfare state (Orloff, 1999). Here it has been illustrated that the expectations of men and women with regard to care work and wage work continue to differ. This leads to a growth of poverty among women which is affected by the unequal access to resources in the family, labour market and the welfare system (Ruspini, 2000). Ruspini (2000) also argues that women's poverty is a different experience from that of men. She indicates that the structural causes of women's poverty are to be found in the interaction between dependency, social exclusion and social change within three resource systems. As a result poverty does not affect men and women in the same way. "Female-headed households are more vulnerable to increased unemployment and reductions in social and welfare spending" (WEJP, 2000). Therefore, women's experiences in the welfare system reflect the gendered inequalities experienced in the family and labour market.

The Maintenance Act No. 99 of 1998 argues generally that custodial parents are entitled to private maintenance from non-custodial parents. This means that anyone who is taking care of the child can and should claim maintenance from the parent or parents who are not living with the child. Therefore, one anticipates finding a situation where aunts, uncles, grandparents, mothers and fathers are actively taking care of children. However, the situation remains the same; most mothers continue to be the primary caregivers of children. Table 5.11 illustrates who claims maintenance most of the time and against whom such claims are made.

Table 5.11 Who opened the maintenance case?

	Number	%
Mother	213	92.2
Daughter	5	2.2
Son	4	1.7
Father	4	1.7
Grandfather	1	0.4
Grandmother	1	0.4
Other	3	1.3
Total	231	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

Out of 237 files, 226 were opened against the father by other caregivers and in particular mothers. This signifies something interesting and maybe also not surprising. It shows that although changes in legislation often look good on paper, more often than not these changes do not correspond with changes in social life. The gender neutrality of the Maintenance Act does not at all mean that the cultural assumptions and ideological underpinnings of the system and everyday life are gender-neutral.

The law here assumes a deeper level of gender equality whereas reality is still gendered, with women performing much of the work needed to raise children. Having said that, the fact that four fathers opened cases against mothers might mean that there is a change although at a very slow rate. On the other hand, most of the fathers I interviewed argued that instead of paying maintenance they would prefer to take their children to raise themselves. This meant, however, that most of them preferred their own mothers or sisters to take over the primary care-giving responsibilities rather than expanding the masculine to include child care. This situation perpetuates the burdens and unequal situation of women. At its centre is the age-old notion that women are primarily responsible for social reproduction,

and that their time belongs to their children and others who need care. This is also true with regard to employment questions in the maintenance forms. Applicants are seldom requested to show if they are employed or required to seek employment if they are unemployed.

The court data also shows that five daughters and four sons claimed maintenance, all of them claiming from their fathers. This shows a shift in issues of responsibility for support and also in the direction our society is taking with regard to rights. The idea of children using the courts and police to discipline their parents is a new phenomenon with strong links to the Constitution. Nevertheless, all these nine claims made by the children were not followed up, the file was open and none of them showed up in court with their fathers. Maintenance was never paid in any of these cases. The reasons for this might be numerous. One observation I made during the fieldwork was that the process of claiming maintenance seemed very tedious and time-consuming. The officials at the court are not helpful, and perhaps these youngsters felt that it was not worth their while to spend so much time on a process that might not reap the expected rewards. Most mothers might not have an alternative but to sit there and hope that the system would work for them.

5.9 Questions of Paternity

Many women would rather go hungry than go to the maintenance courts and allow the courts and the fathers of their children to police their sexuality. Questions of paternity are viewed as derogatory and they control the types of actions women will take or not take to get an unsupportive father to support his child. The challenge is that when men question paternity the reason is mostly to hurt and reject the child and its mother, and mothers usually feel that. These issues move beyond the maintenance system and into the nature of the relationship between the two people, and it might further shape the nature of the relationship between the father and the child.

To prove that paternity is in question these fathers will say anything to show how problematic the uncontrolled sexuality of women is seen to be. These men will quote the sexual exploits of the women and make reference to their previous intimate relationships. Thami Mdeleke, a maintenance officer, gave the following example of a paternity trail:

> The paternity trial is where you would establish whether at the time of the conception they had sexual intercourse. Because you know the evidence is not conclusive. The mother of the child, testifies that well I know the respondent he was my ex-boyfriend and during our love affair we had sexual intercourse and then we did not use any condoms. And I know that he is the father because at that time I was not having any other affairs. And then after saying that, the respondent, which is the father cross-examines her to ask her that well, I think you were in love with so and so and so, because I remember so and so did A,B,C, and D and whatever. And then he, the father, must prove that at that time maybe he used condoms or he's infertile. You know, all those things. And then if there is also documentary proof and medical proof and then it's then that the court can now say well unfortunately you cannot be the father under the circumstances. Or if the evidence proves that he can be the father then the court will then say; well you are the father. Here it's presumed because conclusive evidence would be the evidence of a DNA test. (Interview, Mdeleke, 13 October 2003).

Thami Mdeleke also illustrates that such trails also take into account whether customs were followed. That is whether the woman's family visited the man's family to report the pregnancy. In cases where it was not done this contributes to the doubt, that this man is the father. This is a situation that most women refuse to find themselves in. Is the fact that you did not go to the man's family enough evidence that he is not the father? As much as this is an old African tradition, most people in the cities are choosing not to do it. In fact, my observation is that recently the man's family visits the woman's family and takes responsibility for the pregnancy. The following table analyses how the question of paternity is addressed in the maintenance system.

Table 5.12 Was paternity raised in the case?

	Number	**%**

Yes	99	47.3
No	109	56.7
Total	208	100.0

Source: Author's elaboration from court files, Johannesburg Maintenance Court, 2002.

The question of paternity is one that comes up in many conversations about fatherhood. Sometimes it is talked about openly and at other times it is alluded to through the use of codes or through silences. Although biology is said to play a minimum role in whether fathers get involved in fatherhood, essentialising arguments in the maintenance system impacts on what most fathers think their role should be. Table 5.12 shows that 47.3 per cent of cases raised paternity during the process of the inquiry for maintenance. The reading of the files also suggested that when paternity is not raised at the beginning of the case this is not the end of it – some files showed that paternity was raised when the initial maintenance amount was being increased. In some cases this was two years or more after the case had been opened.

This shows the sensitive nature of this topic, and this is so for both women and men. There are three ways that could be used to conclusively prove or disprove paternity. These are:

- conclusive medical evidence that the man was sterile at the relevant time;
- a blood test undertaken on him and the child showing that he could not possibly be the father;[27]
- non-access at the relevant time – he must show that he did not have physical access to the woman at the relevant time, for example, that he was living in a different country (Armstrong, 1992).

One of the reasons why fathers fail to raise the question of paternity earlier in the case is because they are unaware of their right to do so. Furthermore, they are not

[27] Blood tests can only show that the alleged father is not in fact the biological father; they cannot show that a particular man is definitely the biological father of the child

aware that they could ask the court to order the state to pay for the test if they cannot afford it. "This is despite the fact that the Act specifically states that the court should order the state to pay in instances that the parents cannot afford to as it is in the best interest of the child to have paternity determined" (Biggs, 2003:9). The state seems to fail to police the sexuality of men and women, and it is further unable to assert itself through the use of the policy measures that it has put in place.

5.10 Maintenance Officials' Interpretation of the Act

Walt (1994) maintains that implementation of policies is a complex, interactive process in which implementers may affect the way policy is executed. The actions, inactions and attitudes of officials impact on the making of the state. The following quote shows how the individuals working for the state continue to shape and reshape what we know as the state. Sandra Burman said:

> The maintenance clerk in the first place, just by his attitude he can help or he can hinder, and you know a lot of the time in the old days certainly they told the woman to go away for three months and wait and see if the man paid out (Interview, Burman, 16 May 2003).

Ronny Mahlangu had this to say on the issue:

> I don't see the Act having any weaknesses per se, but it's for the officials, the court officials, to do according to what the Act is saying because we've got very beautiful sections in the Act (Interview, Mahlangu, 24 March 2003).

Once again this confirms that the appearance of the state depends to a large extent on the individuals who work in the state as much as it does on those who use the different institutions of the state. It seems that if these individuals do not have a passion for their work their interpretation of the legislations will reflect to a large extent their own prejudices and interests. The following quote articulates these points:

> …you know my understanding is, when you're working in divisions such as maintenance you don't only need training, but you should

> have passion as well for these issues (Interview, Mahlangu, 24 March 2003).

Thami Mdeleke held the following interesting views suggesting that the Maintenance Act is open to interpretation. He said:

> If a person has been subpoenaed and the person decides not to come to court, you can make an order by default – that is, make a maintenance order in his absence. But now the Act also indicates that that person must have knowledge, that person must know that he is supposed to appear in court and then decides not to appear. But we have different interpretations on that, because some would say that once that person has been subpoenaed and decides to come to court, then the matter is being postponed to another date and then on that date if he does not come, one is supposed to use the order by default. But some would say no that is not how you do it. You know those are the other things because it is not clear there; because it only speaks of a subpoena, it does not speak of a person who has been warned to appear. We don't have a remedy there, except a warrant; you can only apply that a warrant of arrest should be authorised and issued. But with some magistrates they interpret it in a different way, because they would say the person has got a knowledge, and to them knowledge means a person has been warned. Then they would then grant you that order by default. So it depends on the interpretation (Interview, Mdeleke, 13 October 2003).

'It depends on the interpretation' – this can loosely mean it depends on the maintenance officer who is handling the case. If this is the case then the Act does not really contribute much with regard to its new provisions if these provisions do not speak to the particular officer. Interpretation is influenced by an individual's history, her interests, aspirations and fears. Therefore, if a particular maintenance officer holds that women should not be claiming maintenance money from the court, s/he will interpret it in a way that will reflect this.

Suzan, on the other hand, felt that the problem of inconsistency which is reflected in how the maintenance system works is not the fault of maintenance officers but that of the Department of Justice (DoJ) and how it does things. She said:

> R: Because there are a lot of things that are going on around here. Sometimes we are the one who cause the confusion. We confuse the

> public. And they end up being confused, they end up being frustrated, they end up shouting at us. And it's not our fault as officers.
>
> I: It's whose fault?
>
> R: It's the department's fault.
>
> I: Maybe you can just give me an example?
>
> R: Okay, the courts work differently. But in our court, in the family court, we have this one problem; you'll find a person is warned to appear in three places, and you cannot be in three places at one time ... And in one day. How do you do that? In fact we tried to address that but we failed (Interview, Suzan, 19 August 2003).

These stated problems lead to inefficiency and ineffectiveness in how the Maintenance Act is being administered. The following quote gives an example of how frustrating it can be to work in the system and to try to use it to resolve maintenance problems for fathers. Suzan said:

> We had a case where the respondent disputed paternity. When he disputed paternity they went for tests, and after they went for tests the results came back and he was excluded as the father of the child. It was a DNA test, not blood test, DNA. Three weeks down the line the applicant came, went to the clerk of the court, opened a maintenance case against the very same man, the very same child. While we had results in our file that this man has been excluded. (Interview, Suzan, 19 August 2003).

These interpretative challenges lead to discrepancies between the law on paper and the law in the everyday running of the maintenance system. Ineffective implementation of this Act takes power away from the state. It creates loopholes in the system and makes it possible for those who not interested in complying to get away with it. It also opens up space for mismanagement by officials. When asked about the differences between the everyday reality and the aspirations of the state – that is, the policy documents and what is usually referred to as the law – Sandra Burman reacted as follows:

> Obviously it doesn't depict reality, because the trouble with any law you've got to see the court to enforce them. And in the case of maintenance it's the officials who are really the linchpins that

> decide whether it's going to work or not; … And the training of the officials is crucial (Interview, Burman, 16 May 2003).

If there are discrepancies between the law and the everyday workings of the systems, then there are discrepancies in the assumptions of the state about what its function is and how society encounters it. That is the challenge.

The appointment of maintenance investigators has been one of the problems for the implementation of the Act. During the time of this research, only a few investigators had been appointed. Sandra Burman had this to say on the issue:

> We've got to see what money they provide for them, what powers they actually allow them; and how much they actually encourage them to investigate, you know. It's a tall order. I mean you actually need a big workforce to look at it. Whether that is going to happen I have doubts. But it took two years, three years to appoint the investigators in the first place. They kept saying they didn't have the money. So we're making progress, but it's slow (Interview, Burman, 16 May 2003).

The situation must be bad if it takes two and a half years for the implementation of a progressive provision in a much-needed legislation to take off. The challenge here is that women and children continue to bear the brunt of a dysfunctional maintenance system.

5.11 Conclusion

This chapter, through a discussion of court files and a general analysis of interviews with key informants, has tried to show that there is a contradiction between the aspirations of the state as captured in the Maintenance Act and practice as seen through the disparities in the process of claiming maintenance and the general accessibility of the system. The idea of the neutrality of the Maintenance Act opened up a discussion of the assumptions of the state on the gendered nature of society. Hassim (2003:522) argues that "the state does not simply reflect gender inequalities but plays a decisive role through its practices in constituting them". This is especially true with regard to women's care role and

the burdens the use of the maintenance system continues to put on their already burdened time.

This chapter has evaluated the Maintenance Act No. 99 of 1998. This was done through a discussion of the process followed when opening a maintenance case and through a presentation of interviews with maintenance officers and other key players in the maintenance system. Through a quantitative and qualitative analysis of the data on court use, the chapter shows the challenges faced with the implementation of the Act.

The following have been noted as contributing to the failures of the state:

- forms that as inappropriate and unhelpful questions;
- unbudgeted implementation and lack of implementation plan;
- too many postponements; and
- inappropriate assumptions of the Act and the state – full employment, definitions of masculinities(fatherhood), femininities(motherhood), families and households.

These failures are perpetuated by the high expectations of the state and its functions; therefore, there is always a disjuncture between the aspirations of the state and practice.

The intention of the new Act was to lessen the burden of support that women endure. However, the limitations brought about by fiscal discipline that the state puts on itself made this intention impossible. Furthermore, assumptions about the coherence of the state and its autonomy from society impacts on the functionality of the state.

The first point of departure for this chapter is that women continue to experience problems accessing maintenance money from fathers. This is because the same

problems noted by the Lund Committee[28] still exist. For example, delays are still a major problem, defaulting continues to be high and to some extent it is on the raise, and most interestingly there is an avoidance of the use of civil procedures[29] in the implementation of the Act by court officials. These challenges raise questions as to whether the state is able to regulate and discipline men and women to behave as citizens. It does not seem to be succeeding as an overseer of social relations. Furthermore, its conception of men and women is limiting and conservative. This failed regulatory task and the persistent conservative conception of men and women illustrate the contradictory and complex nature of the state.

It is extremely inefficient that someone with care-giving responsibilities and at times with a wage job has to spend the whole day just to open a case. This shows that some of the assumptions about the capabilities and availability of resources of court users are flawed and therefore leads to the courts being of no or little help.

Already at the beginning of the process some assumptions are made about the individuals who use the courts and this does not begin to capture who they are. Furthermore, the processes and mechanisms in place do not present the aspirations in the Act; instead they create more confusion and perpetuate the inequalities the Act is trying to redress.

The normative definition of fathers and mothers is subtly shown in how the provisions are or are not administered. This is especially so in assumptions about women as carers and men as providers. The gender subtext in the Act is subtly acted out in the implementation process. Furthermore, there are loopholes in the Act with regard to implementation - for example, other stakeholders like the police do not participate as they should.

The discussion around the constitutionality of the criminalisation of non-payment essentially questions the unequal treatment that men and women face with regard

[28] See Chapter 1.
[29] See Chapter 4.

to their rights and responsibilities towards parenting. When mothers withhold access they are not punished or criminalised, but when fathers default on maintenance they are punished.

Chapter Six

ON BEING MEN, FATHERS AND CITIZENS

6.1 Introduction

The previous chapter addressed issues pertaining to the contradictory nature of the state with regard to the Maintenance Act and its aspirations. This was done through a quantitative presentation of data from court files. Through a further discussion of interviews with court officials and other relevant stakeholders, Chapter Five also displayed the disparities in the maintenance claiming process in relation to the provisions in the Act.

History, it has been argued, is the story of society from a man's perspective. This has led to conclusions that the patriarchal system in general works and benefits all men. Recent research on masculinities has tried to show the limitation of these kinds of assertions (Horrocks, 1994; Connell, 1995; Morrell, 1995). They have pointed to the need to study men in their own right so as to do away with stereotypes that continue to misdirect us in our conceptions of men's experiences and aspirations.

Connell (1995), in his general definition of masculinities, tries to show that not all men experience masculinity in the same way. Most importantly for this thesis is the notion that masculinity is never pre-given but influenced by the social contexts, relations and practices men enter into to belong – to their families, communities and other men, for example. One type of masculinity which influences how men go about the process of belong is 'hegemonic masculinity' (Morrell, 2001). Although this type of masculinity is not based on brute force it

silences other masculinities. Other masculinities are positioned as illegitimate and of no value to the world of men.

This chapter aims to show the kinds of challenges that relate to the meaning of masculinity and fatherhood in contemporary South Africa. These challenges are structural and relational in nature. They have frequently been overlooked analytically because of socio-biological explanations that asserted that men do certain things because they are men (Connell, 1995; Morrell, 1995). Central to my argument in this chapter is the assertion that these structures and social relations are constantly changing and are contested.

Constant changes and contestations impact on the constructions of masculinity as they do on general social life. In the South African context, this can be attested to by contemporary theorising on 'alternative masculinity' (Walker, 2005). This conceptualisation focuses on different ways of being a man, with an emphasis on non-violent masculinities. This emphasis on positive aspects of masculinity is born in a context where men are generally viewed as perpetrators of gender-based violence. This construct leads to situations where men/fathers doubt themselves, and legislation to protect women and children from such violence is used to punish and define all men (Khunou, 2006).

In South Africa the Human Sciences Research Council's (HSRC) fatherhood project has been working to challenge these negative perceptions of masculinity, and of fatherhood in particular. Their work has been interested in eliciting positive attributes of fatherhood. One conceptual framework that came from this undertaking is that of 'social fatherhood'. This is a conception of fatherhood as collective, and a further acknowledgement of its relational nature which changes over time and context (Morrell & Richter, 2006). This conception of fatherhood as social is interesting and most relevant in understanding some of the experiences to be presented in this chapter.

This chapter intends to focus on the experience of paying, or being required to pay, maintenance among men who are fathers. Through a presentation of their narratives this chapter will show how they perceive the state (through their interaction with the maintenance system). It will also interrogate their conceptions of masculinity in relation to the maintenance system, the mothers and their children, and others who might have influenced them. This chapter will encompass in its discussion the many factors that influence what it means to be a man, a father and a citizen as experienced by these men/fathers.

The chapter is divided into two main sections. The first one is based on narratives of black fathers. It focuses on issues pertaining to constructions of masculinities, experiences of fatherhood and the maintenance system from the perspective of fathers, all of whom are not married to the respective mothers. Their accounts focus on their experiences of maintenance as a factor that impacts negatively on their relationship with their children and their life experiences in general. Furthermore, their stories illustrate the continued actual and perceived link between marriage and fatherhood (Barber, 1975; Hearn, 2002). Most of these fathers said that they did not have rights to the child since it was born out of wedlock. Furthermore, negative experiences with the maintenance system and the justice system in general create feelings of resentment. This creates a situation in which most fathers are reluctant about and discouraged in relation to creating lasting relationships with the children.

