

'What about us?'

Bhekinkosi Moyo



Women are disproportionately vulnerable to poverty and maintenance payments are often the only source of household income. (Photograph: Cedric Nunn)

Children go to bed on empty stomachs because maintenance defaulters shrug off their duty to support them. When women are frustrated in their attempt to access maintenance, their children are denied the only source of income that stands between them and starvation. Yet the courts continue to under-prioritise maintenance and the number of cases keeps increasing. The result is that children's rights are ignored and their voices silenced.

This is the story of the maintenance system in South Africa, 10 years into the democratic dispensation. And this story is not just about money, it is about attitudes.

Many men default on maintenance because they are fighting with their ex-wives or girlfriends. Patriarchal values have dictated the way these men view themselves and how they are viewed by society as breadwinners, guardians and protectors. They feel that by defaulting, they are proving their manhood to their ex-partners, to exact revenge and demonstrate power and control. They miss the point, however, because maintenance is not a battle between the sexes, but about the rights of children.

But has the maintenance system improved or hindered women's and children's access to justice? Although the new Maintenance Act (99 of 1998) puts children first, our research shows that their voices are silenced both by the system and by men and women in their squabbles.

In terms of the new legislation, parents are obliged to provide food, accommodation, clothing, medical and academic services, and other necessities of life to their dependents based on their social standing, lifestyle and financial resources.

The Maintenance Act is progressive in several respects. It makes provision for an order by default, which allows a magistrate to issue a maintenance order in the absence of the respondent if he has been notified and does not attend the hearing. This is a major innovation, as previously cases would be held up indefinitely due to the failure of respondents to appear in court.

The Act also provides for maintenance investigators to track down defaulters. A court can also order the employer of the defaulter to pay arrears and maintenance money from the employee's salary. Significantly, the deduction of maintenance payments takes priority over any other court order requiring payments to be made, and any failure by the employer to comply could result in criminal or civil prosecutions.

In reality, however, women still face many challenges in their attempts to access maintenance and justice.

The legislature's intention was to create a maintenance system that is user-friendly and provides a simple, one-stop maintenance service for women and children who cannot afford legal

representation.

Unfortunately this intention is not yet reality. The court system is saddled with many institutional problems including poor management and systems, staffing deficiencies and a lack of training on maintenance issues for court personnel. In many courts there are long queues and maintenance is not top priority. Generally, courts prefer to deal with defaulters through criminal proceedings in which defaulters are arrested and imprisoned. While this may look like justice, it doesn't put money into women's pockets. All too often women cannot access the civil procedures needed for dealing with the recovery of arrears and the payment of maintenance.

Researchers and contributors to the Tshwaranang Legal Advocacy Centre's latest publication: *What About the Children? The Silent Voices in Maintenance*, have attributed the increasing problems in accessing maintenance to a variety of causes, including structural and systemic factors.

Researcher Shereen Mills of the Centre for Applied Legal Studies concludes that the failure of the courts to provide redress for women is the result of the interplay of many factors. First, the family court pilot project and the new Maintenance Act did not adequately take into account the context of poor women's lives.

Second, the family court project and the Act were a result of political pressure and were rushed through without enough thought or sufficient budgets allocated for effective implementation.

Third, a lack of genuine political commitment on the part of some role players in the government compounded the problem.

Grace Khunou, a doctoral fellow at the Wits Institute for Social Research, found that in the post-1994 period, there have been massive retrenchments and those who are employed have low-paying jobs. She and anthropologist Margaret Mead argue that while fathers are a biological necessity they are a social mistake.

However, it is not all doom and gloom. The Act contains provisions that can effectively address maintenance issues if all those concerned play ball. Chief among these are employers, magistrates, prosecutors, maintenance officers, clerks, investigators, sheriffs, police officers, respondents and complainants.

More important is the role played by civil society organisations to educate women and help them with maintenance-related issues in courts.

Yet even if all these social structural problems are overcome, it is vital that we never lose sight of the realities of children's lives and that we ensure that children's voices can be heard.

Bhekinkosi Moyo is a researcher for Tshwaranang Legal Advocacy Centre and co-editor of What About the Children? The Silent Voices in Maintenance