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Women and Law in Malawi: the experiences of women seeking child maintenance at Lilongwe Child Justice Court

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A Mini-Thesis submitted in partial fulfillment of the requirements

of Masters Degree in the Department of Women's and Gender

Studies, University of the Western Cape

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March 2020

Declaration

I, Limbani Zakeyo Phiri**,** declare that "Women and Law in Malawi: The experiences of women seeking child maintenance at Lilongwe Child Justice Court" is my own work. The paper has not been submitted at any other University for a degree or an examination. All sources that were used or quoted have been indicated and duly acknowledged through complete references.

Limbani Zakeyo Phiri	**06/04/2020**	
Name	**Date**	**Signature**

Abstract

Malawi is endowed with a progressive, transformative and comprehensive legal and policy framework that guarantees the promotion and protection of human rights and justice for its citizenry, including women. The country is a party to multilateral human rights conventions, treaties, and protocols that strive to nurture and safeguard a culture that protects marginalised groups and has, thus, enacted relevant laws to domesticate the instruments. However, studies have shown that the legislative framework has not translated into practice that can create meaningful impact on the lives of ordinary citizens. My study explored the experiences of women that seek child maintenance through the Lilongwe Child Justice Court in Malawi. The study employed a qualitative feminist research method, in-depth interviews, to unearth the women's personal experiences about the delivery of services at the Court. The study analysed the court systems and procedures, and how they impact on the women clients who desire to access child maintenance through it. A purposive sampling technique was adopted to identify the eleven women, whose age range was between 17 and 40 years, to participate in the study. Narrative thematic analysis was used to analyse the data. The findings of the study reveal that there is selective justice at the Lilongwe Child Justice Court. The women, who are not well educated and poor, experience double victimisation. They are confronted with regular logistical costs, huge evidential demands, and biased and unresponsive system that awards unreasonable maintenance amounts that rarely factor in the prevailing costs of living.

Keywords: Women, Access, Law, Rights, Justice, Maintenance, Courts, Violence, Marginalised, Children, Intersectionality, Malawi.

Acknowledgments

My sincere appreciation goes to my supervisor, Prof. Lindsay Clowes, for the guidance, insights and additional reading materials throughout the journey of writing this thesis. I was privileged to have a supervisor who could also mentor me on many aspects of academic life and provide the motherly support whenever I plunged into those usual doldrums that characterise these journeys.

I am equally grateful to the "family members" of the Women and Gender Studies Department. Special mention goes to Prof. Desire Lewis, Dr. Mary Hames and Tigist Shawarega who went a long way to assist me with reading materials whilst I was still home and waiting for the outcome of my student's visa application. Likewise, I cherish the support I received from classmates, fellow tutors in the department, not forgetting Mawada Abrahams who made the journey exciting and subliminal.

Special thanks go to my super uncle, Yamungu Botha, for the evolving roles: dad; mum; grandpa; friend and confidant; you have played in my life since mum's early departure. You have always believed in me even when I have doubted my own abilities, and have supported all my choices, no matter how absurd they may appear.

To my best friends, Melisa Dlamini, Linice Sanga, Mwayi Lusaka, Denis Mitole, Gloria Dzidekha, and Dr. Genesis Chorwe, thank you for the debates and constant encouragements.

Finally to Fie and Ndagha-Kyala, once again thanks for coping with my two-year leave of study away home. Some bumpy rides are worth taking and this was one of them.

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Chapter One: Introduction

1.0 Background

Malawi's political will towards the realization of human rights and justice is unquestionable. The country is endowed with a comprehensive legal framework that guarantees the promotion and protection of human rights and justice to all its citizens. The framework which is modeled on key international and regional instruments has been touted as being progressive and transformative (Kaunda 2012; Nyirenda 2015). It promises utopia.

On the global scene, Malawi is a member of the United Nations (UN) and party to several human rights treaties, conventions and declarations. The country has ratified many instruments that address concerns of different groups requiring special protection. In 1993, Malawi ratified the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)* that specifically tackles the issue of violence against women and girls (VAWG). Furthermore, in 1991, the country ratified the *Convention on the Rights of the Child (CRC)* which spells out the political, civil, cultural, economic and social rights of a child. Essentially, the country is a party to the most critical human rights instruments at the UN level.

Malawi's commitment is further reflected by her ratification of human rights instruments at the African and the Southern Africa Development Community (SADC) levels. The country is a party to the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. Article 8 of this protocol guarantees African women of the right to access to justice and equal protection before the law. The country has also ratified the 2008 *SADC Declaration on Gender and Development* which, just like the *CEDAW*, explicitly tackles the issue of violence against women and children.

At country level, Malawi has cascaded the multi-lateral human rights conventions and treaties into relevant Acts of Parliament. The 1994 Constitution *of the Republic of Malawi* draws its inspiration from the critical international and regional human rights treaties (Kaunda 2012; Nyirenda 2015). Its Bill of Rights, in Chapter IV, clearly spells out various human rights and freedoms, and highlights rights for specific marginalised groups such as women and children (GoM 2012).

Besides the Constitution, Malawi has since the turn of the 21st Century, enacted subsidiary pieces of legislation that seeks to promote and safeguard justice for marginalised groups. In 2006, the country enacted the *Prevention of Domestic Violence Act (PDVA)* (GoM 2006). In the year 2010, the country also enacted the *Child Care, Protection and Justice Act* (GoM 2010) that aims at safeguarding all child rights. The Malawi Parliament equally passed the *Gender Equality Act* (2013) to bring parity and fair treatment between men and women in all spheres of life. Recently, in 2015, the country has enacted the *Marriage, Divorce, and Family Relations Act* (GoM 2015) that provides for issues related to marriage, divorce, and family relations between spouses and unmarried couples, their welfare and maintenance, and that of their children. As can be seen from this brief survey of legislation, the country's legal framework provides for a favorable environment for the provision of justice to and enjoyment of human rights by all.