The second main section discusses interviews with white fathers. Their stories present the experiences of divorced fathers as they experience the justice system in general and the maintenance system in particular. Their accounts reveal their aspirations towards the notion of being new fathers. They give accounts of the negative change in their fatherhood status after divorce. Their narratives also show the continued link between fatherhood and marriage, albeit from a different perspective than emerged from interviews with black fathers.

This chapter is divided into these sections mainly because the data suggested some interesting and unavoidable divergences of experience. Although general assumptions about masculinity and its links to patriarchy suggest otherwise, I am of the notion that even though men share in the patriarchal divide they do not do so equally (Connell, 1995). Therefore, the experiences presented in these sections suggest that historical, class and race differences in the South African context are important factors when trying to understand conceptions of masculinity and fatherhood.

6.2 Experiences of Black Fathers

6.2.1 Becoming a man

For, Sipho, a man in his early thirties, becoming a man was shaped by a number of factors, which are typical of most boys from the townships. His accounts of masculinity, especially during his early twenties, are representative of coming of age in the townships for most boys who avoid, for example, 'violent masculinity'. His experiences were similar to those of Lele, another father in his thirties whom I interviewed. Lele, unlike Sipho, was unemployed, but both lived at their mother's house at the time of the interview.

For both men, their twenties represented a time of intense 'jolling' and sexual rendezvous with as many beautiful women as possible. Although their life experiences were different with regard to access to resources and education, they had quite similar experiences. They were 'playa's'. Notions of a playa in the townships are linked to partying, having access to girls and of course some money. Their transition from boyhood to manhood was influenced by hegemonic ideas of masculinity which at that point emphasised their bodies as sexual and inking with the boys as part of the ritual of becoming a man.

Sipho had a bright future ahead of him, with prospects of getting a university degree. He also worked weekends; this meant he had access to money, which

placed him in a better position to 'perform' masculinity. On the other hand, Lele became a successful businessman with a booming hair salon in his early twenties. This meant access to money on an everyday basis and of course unlimited access to beautiful women who could not refuse him since, according to him, he was also gifted in the department of looks and other 'skills'.

Fuller (2003) among others has argued that, for men, having access to money at an early age is usually a ticket to belonging: you can buy beer and influence others. It is a way to become accepted as 'one of the boys'. Fuller (2003:4) says, "At a young age, having spending money is a masculine need." For Lele, money meant access to girls, allowed him the ability to cross over to the other side – to become a man. Fuller (2003:5) also says that "earning money allows them to court women and to brag about their sexual or romantic exploits with their peers". For Sipho, having access to money weekly influenced to a large extent the 'playa' life he was leading. He said the following to illustrate:

> I was sort of hooked into this life [clubbing and womanising]. But it became quiet at the end. Oh! ya, and we used to get paid on a weekly basis, and that is another thing that made it extra difficult. Because you get paid every week even if you can blow all the money you are going to get paid again next Friday so why bother. So you just splash it on girls, booze and everything (Interview, Sipho, 9 March 2004).

Unfortunately for Sipho, the splashing of his money on everything did not include the welfare and financial support of his child. On the other hand, experiencing sex and sexuality influenced his teenage years. He said:

> Well by then I was a professional playboy so to speak. I used to be a womaniser; I didn't feel anything. I didn't feel anything because I had so many women. I didn't even have time for the mother of the child. I didn't even; you know, enjoy being a father by then. To me it was just like, it's just a child just like other kids. I was blindfolded, I couldn't see anything. Because women surrounding me; you know clubbing. I was a playa.

In his explanation of what it means to be a playa he said:

> You know, one woman would bore me, and fortunately in those days AIDS was not there. You know it was only STDs, of which we

> were not scared of. By then you will feel proud if you get an STD; they'll say 'ja, you are a womaniser (Interview, Sipho, 9 March 2004).

The above extract attests to the dangers linked to the kind of masculinity Lele and Sipho were performing as part of their entry into manhood. The fact that, ten years ago, Lele was ignorant of the existence of HIV is also proof of his performance of 'dangerous masculinity' – which was not only a danger to him but a danger to all his sexual partners.

Dyke, who was not a father at the time of the interview, did not have access to money when he was a teenager. He had to care of his family at a young age, and in a way this influenced him not to rush into fatherhood. However, like Sipho and Lele, sex played an important part in initiating him into manhood. He said the following about what it meant for him to realise that he was a sexual being:

> Obviously when I started ejaculating. I felt like now I am a man. Pubic hair and other changes, then I felt now I am becoming a man. I felt that now I am ripe enough to have sex. I am a man now, I can start having women and things like that, and maybe also kids as well (Interview, Dyke, 26 March 2004).

This meant more than the ability to be sexually active for Dyke. It meant he was no longer on his own. It meant now he was part of a group – he was a man. The following quote captures what having sex the first time represented for him:

> It meant I belong. I belong to the masculine gender. I am a man now; I can do what other men did. I can do what my father did, something like that. I am a man now and I can be a father if I wanted (Interview, Dyke, 26 March 2004).

For Dyke, unlike for Sipho and Lele, this shift to the other side carried with it many responsibilities. He could not take it lightly; he believed that he now had choices to make and he was not going to make them without thinking and without putting protective measures in place. For example, he felt that marriage and a secure job would give him the go-ahead to have children.

It is apparent that the discourse of gender that shaped the ideas of these young men about what it means to be a man was based on the understanding of man as sexual. Furthermore, changes in their bodies also played an important role in the transition from boyhood to manhood. They therefore felt the need to prove their sexual prowess even when it could have had negative consequences for them and their partners. At that point in their lives their bodies and sexuality shaped their masculine identities.

Sipho further shares some experiences that illustrate a shift from being a boy to becoming a man through rebelling against what he calls 'a traditionalist'. He rebelled against his stepfather, who he claims did not understand where he was coming from. At this point in Sipho's life, being told what to do, especially by a stepfather, was not acceptable: he wanted to make his own decisions. Although earlier in the interview Sipho acknowledged the fundamental role his stepfather had played in his life, he resented having to take 'orders' from him. He said of these experiences:

> He believed strongly that since I had already impregnated somebody it meant I had to leave school [university] and find a job, on full-time basis, and be as supportive as possible towards the mother and the child. In a way that way of thinking did not go well with me. Well, I knew I had to do something somehow but I did not believe that I was ready to face the world; I wasn't ready (Interview, Sipho, 9 March 2004).

Is taking responsibility not part of becoming man? Was Sipho just interested in playing and not taking being a man seriously? Or was he just rebelling against the authority of a man who was not his real father? It seems all these questions might carry some weight. Sipho told me that he left his stepfather's house to live the life he wanted, and two years later his mother left as well – something, he says, she should have done a long time ago.

After leaving his stepfather's house, Sipho had to find a job and eventually leave university, since he was not progressing well anyway. However, this independence did not bring with it responsibility. His new life led to 'intensive clubbing' and womanising. It seemed like the more independent he became, the

more riskily he lived. He shared the following experience of his life away from home:

> I mean, we were living so recklessly, but I was always condomising, but it was quite a reckless lifestyle (Interview, Sipho, 9 March 2004).

At this stage Sipho was living with his friends and apparently his job gave him 'too much free time'. They would easily get bored and then they would go to find some women and the partying would begin. He said:

> One of my friends would bring back a couple of women, for example, and then obviously, you know us guys, we like to have fun. We would start choosing and dividing the girls among ourselves. You take that one and I will take that other one, things like that. But it was quite a corrupt lifestyle. Some of the things I have done – scary stuff (Interview, Sipho, 9 March 2004).

For both Sipho and Lele, who they were during their teenage years had dramatically changed by the time I spoke to them. They were aspiring to a different kind of masculinity, where responsibility for their children had influenced who they wanted to be. Their risky experiences and wasteful ways with regard to money had taught them a lesson and it seemed they did not want to make the same mistakes again – they did not want other men to laugh at them. Their teenage years were transitory and did not represent anything permanent.

6.2.2 Manhood

Ideas of what it means to be a man are usually influenced by traditional notions of masculinity. These usually portray men as brave, strong, powerful, intelligent, mature, healthy, heterosexual and uncaring. For most of the men I interviewed, their notions of masculinity focused primarily on the provider and protector roles. There was finality and essentialism in how this was communicated. This affirmed that men's position in society and in relation to the women and children was not to be questioned.

These ideas of what it means to be a man were primarily linked to resources, traditional gender roles and the superiority of the masculine identity. For example,

Sipho pointed out in the interview that his sister plays an important role in his child's life. This is in terms of providing food, clothing and just making sure that the child and mother have everything they need. He noted that he does not have a problem with that. However, that should be where it ends. This meant that his sister should not think she will continue making such provisions on his behalf.

Being able to pay your rent and having the capacity to pay for lunch when you take 'your woman' out should not be questioned according to Sipho. Such ideas were very central in influencing most of the men's ideas about being men. The following extract illustrates how these traditional ideas about masculinity influence general ideas about what it means to be a man, even when they could use support. Sipho said the following:

> S: But imagine someone buying a man a house? I mean, there are traditional rules that men or fathers have to play.
>
> G: Traditional, tell me about those?
>
> S: We are meant to be providers.
>
> G: Providers?
>
> S: Yes. I mean I grew up with my mother … so I am very sympathetic towards women. But when it comes to certain things I believe that – I mean, clearly imagine a woman buying a house for a guy. I mean, if a woman is like very comfortable(has her own money); but there would always be that tension that whenever maybe a guy is unhappy about something or with whatever, he would most probably express it if he knows that whatever. But if maybe he is contributing, not equally but contributing something towards whatever, then he would always have a say; no I don't like the way you did this, or I don't like what you are doing or whatever. But if everything is being provided for by the person you are married to and that person is a female, it tends to [create problems for men]. And I know that those perceptions would change; and they would change, but it would take some time. It would take some time (Interview, Sipho, 9 March 2004).

In Sipho's accounts of what it means to be a man, one sees an emergence of a situation where in marriage one's place as a man (husband and father) is limited to

the provider role. This for Sipho is the only way the man can have a say in the running of the household. This assertion is made without taking into account the precarious nature of employment after1994. What kind of a man would he be when unemployed? Could we still call him husband and father when he is out of work? How would he see himself? As I was listening to him these were some of the questions that raced through my head. What does the fact that he and his sister were raised by a woman mean?

The discussion above shows that although Sipho's sister contributes substantially to the care of his child he does not make much of it. For him this is just 'helping out'. Other research has found that most men see such contributions by women as just "…an additional help to support the family" (Fuller, 2003:7). They view the bulk of this responsibility as theirs. This remains so even when they are unemployed and the woman has the sole responsibility of supporting the family.

Thus, a double standard emerges. This double standard constantly emerged in the interviews with Sipho and Lele in particular, and with a few of the other men. Sipho wants to be the main provider, but he would not want to be married to a stay-at-home wife. This double standard illustrates the frustration that most men face in an era of enormous social and political transformation in South Africa. It also attests to the negative impact that hegemonic conceptions of masculinity have on men's experiences in a changing world.

Sipho is not comfortable with women who pay their way. The following quote illustrates the precarious position the traditional masculine role is placing him under:

> I mean, all the women I've dated, all of them; you can ask, I mean, anyone of them; I always had a problem with taking money from them (Interview, Sipho, 9 March 2004).

This insistence on the provider role further perpetuates the situation where men feel inadequate when unemployed. Although the employment status of women

does not change much with regard to their identity, it does so severely with men. Fuller (2003:8) puts it succinctly:

> … that they be unemployed or that they do not earn money severely challenges manhood.

However, women also play a role in this regard (Posel, 1991). The provider role is not only what men expect, but a societal expectation that prescribes to men what it means to be a good man, or to be just a man. Lele's experience as an unemployed man is captured as follows:

> See, when you are not working there are always some problems. But right now we are in good terms because – it is not like we are no longer [in a relationship]. It's just that I am no longer working. I just have to carry on with life. You know how women are (Interview, Lele, 26 March 2004).

This quote shows that woman's expectations of him encourage him to take up the provider role even when he cannot. Instead of transforming his role in relation to what he can bring into the relationship, it seems that Lele is trapped in what is expected of him and what he expects of himself in relation to what it means to be a man for him.

Men throughout the world and over the years have and continue to reaffirm and constitute their gender identity through the roles linked to wage work. This is also negotiated between men and women in the domestic sphere. Men are defined by others and by themselves as breadwinners and heads of households even when they are unemployed (Gwagwa, 1998). Having money and being the 'head of the household' also of course suggests that men should be the ones 'in control' and thus in turn means that they try to hold power in the domestic situation even when they clearly do not have it. These issues also influence the working of the maintenance system to a great extent.

6.2.3 Fatherhood at 20: "heavy like a ton of bricks"

Expecting a child as a teenager has its own challenges and seems to have dealt most of the men a real blow. For example, when Sipho's child was born he was

not ready; he just wanted to continue his studies and have a bright future. However, all that had to change. He had to face the challenge of becoming a father. Although he did not take on the responsibility of being a father to his child immediately, the reality is that it changed who he was. He could not go on as if nothing had changed. He said that the experience was 'heavy' on him. He recounted:

> Like, financially and emotionally, I suppose, yah. Yah, because I don't know – okay, when I got my child I think I was 20 years and stuff; and I was still at Wits; and the whole thing it sort of like – I don't know, heavy like a ton of bricks (Interview, Sipho, 9 March 2004).

His experience captures to some extent the experiences of the other fathers interviewed. They had not planned to have their children, and most of them had their first children in their teenage years or early twenties. Percy, a father of five from Mapetla, was also a teenager when his first child was born. He said that this child was not planned – 'a mistake'. This was mainly because he had no intention of marrying the mother, or having a meaningful relationship with her. He said:

> I was seventeen. You know we were just being naughty. Because how she fell pregnant; at her place they were selling beer, it was a sheeben. I was not working at the time. So I was drinking there and she would give me beers for free… so I also had to satisfy her and I gave her this thing. So she came with this trouble. And this trouble nearly got me to jail (Interview, Percy, 28 June 2004).

For Percy and almost all of the black fathers I interviewed the pregnancies came as a surprise. Most of them did not think that they had a role to play in preventing them. As I listened to their accounts about how the babies came, most of the fathers took no reproductive responsibility. All of them were not ready to have children, but they did not think they could have done anything to prevent it. Could they have done something to prevent the pregnancies? What if the mothers wanted to have the baby? Could there have been another option? In an interview with one of the mothers, it was revealed that money for an abortion was provided by the alleged father, but she did not have the abortion. Of-course she had the right to refuse it. However, when the baby is born, who is responsible for its financial support? This remains a difficult issue because as a father some responsibilities

remain even when measures were taken on his part to try to prevent the birth of the baby. So is it right then to say that the state favours women? Most of the fathers I encountered felt justified in saying this.

Since most of these men left all the power of reproduction to the women, is it right to argue that nurturing is then the sole responsibility of the mother? Such questions are central to this thesis. Perhaps the reason why most of the men did not take reproductive responsibility was because they were still teenagers. Is this a valid excuse? Furthermore, reproductive health education was only given to girls and this only involved getting a contraceptive injection or pill without much of an explanation as to what it meant and what the risks were. This was especially true of the clinics in townships.

The silences in the interviews on reproductive preventative measures from the men suggested that they saw pregnancy as a woman's problem. This is because she is the one perceived to be taking care of the children. Consequently it is presumed that the work of prevention is solely the responsibility of women. This could be traced back to family planning which emphasised the prevention of pregnancy by women without the involvement of the men in their lives. Literature on reproductive health shows that "beginning with the first oral contraceptive in 1960, and the subsequent development of intrauterine devices and modern surgical sterilization, led to the development of a family planning services community focused on women, often to the exclusion of men" (Network Spring, 1998). As a result there have been silences about men's responsibilities in relation to reproductive health until very recently. Among the interviewees, I found that when you talked about reproductive health it was automatically assumed that you were referring to women.

For example, Lele, like the other men, had no perspective on what his responsibilities were regarding reproduction. This is what he had to say when I asked whether he had planned to have children:

G: Did you plan to have two children?

L: No, I did not plan.

G: What happened?

L: You know, when you like getting yourself into things sometimes. And after they happened it's late, there is nothing you can do; you have to take the responsibility and face the future (Interview, Lele, 2 July 2004).

It sounded as if I was asking him a foreign question, as if you do not plan to have children, they just come. Research on men's reproductive health risks argues that "when means of prevention are unknown, unavailable, unused or fail, STDs can pose a threat not only to a man's fertility and health but to those of his sexual partner" (Network Spring, 1998). In a context where young men are under pressure to prove their manhood through sexual engagement, and they are oblivious to the consequences of such behaviour, it is obvious that when sex results in the birth of children there will be problems with regard to how and by whom those children should be taken care of. Almost all of the black fathers I interviewed had cases against them in the maintenance courts – the child they were to pay maintenance for was conceived when they were teenagers, and they were still unable to take responsibility for them without some sort of intervention from the state.

6.2.4 "What if he is not my child?" – doubting paternity

Paternity is always an issue when maintenance is in question. Some fathers are open about it, while others hope it will go away. Whether they openly talk about it or not, when it is in question it impacts on the kind of fathers they become. This is especially true for children born out of wedlock. Children born within marriage, however, are automatically presumed to be those of the husband (Armstrong, 1992:35). This presumption puts most men in a precarious position. This is especially so when the paternity of the child is in question. What is their responsibility? Do they keep it to themselves and react unlovingly to the child? Do they demand a paternity test? What options do they have when they cannot

afford to pay for such tests? These questions are particularly interesting in socio-economic situations of increasing unemployment; growing uncertainty in intimate relationships and highly contested masculinities.

In many of the narratives shared with me, the fathers felt that the involvement of another man, even when there was no proof that something sexual was going on with the woman, meant that the paternity of the child must be questioned. These questions arise even though, according to law, "it is not a defence to prove that the woman had sexual intercourse with other men during the time in question or that the couple used contraception" (Armstrong, 1992:35) at least this is true in Zimbabwean law. Furthermore, these accounts show how a break-up before finding out about the pregnancy impacts on concerns about paternity.

The accounts also show the complex nature of the relations involved, thinking about the feelings of others and not wanting to look like a coward. The feelings of uncertainty are also difficult to do away with. This is especially true in an environment where men's ability to father is linked to their manhood. In the extract that follows, we hear Sipho share his experiences and feelings on the issue of paternity.

> I suppose I was giving myself excuses which I mainly attribute to growing up. Because we broke up before I found out that my ex-girlfriend was pregnant with my child. And when my child was born we never did the paternity tests and whatever. Even now I do think about it but I think it's going to be too awkward why do you want to find out things? Why do you want to check things when it's already so far down the line? Just leave it like that. It's thoughts I've always harboured. So I am not exactly doubting that he is my child. I mean, he does look like me; the resemblance is just too much. It's just too much. So that in itself gives me enough confidence that he is my child (Interview, Sipho, 9 March 2004)..

Although Sipho speaks of being confident that this child is his, he continues to suggest that there is some doubt. The following quote illustrates how most of the fathers spoke about paternity. They are sure its their children but they can not be too sure. He said:

> But there was a time when I used to think it couldn't possibly be my child. I remember when I started going out with the mother, she was

> dating another guy who was supposed to be THE guy apparently on campus, and I didn't stand a chance, I don't know how I managed to pull it off but I did. Obviously a person cannot say you've fathered their child when they have never slept with you. That's what I used to think. But I know the power of evil in women in general. I am sure there are people who can do their thing when they have never even like touched or … but before I thought agg! You can't exactly accuse somebody you haven't slept with. And if you have slept with that woman you might as well pay the price. That's how I used to look at it. Because my logic or my way of thinking was; if you say you are not the father who is going to raise the poor child? That's how I used to think of it. Even now, I mean, I still think of it that way. But I believe that it's important to establish paternity I mean there has been a whole lot of false [relationships] both on the media and people I've known, like close friends of mine (Interview, Sipho, 9 March 2004).