1.1 Rationale

The legislative framework highlighted in the above section gives expression to Section 41 of the *Constitution of the Republic of Malawi* (GoM 2012) which states that "every person shall have the right of access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues; and that every person shall have the right to an effective remedy by court of law or tribunal for acts violating the rights and freedom granted to him or her by the Constitution or any other law". This right, which has been isolated and entrenched as non-derogable, provide the citizens with opportunities to approach and engage the courts when they feel legally aggrieved (Nyirenda 2015). It is one of the fundamental rights the Malawian citizenry is entitled to and it resonates with the position of the UN (UNDP 2004) that recognizes access to justice as a human right and has since put it into the Sustainable Development Goals (goal number 16).

In term of access to justice in Malawi, most studies, such as the Afro-Barometer (2017), indicate that it is mostly men that make use of the courts in Malawi, at 58%. Whilst acknowledging this finding, women also constitute a significant percentage, 42, of those that approach the courts to seek redress (Afro-Barometer 2017). And according to Lilongwe Child Justice Court (Jud 2018) annual returns, amongst other equally significant matters, many women approach the courts on the issue of child maintenance.

The *Constitution of the Republic of Malawi* (2012) and the *Child Care Protection and Justice Act* (2010) impose duties and responsibilities on the parents in regard to the welfare of the

child. The Constitution (Section 23, 1 & 4 respectively) stipulates that "the best interests and welfare of children shall be the primary consideration in all decisions affecting them "and that "children are entitled to reasonable maintenance from their parents, whether such parents are married, unmarried, or divorced..." The constitution further guarantees women the right to fair maintenance that takes into consideration all the circumstances such as the means of the liable person and the needs of the children (GoM 2012). In a similar vein, the *Child Care Protection and Justice Act* (2010) that consolidates all child-related legislation places an obligation to parents to provide "maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention (GoM 2010, Section 3). The Act (GoM 2010) upholds that maintenance should take into account the cost of living in the particular area where the child lives. Non-adherence to the above statute, mostly by men, propels many women into approaching various justice forums, including the courts, to seek redress.

However, despite child maintenance being one of the dominant issue that women seek justice on, state-sponsored studies, such as the Malawi Demographic and Household Survey (MDHS 2010; 2015), do not capture it as one of the critical issues that affect women and children. This gap is compounded by the absence of studies that specifically focus on women's experiences at the courts. Besides the writings of the Women and Law in Southern Africa (WILSA) – Malawi Chapter, there is no literature that highlights women's experience in their pursuit of justice through the courts. It is against this context that this research seeks to explore the experiences of women pursuing child maintenance, at the Lilongwe Child Justice Court.

My inspiration to explore women's court experiences came from a decade of professional experience as a gender equality advocate working with the Malawi Human Rights Resource Centre (MHRRC). The MHRRC implements programs on human rights, women's rights, good governance, and social justice. I have also worked with and served as the National Coordinator of Men for Gender Equality Now (MEGEN), a men's network that champions gender equality and health equity in Malawi. The grouping reaches out to fellow men, and the general populace, to encourage them to take a leading role in challenging violence and to report incidences of gender-based violence (GBV) occurring within their localities.

MHRRC and MEGEN both have complaint handling mechanisms that assist GBV survivors to access justice through institutions such as the police and courts. I have thus, for the past

decade, handled and facilitated referrals of several GBV cases. When necessary, I have accompanied survivors to case handling institutions to ensure their case is properly lodged. I have also attended court proceedings of those cases. So it is through such work that I interact with women seeking child maintenance.

Many times, the survivors become withdrawn after their interaction with the courts. The hope and expectations, they had of the system vanishes and most of them become withdrawn and prefer not to engage in any conversation soon after their court ordeals. As someone who is passionate about women's rights, I can understand their silence as I have, on numerous occasions that I have visited and interacted with the courts, gone home equally frustrated. However, I have so much wanted to hear the voices behind that silence. So when I had the chance to conduct research, my focus was on learning more about "the voices behind the silence".

1.2 Aims and objectives

The study aimed at exploring the experiences of women seeking child maintenance at Lilongwe Child Justice Court in Malawi.

1.3 Research questions

The overarching research question was:

What are the court experiences of women seeking child maintenance at the Lilongwe Child Justice Court, in Malawi?

In striving to respond to the main research, this study specifically explored the following key questions:

1. What are women's experiences of the court, its systems, and procedures in relation to their application?
2. What are women's experiences of officers of the court in relation to their application?
3. In what ways have these court processes impacted on women's ability to access child maintenance funds?

1.4 Significance of the study

It is envisaged that this study will contribute towards the discourse on access to justice for the marginalised groups in Malawi. It will help in reducing the existing research gap and thin

literature on women's experience in their pursuit of justice through the country's courts. Generally, there is limited literature on access to justice in Malawi (WILSA 2000; Banda *et al* 2002; Kanyongolo 2006; Kaunda 2012; Nyirenda 2015). With the exception of Women and Law in Southern Africa (WILSA) – Malawi Chapter, very few scholars have focused on the experiences of women. No single piece of writing has focused on the category of women that seek child maintenance through the courts. The most readily available documentation on child maintenance in Malawi is in the form of court judgments in various cases. The findings of the study are therefore timely as they will contribute to the literature on child maintenance and the ongoing discourse on access to justice by marginalised groups in the country.

In addition, the study has revealed the extent to which the recently enacted various gender-related laws such as *The Child Care, Protection and Justice Act* and *The Prevention of Domestic Violence Act* have been effective. It has shown both the strength and gaps in the application of the aforementioned pieces of legislation. It is envisaged that the gaps identified regarding the gender-related laws and the courts, will assist in the programming of women's and child rights-focused NGOs and networks, such as the MHRRC and MEGEN respectively, that usually refer GBV cases to the courts. The findings will facilitate the development of specific interventions that will be responsive and relevant to the experiences and needs of women court users, thereby contribute towards the realization of women's rights.