Interestingly at this juncture it seems that Sipho is trying to convince himself that he has accepted the paternity issue. However, the account as a whole raises questions about that. It seems he is also trying to give reasons for what he refers to as his irresponsibility. Are there feelings of guilt driving him away from doing the test? He might be afraid to raise the issue of paternity because he fears he will find out that he is not the father and his manhood will be in question. Percy also talked about why he did not do the paternity test, even though he doubted that he was the father and still does. The following extract captures his thoughts and experiences on the issue:

> P: She took me to court and they told me – because there they just tell you that you have to maintain the child, it's your child; they do not talk about DNA tests, of which it's expensive. If I had money I would do the test. So I ended up maintaining that child.
>
> G: So you did not do the test?
>
> P: It's expensive to do it. I wanted to do the DNA test but it was so expensive. They told me that I'd have to part with R1 200.00. I said I do not have that money, let me just maintain the child. And still it'll take time for the results to come, and all that. Right now I do not know how women are – women are jealous; she tells me, ja, you are maintaining a child who is not yours; it's a neighbour's child. She is still saying that even now. But I am still maintaining my child, because he also knows that Percy is my father. Even at court they told me to maintain the child. At court they do not want to hear

> anything; they tell you that you are going to maintain this child. So I ended up maintaining him, what can I do? Sometimes when you have money and you do the tests, but still the tests come back saying it's your child even if it's not you child. So that is how it is. Who do you think will maintain the child if you say it's not your child? And still if I go for the test I'll waste money which I should have used to maintain him (Interview, Percy, 28 June 2004).

According to Percy, spending money on a paternity test which will come out positive anyway is a waste of time and money. He would rather pay maintenance than do a paternity test even if this creates problems between him and his wife. For Percy, questioning paternity and actually doing the test would amount to deserting his son, a son who knows and appreciates that he is his father.

Sipho, on the other hand, in making sense of his own doubts, shared how he felt about the experience of one of his friends. The friend had found out that the child he had loved and paid maintenance for was not his. This is what he said:

> Fezile Mpela is a friend of mine; and you remember that Baby Cele person, like, accused him of having fathered her child. Then Fezile was so much in love with that child you wouldn't believe it. He used to shower that kid with presents and love, everything. And then he discovered, like, two years or one year later that no it's not him when they did a paternity test. And that whole experience left him devastated. And I thought, okay, if that bond can be broken by that kind of discovery then I might as well …stay away. Because he still likes the child. I mean he does talk about Baby Cele's child now and again (Interview, Sipho, 9 March 2004).

This account on paternity reveals fear and the pain that goes with experiencing deceit, and this is not just any kind of deceit – it is a deceit that involves deep feelings of love and attachment. How do you detach from a child you have loved and raised? Do you stop being a father when you find out that a child is biologically not yours? It seems possible that when these fathers refuse to build relationships with their alleged children they are driven by fear, among other things. This fear is linked to having to pay the price of attaching and loving a child who might later be revealed to be somebody else's. "It's bad enough that so many fathers won't pay maintenance for their offspring. It's worse when those who knuckle down and hand over the money are found to have been paying for

kids that aren't theirs – except for those who consider it an honour" (Ngudle, 2003:12). How many men will find being dragged into courts an honour? I suspect few. Many of the men who are forced to pay maintenance through the courts resent it. They find it to be embarrassing and unforgivable, especially when the police are involved. Men who find out that they have been supporting children who are not theirs are laughed at by other men and some women.

The story of Fezile and Baby Cele referred to above was one of the many stories featured in the media during the months of May and August 2003. The media featured a number of stories on the issue of paternity tests failing to confirm paternity claims. These stories placed the issue of paternity testing in the spotlight, saying on the one hand that women are not to be trusted and on the other hand saying that men have a responsibility to themselves to prove paternity before taking on the responsibility of fatherhood. One of the fathers quoted in the article said:

> It was not about the money, but the lies, the deceit. It hurts (Ngudle, 2003:12).

Although paternity testing is a helpful endeavour for men and children, it can put men in difficult positions. Questioning paternity implies that you question the integrity of the woman involved; however, not raising it as a concern robs the men of the full experience of fatherhood. For most fathers this question leads them to perform only the provider role with their alleged children and not any other role. What do you do in a society where fathers are treated like the 'lotto' when they have children? These questions straddle the issues raised and experienced by the fathers interviewed for this thesis.

6.2.5 Fatherhood with the help of others

Experiencing the maintenance system leads most fathers to argue that they would rather live with their children. According to them, this would eradicate having to go to court every second week and having to part with their hard-earned money. Ndilele felt that:

> It is not a bad experience to be a full-time father, but you need the help of others. For example, my sisters, mother and cousins help me a lot (Interview, Ndilele, 6 July 2004)[30].

Ndilele owned a hair salon and had three children. The first two children were conceived when he was a teenager with one of his first girlfriends, and the youngest child was conceived with another women for whom he had paid *lobola;* she passed away a year before our interview. He was living with his youngest son, and said that it would not have been possible to do it without the help of his mother, sisters and cousins. They did most of the care-giving work – laundry, cooking and fetching the child from the crèche. In essence, his fatherhood role was only possible because he had help. The following quote is an illustration of his thoughts if he had to live with his two elder children:

> So I don't think I'll have such a huge problem. The only thing that I'll have a problem with is cooking for them. With this guy, we wake up in the morning, I cook him porridge, I [wash] him, and I take him to crèche. The other problem is doing the laundry. I don't have time, because I have to come to work, and I work Monday to Monday. So I have to sacrifice other things; like powder soap, a child's basic needs. Sometimes a child needs sweets unnecessarily. So I make sure I always have them. Even if I do not spend too much time with him where I stay – because like now he goes to crèche nearby. It's wise that he goes to crèche nearby, because sometimes I wake up late in the morning. And it would be too demanding for a child, and also the cold. This is going to cost more funds. Like he would get sick; anyway he is a sickly person, so most of the time he is home. I take him to work on weekends, knowing that I'm relaxed (Interview, Ndilele, 6 July 2004).

Ndilele, unlike many of his contemporaries, was not running away. He was aware of the everyday needs of his son and catered for them where he could. Furthermore, his experience of fatherhood was as a social phenomenon where the help of others was necessary. This necessity for Ndilele does not absolve him of his accountability and responsibility as a father. The idea of raising these children without the help of one woman or the other was still unheard of in the interviews I did. The other womenfolk in the lives of these men were seen as important when the child-rearing qualities of the mothers was in question. Ndilele felt that since he

[30] Ndilele passed away in 2005, may his soul rest in peace.

was taking care of his smaller child he would not find it difficult to do it with the other two children. He said:

> If the children are already 13, 14, they are not a problem. As long as you've bought four braaipacks, 50 kg of mielie meal. The daughter is the eldest one. When she becomes 14, 15, she'll be knowing how to cook. I've got a sister who is responsible for this one. She does not want a mistake with the children. I've got clothing accounts. I don't have a problem. When they need clothes, I'll take accounts and buy them clothes (Interview, Ndilele, 6 July 2004).

The help of others for most of the fathers refers to their mothers in particular and at times their sisters and other family members. Welly, a father of two children from two different women, had maintenance problems with the mother of the younger child. He said that this woman took him to court not because he was not supporting the child but because he was not interested in the relationship any more. For him, being a full-time father was captured as follows:

> G: And is the relationship with your children the way you want it?
>
> W: Number one! The thing is that I can't stay with them, and have custody. I do not have a problem with the son, because he stays next to Lele's place. He does come. The past week he was here during the school holidays. So with the girl, I fetch her on weekends. I spoke to her mother as to how would it be if I take the child and stay with her full-time. She refused. She says it's her child.
>
> G: Would you be able to stay with her full-time?
>
> W: Yes. My mother is there. I won't have problems, I'll manage (Interview, Welly, 2 July 2004).

Fatherhood, at this point, is understood in relation to the contribution of mothers, sisters and grandmothers with regard to care. Taking care of children is seen as a collective endeavour (Mkhize, 2006); it is not seen in isolation from social factors like work, and the availability and contribution of other family members. The challenge is when some fathers use the availability of others as reason for irresponsibility and neglect.

Then again, being a father is still viewed in the traditional sense of provision and authoritative control. For example, the reason why most fathers wanted to live with their children was so that they could avoid paying maintenance to households they did not live in and have control over. The main problem here is that these men do not have control over how maintenance money is used. They are also unable to monitor what the child has access to when they do not live with it. Paul, a father of two who at the time of the interview had filed for divorce and was in the process of proving that his alleged last-born was not his, was very happy giving his mother more than the amount he was ordered to pay by the courts when his children were living with her. He said:

> When they were with my mother I was paying more maintenance than what I was ordered to pay. I was ordered to pay something like R600 per month. So when they were there I was paying for transport, food, and other things. So it was something like R800 per month (Interview, Paul, 7 July 2004).

The collective nature of fatherhood is acknowledged in instances where the control of one's money overpowers the fathers I interviewed. Here the assistance they receive or will require from others is expressed, but not those of the mothers concerned. This is especially true because the idea is to take away from them ability to control their money when they cannot monitor or benefit from that control. The relationship between money and masculinity influences to a large extent how men will relate to particular challenges in their lives, and fatherhood and maintenance are some of these challenges.

6.2.6 Distant fathers: "out of sight, out of mind"

For most of the black men I interviewed, talk about missing their children and wanting more to do with them did not come up often. However, for a few of these men, this was at the centre of why they agreed to do the interviews with me. They really wanted to be a feature in their children's lives. Surprisingly, Sipho questioned the kind of father he was, and admitted he knew there was more to be done by him. This is what he had to say:

> Honestly speaking, I believe there is much more to fatherhood than the role that I am currently playing. And the reason for that is

> because I am not staying with my son. My son is staying with the mother. And that in a way, it sort of creates a sense of detachment, honestly speaking. You know like 'out of sight, out of mind', and we tend to become like irresponsible due to that fact, honestly speaking. But I believe there is more I could have done for my child … and I am not married. I was not in a position to basically take both my son and [her] mother in with me. So I suppose I had to suffer the consequences (Interview, Sipho, 9 March 2004).

Seeing other men acting as fathers makes him understand what he has missed out on and gives him reason to want more. In addition, this extract shows the connection that Sipho is making to fatherhood and marriage. From what he says, it sounds as if when you are not married to the mother you will not be a 'real' father. According to the law, "the absence of marriage automatically entails total disassociation from their children" (Barber, 1975:125). Sipho says the following about his status as father:

> I am like a stranger to him. Honestly speaking, I am a complete stranger (Interview, Sipho, 9 March 2004).

For Sipho, missing the father-child bond could be related to his own childhood. His father was never there. His father did not contribute to his support. He recounted a memory of his childhood, when he had accompanied his mother to the maintenance court. There is pride in his voice when he recounts how his mother single-handedly raised him and his sister. There is also an un-communicated sadness in his voice when he talks about paying maintenance for his child at the courts. His child does not know him. Sipho also mentions that when he takes the boy out, after a few minutes he will tell him that he wants to go home to mommy. This hurts him deeply, he says. He wants to have a more meaningful connection with his son. He asks whether this is possible when the boy has grown so far without him. He recounts this need with sadness, and as a serious paradox of the possibility of reconnecting with him.

6.2.7 Fatherhood and the maintenance system

When the fatherhood experience is established through the use of force it becomes unpleasant and complicated. Despite this, for some fathers, their negative feelings

toward the mother did not negatively impact on how they felt about the child. It is, however, difficult to maintain a good relationship if the interaction is going to be facilitated by people who are not in a good relationship. For Welly the relationship with his child was not affected by his interaction with the maintenance system. He said:

> It was fine, the tension was just between myself and the child's mother, and because it was for the first time I appeared in court (Interview, Welly, 2 July 2004)

For a few of the fathers, even where relationships were not completely bad, a maintenance case impacted negatively on the relationship. When the police and courts became involved, the relationship is seen as problematic, and at this point even the fathers' family gets involved. Welly's relationship with the mother took a downturn when he was paying maintenance, and they almost stopped talking completely. He said:

> It was just hello, hello; the child needs this and that, money for clothes and such things (Interview, Welly, 2 July 2004)

The feelings of resentment come from and reveal that the maintenance system favours women and is biased against men. It has been argued elsewhere in research on fathers that "the very process of the law encourages the separation of mother, father, and child" (Barber, 1975:123). Consequently, when the relationship between the mother and father is ruined because of the use of the court, it impacts negatively on the relationship the fathers have with their children. This situation is sad for the children, who at times know absolutely nothing about this relationship but find themselves in the middle of it. This does not suggest that all children are inactive in how the relationships between their parents and with their parents turn out. This is especially true because most men find that the use of the courts to solve what they refer to as personal problems builds feelings of resentment towards the mother and the child. The following captures what Ndilele felt for his children when the court intervened:

> But can you understand that his rights were [combined] with dictatorship that you must, it's a must that you pay that money. And sometimes I feel that; I do want to do things for them, I like them to have their needs met just like the other children, and they must go

anywhere. But right now due to the circumstances I've experienced – I've attended court thrice (Interview, Ndilele, 6 July 2004).

The conversation that follows shows how feelings of resentment about unequal treatment in the maintenance system fuels resentment for the child. These children are seen as sources of stress and a trap to indebt the fathers forever. The feelings of being indebted were voiced by the fathers throughout the interviews. Ntate Lamola, a police officer and father of three, works in the subpoena office in the Diepkloof Police Station. He has been paying maintenance for his first child, who was conceived out of wedlock, from the early 1980s. His relationship with his first child was ruined; he says that this relationship was affected by his having to pay maintenance when he was supporting the child anyway. We see in the following extract a development of feelings of hatred and the communication of a desire to be violent towards the child. He said:

G: Why were you not paying?

L: No, by then to pay – to pay something through the court is not nice. It's not nice.

G: Why was it not nice?

L: Eyyy! I felt like poisoning her. I wished I could poison her. I was not happy. Even today the child is old now, she is eighteen years old. I do not want to see her. I do not wish to see her! No!

G: Why?

L: I do not want to see her!

G: The child?

L: Yes.

G: Why would you not want to see her?

L: I do not love her.

G: Why do you not love her?

L: I do not want to frequent the courts. It hurts, this thing.

G: Court?

L: Yes. Because anything done through the court will obviously lead to arrest (Interview, Lamola, 28 March 2004).

Having imposed feelings of indebtedness towards one's children breeds feelings of hatred. Such feelings can only be detrimental to the relationship between father and child. As Barber (1975:123) argues, "many putative fathers are encouraged to deny paternity because they place themselves at possible future financial risk". A majority of the fathers owed arrears for having skipped payment for two or three years. Most of them claimed that during these periods they were unemployed or they had made out-of-court arrangements with the mothers without informing the courts. The amounts which were mentioned were between R20 000 and R28 000. The fathers argued that these arrears made the mothers manipulative and controlling. In this research we see this situation leading to the further risk of being criminalised. The following extract captures the feelings of being criminalised which were felt by Percy. He said:

> Even when they come to arrest you they treat you badly. They once knocked here the time when they came with her; it was like they were coming to arrest a criminal. I even fought with them that, no you must not knock like that. I am not a criminal. When you come here, you must explain what you want here. You must treat me like a human being. I am also a citizen (Interview, Percy, 28 June 2004).

Furthermore, most men tend to believe that maintenance and family law in general favours women and works against men. These arguments take place in relation to the notion of equality, which has been defined in lay terms to mean 50/50, which means women and men must share financial responsibility equally. It could also be defined to mean that, since women have equal rights to men, they should go through the same hardships that men go through, like taking over sole responsibility for the maintenance of children. So, as much as the Constitution has positive impacts on society, some aspects have been interpreted negatively. This negative interpretation of the Constitution and the concept of rights have been recorded in cases of general abuse by men against women, either through economic or physical abuse. As a result this attitude leads to defaulting on

maintenance payments, and arguments are linked to issues around money and who should control it and why. The differential treatment of women and men was captured in the following way by Percy:

> She did not come to court, but they've never fetched her. If it was me they would have fetched me immediately. I went there many times, I think sixteen times. Sometimes there is no judge; maybe he is sick, and you're told to come tomorrow or whenever. You even attend evening courts at six o'clock, seven o'clock. I don't want to tell you a lie – the system there is up to shit. It's out, out. They do not treat you well, especially we men. Meanwhile you know you love your children (Interview, Percy, 28 June 2004).

6.2.8 Negotiating maintenance: working the system

Conceptions of masculinity and fatherhood are constantly contested, and the maintenance system is an interesting site where these contestations take place. Individual men deal with the system in such a way that their identities and histories are carved on the system. Most of the fathers asserted the importance of understanding the system when going in to negotiate maintenance. They pointed out that you need to offer less than what the women demand because what women demand is always unreasonable. Welly said the following:

> In the first appearance they asked me why I was not supporting the child. I explained to them that it was only for one month as I had financial problems. Then they asked her how much she wanted, she said she wanted R600. I said I can't afford that R600.00, I can only afford R250.00. Then they said we must go back and negotiate. Okay, we went back on the date they've given us. They asked me again how much I could pay, and I said R250.00. I started paying the following month. Ja. So she came to me with a problem. She wants to move out, and she wanted me to help her look for a room, pay rent and [buy her food]. So now I ended up paying more than the amount we agreed on (Interview, Welly, 2 July 2004).

Paul experienced the following:

> According to my judgement regarding the maintenance case, I stated facts as well and they did not want to hear about it. So it was unfair for me. So it was one-sided, even if I tried to convince the judge. It was unfair to me (Interview, Paul, 7 July 2004).

The apartheid state is said to have used different tactics to make these men into fathers. The maintenance amount varying provision in the 1998 Act gives more power to the court as compared to the 1963 Act. This is then liked to the Constitution and the rights culture thereof. Ntate Lamola had this to say about the different treatments then and now. He said:

> G: And then how did they treat you when you arrived at court?
>
> L: No [err] the treatment – the treatment then – these things then, when I view during the white government; things were far better; we were not as oppressed as current. Currently you cannot say anything in court.
>
> G: What makes you say there was no oppression compared to now?
>
> L: When I look back; oppression was very limited. Because something else now – shortly, frequently the person will request an increase at the court. You see this person is after your life. She is not concerned with the maintenance of the child. She is concerned with receiving the money for herself (Interview, Lamola, 28 March 2004).

6.2.9 Defining fatherhood against motherhood

Men tell their stories in relation to women. This is true of fatherhood in general, and especially true in their experiences of the maintenance system. Most of the fathers defined their actions and lack of action with regard to maintenance in relation to who the mothers were and the types of behaviours they assumed. In situations where their relationships with the mothers were not good the fathers' compliance to maintenance was equally not good. The following extract shows what Welly thought the reasons for claiming maintenance were, thus justifying his actions somewhat. He said:

> W: I think this second one used the baby to cash in on our separation. Because she never accepted our separation; she kept on fighting. Maybe there is someone who gave her that advice, that maybe if she opens a maintenance case against me then I'll pay her much attention.