Furthermore, the study will enhance the operations of the judiciary, particularly the Child Justice Courts in the country through the unearthed new knowledge about the institution. Such knowledge will inform the short term and strategic planning and direction of the institution. It will come up with responsive practices that will transform the way the institution operates. This will, in the long run, improve service delivery within the judiciary and specifically the courts, thereby contributing to the realization of the right to access justice by the marginalised groups.

1.5 Outline of the thesis

Chapter one offers a glimpse of the legal context that illustrates the country's will in promoting and upholding the rights of the marginalised groups. The chapter also provides the motivation behind my exploration of this research topic. The chapter concludes by highlighting the objectives and aims of the study, research questions that the study strives to unpack, and the significance of the study.

Chapter two looks at relevant literature on women's access to justice and maintenance through the courts. First, it explores, broadly, what various authors through journal articles, commissioned research reports and scholars' findings, in the SADC region and specifically South Africa, have written on child maintenance. The chapter also explores general factors that affect marginalised people's access to justice in Malawi.

Chapter three discusses the feminist theoretical and methodological frameworks that underpinned this study as well as ethical issues considered by the research before outlining the choices made around data gathering and analysis methods. The chapter concludes by outlining the key challenges encountered during the study.

Chapters four and five present my analysis of the narratives of women. Whilst upholding located experiences, premised on Standpoint theory that underpinned the study, the analysis has also attempted to apply the intersectionality lens when looking at the women's narratives. Chapter four specifically focuses on the logistical and procedural aspects that the women have to navigate in interactions with courts, while chapter five looks at the court outcomes and the implications the maintenance pursuit has in the lives of the women.

Finally, the concluding chapter, chapter six, offers a summary of the study findings. The chapter also provides some suggestions and recommendations to stakeholders on access to justice, especially for marginalised groups. Furthermore, the chapter also highlights areas that need further exploration.

The following chapter looks at some literature on child maintenance from some Southern Africa states and the issue of access to justice in Malawi.

Chapter Two: Literature Review

2.0 Introduction

Whilst there exists a volume of literature that depicts the experiences of the poor, vulnerable and marginalised groups that pursue justice through the courts in Malawi, there are limited discussions that specifically focus on women court users. As indicated earlier on, it is only the works by the feminist body, Women and Law in Southern Africa (WILSA) – Malawi Chapter, that attempt in general to explore the concept of women's access to justice. There is no literature that specifically foregrounds the experiences of women that claim child maintenance through the courts. It is only the court's determinations on particular cases that provide a glimpse of child maintenance experiences. The issue of lack of child maintenance literature is, however, not surprising considering that the justice sector in Malawi has been touted as being "poor at producing and publishing important legal materials such as expert commentary on the law and other aspects of the sector" (Kanyongolo 2006).

In this regard, I first explored child maintenance literature from across the Southern Africa sub-region as the political and socio-economic factors are almost similar across the region. I looked at the journal articles, commissioned research reports, and scholars' study's findings mostly from the Republic of South Africa. I also looked at a few journal articles by researchers from Zimbabwe and Botswana. In addition, I reviewed general literature, scholarly and commissioned studies, on factors that affect poor people's access to justice through the formal courts in Malawi.

2.1 Literature from Southern Africa

Various studies, both scholarly and commissioned, that spoke to the question of child maintenance in Southern Africa were relevant to my research. Providing a foundation and a point of departure for my study, the key texts below were reviewed.

An important study, although a little out-dated, was that of Singh *et al* (2004) who explored the extent to which South Africa's "progressive" 1998 Maintenance Act and its associated policies translated into reality. The study, which was conducted at Johannesburg Family Courts, adopted a qualitative methodology, mainly face-to-face interviews, and targeted court's officers (three magistrates, three prosecutors, and three maintenance officers) as well as forty black women that were, at the time of exercise, at the court applying for maintenance. Among key things, the participants were asked to share their perceptions on:

the effectiveness of the 1998 Act; the extent to which it protected women; the factors that were frustrating its smooth implementation; and suggestions on how the challenges could be alleviated.

Singh *et al* (2004) found different perceptions between the court officers and the court users regarding the effectiveness of the Act. They found that whilst most court personnel perceived the Act as being adequate in the protection of women, a few officers and the women participants felt that the absence of maintenance officers created loopholes within the system that made the claimants vulnerable and their pursuit of maintenance laborious and frustrating. They (Singh *et al* 2004) revealed that lack of well-qualified court personnel compromised the outcome of most cases as claimants had little knowledge about the law and court procedures and relied on the court officers to navigate through the intricate court systems. Court officers, who were predominantly males, were found to be corrupt and contemptuous towards the claimants (Singh *et al* 2004). In essence, the study concluded that despite having good legal frameworks on maintenance, the good intentions and spirit behind such progressive legislation were being betrayed by a lethargic and inefficient administrative system.

Another useful text for the purposes of my study was the work by Mamashela (2006) who just like Singh *et al* (2004) argues that the Maintenance Act of 1998, despite having good provisions, was poorly introduced without putting into place the necessary support systems. The note highlights the findings of a qualitative study that Mamashela undertook, in 2001and its follow-up in 2005, at Pietermaritzburg Maintenance Court and had targeted court administrators, maintenance officers, magistrates, lawyers and staff of NGOs that assisted women on maintenances issues. Mamashela (2006) found that the Act was not being effective due to budgetary constraints, complications and prolongation of the procedures, and lack of well-trained maintenance officers who most claimants depended upon for advice and guidance.

In another scholarly study on child maintenance, Khunou (2006) found that the South African maintenance system contributes in shaping gender identities and relations in the country. The study, conducted in Johannesburg, adopted qualitative methods and targeted both women and men across the black and white racial divide. Twenty African women, seventeen African men, ten white men, and seventeen key informants were interviewed besides analysing two hundred and thirty-seven maintenance files at the court. Khunou (2006) problematised the maintenance system's lack of acknowledgment of meanings that are attached to money,

arguing that such disregard contributes to the challenges confronting the system. She (Khunou 2006) contends that money has power connotations that give whosoever possesses it authority and control over others. The remittance of the maintenance is therefore construed, by the men, as a transfer of power to the women hence their reluctance to honour maintenance obligation as it comprise the enjoyment of patriarchal rights that came with providing for one's family (Khunou 2006).

Khunou (2006) revealed, among other things, that most men had a negative perception towards the maintenance system. She found that most men viewed the system as being biased against them and were not pleased with the whole arrangement of having family issues sorted out through government agencies such as the police and courts (Khunou 2006). Furthermore, Khunou (2006) showed that most men, especially the white ones, were not necessarily against paying maintenance as long as they had a voice on how it was spent and had access to the children involved. This perspective is shared by Mamashela (2005) who also found that most men wanted to see that the maintenance was indeed spent on the children. However, against the general view that some women deliberately fall pregnant to access maintenance or that they pursue such cases to get even with the fathers, Khunou (2006) found that most claims were out of genuine concern for the welfare of the children involved.

In another scholarly study (Coutts (2014) on the implementation of the South African Maintenance Act of 1998, just like Singh *et al* (2004) and Mamashela's (2006) had observed earlier on, found that despite law having good intentions and some progressive provisions, such as the establishment of the offices of maintenance and investigation officers, and the binding of third parties (employers and pensioners) to claims, implementation of transformative Act was still confronted by a myriad of administrative challenges such as long waiting hours that women were subjected to before they finally appeared before magistrates, numerous adjournments that surrounded the maintenance cases, issues of corruption amongst the court's staff, and weak enforcement of court orders. Coutts (2014), among other things, recommended that the South African Justice Department should consider offering vacation employment to law students to beef up the human resource at the maintenance courts and that maintenance issues should first go through some mediation, facilitated by NGOs to avoid backlogs at the courts. Coutts (2014) contends that although the issue of maintenance is usually overlooked by society, it is an extreme form of abuse to both the women and children involved.

Coutts' study, which had maintenance claimants as the study participants, was conducted at 7 magistrate courts across the Eastern Cape Province in South Africa. A questionnaire that had both qualitative and quantitative elements was used to interviews three hundred and fifty participants, fifty at each targeted court, that were predominantly township's dwellers.

Bonthuys's (2008) article on child maintenance and poverty in South Africa highlights a unique dimension of the maintenance law in the Country. She observes the lack of harmonization of the country's maintenance laws with other pieces of family legislation that govern the distribution of property between ex-spouses (Bonthuys 2008). She posits that the 1998 Maintenance Act ignores the gendered impact that childcare has on the economic position of most black women whose education and income levels are usually low (Bonthuys 2008). In addition, she contends that the approach assumed by the maintenance courts' in determining maintenance costs, that of simply asking men how much they can afford, puts women at a disadvantage as it does not take into consideration the women's weak financial position that is created by the gender roles that are ascribed to them (Bonthuys 2008). She, furthermore, claims that the child-caring role ascribed to women directly impinges on their ability to earn their own money, thereby perpetuating their dependence on the man's income (Bonthuys 2008). She, therefore, recommends for the establishment of a specialized government agency that would make holistic calculations of maintenance (Bonthuys 2008).

De Jong's study (2009), commissioned by the South African Government, aimed at compiling a 10-year review of the 1998 Maintenance Act. The study covered all nine provinces in South Africa and adopted qualitative research methods. Its participants were mostly maintenance court officers such as regional heads of maintenance courts, the maintenance officers, and the accountants and clerks that facilitated access to the maintenance by the claimants. Each target group had its own set of questions. De Jong (2009) found that despite acute human and material resources gaps evident at most maintenance courts and the lack of co-operation from employers regarding emolument attachment orders, the available courts' officers were doing commendable work. De Jong (2009) also revealed that sensitization campaigns, such as Operation Isondlo, were effective means of popularizing maintenance procedures. The study, among other things, recommended a countrywide replication of the Electronic Funds Transfer system of maintenance, that it reduced both claimants' and fathers' logistical and time costs. So whilst acknowledging the administrative shortcomings and lethargic processes that had also been highlighted by some earlier studies (See Sing *et al* 2004; Mamashela 2006; Khunou

2006), De Jong (2009) found the Act had facilitated some progress in the accessibility of maintenance.

In Botswana, another country with the SADC region, a study on child maintenance, undertaken over 20 years ago by Garey and Townsend (1996), revealed that it was tricky for women to initiate maintenance claims through the courts as it jeopardised their chances of getting married. The study that had one hundred fifteen men and seventy-two women as participants, and employed both qualitative and quantitative methods, in-depth interviews and household surveys respectively, observed that the country's legislation on child maintenance was premised on the statutory and common laws that ignored customary laws that were deeply entrenched and revered amongst the Tswana (Garey & Townsend 1996). Garey and Townsend (2006) also found that in a context where, traditionally and culturally, a child belongs to its mother's family until payment of bride wealth and the marriage process stretches over a long period even when there are children between the parties, any initiation of maintenance claim is perceived as a transgression of cultural norms and attracts retaliation not just from the men involved but also the woman's own family that isolate her. They (Garey & Townsend 1996) highlighted that the provision in the maintenance law that require maintenance claims to be filed within a year of childbirth also put women in a dilemma as culture expects them to keep on waiting even beyond the stipulated one year period and cannot, therefore, initiate any court process as it poses the risk of ending a relationship that could culminate in marriage. So, despite knowledge of the existence of maintenance laws, most Tswana women prefer not to explore that avenue.