G: So how do you feel about the maintenance system?

W: It depends. There are those who go for [justifiable] reasons, and there are those who go for wrong reasons.

G: What are the wrong ones?

W: Like in her case. As I say there is someone who convinced her that; if you can go to the maintenance court, it's easy that you might get back together again. The main reason was not necessarily support. Because if it was support she would have [objected] at that moment I went to tell her that [I had a financial problem that month]. She never questioned it; she agreed. And then a month after, she came with the police (Interview, Welly, 2 July 2004).

The mother of Percy's child told him that the only reason she opened a maintenance case was because:

> When I started that lady told me that, okay, what made her take me to maintenance court, she heard that I am staying with a woman, we have children and those children are comfortable (Interview, Percy, 28 June 2004).

The motives of the mothers are seldom seen as relating to the need to nurture the child. This was alleged by most of the fathers. Most of the fathers seemed unable to move beyond their relationship with the mother when dealing with maintenance cases.

6.2.10 Would I ever be the father of the year?

This part of the chapter uses Nhlanhla's story to show the struggles that interested fathers face to be accepted as such. His experiences mirror those of the white fathers who are discussed in section 6.3.

Nhlanhla's situation caused him much distress, and when he related it there were tears in his eyes. He said he wanted to be a different man, that in everything he does he is a different man. He was refused access to his child and he said this was killing him slowly. He had a good job, and was married to another woman at the time of the interview. He mentioned to me that he did not want the man of the

year award if he could not be the father of the year. His memories of family were interesting. His ideas of being a father were not linked to biology, but he ached for a relationship with his son.

He tried everything; he argued that the justice system had failed him. He attended counselling with the mother, he tried family intervention, but none of these worked. He said that he was not sure where his son went for day care. He recounted that the last time he saw him was on his birthday and only for a few minutes since the mother does not allow him visiting time. At the time of this interview he had no access arrangement and had not seen the child for months.

As I was leaving after the interview, Nhlanhla asked me what he should do. I had nothing concrete to say to him. I knew that it would take a miracle for him to get access – and I wondered why the state wants to treat all men the same. Some fathers go out of their way to be responsible, but this is not all the time and people behave based on where they are in their lives. When times are hard, people become hard on others; this is in the nature of social relations. The following extract captures one of Nhlanhla's many negative experiences around access:

> N: I last saw him on the 6th of July on his birthday. That's the time his mother allowed me to come to school. I can't even get his report because…
>
> G: You saw him at school?
>
> N: Ja, they said come to school. So we met, we hugged each other and that was it. And I asked the teachers that I want to see his report, and they said if you do not have access we're not allowed to give it to you. You have to go and make an application at the High Court for the mother to let you see a report. I've been trying to phone her to sort out such things, and she does not want to talk to me (Interview, Nhlanhla, 29 September 2004).

The following quote captures the different methods used to get access. At the time of this interview, Nhlanhla was still unable to see his son:

> G: And looking at the situation, do you think it would get better?

> N: Ja. it would get better. Because he knows that I'm around and I'm responsible. If I was irresponsible, then he would say papa does not care. and I haven't given up; I've been trying different methods. And we meet the same people. I think it would be fine. I've also been advised that I shouldn't allow a lot of time to pass without seeing the child. But at the same time if I'm doing whatever I can do and I'm not succeeding, I must just relax. He would come; he would ask and he would say I want my father and he would find me. So I'll just have to make sure that I'm ready for him (Interview, Nhlanhla, 29 September 2004).

Nhlanhla has tried everything, talked to the mothers friends, he got his parents to talk to her parents, he has written letters to her making suggestions of how they could arrange access and nothing has helped. He is also thinking of going to the high court. In the mean time he is losing time with his son. These experiences bring Nhlanhla feelings of self-doubt. As I have written elsewhere, "the honesty of the fathers is always questioned in a way that, over the long term, undermines their confidence in their parenting capacity. The general portrayal of men as abusive by the media and society in general leaves most of these fathers feeling unsure of themselves" (Khunou, 2006:271). For Nhlanhla, these feeling of self-doubt were remedied by the use of mediation. He said the following about this experience:

> G: And regarding your mediation?
>
> N: It helps with self doubt because let's face it – especially if you are a man. I don't know for women. I think it affects you differently, but it does affect you if you are a woman. If you are a man in a society where women are constantly abused by men – financially, physically, emotionally and otherwise – when things go wrong, let's face it, you doubt yourself. I'll give you an example. Right now I've been nominated to go to the IT Personality of the Year. They had nominated many people and then they cut them down to only a few of us. They are going to make a short-list. So I'm in the top ten. Now if you think about it, that I'm in the top ten, and when you look at other people nominated as well, you think actually I have a good chance, based on your experience and academic qualifications, etc. But will I ever be nominated as a father of the year? And for me, things that would immediately disqualify me is I don't know which school the kid goes to, you do not know his reports. In fact if you can ask me today for his

> surname I wouldn't know because the other day when I went to fetch him from crèche, I didn't know what surname he used.
>
> G: So you say it helps with issues of self-doubt?
>
> N: Sorry, ja. So I've just expressed that example. So when you're going there to the sessions, you meet this lawyer and a psychologist, and you talk. And their body language and what they tell you assure you that the things that you are asking for are reasonable; you are not being horrible. And as you work towards an agreement – and in this case even though mediation did not result in an agreement we aspired for, it resulted in me being in a state of peace with myself that, even though I'd be disqualified as a father of the year because I do not know the child's whereabouts, I can comfortably say that I've tried. (Interview, Nhlanhla, 29 September 2004).

Nhlanhla has tried all avenues open to him but still without any success. Barber (1975:125) argues:

> It can be definitely stated that because there is not a habit in our society of the man taking an interest, it is a very uphill task for him to get even an access order, let alone a custody or care and control order. There is still a tremendous feeling in our society – very wrongly in my view – of an almost proprietary right on the part of the unmarried mother to have charge and control of her child. It's her child. He landed her with the problem. The man really has got to convince the court that he should be allowed to see the child. In some courts, I suspect there is almost a feeling that he is an undesirable person per se and would be a bad influence on the child anyway. On the other hand, I think nearly all matrimonial courts would assume that the father had a right to access unless the mother could show that he was an undesirable person. If a man is applying for access to a child of whom he is the putative father, the burden is on him to show that the child should see him. That is not the rule of law at all. In law his rights to access are the same as a married father's but I am certain that in practice they are very hard to obtain.

Nhlanhla's experiences are similar to the experiences that are captured in the following section.

6.3 Experiences of White Fathers

6.3.1 Introduction

The accounts of white fathers in this study represent a conception of fatherhood as defined through the eyes of marriage. Their experiences reveal the frustrations that divorce and separation bring in relation to fatherhood. This is coupled with experiences of lack of support from the state and a resentment of the state's emphasis on men as abusers, as violent and as providers. These fathers emphasise that their view of their fatherhood roles amounts to more than the provider role and should be seen as such. Furthermore, they oppose the tendency of the justice system, and the divorce and maintenance courts in particular, to define men as a group without taking into account their different interests and needs as fathers.

6.3.2 Negative fatherhood: problems arising from legislation to protect women

Almost all the white fathers regarded the use of legislation to protect women against abuse in a negative light. This leads to the conclusion that if the use of this legislation to keep fathers away continues, fathers will continue to be portrayed as disinterested even when they actually have a keen interest in fathering in active and different ways. These fathers particularly emphasised the importance for them of being more than provider fathers. Although this is similar to the black fathers, for them there was an emphasis on the acknowledgement of the affective side of fathering. This might have been made more possible by the fact that most of them were middle to upper class and, therefore the challenge of financial provision was not that acute for them.

Eric, one of the fathers, endured a number of court cases as well as mediation and counselling session before getting access to his child. His story captures the typical experiences of the white fathers interviewed (Interview, Eric, 1 June 2003).

Eric was married for ten years. The problems in his marriage started when his wife fell pregnant. She was not happy with him when he showed an interest in the pregnancy, and as the months went by she became more and more unhappy. His struggle started with him wanting to be present at the birth; he had to fight to be there. He did not know that this was the beginning of a long and costly struggle. A few months after the baby was born his wife moved out and did not allow him to see the child. For six months after that he did not see his child. He tried several things including therapy, the church and mediation to try to sort out the marriage and their differences, which he asserts at times he did not even understand. Eventually they filed for divorce, which had not been finalised when I talked to him in June 2003. In the two-and-a-half years since the separation, there were continued fights over access to the child. These were coupled with accusations by the mother of abuse and molestation of the child. These in turn led to court orders of all shapes and sizes, barring Eric from seeing the child, from coming to the mothers' house and other restrictions. These led to intervention by psychologists, lawyers and the courts in general. At the time of the interview Eric had regular access to his three-and-a-half-year-old daughter. However, in his voice one could clearly hear distress and mistrust of the law and its mechanics. For example, Eric did not understand why the police did not, at any point of his interaction with them, give him the benefit of the doubt. He wondered why they took it for granted that everything his ex-wife said was true without further investigation, and why everything he said was treated with disbelief. He sounded very angry and frustrated that he had to spend so much money, time and professional intervention trying to be a father.[31]

For these fathers, the protective legislation (the Domestic Violence Act in particular) was used to deny them access, which was a major issue for most of them. Access was a big problem for them mainly because they had been married to the mothers and therefore had experienced a different kind of fatherhood from the interviewed black fathers. Before their divorces, all the white fathers had been everyday fathers – that is, they had the opportunity to see and interact with their

[31] The story presented here has not been validated; however, I have no reason to disbelieve it. This is because it resonates with almost all of the narratives shared by the white fathers.

children on an everyday basis; the children had been a part of their lives. The challenge that came with the divorce was lack of access. This, they argued, was frustrating since they had to readjust completely from being everyday fathers to 'Father's Day fathers'.

Eric had very negative experiences with regard to access. He argued that it was not enough to see his child on birthdays and on Father's Day. He said that he wanted to read her bedtime stories and listen to her ask questions about the beginning and ending of the universe. Elsewhere, I show that the access arrangements these fathers had were making it difficult for them to be involved fathers.

6.3.3 When money is not a problem

Money plays an important role in defining power relations between women and men. This is because those who earn it (usually men) control who has access to it, as well as the terms of access, and women mostly are dictated to with regard to how to use it. This usually leads to unequal relations and mostly leads to abuse linked to withholding money for the support of the family. This was seen mostly in the experiences of the black fathers through their acknowledgement of defaulting on maintenance payments due to financial hardships linked to unemployment and insufficient pay. For the white fathers, however, money was not an issue. Their financial responsibilities to their children were not seen in a negative light whatsoever. They were more concerned with not being able to decide how the money was to be used.

The fathers said that paying maintenance without the other privileges that went with being everyday fathers made them realise that they were no longer part of their children's lives in the same way. This for them led to questions of decision-making powers with regard to how the child was being raised. Mostly, the fathers raised concerns about the kinds of schools their children attended and the everyday decisions that had to do with the lives of their children. This is what one of the fathers had to say:

> Well, I don't mind paying maintenance for my daughter, but when I see what she writes (when accounting for expenditures for the child), what her justification is for spending, I have a big problem with that because she is now claiming for all sorts of stuff that we never had in our lives (Interview, Eric, 1 June 2003).

Another factor that has to do with the class status of the fathers is their ability to pay. This has been argued to play a role in whether men are able to marry and remain married – furthermore, the ability to pay impacts on the kinds of fathers men can be. This is especially true in a situation where conceptions of fatherhood are, to a large extent, still seen through the provider role by fathers themselves and by society in general.

The other financial challenges these fathers raised had to do with the costly nature of divorce proceedings. They argued that getting divorced and the processes they had to follow to prove they were worthy fathers cost so much that they felt they should have invested that money on behalf of their children. The issue of the use of the Domestic Violence Act to exclude fathers was also quoted in this regard. Another father had this to say:

> For me the blow has been two-fold. Whilst the mother claimed domestic violence and abuse, I had to defend myself, which cost more than R12 000 in legal and psychological fees. And in the process I was denied access to my son for six weeks. And that meant no phone calls, nothing. When the psychologist report went against her, the state declined to prosecute, and she suffered no consequences. I tell you, the mother has the ability to destroy the relationship between the child and his father. And that, I'm afraid, is incredibly dangerous (Interview, Mark, 3 July 2003).

It is expensive to be a different kind of father:

> As a father, from a paternal point of view, I knew from day one that I was at an instant disadvantage. Fathers in South Africa are at an instant disadvantage, irrespective of race, colour, creed and financial standing. There is an assumption that the mother is a primary caregiver of children but this is not necessarily the case (Interview, Mark, 14 June 2003).

These sentiments were raised by Mark, a father of two who fought the system and triumphed. When I interviewed him he had custody and lived with his eleven-

year-old son and six-year-old daughter. The fact that most fathers are not interested in nurturing responsibilities leans the divorce courts and justice system in general to favour mothers in this regard. The first thing Mark said to me was interesting; he said:

> Most men pay maintenance; I receive maintenance (Interview, Mark, 14 June 2003).

The reason this is the case is that Mark's ex-wife wanted to leave the country with the children at the time of the divorce. I could say that this situation gave Mark an advantage; no judge in his right mind would allow one spouse to uproot children from their father and country without acknowledgement of ties and access for the other parent. Mark argues differently. He maintains that as a father he was still at a disadvantage. He recounts that it took a lot of planning and strategising for him to end up with custody of his children. He said:

> I chose my attorney well, and from day one and right through until the court appointed me as a custodian, I followed arguably a game plan. In a divorce situation it really is a game plan; you have got to plan. It's like going to war; you actually have to plan your strategy (Interview, Mark, 14 June 2003).

The reason this war was important for Mark was because the values he holds about fatherhood do not allow for lack of active involvement. It was unthinkable for him to have his children living very far away from him. Mark felt that it would cost him more money to travel to see his children than it would to support them, and that was unacceptable. He did not want to be an 'ATM dad', he said:

> For me to have to foot the bill, it was just inconceivable. Besides the money issue, I really believed that as a father I have equal rights in the upbringing of my children (Interview, Mark, 14 June 2003).

"Equal rights" in this quote refers to more than what the maintenance system put forward. It implies everyday responsibilities. This was not going to be possible if the children moved to a different country. Mark is happy to be living and raising his children himself; he is also grateful to be receiving maintenance. He brings a

fresh understanding to receiving maintenance. The following quote captures what it means for him:

> Let me tell you now, I admire the women who go and stand in the maintenance courts day after day, week after week, and fight for what is rightfully theirs. And I want to rectify that question; maintenance is not a right of the mother or the father; maintenance is the right of the children. By the non-custodial parent denying maintenance, they are not denying anything to the wife or the husband they are trying to irritate; they are actually denying the children a right. The children have a right to a lifestyle of which they have been accustomed, and of which their parents brought them into this world. I am not saying the life of the rich and famous, but what I am saying is that children do not ask to get divorced. I have still got on tape my son singing a little song, he said just after the separation – 'I wish, I wish that for just one moment, just one moment that my mummy and my daddy would get back together again'. It is a wish of every divorced child that their parents get back together again. And that wish they carry into their teens and into their adulthood (Interview, Mark, 14 June 2003).

6.3.4 "Fathers don't stand a chance …"

While the media frequently highlight the shortcomings of fathers in meeting maintenance payments and in retaining links with their children, the fathers in this study expressed acute frustration concerning the obstacles placed in their way by their ex-partners and by legal processes. Eight of the fathers referred to in this chapter have tried numerous strategies to get their ex-partners to allow them what they call 'reasonable access' to their children.

The fathers interviewed have all attempted to gain increased access to their children. This has in some cases involved litigation, which most have experienced as a stressful and painful process that has damaged their relationships with their ex-partners. But this is only one of the strategies that the fathers have been forced to adopt in order to gain access to their children. Eric was accused of abusing his daughter, and went through a long process of investigation to finally get access. The process included the intervention of psychologists, judges and social workers, and it took place over a long period of time. What was common with this case and

with the experience of litigation more generally is the assumption that fathers are irresponsible and uncaring unless they prove the opposite. Eric had this to say:

> And the accusations, I mean they were rubbish. You know there is no come-back on her. It's only me that can go to jail if I do something wrong, but she can just accuse, accuse, accuse, with no truth. And nothing happens to her. Nothing! And it costs me money, time and pain to go to lawyers, to write a letter, to defend myself against the lying. Not for her to prove that I'm guilty. She can just say any rubbish she wants to and people believe it (Interview, Erik, 1 June 2003).

Almost all the men I interviewed argued that they did not stand a chance because women were never suspected of lying and were given the benefit of the doubt. On the other hand, the honesty of the fathers was always questioned in a way that, over the long term, undermined their confidence in their parenting capacity. The general portrayal of men as abusive by the media and society in general leaves most of these fathers feeling unsure of themselves. George, another father, said this:

> Now you know that, I know that, and every judge knows that. Yet my attorneys said to me you dare lay charges against her for assault or for anything else, let it go, because if you do anything you will be seen to be the aggressor and ultimately it would be used against you. And I know that. It just happens time and time again. We do not stand a chance. We do not. As a man, as a father in this country, you have no chance whatsoever (Interview, George, 25 June 2004).

Family laws that take into account the capabilities and interests of fathers should not be damaging to feminist gains. Yet there has been some resistance over the years to including fathers in the lives of their children. In the 1980s, calling into question the credentials of fathers was considered by some as contributing to the feminist campaign against the patriarchal dominance of women. Making allegations of sexual abuse and violence during access and custody cases was thus considered a legitimate, politically inspired, move. Bitter maintenance disputes still feature in such allegations, as well as male counter-allegations of mothers not being fit to care for their children. Without exception, such disputes have a detrimental effect on the relationship between children and their fathers. Prince, another father, had this to say:

> Allowing such situations to continue unchecked may send the wrong message about the use of the justice system. People might think it can be used to settle scores, when really the goal should be to find a situation in which the child gets the best that both parents have to offer (Interview, Prince, 3 July 2004).

6.3.5 Striking a balance: Paying maintenance and seeing the kids

The white fathers in this study were, for the most part, very keen to have frequent contact with their children. They did not see their obligations as fathers ending with paying maintenance. Being a provider was only part of their fatherhood role. They wanted to be integrally involved in the upbringing of their children – they wanted to be involved in deciding which schools the children went to, the subjects they chose, and the sports they played.

Surprisingly for me, the experience of paying maintenance for a majority of these fathers made them realise that they were not an integral part of their children's lives. They missed being a father in the everyday sense, such as making decisions about school activities and getting to know the child's world, including their child's friends, tastes, joys and disappointments. Fathers wanted to make an impact on the kinds of people their children would become. These fathers were not against paying maintenance, but against not having control over how the maintenance benefited their children. Fathers pointed out that their objections should not be construed as suggesting that their ex-partners were not good mothers. Their concerns were that their contribution to raising the children should not be measured only in financial terms, but should include their being part of the decision-making process.

On the same issues, Prince had this to say:

> I'm busy negotiating a maintenance settlement now, that I have the right to pay expenses directly. So for example, she says school fees is a thousand rand, and I pay a thousand rand to the school, and I know it is a good school (Interview, Prince, 3 July 2004).

Fathers seem happy to pay maintenance if they are satisfied that it is being used for the benefit of their children. However, many question whether their maintenance payments are being used for this purpose, especially when their ex-partners are in good jobs, have new partners and appear to be living lavish lifestyles. In situations where suspicion exists between mother and father, fathers want maintenance issues to be discussed together with issues of access and decision making. Attempts should be made in legal processes to accommodate holistic attempts to promote the involvement of fathers in the lives of their children.

6.4 Conclusion

This chapter has illustrated through the narratives of black and white fathers the varied experiences of the maintenance system in particular and the justice system in general with regard to the treatment of men/fathers. Through their encounters with these institutions, these fathers constantly redefine who they are as men and as fathers. The treatment they receive and do not receive from the system compared to women also leads to interrogations of their status as citizens.

Although the men/fathers are aware of the changes taking place in gender relations and of the challenges this has placed on their traditional roles, it is difficult to regard these changes as legitimate. It has been argued that such resistance is a result of the fact that, for most men, representations of gender and masculinity are firmly rooted in an "asymmetric notion of gender and social order". As a result the contribution made by women to the survival of the family is seen as only an additional contribution (Fuller, 2003:7).

Furthermore, the chapter shows that the rights, and therefore the obligations, that come with reproductive rights lie with the woman, thus placing the responsibility of child rearing on her. This results in unfair burdens on the mother, which might lead to stress, inequities in commitment and resentment in relationships. The next

chapter will illustrate, through the presentation of the mothers' narratives, their experiences with regards to these issues.

The different experiences of the fathers broadly show the class differences in South African society. Nhlanhla's experiences show that class works across race and thus plays a major role in determining access to justice and other institutions like counselling and information in general. South African history, including migrant history, has certainly contributed to the kinds of fathers the black men are. This is especially true with regard to the idea of distant fatherhood.

The general argument of this chapter is that the idea that men/fathers are the same, and the homogeneous treatment they receive from the maintenance system, is limiting and stereotyping. This is especially true if the different factors at play in defining men on an everyday basis are not taken into account. Definitions of what it means to be a man are constantly negotiated and are different for different men. As a result, their needs and aspirations as fathers should be treated as such by the maintenance system.

In this chapter, I also show how the desire of men to forge close relationships with their children has been frustrated by the gender assumptions of the law, by the officials who administer the law, and by their ex-partners.

Chapter Seven

NEGOTIATING MOTHERHOOD AND EVERYDAY LIFE

7.1 Introduction

Women's experiences have been the interest of research across disciplines. Much of this research has taken for granted the positions women occupy and therefore ignored their accounts of their daily experiences. The women's movement has, however, worked to challenge these notions through centring the accounts and experiences of women and questioning how they are defined (hooks, 1981; Hassim, 2003; Mahonty, 1992). As a result women's place in the labour market, household and general societal institutions is no longer assumed to the degree it was before. The women's movement also succeeded in making demands for equal opportunities – that is, rights to education, reproductive choice, employment and the vote. However, these rights continue to be challenged by essentialising conceptions of women's relationships to the state, to men and to the motherhood role. It is therefore important to conceive of motherhood as an identity, an occupation and a relationship (Preston-Whyte & Allen, 1992), so as to allow space for the different and varied experiences that come with mothering.

This is especially important in societies where traditional definitions of womanhood continue to hold sway and in which women are frequently held in a negative light. The perception, in South Africa and elsewhere, that women fall pregnant to access welfare is one such widespread and unduly negative view. This is usually expressed without taking into consideration the role men play in the conception of children, let alone their responsibilities to these children. Motherhood in this example is defined as the only way women can access resources for themselves. Pregnancy among disadvantaged teenagers must be

viewed as an adaptive response to poverty (Fustenburg, 1994; Preston-Whyte & Allen, 1992). This argument, like others similar to it, overlooks the financial burden linked to raising children under conditions of poverty.

The institution of motherhood has been argued to present mothers with oppressive conditions. This does not suggest that mothering and mothers are not appreciated, though. Motherhood has been defined as:

> … highly complex. It is not just the experience of looking after and caring for a child. It is also an identity which in our society is necessary for full adult status as a normal feminine woman. To have children is to be a good girl and is rewarded by social approval and social acceptance, providing of course that you are not a lesbian or unmarried (Preston-Whyte & Allen, 1992:219).

One of the implicit definitions of good motherhood in the above quote is material sacrifice, where the needs of the child come before those of the mother. This idea of sacrifice leads to situations where most women struggle to find suitable ways of talking about motherhood experiences which do not resonate with personal and societal expectations.

One of the issues central to debates on motherhood is men's role in childrearing responsibilities. This issue has raised interesting debates among feminists, the minority position among them being that most women do not want men to be more involved in childrearing.

> In a society where women's opportunities for sources of status and power outside the home are restricted compared to men, some women may feel threatened by the idea of men encroaching on what they regard as their territory. Similarly, from a feminist perspective, it is important to recognize the potential that exists for men to increase their power and control over women (and children's) lives. It is partly for this reason that some feminists argue that, rather than getting men to take equal responsibilities for childcare, we should seek to maintain childrearing as a female preserve alongside demanding greater support and recognition for mothers (Preston-Whyte & Allen, 1992:219).

Although this idea sounds interesting and protective of women, it also sounds like it is creating a trap, especially in situations where the support that would come to mothers would essentialise and limit what mothers can do.

Another problem which arises where childrearing is viewed as the preserve of women, and one of particular interest for this study, is that the same male power that these feminists are trying to curb will remain so in situations where fathers will still control mothers and children as part of the transaction of accessing maintenance money.

O'Barr *et al.* (1979:17) interestingly argue that, "by defining mothering as constitutive of femaleness, individual men are relieved of the obligation to adjust their own advantageously constituted roles to suit it. By defining mothering as essentially biological, moral, and timeless, the patriarchal state is relieved of the necessity to make material, political and temporal arrangements to assist it". At the same time there are social and cultural variations which illustrate that motherhood and mothering is not universal and biologically determined as constructed by the state and others who are interested in controlling women. On the same note women have been also conceived of as victims, especially with regard to their relationships with men (hooks, 1981), and therefore their interaction with the maintenance system. This has been particularly in relation to abuse in its mirrored forms. Once again these notions refuse to acknowledge the strength and resources required by most women to get out of abusive situations and to raise their children in antagonistic life situations. At the centre of this chapter is the argument that women use different tactics at different points in their lives to get through challenging life circumstances.

The primary focus of the chapter is on the experiences of women, in particular their conception of their role as mothers in relation to the maintenance system and fathers. The key argument, as I indicated above, is that although these women face varied challenges in relation to their role as mothers, they enter into a number of transactions where they assert themselves as individuals with fears, autonomy,

power and connection to others. In these mirrored life challenges these women draw on their available strength and resources to live through their many roles.

The narratives shared in this chapter are shaped by the women's need to survive as individuals and as caregivers. They simultaneously challenge and accept the rigid concept that the maintenance system holds of them through resilience, by dropping their cases and by playing the system through learning the ropes and finding strategies to make it work for them. Therefore, their experiences are also shaped by constant although varied moves and strategies to make ends meet. These experiences are important in illuminating the relations women have with the maintenance system and the men with whom they have children. The previous chapter gave a detailed account of men's experiences of fatherhood and the maintenance system. The argument made in that chapter was that men's experiences of masculinity, fatherhood and citizenship are varied and that they are further complicated by the social nature of these identities and the relationships they enter into. Here, I turn to women's experiences of motherhood.

7.2 Dealing with Unplanned Teenage Pregnancy

The years between childhood and adulthood have been defined as the most challenging of a persons' life. They represent a time when one defines who one is or is going to be. This transition, however, is made without 'full information' or knowledge of what the future will offer. Women are perhaps particularly vulnerable in this regard since they face the threat of unplanned pregnancy and childbirth. Most of the women interviewed had their first children between the ages of seventeen and twenty-one. A number of socio-economic factors impacted on their lives and also influenced their decisions or lack thereof.

The time of pregnancy represented a sort of a crisis in the lives of these women. They were young and still in school. They mostly felt that their parents would be disappointed in them and would stop loving them. They also had frustrations which were linked to their boyfriends' reaction to the news. All these factors

represented challenges with regard to who these women became. A number of feelings were presented as central to that time in their lives; most of them said they felt anger, denial, guilt and fear of an uncertain future. These feelings were curtailed by support from their families and boyfriends. In situations where such support was not forthcoming, the women harboured negative feelings against those who withheld it.

Rosinah, a single mother of four, was born and raised in Soweto by her father after he divorced their mother. She had two sisters, one of whom died in 1999. Her sister's death seems to have had a negative impact on her and she was still dealing with it at the time of our interview. She relates most of her and her sister's life experiences to the lack of a stable family life, and mostly to the lack of commitment to their upbringing shown by her father. Rosinah's silence on her mother's role in their upbringing suggests that the instability she is referring to here includes her absence as well. She says that the situation at home drove her and her sisters to the streets to fend for themselves. Their father always pointed out to them that they should go out and get what they needed elsewhere since he was unable to provide. This meant finding a boyfriend who could provide for the material needs and emotional support not available at home. The following captures her experience:

> R: I was nineteen when I had my first-born, and when I had my second-born I was 21.
>
> G: Did you plan your pregnancies?
>
> R: I did not plan to have children. You know, if you do not have a good life at home – we did not have a good life when we were growing up. My father, eish! When we asked for something, he would say I do not have it, go and fend for yourselves, you're grown up, such things. So we ended up having children. See, we were raised by a man. Life was hard for us. So we thought by having boyfriends we would be okay. But we ended up having children at a young age (Interview, Rosinah, 13 August 2004).

Rosinah asserts that because they were raised by a man they ended up unhappy and without stability. This suggests that if they had been raised by a woman –

their mother, for instance – things would have turned out more positively. In her assumptions about what her mother's presence would have brought, Rosinah romanticises and idealises the image of mother. This romanticisation occurs without reference to why her mother remained absent when they clearly needed her.

Her situation, Rosinah said, was exacerbated by the fact that her father did not keep one partner. She said:

> We were raised by different stepmothers, and each one came with her own rules. Some did not want us and chased us away. So we ended up where one sibling was staying in the streets and the other one stays elsewhere. My other sister decided to stay in town when she was fourteen; imagine at fourteen and you stay in town. But I did stay at home. I said I will stay, this is my home. Until 1992 when one of the stepmothers poisoned my sister. That is when I decided to go and stay with my second boyfriend (Interview, Rosinah, 13 August 2004).

The question that kept on invading my thoughts at the time of the interviews was whether an abortion and the use of contraception was not an option for Rosinah and the other young women. The issue of abortion as a preventative method came up twice in the interviews. For Rosinah it was not an option. Her second boyfriend gave her money for an abortion when she was expecting her third child. She took the money, went back to her father's house and gave birth nine months later. This is what she said about not doing the abortion:

> Let me say that at that time I did not believe in abortions. I do not want to lie (Interview, Rosinah, 13 August 2004).

It has been shown that the call by the struggle movement for more soldiers and the value placed on children by African societies in South Africa has contributed to a negative view of abortion. These might have been some of the reasons behind Rosinah's lack of belief in abortions. This is particularly so since she could not articulate clear personal reasons why she did not believe in abortion, suggesting something deeply entrenched in her that she had not thought about.

For Nhlanhla, a mother of two, an abortion became an option when the father of her second child insisted that he did not want the child. She was also afraid at that point that her family would not approve. She went ahead and had the abortion, although later the father was not happy and wanted another child. Nhlanhla had the following to say about her experiences:

> N: In 1999 my parents knew that I was expecting a child because they did not want me to use contraceptives. And he [boyfriend] understood, and he gave me money to go and do a pregnancy test at Marie Stopes in Zone 6. After that I phoned him and told him the results; he understood about that. After two weeks, I think, he told me that he was not ready for a child.
>
> G: After two weeks?
>
> N: Yes? And I said; you are not ready? What do you mean? I don't understand? No, it's just that I have been through a lot of problems so I am not ready for a child. That is what he said. I did not know what to say. Because he used to follow me around, and even his friends did not believe it – because he used to say this woman does not want to give me a child; that is why she gets me irritated at times. So I did not understand what went wrong because after I came back from my sister's place in Welkom he took my contraceptive pills and threw them away, and I stopped using them. Then he said I would not tell you to do an abortion or anything like that – but actually he was just reluctant to tell me to do an abortion. He said I would not tell you to do an abortion but I am just not ready for a child. I realised that I did not have a choice. He gave me money to go and do the abortion. He took me there, he paid the money and I did the abortion, and he brought me back home (Interview, Nhlanhla, 18 September 2003).

For Nhlanhla then, the situation was troubling, and she did think about contraceptives and used them for a while before falling pregnant with her first child. However, her boyfriend intervened and demanded that she stop using them. It seems like Nhlanhla trusted too much and gave away much of her power: to control her fertility. This is what she later said about this situation:

> Later he wanted another child, this one [the child she is claiming maintenance for]. You see, we stayed together in 1999 just before Christmas Eve. I think it was on the twenty-second or twenty-third when we started staying together at his house in Protea Glen. I used to go visit and then he suggested that I come stay with him. What I

> can say is that he destroyed my life. I don't know how to say it. My parents were angry with me, especially my father; he was not talking to me, and he wanted nothing to do with me (Interview, Nhlanhla, 18 September 2003).

Nhlanhla moved in with this man, and it is clear that she hoped for a stable relationship, maybe even marriage. It could be assumed that this is why she allowed herself to fall pregnant again. The fact that he insisted on a second child only to dump mother and child and have them return home, to be further humiliated in front of her parents and siblings, does amount to a ruined life if you look at it from Nhlanhla's point of view. She knew clearly that her father wanted her married; moreover, he was not really happy with her moving in with this man.

When most of these women had their first child they were neither adults nor children; as a result the pregnancy played a major role in defining who they became. Adolescence is a life stage coupled with issues of self-acceptance, sexual identity and notions of independence. The latter played a major part in influencing the lives of the women I interviewed. This was especially true for Rosinah, who wanted independence from her unreliable father. The paradox here is that she could only get this independence by being dependant on another man – her boyfriend.

Research on teenage pregnancy focuses on the impact it has on many women's ability to further their education and to survive poverty. It is interesting that it was difficult for the women I interviewed to further their education after having had their first child. None of the women had an education beyond matric. Hoosain (2003) argues that pregnancy and subsequent parenting during adolescence will increase the vulnerabilities and inadequacy as adolescent mothers experience demands that may exceed their existing resources. She adds, however, that these demands may create new ways of contributing and understanding of the self and one's place in the world.

7.3 Why use the Maintenance Courts?

Maintenance is "a violation of our culture, it is causing divorce because women know that they will be maintained by men" (Armstrong, 1992:57)[32]. This view is mostly experienced by men who are unhappy with how maintenance is handled by the courts. This is especially because the courts will give mothers access to maintenance for the children they care for without giving them more responsibilities with regard to the fathers and the maintenance of their marriages and crumbled relationships. The alternative that is put forward is that women should continue to beg and perhaps continue to perform some of the relationship duties they were performing during their relationships if they want the fathers to support their children. This is true even when such relationships are non-existent. Armstrong (1992:58) captures it succinctly:

> Some men argued very strongly that the use of the maintenance system had affected the institution of marriage adversely in that women were no longer willing to persevere, because they can still obtain financial support after a divorce.

When mothers have tried everything reasonable to get the fathers to support their children, and the fathers seem reluctant or they outright refuse, the only option left is to use the courts. The following quote captures the kinds of responses that led most of the mothers to use the courts. Nosizwe, a mother of two who had been married to the father of her youngest daughter, had the following experience:

> Yes, I took the children and stayed with them. So I asked him to maintain the child so that I should not go to the maintenance court. That he must do everything for the child as he is supposed to. He refused; he said he'll never do that (Interview, Nosizwe, 7 July 2004).

Kedibone, a twenty-eight year old mother of one from Mapetla, was at the time of the interview claiming maintenance for children between thirteen and fourteen years of age. The maintenance case had been opened in 2000. She said the following:

[32] Spoken by one of the male interviewees of that project.

> I opened a maintenance case because he was not maintaining them at all from birth. I had been trying to talk to him but he has been refusing (Interview, Kedibone, 28 June 2004).

It seems that the continued insistence by the father that she could go to the court if she pleased pushed the mother to the use the maintenance courts to resolve the problem of a father who would not support their children willingly. Taking an unsupportive father to court does not seem to alter his behaviour. Most of the mothers had similar experiences with regard to this. For example, for Nosizwe, one of the reasons why she decided to divorce was because she went hungry even when her husband was working and earning a monthly salary. This is what she said on the matter:

> It's painful when you have children in the house and you go to sleep on an empty stomach. He was giving me problems and he was the only one who was working. He also had more debt than his salary (Interview, Nosizwe, 7 July 2004).

Furthermore, the reason to take him to court was due to the continued lack of support for his child after divorce. Subsequent to the use of the maintenance court the situation seemed to change for a while but soon it got back to the same unwillingness to pay. Nosizwe further experienced the following:

> He started bringing the money to me, we wrote everything down, he paid. And all the time he brought it I signed. Maybe he paid four or five times. After that I didn't see him, he was also not bringing money. So I had to go to him. I asked why is he not bringing money anymore. He'd tell me stories. I went back to court and told them that I do not want this person to bring money to me any more; he has to deposit it at court because he is giving me problems (Interview, Nosizwe, 7 July 2004).

Another reason why most mothers resort to using the maintenance system is the obvious need for money, as opposed to punishing the fathers. Most of the mothers who were not employed felt strongly about the issue and the need for the men to contribute to the financial support of their children. Unemployment was at the centre of some of these concerns. Nosizwe said:

> I am unemployed. That's why you see me trying to get maintenance money. I am not working but I try to do temp jobs where they are available. Right now I am getting the disability grant. I was in

> hospital from December 2002 until March last year. So they helped get a disability grant. So far it is helping me (Interview, Nosizwe, 7 July 2004).

Karabo, a mother of two who had been divorced for four years when I interviewed her and had been married for close to twenty years, saw the court as the only outlet for her problems mainly because when she left her husband she did not take anything and they had worked together to acquire everything. The other reason is that when she left him she only took one of their children and the other one stayed behind with his father. She says:

> I ended up using the maintenance court because the father of my children did not want to maintain the child I am staying with. We have two children; so one is staying with him and the other one is staying with me. We were working in a salon; we were together in business, so when I left I did not take anything. I left the money and everything, because I expected him to maintain the child because I left the money and everything (Interview, Karabo, 13 August 2004).

In this regard it seems that Karabo lost more than her ex-husband will ever lose from paying maintenance. She worked hard as a wife and as a business partner, but because of the illusions that many people have about the nature of marriage she did not take care to make sure she was protected later. She took it for granted that both she and her husband were working towards the same goal. Furthermore, she took it for granted that they would both do everything to take care of their children. This is especially so because the child that Karabo took with her is disabled. She also told me that she was only eighteen years old when she got married. She lamented that if only she knew 'stuff' about marriage and protective mechanisms she would have taken them, but she was young and never thought it would come to this. For her the love and relationship she had with her ex-husband was for life – there were no uncertainties about the future. Even when the marriage ended, the certainty concerning responsibility from the father drove the way in which she did things and what she omitted.

Rosinah, who had four children at the time of the interview, went to the court when she was having her third child. She felt that it was going to be strenuous on

her and her then boyfriend who was helping her with her two elder children from a previous relationship. She said:

> When I fell pregnant with his child, he told me that he won't manage when our child comes. He said I must rather open a maintenance case against the father of the other two children. I then opened the case in July 1996 (Interview, Rosinah, 13 August 2004).