In contrast to Khunou's (2006) that found that most maintenance claims are made out of genuine need, a recent research by Mapuranga (2016) in Harare in Zimbabwe revealed that some women take advantage of gaps in the country's maintenance legislation to seek fortune or mete out vengeance on men. The study explored the experiences of men that paid maintenance through the Harare Civil Court. Whilst acknowledging the positive impact that the maintenance law has had in promoting social justice in the country, Mapuranga (2016) found that women go into the marriage of inconveniences with well to do men and later, upon being divorced, use the legislation to claim funds for self-sustenance. However, Mapuranga (2016) tacitly acknowledges that gender inequalities, which cascade from history, the gendered division of labour and patriarchy, privilege men and marginalises women and make them dependant on the former for economic survival.

Overall, with the exception of the Zimbabwe scenario (Mapuranga 2016) where a few women have worked the system to benefit themselves and their dependants, all the literature reviewed, from South Africa and Botswana, suggests that women are still confronted by a lot of hurdles in their pursuit of child maintenance despite the availability of promising and transformative laws. The maintenance system in South Africa has been shown to have a myriad of challenges, mostly administrative, that frustrate women's maintenance claims. Similarly, the maintenance system in Botswana, built around statutory law, has been shown to be in conflict with strong customary laws that are highly valued by both Tswana men and women, resulting in an ineffective maintenance process, one that marginalises women's claims and privileges men.

Whilst my study shares some similarities with the studies reviewed above, it has, at the same time, some differences. Despite a few studies (Garey & Townsend 1996; Coutts 2014) adopting both quantitative and qualitative approaches, the rest (Singh *et al* 2004; Mamashela 2006; Khunou 2006; Dejong 2009; Mapuranga 2016) like my study, employed qualitative methods and mostly used face to face interviews to explore participants' experiences. In addition, like those studies conducted by Grey and Townsend (1996), Singh *et al* (2004), Khunou (2006), and Coutts (2014) my study explored specifically women's experiences. Furthermore, with the exception of the study by Garey and Townsend (1996), all the studies focused on experiences in urban areas such as Johannesburg, Pietermaritzburg, and Harare.

My study adds to this body of work by foregrounding women's experiences, specifically women claiming child maintenance through the courts, and specifically women in Malawi. While there may be common experiences amongst different groups of women across the SADC region due to a range of political and socio-economic similarities, my research also reveals, as I discuss in chapters four and five, experiences that are unique to the Malawian context.

In the next section, I consider factors that affect poor and marginalised communities' access to and interaction with courts in Malawi.

2.2 Factors affecting access to Justice to in Malawi

Since Malawi's attainment of democracy in 1994, there has been considerable research exploring factors that affect poor and marginalised communities' access to justice in the country. Several researchers and scholars, such as the feminist body WILSA- Malawi (2000

& 2002), human rights advocates such as Banda *et al* (2002), Kanyongolo (2007), Kanyongolo and Gloppen (2006), Kaunda (2012), and Nyirenda (2015) have all contributed to the country's ongoing discourse on access to justice. Several factors have been found to impede the average Malawians engagement with the courts.

A study by Kaunda (2012), a human rights advocate and social justice researcher, on expanding justice for the poor in Malawi, found that physical accessibility of the courts is one of the notable challenges confronting most Malawians, as most functioning courts are found at urban centers far from the rural masses where the majority of the citizenry lives. The study (Kaunda 2012), which was undertaken through a desk review, aimed at exploring ways to improve the effectiveness of the local courts and the legal aid system. Kaunda (2012) revealed, among other things, that rural people travel long distances of over 40 to 50 kilometers or walk over 6-8 hours to access the nearest court, making access to justice difficult relative to urban dwellers, thus further reinforcing their marginalization.

Kaunda (2012) also showed that the challenge of courts' accessibility is worsened by the fact that the courts are hierarchically ranked and can only hear matters that are within their jurisdiction. Litigants are therefore forced to take their cases to the High Court located only in major cities, over 200km from most corners of the country, when the magistrate courts, that are found in most localities, does not have jurisdiction over their cases (Kaunda 2012). The finding reinforces revelations by earlier studies (see Banda *et al* 2002; Kanyongolo 2006; Kanyongolo & Gloppen 2007) that highlighted long distance as one of the huge barriers for the poor rural majority who attempt to seek redress through the courts as they are subjected to huge logistical costs. According to Kaunda (2012), rural and poor people are often reluctant to use the courts, despite their apparent need for them and the few that initiate the process stop patronizing the courts long before their cases are concluded.

An article by Nyirenda (2015), the current Chief Justice of Appeal of the Supreme Court of Malawi, focuses on the role of the judiciary in the protection of vulnerable groups in Malawi highlights the issue of complex court procedures. Nyirenda (2015) claims that most court users find difficulties navigating through court procedures even after physically accessing the court buildings. This perspective is supported by desk review studies by Kanyongolo (2006) and Kaunda (2012) that both revealed that court procedures are so intricate and complex that even seasoned litigators have had their cases, on some occasions, thrown out of the court for not being lodged appropriately. Similarly, another cross-country qualitative appraisal by

Banda *et al* (2002) on access to justice for the poor in the country that was commissioned by the Department of International Development (DFID) and targeted key informants such as magistrates also found that the court's environment in the country is too formal for unrepresented poor and illiterate that are called to participate in the intricate processes such as cross-examining. According to Kishindo (2001) and WILSA (2000), the courts' hostile atmosphere compromises the poor and marginalised parties' ability to effectively present their cases and it is common for such litigants to be held in contempt of the court for not adhering to procedures and protocols.

Studies, by the feminist body WILSA (2000) and human rights academicians, Kanyongolo and Gloppen (2007), suggest that lack of legal literacy amongst most Malawians compounds their challenges in accessing and utilizing the courts. WILSA (2000) and Kanyongolo and Gloppen (2007) show that due to high illiteracy rates, most Malawians are unaware of the extent of their rights and how such rights can be enforced. Gender was found as an important aspect of this, as women constitute the majority of the illiterate category in the country (WILSA 2000; Kanyongolo 2006). Consequently, women in many situations let those that have wronged them go free as they, themselves, have insufficient knowledge about who is really to blame, how the offenders can be held accountable, and the legal implications of such situations (WILSA 2000; Kanyongolo & Gloppen 2007). The issue of women's lack of legal literacy in Malawi is well documented and has even attracted the attention of the UN Committee on CEDAW that has urged the Government of Malawi to take special measures to enhance women's awareness of their rights, to facilitate their smooth access to the courts (Kanyongolo 2006).

The study by Banda *et al* (2002) also revealed that due to limited knowledge on laws and procedures, Malawi's poor litigants rely on court clerks for guidance whenever they interact with the courts. However, similar studies (see Kanyongolo 2006; Kaunda 2012) caution against being over-reliant on court clerks as some of them are under-qualified and have never had any formal training in clerical or legal work to properly assist litigants. The scholars fear that the clerks can easily mislead those that come to seek justice and this could easily lead to miscarriage of justice (Banda *et al* 2002; Kanyongolo 2006; Kaunda 2012). In sum, research shows that women's poor literacy level and lack of legal literacy compromise their smooth navigation of the courts' systems that are full of intricate procedures and protocols.

Kishindo (2001), a professor of language studies at the University of Malawi problematises the court's use of English as the medium of communication, claiming it compromises the outcomes of cases involving the unrepresented poor who have to grapple with the language. The court, just like in many other public establishments in Malawi, transacts its business in English. Kishindo (2001) however notes that this puts many court users at a disadvantage when they interact with the justice system since that language is not spoken by a majority of its citizens.

While various studies (WILSA 2000; Banda et al 2002; Kanyongolo & Gloppen 2007) have rightly observed that the *Republican Constitution of Malawi* (GoM 2012), under section 42:1, provides the litigants with the right to be heard in a language that they fully understand, and that the Judiciary does indeed provide interpreters when there is the need to, the standards of such interpretations have been found to be questionable. The quality has been observed to be generally poor as most courts interpreters have low education levels, not formally trained in such an enterprise, and that their level of proficiency in English is equally poor (Kishindo 2000; WILSA 2000; Banda *et al* 2002; Kanyongolo 2007). Some of the interpreters have been noted not to be fluent in some of the local languages which they translate the court's proceedings from and this, it is claimed, has the potential of contributing to the miscarriage of justice through misinterpretations and distortions of meanings (WILSA 2000; Kishindo 2001; and Banda *et al* 2002).

Kishindo (2001) concludes that the use of English as the medium of communication in the courts is detrimental to justice in modern-day Malawi. He (Kishindo 2001) contends that while the use of English and an interpreter might have been necessary during the colonial era when court presiding officers were all British and did not understand any of the local languages, the feature is no longer relevant in the current context where all the courts officers, the magistrates and clerks, are local Malawians who are fluent in Chichewa, the dominant lingua franca widely spoken by all social groupings across the county.

Writers such as Kanyongolo (2006), Kanyongolo and Gloppen (2007) Kaunda (2012) consider the lack of legal representation as another factor that affects those who try to access justice through the courts in Malawi. They note that the country's legal system leaves many citizens, who live on less than a dollar per day, without access to appropriate legal advice or representation due to prohibitive costs of private lawyers' services (Kaunda 2012;

Kanyongolo 2006). There is a gender dimension to this observation as women are the most disproportionately affected as their income is generally lower than those of men (WILSA 2000; Banda *et al* 2002). Consequently, it is mostly women than men who have to confront and withstand the court's hostile environment without adequate legal representation.

On the same note, WILSA (2000), Kanyongolo (2006) and Kaunda (2012) observe that the challenges of lack of representation is exacerbated by the limited and lethargic operations of the country's Legal Aid Bureau, which under section 42 of the *Republican Constitution of Malawi* is mandated to offer free legal services to the poor. They contend that the Bureau is underfunded, understaffed, full of high staff turnover and has a limited presence as its offices are only in the major cities of Lilongwe, Blantyre, and Mzuzu, without a single representation at either district or rural community levels (WILSA 2000; Kanyongolo 2006; Kaunda 2012). WILSA (2000) highlights that the Bureau has not profiled itself enough such that its existence is not known by the very Malawians it is supposed to serve. Its ineffectiveness and obscurity, therefore, leaves many poor Malawians with very limited alternatives of free legal advice and representation, further compromising access to justice and women's access to justice in particular.

Kaunda (2012) observes that the lack of a pro-bono culture amongst the Malawian lawyers does not help matters. He claims that most legal practitioners in the country are reluctant to offer pro-bono services as very few members of the profession undertake such services (Kaunda 2012). The pro-bono services could have aided and cushioned most marginalised and poor Malawians if lawyers were more willing to offer it.

Kanyongolo and Gloppen (2007) suggest that the issue of lack of legal representations could have somehow been mitigated if the country had a soft position on *locus standi.* They (Kanyongolo & Gloppen 2007) contend that the country's Supreme Court's position on the *locus standi* rule worsens poor and marginalised people's situation when it comes to legal representation. Whilst the *Republican Constitution of Malawi* (GoM 1994), under Section 15 provides for "any person or groups of persons with sufficient interest" in the promotion of rights to approach the court to safeguard those entitlements, Kanyongolo (2006) and Kanyongolo & Gloppen (2007) believe that the court's strict criteria for that provision, of allowing only direct victims of the action to be heard, works against all third parties, such as NGOs, that may have the interest to join and litigate cases on behalf of their poor, illiterate and marginalised clients. They conclude that the court's position disenfranchises many

vulnerable and marginalised people that have no means of engaging private attorneys and could be helped by NGOs and other interested individuals in researching and presenting their case (Kanyongolo & Gloppen 2007). A variety of factors, then, work together to compromise the poor and marginalised communities' access to justice in Malawi.