Other than need, Maletsatsi, a thirty-three year old mother of four, pointed out that the reasons why she was claiming maintenance from one of the fathers was to make him "pay". She points out that he wasted her time and used her when no one else was interested in taking care of him. As a result she said "he must pay". Although this is what she expressed, it was evident from my observation of the children and where they lived that she really needed the assistance. She said:

> I won't leave him. We will fight in court until. I took care of him for seven months. When he was paid for those injustices his family was talking too much, saying I was eating his money. When he [defecated] on himself there was no one who cleaned him, I was the one doing it. I even told him that I am not going to open maintenance cases against the other fathers, but I am going to open a case against you because you used to [defecate] on yourself, and I used to take care of you with my own money. Your mother was there but she did not care about you. So I said you have to pay maintenance. You wasted my time (Interview, Maletsatsi, 2 July 2004).

It seems that it was pay-back time for this particular father. As much as claiming maintenance was an issue of the responsibility of both parents to their child, it seemed that here the issue was coupled with questions of unfulfilled promises. These usually led to anger and the need for revenge. It appears that Maletsatsi was using her child's right to maintenance and the father's responsibility to maintain her to her own advantage. She was asserting herself and making the father see her in a new light, as someone who could inflict frustration, humiliation and pain. Although the idea of maintenance as a weapon to fight injustices in relationships has been seen in a negative light, it is a reality for many women who find themselves in the same situation as Maletsatsi.

It is obvious from the interviews discussed in this section that the reasons the mothers resort to the use of the maintenance court is driven by varied motives. However, at the centre of most of these claims is purely a need to keep their children out of poverty. However, other situations lead women to use the services of the court with regard to getting back at the father. Although this is driven foremost by the need of the child, at times the need to have a particular man pay for omissions or for services rendered at some point during the relationship drives some of these claims.

7.4 The Not-so-pleasant Reality of Maintenance

The assumption at the heart of the maintenance system in general is that users understand the procedures, and that in situations where they do not maintenance officers will be able and willing to assist. However, as we have seen in previous chapters, the contrary is true. Most women survive the maintenance system through trial and error, but many of them do not survive the system long enough to see the rewards of their persistence. Researchers agree that maintenance officers and the procedures are at best unhelpful and a serious challenge to the effective implementation of the Maintenance Act (Bell, 2003; Mills, 2003; Moyo, 2003).

When you do not understand your rights and you do not know how the system works, you will struggle to get assistance. The only thing that seems to work for the women is persistence and the willingness to fight: that is the only way one's rights to proper service will be acknowledged. Nosizwe contends that when you do not know your rights you will never get service. She said:

> One of the officers said when will we sleep, I told him that would never happen, so just help me with what I want, I want to go. He did it, and it was already late. He did it. I had told myself that I would never leave until he did it. I told him that I will report you. There is corruption at maintenance. There is too much corruption. I don't want to lie to you. Its corrupt, corrupt! I don't know how to put it to you. I went there many times, there's corruption. They helped me because I stood up for myself (Interview, Nosizwe, 7 July 2004).

Unfortunately not all women who use the maintenance courts are like Nosizwe. Others completely lose interest in their cases for varied reasons – because the father is not paying maintenance, or because the system is corrupt, as Nosizwe points out, and it feels like a futile exercise to continue following up. For Karabo it was too burdensome to follow through with maintenance, both because the system was not working and because she just got too angry with the father. She said:

> He paid for two months and then he stopped paying. Then I went to the maintenance court, but he gave me problems and then I decided to leave it. Another thing is the court. Sometimes the files get lost, and you have to start from scratch, and if there are arrears and you have no court order you forfeit the arrears (Interview, Karabo, 13 August 2004).

Another reason why Karabo stopped pursuing maintenance was this:

> What made me stop pursuing maintenance is because I was getting a disability grant for my son. I was also avoiding stress, because the next thing he would stop paying; when you go to court he says the business is not doing well. And I know that the business is doing okay, I mean, he buys cars and all that. You see the procedure at court is stressful. So when I started receiving the disability grant I said that is it; I stopped going to the court (Interview, Karabo, 13 August 2004).

Despite these challenges with the maintenance system, Karabo still wanted custody of both her children. Her struggles did not allow her to realise that if she agreed to take both the children she would not be able to cope when their divorce was finalised. Her situation was aided by her elder son's refusal to stay with her. She then realised that in that way she would not be burdened with support of two children. She said:

> In fact I wanted to take both of them. But since he gave me problems with maintenance I realised that I would suffer more with both of them (Interview, Karabo, 13 August 2004).

If you are not resilient like Nosizwe, the maintenance court will not work for you. The experience of Phildha attests to this. She had not received a cent of maintenance, and her daughter was twelve years old at the time of our interview.

The father denied paternity and is still to be arrested for defaulting an order to do a paternity test. The following captures what Phildah experienced:

> I went to court. They gave me a date to come to court, with him, and on that day the magistrate was going to give us a date and time for the DNA test. You know, they have to book for you so that they can give you a date for the test. So I went to court, and he did not come. I said, let me be patient; maybe he will come. He never came. The file has been like that. They said they will phone me after they arrested him. Even today they haven't phoned me. There has not been any progress (Interview, Phildah, 5 August 2004).

Was there nothing that Phildah could have done to pursue her case, like Nosizwe? Perhaps not; it may not have helped. The discussion in this section shows that it is in the nature of the system to work for those who work the system. And those who do not know how will be left in the cold.

The police, like the maintenance officers, are not as helpful as they should be. This is why for Nosizwe the best thing to do was to be willing to go the extra mile. This, she said, was the only reason why she was helped eventually. She conceded that she would never give up. The following quote shows her experience with the police:

> The police are helpful, some of them at least. But it also depends on what kind of a policeman you get there. So far they've been helpful. But last week Friday when I went there and they gave us subpoenas to deliver ourselves, one Indian lady refused. She said for a long time she has been trying to get the police to accompany her, and they refused. But personally I did not go to the police; I went straight to his workplace (Interview, Nosizwe, 7 July 2004).

The challenge here is that in situations where the police are men and they have preconceived ideas about women and maintenance, it might be difficult to get them to assist in making the system work better. Nhlanhla, whose ex-boyfriend and father of her daughter is a police officer, is finding it difficult to access maintenance because the father knows how to work the system. He has never been to court in the year that the maintenance case has been running, and he has not been arrested once. Nhlanhla speaks of the corrupt nature of the system, saying:

> Malatji [the maintenance officer], he said I am going to put your file aside, not in the shelf, so that I can remember that I promised to

> help you. He said your boyfriend undermines us because he is a policeman. He said I am going to solve him. I said okay. But when I spoke to the Maintenance Forum they said he was making you a fool; the minute he put the file aside he knew what he wanted to do. It means he phoned him and gave him the file for money. It is true because the last time when I went to court he acted very funny. He told me he does not know where the file is. I saw right there that they made a deal; he gave him the file for money (Interview, Nhlanhla, 18 September 2003).

This shows that where men know how to work the system and have the power to evade it, the women involved are left in seriously challenging situations. However, the example of Nosizwe shows that persistence and un-willingness to surrender to labels and nasty treatment from some maintenance officers and the fathers allows her to use the system to get support for her child. Unfortunately not all women in her position will have the drive and stamina to pursue the system as she is doing.

Elizabeth is a thirty-three year old mother of one. Her story shows the continued struggle to which the maintenance system subjects women. For example, when a woman goes to complain that the father is not paying, they will ask her to find out where he is working and all the other information that is needed. This puts women in vulnerable positions and stigmatises their efforts to get the much-needed support for their children. The following quote shows what Elizabeth experienced and her feelings about it:

> I went to complain again. They opened a case and said I should come back after six weeks. They said that they will remind me when to come to court. In the meantime they said I should find out where he works. I said what if I try to find out and I do not get it, because a lot of people in our area know that I was once in a relationship with him and they also know that I had opened a maintenance case against him. What if when I try to find out where he works those people say, 'so you want to get him arrested again', and do not want to give me information. What will I do then? (Interview, Elizabeth, 5 August 2004).

Functions such as these, that women end up performing on behalf of the maintenance court, lead to feelings of disempowerment, sometimes to the point that the women end up not getting the maintenance. This is especially true in

situations where the relationships with the men are sour and violent. Finally these women end up exiting the maintenance system without getting the help they need.

One other challenge that women face is the use of the variation order. The order is used to either increase or reduce the maintenance amount. In most cases, this order is used to increase maintenance by claimants. It is seldom used by the respondents when socio-economic circumstances change their financial situation. It seems that most fathers feel that once maintenance is set it should remain at the initial amount and not change. This is shown by the challenges the mothers go through to get an increase. Even the fathers themselves felt that the variation order was linked to women's wanting to squeeze them of their hard earned money. The following account captures one mother's experience of trying to use the variation order.

Connie was a teacher by profession and her sister, who was shot dead by a colleague, was also a teacher with two children. Her sister was married but was living at her parents' home with the two children. When she died in 1999 that was still the case. The family did everything for the children after that, although the estate was given to the husband since they were still married when she died. The sister's parents, with Connie's help, opened a maintenance case against the father in 2000, as he was not volunteering any financial assistance to the family. The maintenance case was heard, and he agreed to pay a set amount for the upkeep of the children. For all that time he did not visit once or enquire about the health or general wellbeing of the children.

A year later the grandparents requested a variation of maintenance because they were not coping any more. This process lead to a situation where they lost the children to the father because he did not want to pay more maintenance. The process followed was not proper – no social workers intervened to assist the children with the transition. Furthermore, the elder child was not the father's, so he was left with the grandparents, and nothing was done to make sure that the separation from his siblings did not impact negatively on him. The court did not

order the father to make any financial provision for this boy from his mother's estate. The grandparents were not granted any rights whatsoever to the other children. This is a sign of the inefficient way the justice system is working, and the maintenance system in particular. The necessary links are missing, making the maintenance system fragmented.

The lack of consistency between the functions of the court and its relationship to the police, social workers and the health system among others has been voiced in a number of cases that deal directly with the maintenance system. Mpho, a mother of four who was claiming maintenance for two of her children, suspected strongly that the father had some relationship with the police. She said:

> When he does not deposit money, I usually go and tell them at the maintenance court. This is a third warrant and he has never been arrested. I think he has links with the police or something, I do not know. This is a third warrant and he has never been arrested (Interview, Mpho, 28 June 2004).

When this important link is not taken seriously, then how important is legislation like the Maintenance Act that argues for the protection of women and children? Experiences like Mpho's are disappointing to many women who might be led to exit the system since its effectiveness is brought in question. This might suggest that such legislation is not working at all.

Kedibone was disappointed by how the court dealt with her case. For her it felt like she did not even go there. Her problems are also linked to her lack of knowledge of the workings of the Maintenance Act. She, like many other court users, relied on the maintenance officer for guidance about what should be done and how. However, her experience was unsuccessful and negative, leaving her without options when the father defaulted.

During her first visit to the court the case was opened and she was given a date of appearance. She came back on that date, which was a month later, and the father was not there because the subpoena had not been sent. She then asked for the subpoena and she took it to the father in the company of the police. On the second

court date the father did not show up again. At this point nothing else was done except to remind him. On the third occasion he came and nothing much happened, according to Kedibone. The following extract captures her experience and frustration with the ineffectiveness of the court:

> K: The third time he came to court. Actually we met before and he told me that he thinks we should talk instead of going to court. I said there is nothing I can do because the matter is being dealt with by the court. He later said he has decided that he will send the money, he will do everything that the child needs. He will buy clothes, pay crèche and everything that the child needs. We agreed about that. I do not remember us signing for everything that we spoke about. That guy said our issue was clear; he never told us to sign, as to what I should do when the father does not do what he has promised. He never explained anything to us, like right now he is giving me problems and when I tell him he says, where did we sign?
>
> G: What kinds of problems?
>
> K: Okay, he sent money for crèche, he sent it for two months and then on the third month I asked him about food and clothes for the child. He told me about his problems, that he has problems and he will try to send it. I said okay. But he kept on sending money for crèche without the addition for food and clothes. Like right now he has sent it, but the problem is he had promised to care for all the needs of the child including crèche (Interview, Kedibone, 28 June 2004).

This inconsistency in how the implementation of the Act is being carried out leaves women like Kedibone with a dilemma. When you have taken action and you have used a system you do not fully comprehend, and it ends up like it did for Kedibone, what else can you do? Is there another avenue for women who experience this? Or should they just continue to raise their children without the much-needed contribution of the fathers? There should be and are other options, but these, too, like the maintenance courts, are tedious and might not be very helpful. The Commission on Gender Equality (CGE) and institutions such as the Maintenance Forum and Tshwaranang Legal Advocacy Centre all do work with women on maintenance cases and other gender advocacy matters. The challenge

really is that these organisations do not have the capacity to see through some of the cases that come before them, although it is not for want of trying.

At the time of the interview Kedibone's child had no relationship with the father or the family of the father. Furthermore, she had also not received any kind of support from him concerning the needs of the child other than crèche money, which amounts to at least R200 in the township.

For Queen, who is a mother of two and a member of the policing forum in Diepkloof, the maintenance system is frustrating in a number of ways, especially to those who do not know and understand how it works. She noted the following as frustration points in the maintenance system:

> When you go to the court they want you to give the name of the father, his work address, his work phone number. When you do not have these things you cannot be helped. You must go back to find this information. You must go and trace him, find out where he works. Sometimes this takes forever. You might end up raising the child by yourself. That is one frustrating point. Another thing is that sometimes when you have received a warrant of arrest, you then take it to a particular police station. When you get there and find a good police officer, someone who understand their job, they will arrest him. Otherwise you will find a situation where they will negotiate and your case will go nowhere. So really it is frustrating (Interview, Queen, 17 March 2004.

The negotiations referred to here might mean a lot of things. However, in situations where the police ignore a warrant of arrest the situation usually involves the paying of a bribe. The maintenance case, it seems, favours those who understand how it works and those who understand how to work it.

Mumsy, a thirty-four-year-old mother of three who was unemployed at the time of the interview, confirms the frustrations to which Queen refers. She says this with a smile on her face, I think a sign to let me know how absurd her experiences are or rather the reaction of the father of his children is to her demands for support. She said:

> When I went to the maintenance court to open the case he left the job when he received the letter. Yes, he left the job. He was

> working at the complex; he left and then he worked at Sauer Street, and he left as well. When he gets the letter he leaves the job. When I go to revive the case, he leaves the job. He ended being a taxi driver, and still he kept on changing taxis. He pays a little, maybe for one month and then he would leave the job (Interview, Mumsy, 13 July 2004).

The frustrations experienced in dealing with the maintenance system lead a lot of mothers to drop their pursuit of the fathers. For most of the mothers who exit the system, they end up sacrificing their own comforts to raise their children single-handedly. This is one of those sacrifices that come with motherhood. They argue that the pain of chasing after the reluctant father is not worth it, especially when the system is not helping.

7.5 Motherhood as Worthy Sacrifice and Struggle

It has been argued that motherhood epitomises the beginning of the patriarchal oppression that women endure. For others motherhood is a glorious thing to be proud of, yet it creates more unpaid and socially unvalued work for women. This, then, represents a conundrum where women are forced to continually negotiate their conception of motherhood in relation to the mirrored and complex experiences they face daily.

The constant struggles and sacrifices that most women have experienced and continue to go through proves motherhood to be a life-long process of struggle and continued sacrifice. Not many mothers end up enjoying their labour and that of the children they struggle so much to raise. Wendy Matima, a fifty-year-old mother of two, experienced the challenge of raising children single-handedly and with the assistance of the maintenance courts once in while:

> Really you experience difficulties. I do not want to lie. It is painful when a person can afford to dress smartly when you go to court, and he can afford to pay a lawyer. You think about yourself that you cannot enjoy anything; you take your children to school, and you do whatever your children need. You do not experience comfort; you do not even have money to entertain yourself. When other women in your club go out you cannot accompany them. You just tell

> yourself that with the cent I have, I should please my children and do something for them. That is all you live for. I lived for my children. It is now that I am starting to enjoy life, to choose what to wear, and have things done for me. It is now that I start seeing life (Interview, Matima, 6 July 2004).

At the time of the interview, Wendy's first-born had completed a university degree and her second-born was at university. The fact that her children were now empowered seemed to bring a lot of pride to her and the ability for her to open herself up to other life possibilities. Her sacrifices did not end with the responsibility of raising her children. She stated that the problems she had with her ex-husband robbed her of the ability to love and feel. She captured this experience as follows:

> He made me loveless, ever since. I do not want to lie. They always laugh when I say AIDS will destroy all of you but it won't get me. I am loveless, I do not have feelings (Interview, Matima, 6 July 2004).

One of the central questions I continually asked myself during the course of this research was why women are not giving the fathers their children so that they can come to understand how difficult it is to raise them without the necessary support. I thought women were not valuing themselves enough, and they were letting the men get away with little if any responsibility. However, most of the mothers I interviewed said they would not give their children away; they would rather continue struggling than give them to the already irresponsible fathers. Nhlanhla, however, did give the child to its father when she found a job and had no one to look after her. She also says that the father was constantly saying that he would only support the child if he has his child. She obliged because she had no other choice, and she also believed he would care for the child himself. The situation turned out to be different, she said:

> When I was working in Centurion there was no one to look after the child because my mother was working. So I asked him to look after the child as he said he would. The agreement was that he would take her to crèche in the morning and all those things. He never looked after the child; he just dumped the child at his aunt's place in Zone 2. I had a friend who was staying next door to the aunt and she phoned me and said I was making my child's life difficult. She then said she saw my child in church with the aunt and she was not

> properly dressed, and it was cold. She also said the aunt was mistreating the child and calling her names. I did not go to work that Monday, it was a holiday, and I went to fetch the child. The aunt said he just left the child there on Wednesday and I found the child filthy just like that. Now he [the father] keeps on telling me that he took the child but I went and fetched the child again. I said you were incapable of looking after the child, because you just dumped her with your aunt, and you did not tell me that and you did not even go back to see how the child was doing (Interview, Nhlanhla, 18 September 2003).

Nhlanhla learned her lesson the hard way. For Rosinah the idea of giving the child to the father was unthinkable. She would not do it in a million years, she said. The following quote captures the reasons why:

> He changes women, and I won't give him my children. Dineo, this women who he is with now, does not like my children. She wants to be alone with her children and those children are not Paul's. The other thing is, I was raised by stepmothers, so I won't let my children be raised by stepmothers. There are good stepmothers, but on a whole they are bad. I told my mother that if I die she must take my children. They must not go to their father; he is not prepared to live a disciplined life – he changes women too much (Interview, Rosinah, 13 August 2004).

Rosinah's experience as a child influenced her ideas about the kind of parents men are. She was raised by a father under unstable circumstances, and does not trust the parenting abilities of men in general. This is especially true if these men are not stable in the relationships they have with women. Again here we see her silences about how her own mother's absences during her childhood influence how she wants to mother. It also seems that she is not interested in having another woman raise her children. As much as the formation of subjectivities is relational, individual mothers need to be empowered and view their reproductive rights as their own responsibility. Furthermore, motherhood should be accompanied by the fulfilment of other roles.