According to Kanyongolo (2006), women's access to the justice system is further compromised by victims and witnesses ' intimidation that results in the withdrawal of charges, especially those related to domestic violence. Banda *et al* (2002) share a similar viewpoint, that the law in Malawi does not provide maximum protection to witnesses of GBV cases, usually women, thereby making it common for survivors to go back to the courts and plead for their cases withdraw, arguing that they lodged them out of emotions. Worse still, a study commissioned by the Malawi Government (GoM 2014) found that some survivors approach the court to reverse the conviction of abusive spouses on the ground that there is no one to financially support them. Some women, (see WILSA 2000; Banda et al 2002) therefore opt to suffer in silence rather than report their violent ordeals to relevant authorities whilst some that report end up requesting the authorities to withdraw the case, further undermining the possibilities for women to have appropriate access to justice.

Kanyongolo (2006) and Phiri (2006) argue that women's access to justice is further compromised by lenient sentences imposed on VAW offenders that at times fail to take full account of the gravity of the offense that committed. Similarly, Nyirenda (2015) points out that some court determinations indeed ignore the circumstances and plight of vulnerable groups, particularly women and girls. These perspectives resonate with the findings of an evaluation of the Malawi's 2008 - 2012 strategy to combat GBV by Sibale and Pasani (2014) that revealed that some court officers are insensitive to women's issues and do not give VAW cases the attention they deserve and instead trivialize them, thereby leaving the survivors who approach their institution for guidance and help further traumatised. According to Banda *et al* (2002), such tendencies reinforce gender stereotypes and consolidate patriarchal tendencies. Consequently, some women opt not to report VAW cases at all because of the second violation of their rights that they are subjected to.

Kanyongolo (2006) contends that due to huge gender imbalance in the composition of judicial staff, with men being disproportionately represented at all levels, the Malawian courts do not have adequate qualified female staff that could properly assist women who come seeking justice in its corridors. As of 2018 there was just one female, out of the nine

justices of the Supreme Court of Appeal, while there are only eight out of fifteen Justices of the High Court[1]. This disparity is even more pronounced when it comes to the lower courts that usually handle the bulk log of cases involving vulnerable and marginalised groups as women constitute just 10 percent of the workforce in the magistrate courts. An earlier study by WILSA (2000) found that some of the courts, especially those at the district level, do not have a single female judicial officer. The absence of female judicial officers at the courts leaves female clients with no other option than to lodge their complaint with the available male officers, who, as discussed above (see Banda *et al* 2002; Kanyongolo 2006; Sibale & Pasani 2014) can at times be nonresponsive to the situation and the needs of women.

Banda *et al* (2002) also noted that even after the conclusion of a case, there are still some challenges faced by plaintiffs, such as the courts' failure to enforce judgments, which the poor and marginalised court clients have to grapple with in order to see justice. They (Banda *et al* 2002) observed that most parties do not comply with the orders and that judgments are rarely enforced. The scholars (Banda *et al* 2002) are also not comfortable with the courts' arrangement that accords s the chance to indicate how they would honor the judgments, even when their terms would be unacceptable to the complainants, as it puts vulnerable and poor people who might be reliant on the courts determination at a disadvantage.

In addition, Banda *et al* (2002) are critical of the "conduct money" that courts request from litigants to meet logistical expenses of courts marshals when they travel to deliver summons or enforce the judgments. In an ideal situation, the court is supposed to meet such costs. But due to underfunding and high costs in enforcing judgments of the civil cases, the judiciary introduced the "conduct money" as a cushion against their own institutional budgets (Banda *et al* 2002). It has however been found that such funds balloon the litigation costs of complainants especially when perpetual defaulters are involved and that court marshals also abuse this provision by making unnecessary huge demands from the litigants (Banda *et al* 2002). Consequently, it is usually poor people, generally women, who are unable to provide "conduct money' and are thus more likely not to have their judgments enforced. So while women may receive a fair judgment, they are still amongst those most likely not to see justice at all.

In conclusion, this chapter has reviewed two main bodies of work. The first section focuses on women's experiences on maintenance pursuit in countries across the Southern Africa sub-

[1] Correspondence with the Chief Resident Magistrate, Lilongwe.

region. Researchers in Zimbabwe, Botswana, and South Africa have shown that despite the availability of progressive and transformation child maintenance legislation, the pursuit and access to maintenance is still compromised by a variety factors such as inadequate human and material resources at the courts; claimants subjection to long waiting hours before they are called to appear before magistrates; numerous case adjournments; issues of corruption amongst the court's staff; weak enforcement of court orders and conflict between the customary and statutory law.

In the second part, I have considered a fairly substantial body of research that explored aspects of accessing the court system in Malawi. As discussed above, this research provides insights into setbacks that many Malawians encounter when they opt to seek legal redress through the courts. The studies show that the poor and marginalised citizenry, and women who tend to dominate the ranks of that category, meet great challenges that range from the physical inaccessibility of the courts, complex court procedures, and use of English as the medium of communication, lack of legal representation, to ineffective remedies and lack of enforcement of court determinations. From the perspective of my study, a weakness of this body of work is that the research, reviewed in the first section, does not consider the experiences at Malawian courts, while that in the second section is too general and does not specifically explore women's experiences of using the courts to access maintenance payments for their children. It is this gap I hope to address with my study, through an in-depth exploration of a small number of women's experiences at the Lilongwe court as discussed in chapter four.

The following chapter is a discussion of the methodological and theoretical frameworks that underpinned this study.

Chapter Three: Research Design and Methodology

3.0 Introduction

This chapter explains and justifies the theoretical and methodological frameworks that the study adopted. The experiences of women that seek child maintenance at the Lilongwe Child Justice Court have been explored through the use of feminist data collection and analysis approaches. The first section of the chapter unpacks the theoretical frameworks and the second section explores the methodological aspects.