7.6 When Relationships End, Financial Support Ceases

The contract entered into during relationships, whether explicitly outlined or implicitly negotiated, reveals the gendered division of labour of the two involved people. This division includes the exchange and control of different resources, including money, sexual rights and access, and the performance of household chores. When relationships break down and there are children involved, it becomes difficult to divorce the initial contract from the new situation. This is especially true in terms of money accruing to mothers for maintenance. This section of the chapter shows how the break in relationships impacts on the flow of resources and parental responsibilities to the children of these relationships.

In general it seemed that what was at the centre of the maintenance problems for most of the women who did not experience problems during their marriage or when the relationship was going well, was the end of the relationship. When such relationships end the men tend to retreat completely. It seems this ends not only the relationships with the mothers but also those with the children. Most importantly, it ends the responsibilities these fathers see themselves as having in relation to supporting their children financially and in other ways. Maybe this is a case of out of sight, out of mind.

The link between money from the man and the performance of 'wifely duties', such as doing the laundry among other things, by the mother is at the centre of this struggle. Maintenance money is seen as an entitlement that comes with responsibilities attached, so that when these responsibilities are not met the maintenance money is withdrawn.

Elizabeth said that if it was not alcohol it was another woman that was the reason she had to go to the court. It also seemed as if the only reason she was not getting maintenance was because she was not interested in the relationship anymore. The following captures her experience:

> On the times when he wanted me, he would make things difficult for me. He would disappear and not deposit the money (Interview, Elizabeth, 5 August 2004).

It seems that Elizabeth was expected to grant the father sexual favours in exchange for receiving maintenance money for their child. The father seems to forget his responsibility, as the control or gain from his money is the only thing central to him. Armstrong (1992) found the same situation to be true in Zimbabwe. Elizabeth later expressed the following:

> When he asked to stop the case at court, he expected us to get back together; that was the only way he was going to maintain the child (Interview, Elizabeth, 5 August 2004).

Here, maintenance was promised because, according to the man, the relationship was going to be mended. He assumed an exchange without finding out if the woman was still interested in reviving the relationship. As much as it is not favourable to view money as central in the way that intimate relationships are run, it would be an oversight to assume that money does not play a role in how these relationships are shaped and reshaped.[33]

For many of the women I interviewed, maintenance very often stopped when there was another woman in the lives of their ex-husbands or boyfriends. It seems that when there is competition for a man's income he falters on maintenance. The personal and emotional matrix is at play here – where the fathers have to weigh up their options and allow the weakest connection to falter. Unfortunately, it is usually the needs of the child which are not taken into account. In Karabo's case, for instance, the father started to give her problems with maintenance when he started living with a new girlfriend.

It seems that money plays an important role in how relationships progress. As much as the workings of the maintenance system ignore the role intimate relationships play in maintenance cases, it does impact upon the expectations and negotiations for maintenance between men and women. Nhlanhla said that the

[33] Zelizer (2005) makes the same observation in her study of intimate relationships and money.

withholding of maintenance for her child was linked to the punishment that her ex-boyfriend wanted to inflict on her for leaving him. She said:

> It's not that he is unable to support the child – He said I would never be unable to support my child. You piss me off with what you are doing. And what irritates me is that Jabu brags – always when I talk to him about the child he says, I'm doing you right, you are too stubborn. He said that I must know that he is able to support his other child, Tinyiko (the child from the first wife). He said, you know that I do not have problems supporting Tinyiko. I then told him that I did not understand why he has to punish the child because I did nothing to him. I had a right to leave him when he started to have other affairs. Leaving him was not a mistake; was I supposed to beg him when he was the one doing wrong things? (Interview, Nhlanhla, 16 October 2004).

The financial support that fathers provide is linked to much more than their responsibilities to their children. It is linked to what they are getting from the transaction as a whole. One of the central factors here is the love, support and labour of the concerned mother. When these end, financial support definitely ceases.

7.7 When the Children get Caught in the Conflict

Children are usually seen by the maintenance system as innocent and uninvolved in the direction taken by relationships between their parents. Furthermore, the degree to which they are affected and changed by the conflict between their parents is sometimes underestimated. The experiences of mothers here reveal that the role played by children in relationships between their parents is enormous.

For Nosizwe everything changed after the divorce. The father removed the child from his medical aid, saying she should take her to the clinic because it is free. Nosizwe also mentioned that the father of her second child was a womaniser who had other children that he did not take care of. According to Nosizwe, it seemed that the relationship with the mother impacted on how this man felt about the child he had with the particular woman. She said:

> He is the kind of person who loves your child if he stays with you; once you separate, that's it; he does not even want the child (Interview, Nosizwe, 7 July 2004).

Is it then proper to argue that when the mother has been separated from the father, or when there was never a marriage, the child belongs to the mother with regard to support and care? It seems that most of the mothers felt this is what the fathers communicated to them in their silence and reluctance to support and maintain relationships with the children. Karabo's experience with the treatment the father was giving to their youngest child who was disabled was hurtful and unnecessary. She said:

> The youngest one was the most problematic because he was closer to his father. He had meningitis when he was one year old, so it affected him and it was like stroke. So he is closer to his father, but since the divorce he used him to fight me. When the child wanted him he would turn him away. I think he was trying to hurt me, but it was the child who was getting hurt. So the child was the one who suffered a lot (Interview, Karabo, 13 August 2004).

What this quote shows is the selfishness involved during the conflicts which derive from the separation of people, especially where there are children involved. The children get caught up in the fights and they end up having to choose a side, or they end up feeling unloved by one of the parents. This situation is unnecessary and could be avoided to protect the children and their feelings for their parents.

One of the mothers shared that her elder daughter ended up taking responsibility for pursuing maintenance for her younger siblings because of the contempt she felt for her father and his inability to financially provide for her. She later changed her surname from that of her father to that of her mother as a symbol of her wish not be linked to him at all.

This move to de-link from one's father, even when his blood flows in your veins, and the intervention in the maintenance case when one's mother was able-bodied and could have continued the fight herself, clearly shows the amount of emotion and resources the child is willing to invest in the conflict between father and mother. Or is this conflict between the children and their fathers?

7.8 Dealing with Questioned Paternity

Paternity is very central to how maintenance cases are carried out. It is an issue that questions the integrity and morality of women, and an issue that traps many men in responsibilities that are not theirs, therefore raising questions of women as bad and untrustworthy. When men question their paternity women feel cheated, used and negatively labelled. It is an issue filled with emotions and it raises feelings of anger, fear and love. In a number of cases one's identity needs to be renegotiated.

For Phildah, a mother of one who fell pregnant at the age of twenty-one, questioning paternity challenged who she was and questioned her beliefs in relationships and men in particular. Pregnancy for her was not a time to rejoice and be happy. She was unable to embrace the femininity that is represented in pregnancy. She was young, still in school and pregnant by a man who outwardly refused the responsibility. This left her angry and scared – what would her parents say about her? How would she raise a child when she herself was still a child? This experience changed her completely, and it was just the beginning of a long struggle that lasted sixteen years, the age of her son at the time of our interview.

George, the father and her boyfriend for three years, refused paternity three months into the pregnancy and disappeared. Nine years later it had become difficult for Phildah's family to cope without assistance from the father. Her grandmother was the only one taking care of a family of nine from her old age pension; no one else in the house was employed. There was one option left, to open a maintenance case against George. In 1995 a case was heard; George continued to deny paternity. The following quote captures Phildah 's experience:

> In court he denied paternity. He said that the child was not his. 'I know who the father of the baby is', he said. So in court they said because he was denying paternity we had to do a blood test. We went to Hillbrow and did the test (Interview, Phildah, 5 August 2004).

This did not represent a solution for Phildah. It was two years later when she found out what the test results proved. The results did not make sense to her and there was no one to explain what they meant. This was because, as they came back to court a few months after the tests were done, the father asked her in front of the magistrate to stop the enquiries. He also promised that he would start paying maintenance to her. He only did that for two months and then started the disappearing acts once more. At this point Phildah had to go back to court to revive the case. The following quote captures her experience this time around:

> Because he is the one who paid for the blood test the results went to him. He was supposed to tell me the results but he did not. When we went to court again they said as the results were inconclusive, it is better to do a DNA test. He was so angry at that and even threatened to shoot me (Interview, Phildah, 5 August 2004).

All this took place in 2002, and at the time of the interview the DNA test had not been done. George disappeared and had not been brought to book by the system. Phildah also told me that he was a police officer and that his threats to shoot her were not a joke. She was in fear of her life, and every time they had to appear in court she had to be extra cautious. She said:

> He threatened to shoot me. Always after the court hearing I had to run away, and just disappear right there. He is a policeman, so he might take his gun and then just do what he wants with me outside the court. Can you imagine that I went alone to court every time (Interview, Phildah, 5 August 2004).

Phildah is bitter and wants nothing to do with George. This is exacerbated by the fact that he does not have a relationship with the child. He never did and he is not interested in it. Even his family did not follow up when they went to announce the pregnancy to them. She said that she does not speak to him and she won't change that.

Shirley's situation is different, although she also went through the same experiences as Phildah. She was in high school and was only nineteen when she fell pregnant. However, she feels that the father was justified when he denied paternity. They had broken up and she started seeing someone else, and two

months later she found out she was pregnant. They went to the family to announce the pregnancy and the father denied his involvement in front of everyone. Although this was embarrassing, not only to her but to her family as well, she understood why he was doing this. The following captures this experience:

> He said that my new boyfriend denied paternity and now I come to him (Interview, Shirley, 5 August 2004).

Later, when the child was born, the father's aunts and grandmother came to inspect the child, to prove paternity 'the traditional way'. This usually involves elder women from the men's family. They inspect the child for family birth marks or resemblance. This is what Shirley experienced:

> They came to look at the child. They looked at the hands and they said it was not their child (Interview, Shirley, 5 August 2004).

At this point Shirley's grandmother intervened. The following captures her intervention:

> My grandmother then said this thing would be sorted by whites (blood tests), because these people say its not their child (Interview, Shirley, 5 August 2004).

The father was still not going to maintain a child he thought was not his. They went to the maintenance court and that is where a blood test was suggested. Shirley's experience of the system and of paternity questions ends up better than Phildah's, but the father is not interested in having a relationship with the child. The following quote illustrates these experiences:

> The results came and they said he was the father. He is now paying maintenance. But this year he only saw her once when he was visiting someone in our street. I think he does not want to see the child (Interview, Shirley, 5 August 2004).

The narratives shared in this section show the frustration that women go through when they have children, especially out of wedlock. Furthermore, although proving paternity is an emotional expedition for both mothers and fathers, doing it through the maintenance system only emphasises the financial responsibilities of the fathers and not other relational factors. Although the financial support of children by their fathers is important and is much needed by the mothers to be

able to raise the children, part of its importance is to prove to the children who their fathers are so that they can have a relationship with them. This seems to be an interest for the mothers as well.

The nature of the maintenance system, like other state institutions, is very elusive. People do not really understand its workings. Most of what they know it to be is to a large extent influenced by public discourse. When I talked to Mpho about paternity, she noted that although the father was not denying paternity his reasons were not only because he was sure of the paternity but because he knew the penalty for questioning paternity at the courts. The following captures what she said:

> Oh! He never denied. I think they have it somewhere at court that if you deny paternity you will have to pay R2000 so he never denied. And indeed as they were growing up he used to say my children, my children. He knows that they are his children. He would say this is my first-born (Interview, Mpho, 28 June 2004).

Although the general actions of the father suggested that these were his children, something made it difficult for him to maintain them as he was supposed to. This further impacted on the kind of father he was. Questions of paternity impact on the nature of the relationship, and it seems it also impacts on the consistency of maintenance payments and defaulting.

7.9 What does Violence have to do with it?

Violence experienced by the women I interviewed was primarily in the home and by someone known to them. The narratives of the women primarily focused on physical abuse. However, most of them also pointed to emotional and verbal abuse. In addition, economic abuse seemed to be central to their narratives of access to maintenance. These narratives of abuse focused on their interaction with the fathers and the father's families. The women also emphasised their fear and concern for the impact such acts had on their children's emotional and psychological health.

One factor that struck me was the nature of the talk around the experiences of violence the women endured. When they shared this with me it was rather matter-of-factly stated without emphasising the incidents as important or as a crisis. It seemed they lived their everyday lives without making those incidents of violence central to their life experiences. This confirmed for me that how women experience violence and define abuse is influenced by the fact that they were not thinking about definitions and theories. Although they recounted their experience as if they were not important, they later pointed out that the violence was one of the reasons they left the men involved.

For Nosizwe, one of the reasons she left was the physical abuse that her ex-husband inflicted on one of her daughters. She pointed out that she would never sell her child's happiness for her own, therefore showing once again the sacrifices that she saw as part of motherhood. She said:

> There was once that thing. When Phindile and Sibongile were once young, they got into a fight and Sibongile beat Phindile. So Phindile's father kicked Sibongile. Phindile's father kicked Sibongile. So that is one of the things that made me leave him. I told him I will never beg marriage with my child (Interview, Nosizer, 7 July 2004).

Karabo had similar experiences of physical abuse. She said:

> He used to beat me. He was jealous, so to say. He would beat me and then the following day we'd wash and he'll buy me a present or take me to a very expensive restaurant and buy me food, and then ask for forgiveness. But he would repeat that thing. He would say people are bewitching us, and such things. Such excuses. So when I left, I actually escaped and then filed for divorce. I think abusive people are like that; he would not chase you away, and he will make you suffer. He would beat you. I think he was like that when he had a girlfriend. I would leave and then he'd bring that girlfriend into the house. When she leaves he would then come and get me, ask for forgiveness and take me to a restaurant, buy me an expensive bracelet or whatever. He would buy me expensive gifts. That is the kind of person he was (Interview, Karabo, 13 August 2004).

Even though such experiences of abuse are confusing, the reluctance of other people to see them for what they are make it difficult for one to have a different

perspective of them. Karabo's experiences of abuse were worsened by how people around her defined her experiences. She said:

> I think it was jealousy. I don't know what kind of jealousy, because people used to say it means he loves you. But I felt somehow – because if a person loves you he would not leave you in the house. If he leaves you and then comes back in the early hours of the morning, doesn't he think you might get attacked in the house (Interview, Karabo, 13 August 2004).

Rosinah had experienced violence when she was pregnant with her third child. She explained it as follows:

> He was beating me. He once chased me away in 1994 when I was pregnant. He said I must go back home. I came back home for the whole nine months (Interview, Rosinah, 13 August 2004).

The reasons for the violence and beatings varied, according to Rosinah. They were linked to a number of things which did not make sense. The following quote captures some of these reasons:

> Sometimes he would come and accuse me that those guys sleep with me, they are my boyfriends. So it was that kind of life. Sometimes when something gets lost it means I took it and sold it, or I stole money. Sometimes his mother would instigate him and say that I am not right for him. Sometimes she would come and say we should not sleep together, and claim that 'my child does not want you'. That is why I had this child, Tshepo. Tshepo is the only child I could say I had out of spite (Interview, Rosinah, 13 August 2004).

Although Rosinah eventually left because it was becoming too much for her, she had her fourth child because she was tired of the verbal abuse from the mother of her ex-boyfriend. She wanted to show her that they were actually sharing a bed and the only way to prove this to the mother was to fall pregnant. It seems like she was getting the abuse from all sides and she had to react destructively to show her power.

7.10 When Maintenance is Not Enough: Making Ends Meet

Although the maintenance system is relevant and needed by the thousands of mothers and children who seeks its intervention in South Africa and elsewhere, it falls short of fulfilling their needs in a number of ways. As a result it should never be seen as total intervention to raise children, especially looking at the fact that usually maintenance paid is in the region of R191 and R349 per month (see Table 5.1). Therefore, most of the mothers needed to look at other methods to raise the funds required to raise their children and survive.

For most of the mothers it is difficult raising children without assistance from the fathers. Therefore, there had to be income from somewhere to get along. Most pointed out that there were school fees or crèche fees to pay, food to buy, lunch money or a lunch box to prepare, there were clothes to buy – the women pointed out the need especially for winter clothes. There were also other things to take care of: the need for health care was especially a concern for the mothers with 'sickly' children.

In situations where the mothers were unemployed there was a need to get alternative income from somewhere. A few of the mother's were engaged in informal trade, selling beer, sweets or vegetables. This did not contribute much income but allowed them to buy the odd book or pay for school fees. The following captures the experience of one of the mothers:

> I am a hawker. I sell sheep-heads. You know how business is, the money is little. I used to sell at City Deep. I have to give the child lunch money, I pay transport, and I can't pay school fees (Interview, Elizabeth, 5 August 2004).

Elizabeth's experience shows the precarious nature of informal work. When you do not sell enough, you go hungry. In this case you do not pay your child's school fees. This then impacts not only on their now but on the future of the child. Mpho also sells sweets and cigarettes to augment the maintenance she receives. Her experiences are as follows:

> I sell popcorns, samba chips, cigarettes and juice. I sell at the school, actually. So when the schools are closed business is slow. I also have a stall at the gate and people buy as they wish. That is how my children get food. For the two little ones I claim the grant. The other one is eight years old and he goes to Eldorado Park. I pay transport for him with some of this money. My mother does help me and my brother helps as well (Interview, Mpho, 28 June 2004).

Although Mpho's mother is unemployed she helps when she has some money. The fact that they eat from the same pot also assists. Mpho's brother, who transports school and crèche children, assists with her children. However, Mpho felt that this assistance would be better if the father of his two elder children was paying maintenance as promised. The reason for her struggles is also the fact that her husband, the father of her two younger children, passed away in 2002. That is when, she said, all her problems started.

In situations where they are not involved in informal trade, other family members assist with the care of the children. Most of the mothers quoted the use of the old age pension for this purpose. You find a situation where a family of more than five depends on the old age pension of the grandmother in particular. Ellen, a mother of three who is unemployed, depends on her mother's pension because the grant is too little. They are a family of five. She said:

> We are depending on my mother's pension. Sometimes I get money if people ask me to do their laundry. The grant helps with lunch box and school fees. Sometimes it helps when they have school trips but it is too little (Interview, Ellen, 13 July 2004).

However, in other households the situation is not as typical. In Nosizwe's household it was everyone for themselves. They did not cook from the same pot or bring their resources together for the survival of the whole. The following represents her experience of people living together without sharing their livelihood:

> Each and every one is responsible for herself, and I am paying rent. I pay rent to my elder aunt, the house belongs to my grandmother. I am staying as a lodger at home (Interview, Nosizwe, 7 July 2004).

Nosizwe goes on to say the following about her family:

> There is no one who is working. I stay with my mom and three aunts. They are all staying there. My eldest aunt stays in the house; she is working for her child. Actually it is the kind of family which is not united. So I am supporting my mother and my children. I have a room in the yard and I support my mother and my children. My mother stays in my shack in the yard. My other aunt stays in one of the rooms as well. We have outside rooms at home. The other room is occupied by my other cousin and the other room is occupied by my cousin's children (Interview, Nosizwe, 7 July 2004).

Rosinah's experience is similar. She lives with her father who is eligible for the old age pension but claims to be too young. Rosinah actually believes he is claiming it but hiding it from them so that he avoids contributing to the upkeep of the household. His father could be helping but he refuses to do it. The following quote captures her experience:

> I am responsible for everything here at home. I pay electricity and everything else. My father gets rent money from the shacks, but he does not do anything (Interview, Rosinah, 13 August 2004).

The state child grant seemed to play an important role in the survival of these mothers and their children. Having access to the grant made a lot of difference in whether they were able to make it or not. This is especially true where claiming maintenance was filled with frustration and often lack of access. The child grant helped these mothers to sustain a livelihood for themselves and their children. For Mpho the grant was very important. She said:

> From the grant sometimes I use R100 to buy stock so that I make some profit and be able to buy some more things for them (Interview, Mpho, 28 June 2004).

Interestingly, for one of the mothers, playing fafee, a form of gambling, contributed to her income and therefore her ability to take care of her children:

> I play fa-fee. I also get the grant (Interview, Maletsatsi, 2 July 2004)

The state child support grant seems to play a very important role in the survival of these women and their children. However most of them pointed out that it was little and could go a bit longer if it was to be increased to another level.

Furthermore, this section questions the idea of households as units that bring together income and other material resources to survive. It shows that these relations are complex and varied.

7.11 Conclusion

This chapter has focused on the experiences of twenty women who use the maintenance system. Their narratives reveal their experiences with men, motherhood and its challenges and their ideas about the maintenance system and how it works. These further showed the processes and factors that shape their lives and the negotiations they enter into to survive and how they are defined, how they loved and the kinds of parents they became.

These women also show in their stories the continued link between money and intimate relationships. This is clearly seen when relationships end and maintenance money is withheld because it does not come with the expected obligations from the mothers.

Although all the women interviewed here experienced economic abuse, how they talked about it and their everyday struggle to get access to maintenance is different from the general perceptions about 'abused women'. They did not appear to be victims, but they behaved and talked of their experiences as individuals who were trying to use the system and do everything in their power to make a living for themselves and their children.

The next chapter will give a summary of the thesis and its main arguments. It will also provide concluding remarks.

Chapter Eight

CONCLUSION

8.1 Summary and Analysis

The South African socio-economic context after 1994 has been characterised by transformation and a move towards integration, especially with regard to welfare provision. The following features have been shown: firstly, that there has been a fundamental move from racially based welfare provision towards a racially inclusive welfare system; secondly, this was unfortunately followed by a reduction in the state maintenance grant. However, this occurred in an environment where the old-age pension has improved compared to provisions around the world, making welfare provision in South Africa extensive. Finally, there has been a growing emphasis on privatisation, accompanied by a move towards family provision, characterised by continued inequality in relation to gender and care-giving. This, the thesis argues is visible in the paternalistic nature of the maintenance system and its lack of intensive punitive measure against defaulting fathers.

Then again with regard to the maintenance system, a few structural factors have hindered the transformation and execution of the Maintenance Act of 1998. These include inadequate training for maintenance officers, lack of a substantial budget for implementation of the Act and shortage of personnel.

The primary aim of this thesis was to investigate how the maintenance system, as a specific structure of income and resource distribution within society and the household, impacts on gender relations and the general formation of masculinities and femininities. Significantly, unlike other studies of gender and maintenance

this thesis was concerned with how men as fathers, husbands, brothers and breadwinners are constructed. Parts of this thesis focused on their involvement in the control of money and resources in relation to women as mothers, sisters and wives. In addition, this thesis has discussed the portrayal of women as dependent and independent by themselves, the men they have children with and the maintenance system.

The literature review focused on debates on the nature of the state with particular emphasis on what the South African state is trying to do with the administration of maintenance. I started by showing that through the maintenance system and other related Acts the state has supported particular types of family which give emphasis to a male breadwinner and female caregiver. I argued throughout the thesis that conceptualising the family in this way assumes certain types of gender relations. These blanket assumptions create ideologies and structural constraints that make it difficult for women to develop their place in 'public', and for men to develop their place in the home or in relation to care-work. This is partly a result of the state's intervention in determining where and how families and individual men and women constitute themselves through legislation.

In showing the gendered nature of social relations, this thesis demonstrated the manner in which relations with, and meanings attached to, money impact on the nature and shape of these gender relations and vice versa. The intervention of the state through adjudicating private maintenance challenges widely held views of masculinity and money, and relationships between gender and money. The same is true with the administration of the State Maintenance Grant, which is mostly received by mothers. These challenge traditional notions of masculinity and the provider role by shifting the negotiation for men's money to the state, thus raising other social problems, for example 'emasculation' and increased acts of violence against women. The argument has been that the way the maintenance system or the state looks at maintenance money and the child grant is artificially removed from these broader social interactions and meanings attached to money in the everyday life of those who engage with the system.

In Chapters Four and Five, in which I discussed my findings, the South African welfare state was shown to be systematically, but not uniformly, engaged in relations of power between women and men. In these chapters, I showed that the maintenance system embodies a set of interests, emanating from the interests of men, women, the state and its officials. This meant that the process of claiming and awarding maintenance was also a practice of control and regulation. The process was seen to both emancipate and enslave women, whereas it shaped the position of men within a largely tradition mould.

This thesis also maintained that because the state emphasises private family support, women's poverty is being treated as a condition perpetuated and perpetrated only by defaulting fathers. This is played out in the public discourse about the responsibility of defaulting fathers. The victimhood of women in relation to fathers is then supported in public discourse, and the state gets away with not providing relevant social support. This is not to suggest that general welfare provision in South Africa is non-existent.

Then again, individual women and men were seen to shape their own destiny as shown in discussions in Chapters Six and Seven. One of the conclusions of this thesis is that these experiences are not necessarily always under conditions of their own choice. A range of different circumstances were seen to shape how these individual men and women interacted with each other and how then they interacted with the maintenance system.

The main argument put forward, then, is that the welfare state is gendered, as seen in its treatment of its users. Because of its gendered assumptions, and treatment of the women and men who use of the system, it fails to fulfil its regulator role. The state in its interventionist activities acts to protect, reinforce and reproduce the economic, political and social relations of capitalist society. Its major contradiction lies between its aims and the resources made available to achieve those aims.

On the other hand, the maintenance system makes assumptions about the role of women and their relationship to maintenance money. Consequently, it plays on ideas of female victimhood and motherhood as sacrifice. These are far from true definitions or accurate descriptions of the role mothers play and how they relate to the maintenance system and to the men from whom they claim maintenance. The thesis shows that their identities are far more complex and their relationship to men and the state is far removed from traditional notions of victimhood and simple notions of dependence.

Work is very central in definitions of masculinities in general and fatherhood in particular. This is so not only for the fathers but also for the maintenance system and how it defines men's place in their children's lives. These links between work and what it means to be a man/father is based on the historical development of masculinities and femininities. Yet they do not take into account the changes with regard to the restructuring of work post-1994 and the entry of women into wage work. South Africa, as many other developing countries, does not have full employment and the reality is that most men are out of permanent formal employment. This makes the link between masculinities and the ability to earn a wages ineffective in conceptions of fatherhood.

In addition, the fatherhood role is defined through assumed feminine needs and aspirations, thus undermining the contributions and expectations of fathers in the maintenance system and the justice system in general. This translates into challenges in everyday life with regard to the father's role and money. It was the task of this thesis to show that fatherhood is more complex than paying maintenance; it is and has been more than the biological contribution of a sperm. It should include other forms of fatherhood, especially social fatherhood, which includes taking care of children who do not necessarily need to be biologically related to the father. The state should also not focus single-mindedly on determining paternity for its own sake but on promoting social fatherhood or

active fatherhood by emphasising ways in which men can contribute to raising their children.

The maintenance system impacts strongly on the entry and exit of money from households, and this is seen in relation to assumptions about gender relations and interests concerning parenthood. As a result it is a site for the making and remaking of gender identities and relations. This is especially true with regard to fatherhood. Men here continue to be seen as breadwinners, deadbeat, uninterested and mostly as unable to be parents unless they contribute money or financial support.

Although these limiting conceptions still influence how fathers are viewed and experience the maintenance system, in their everyday interaction with this system they are working towards the deconstruction of these stereotypes and misconceptions. They have aspirations to be different kinds of fathers. This can be achieved only if the state acknowledges that not all men want to father in similar ways and give them the benefit of the doubt.

This thesis concludes that, social relational issues – that is, the intimate relationships between men and women; the social meanings they attach to money and the discursive nature of their identities – significantly deter the smooth implementation of the Maintenance Act of 1998. This is because the actions and attitudes of the maintenance system's users are not necessarily determined by the rules and procedures of the maintenance system. Rather, they make up their own minds as they try to make sense of their needs and find ways to fulfil them. These dynamics suggests that the maintenance system cannot continue to limit its function to the impersonal juridical transfer of money from one user to the other. Its function should take a more socially dynamic stance in dealing with these complex individual men and women.

The following section addresses ways in which the Department of Justice in general could improve the lives of children by instilling different ideas of who fathers and mothers are in their systems.

8.2 Policy Implications and Recommendations

Recently there has been growing interest by scholars and public intellectuals in the role of fatherhood. This means there is potential for the maintenance system in particular and the justice system in general to really work in the interest of the child. This they could do by emphasising fatherhood in an active everyday form and shifting it from the provider role.

The intervention of the state through maintenance could be much more nuanced and substantial. A few things might be considered to improve the lives of men and women in relation to their status as parents and their responsibilities. Firstly, I would like to recommend that the role of the father should be re-conceptualised in the maintenance system. He should not be seen solely as the provider, given the labour context and broader challenges emanating from our history of migrancy, especially among African families. I propose that:

- The Fathers of Children Born Out of Wedlock Act should be integrated into the maintenance system. This means that the maintenance system should be used as a way for interested fathers to have more access to their children and to contribute socially to their lives.
- A new system should be put in place, one which will acknowledge and assist fathers who voluntarily need the help of the maintenance courts to initiate paying maintenance.
- The maintenance inquiry and order should extend the responsibilities of the non-custodial parent to include spending time with the child and being involved in the performance of other child-rearing responsibilities.
- Further research should be undertaken, to determine how and which mechanism should be used to get more fathers involved.

The conception of women in the Department of Justice in general and in the maintenance system in particular is limited and limiting. The victimhood woven into the maintenance system is not doing justice to the role women play in the everyday survival of their children and themselves. To add to this, it should also be taken into consideration that this survival, to a large extent, has nothing to do with claiming or receiving maintenance or any other form of support from the fathers. Accessing maintenance should not be seen as a favour to the woman but as a necessity for the child. I recommend the following based on my research:

- Improvement of systems of claiming and receiving maintenance. This includes addressing the long queues and making the warrants of arrest more effective.
- The processes of chasing after defaulting fathers should be the responsibility of the maintenance investigators and should be more effective.
- Extensive education on maintenance processes should be provided for both women and men.
- Increased personnel are needed to deal with the increasing number of cases.
- Maintenance officers should be 'gender sensitised' through training and motivation with regard to the importance of the maintenance system.
- The concept of a family court should be closely looked into and implementation should be underway.
- Maintenance forms must be in all languages and easy to read. They should also include relevant information for the effective inception and conclusion of the case.
- Maintenance calculations should be standard. There is a need for extensive training on this.

The workings of intimate relationships play an important part in whether the maintenance process works or not. Overlooking these in maintenance cases is a great oversight. This contributes to the ineffective running of the maintenance courts and to continued defaulting and arguing between mothers and fathers. Therefore, I advocate that:

- The first in-camera session with the maintenance officer should be handled by professional mediators. This research has found that most maintenance cases did not need to be brought to the maintenance courts since they were not about maintenance, but about relationships between mothers and fathers.

With regard to the final recommendation above, having such a mediator might help keep families intact in a number of ways. This mediator might be in a position to establish a number of things about the relationship and its impact on the children's lives. This would help with further intervention where maintenance is really needed and the children's relationship with either parent might be at risk. This thesis holds that maintenance is not always about the need for money, but about the need to work on relationships which are failing or getting back at those who did not fulfil their relationship obligations. This position is taken with full acknowledge of the continued genuine need for financial support from men for their children. All theses factors should be taken into account in the running of the maintenance system. And maybe, just maybe, we might see better results.

The research undertaken in this thesis has aimed to contribute to better understanding the relationship between men, women and money. It showed the intricacy, and at times care that characterises such relationships. It was written with the hope that policy makers would take these complexities into account in addressing the social problems that the maintenance system was built to address.

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APPENDICES

Appendix A
CONSENT FORM

Dear Participant,

My Name is Grace Khunou. I am a PhD candidate at the University of the Witwatersrand currently doing research for this degree. My study aims to investigate contemporary South African Masculinity within the context of parental responsibilities with regards to maintenance payments and relations in households.

Your participation in this study is entirely voluntary and you may withdraw your participation, or refuse to answer questions that I may ask at any time. Findings of this research will be published in the form of a research report for submission for the degree. If you agree to participate, please sign this form.

I, _____do / do not consent to participate in the research study to be conducted by Grace Khunou.

Thank you for your time.

Grace Khunou
Wits Institute for Social and Economic Research
University of the Witwatersrand

Appendix B
LIST OF RESPONDENTS AND DATES OF INTERVIEWS

Name	Date	Position	Sex	Race
1. Manie	31 January 2003	IT Specialist and Statistician at the JMC	M	W
2. Ronny Mahlangu	24 March 2003	Former Maintenance Officer – Worked for NGO working on Maintenance	M	B
3. Kiba Pooe	20 May 2003	Works for Maintenance Forum – NGO working in the Maintenance Court	F	B
4. Sandra Burman	16 May 2003	Academic UCT	F	W
5. Zakhele	24 June 2003	Maintenance Officer	M	B
6. Suzan Mboneni	19 August 2003	Maintenance Officer	F	B
7. Daphney Moonsamy	28 July 2003	Works for the DoJ	F	B
8. Lulama	29 July 2003	Works for the DoJ – Gender Directorate	F	B
9. Irene	30 July 2003	Works for the DoJ – Gender Directorate	F	B
10. Nozuko	30 July 2003	POWA	F	B
11. Mmathari Mashao	31 July 2003	CGE	F	B
12. Mrs Sepuru	28 August 203	Court Manager	F	B
13. Paul Mthimunye	02 September 2003	Manager the DoJ	M	B
14. Kolia Kock	02 September 2003	Manager the DoJ	F	W
15. Buli and Thomas	09 September 2003	Fathers	M	B
16. Bongi Thulama	19 September 2003	Maintenance Clerk	F	B
17. Mr King	19 September 2003	Father	M	B
18. Carol	19 September 2003 – had informal discussions	Mother	F	B
19. Mildred	01 October 2003	DoJ – Family court	F	B
20. David Melk	08 October 2003	Maintenance Officer	M	B
21. Thami Mdeleka	13 October 2003	Maintenance Officer	M	B
22. Nonhlanhla Mtambo	16 October 2003	Mother	F	B
23. Sis Connie	16 October 2003	Mother	F	B
24. Samuel Mntambo	14 October 2004	Grandfather	M	B
25. Esther Mntambo	17 October 2003	Mother	F	B

26. Sipho Khumalo	09 March 2004	Father	M	B
27. Sis Queen	21 March 2004	Mother – Community Policing Forum (CPF)	F	B
28. Ausi Maki	21 March 2004	Mother	F	B
29. Mateka and Floyd	22 March 2004	Fathers	M	B
30. George	22 March 2004	Father	M	B
31. Gilbert	23 March 2004	Court Official	M	B
32. Ntate Lamola	23 March 2004	Father	M	B
33. Dyke	26 March 2004	Man	M	B
34. Lele Makgabutlane	26 March 2004	Father	M	B
35. Wessel	31 May 2004	Father	M	W
36. Peter	01 June 2004	Father	M	W
37. Schlomo	02 June 2004	Father	M	W
38. Mark	14 June 2004	Father	M	W
39. Ady	23 June 2004	Mother	F	W
40. Bernard	25 June 2004	Father	M	W
41. Mpho	28 June 2004	Mother	F	B
42. Bonny	28 June 2004	Father	M	B
43. Percy	28 June 2004	Father	M	B
44. Kedibone	28 June 2004	Mother	F	B
45. Welly	02 July 2004	Father	M	B
46. Maletsatsi	02 July 2004	Mother	F	B
47. Mark Mitchell	03 July 2004	Father	M	W
48. Masabata	04 July 2004	Mother	F	B
49. Ndilele	06 July 2004	Father	M	B
50. Kgothatso	06 July 2004	Mother	F	B
51. Wendy	06 July 2004	Mother	F	B
52. Percy Masima	06 July 2004	Father	M	B
53. Paul	07 July 2004	Father	M	W
54. Bongani	07 July 2004	Father	M	B
55. Nosiswe	07 July 2004	Mother	F	B
56. Mumsy	13 July 2004	Mother	F	B
57. Ausi Jackie	13 July 2004	Mother	F	B
58. Ellen Seboko	13 July 2004	Mother	F	B
59. Philda Kgatle	05 August 2004	Mother	F	B
60. Shirley	05 August 2004	Mother	F	B
61. Elizabeth	05 August 2004	Mother	F	B
62. Rosinah Mosoki	13 August 2004	Mother	F	B
63. Karabo	13 August 2004	Mother	F	B
64. Nhlanhla Mabaso	29 September 2004	Father	M	B

Preliminary or pilot interviews and informal discussions:

Gilbert (family life centre, worked with CHILDS, works in court) helped make contact with CHILDS. He shared informally what his work in the court involved, as well as the importance of culture when helping people of different groups. He shared some of his stories on this point.

Sello (father of two) does not pay maintenance but supports his children. He has issues with women and how nice they look when they go to collect maintenance. He also hates the comments they make about men in the queues.

Patrick Sekgoale (father): We had a few discussions. He wants to have custody of his daughter because paying maintenance has a negative impact on his marriage. He pulled out of several interview meetings.

Mpho Mohale (daughter) was claiming maintenance from her father because he refused to pay for her tuition. She is a student at Wits Technikon.

Jenny Bell (Justice and Women, Pietermaritzburg): We discussed how the system works and how it could be changed. She shared her experiences of working with women on an everyday basis and how cultural realities in KwaZulu-Natal might be different from Gauteng. In particular, she mentioned issues of how asking for money, especially through the use of the system, might lead to violence.

Appendix C
SUMMARY OF ACTS REFERRED TO IN THESIS

Act	Summary of Contents
Domestic Violence Act (Act 116 of 1998)	This Act replaces the Prevention of Family Violence Act, 1993. It comprises a substantial broadening of the limited scope of the 1993 Act and recognises that domestic violence is a serous social problem and an obstacle to gender equality. The Act offers protection to any victim of domestic violence who is in a domestic relationship with an abuser. A broad definition has been given to 'domestic violence', so that it includes any form of abuse and not only physical abuse. The Act places a duty on a member of the Police Service to inform a victim of his or her rights at the scene of the incident of domestic violence. Provision is also made for the national commissioner of the SAPS to issue national guidelines which must be observed when dealing with domestic violence, and failure to comply with these guidelines will result in disciplinary proceedings against the member concerned.
Natural Fathers of Children Born Out of Wedlock Act (Act 86 of 1997)	This Act gives the father of a child born out of wedlock the express and unambiguous right to approach a court for relief in regard to access to and to custody and guardianship of his child. The court will only grant such relief it is in the best interest of the child to do so.
Maintenance Act (Act 99 of 1998)	This Act repeals the Maintenance Act of 1963. It heralds the start of a reform process as far as maintenance is concerned. It brings about the following improvements: appointing maintenance investigators to assist maintenance officers; setting out core statutory guidelines relating to the duty of parents in respect of their children; enabling maintenance courts to make maintenance orders in the absence of the respondent in appropriate cases; extending the circumstances in which a maintenance court can order the payment of maintenance to be made on behalf of respondents.