3.1 Theoretical Framework

3.1.1 Standpoint Theory

I have used feminist Standpoint epistemology to underpin this study. The theory is widely known for its emphasis that knowledge is situated, perspectival and that there are multiple locations from which knowledge is produced, and that lived experience orients one towards a particular perspective of things (Lorde 1984; hooks 1994; Hekman 1997). It acknowledges that material situations are quite different from one person to another thereby making their subjective perceptions of reality accurate and authentic (Hartsock 1993). Standpoint theory emerged from feminist scholars' disillusionment with androcentric theories that failed to take into account the experiences of women. The theory, therefore, emerged from the necessity for new frameworks, "alternative ways of thinking", that could cover the experiences of marginalised groups such as women (Brooks 2007). It places women at the core of knowledge production.

I adopted the standpoint theory because of its attempt to let people understand the world through the lens and experience of the marginalised. The theory holds that marginalised groups, such as poor women or black women, have developed skills and knowledge that are valuable and that can be used for the greater good of the community (Brooks 2007). It contends that due to their low ranking in social stratification, the marginalised are better placed to accurately present social reality as they have any ulterior motive to deliberately conceal the reality (Brooks 2007). The theory further upholds that women also have a double consciousness that comes from their attempt to grapple with two worlds concurrently: their own, in which they are expected to adhere to the social norms that society dictates upon them; and that of the dominant perspectives to which they are expected to be ever attuned and

attentive (hooks 2004; Brooks 2007). Society can, therefore, utilize their authentic knowledge as the basis for activism to bring social transformation.

However, there are some challenges for the standpoint theory that arise from the complexities of different positionalities that are occupied by different women. The differences in positionalities that are structured around race, class, sexuality, religion and other axes of power have been observed to culminate in the prioritization of some markers over others (Lorde 1984). It is argued that since women's experiences are different, so too are their priorities (hooks 1994). Other feminist scholars have also interrogated whether some standpoints are more truthful than others (Harding 1993). Consequently, such an individual-centred approach has been deemed to deny the feminist movement a unified voice on crucial matters (Ramazanoglu & Holland 2002). However, another school of feminist thought holds that despite the focus on the individual's positionalities, women can still work together through open dialogues that can culminate into alliances and unified voices on common issues (Hill-Collins 1990). It believes that women can develop a culture of "respectful listening and dialogue interchange that can increase the understanding between them, even though they might be from different backgrounds, cultures and life experiences" (Brooks 2007). So despite these highlighted shortcomings, I still found this approach ideal for this study due to its attention to and emphasis on an individual's experiences. The theory also augurs well with the Intersectional approach that I explore in the next section.

3.1.2 Intersectionality.

As indicated in the above section, Intersectionality complements standpoint theory to create a theoretical space that acknowledges various ways through which oppressive factors interact to shape the multiple dimensions of women's experiences (Crenshaw 1991). The approach looks at "the interlocking relations of the dominance of multiple social, political, cultural and economic dynamics of power that are determined simultaneously by the identity categories of race, gender, class, sexuality, disability, age, and others" (Gouws 2017:19). The approach is premised on the understanding that multiple oppressive factors simultaneously converge, accumulate and converse with each other on already disadvantaged groups (Hankivsky *et al* 2010).

I adopted the approach because of its attempt to resist the hegemonic tendency of essentialising womanhood into a single category that ignores other critical social determinants

such as religion, sexual orientation, age, immigration status, language, and disability status (Yuval Davis 2006; Hankivsky *et al* 2010). Even though all my study participants were all women and generally poor, there were still some stark differences amongst them structured around aspects such as geographical locations, ethnicity, age, unemployment status, marital status, and academic qualifications. I had to pay attention to how such markers affected their interaction with the court to access child maintenance. As advocated by the approach (Hankivsky *et al* 2010), I had to give attention to all identities, both the obvious as well as the subtle ones, without giving prominence or priority to any.

As suggested by Hankivsky *et al* (2010), I also used the approach's lens to analyse the context surrounding child maintenance in Malawi and see how the women's different social identities contribute to multiple forms of discrimination, oppression, and exploitations I probed at their obvious identities to unearth other underneath markers that mediate their access to maintenance (Yuval-Davis 2006). I recognized that my participant's locations were not just based on two prominent markers, that of being women and maintenance claimants, but also other multidimensional and multilayered identities that overlapped (Crenshaw 1991). I critically looked at the linkages across all their identities.

Furthermore, the intersectional approach unearths how those with non-marginalised status, enjoy the benefits created by the multiple forms of discrimination. This according to Hill-Collins (2004) trickles down from an unequal power relations in social institutions and organization structures that deliberately places women and other marginalised in a disadvantageous situation. As I will demonstrate, later on in this paper, men can capitalize on gaps in the implementation of laws to outwit women and the court systems in delaying or avoiding honoring maintenance payments. The findings will demonstrate that even male officers of the courts take advantage of the women's desperate situations to make unnecessary financial demands on the women.

The approach's orientation towards social transformation resonated well with this study that is premised on feminist principles. An intersectional approach promotes social justice by constantly interrogating how power relations and structural inequalities are produced, reproduced and perpetuated (Hankivsky *et al* 2010). It can thus be used to pursue multifaceted forms of justice as it is not solely about exploring human experiences but also an agency of recognizing and interrogating how power is used by those that wield it over others (Gouws 2013; May 2015). I deemed its ability to identify underlying issues that need to be addressed

as ideal for the study. I felt its multi-dimensional approach to exploring issues (Hankivsky *et al* 2010) as related to women's experiences at the court would offer a comprehensive and holistic view of women's situation that various stakeholders, such as policymakers and women rights activist, can utilize in their programming to bring about social transformation.

The following section looks at the methodology framework, the steps, which I used to undertake the study.

3.2 Methodological Framework

In this study, I employed a qualitative feminist research methodology. I considered the framework suitable as it resonated well with the study's aim, that of exploring in-depth the experiences of women that seek child maintenance through the courts (Hesse-Biber & Leavy 2006). I wanted to have a thorough understanding of how these women negotiate the material realities of their daily lives through interviews and field notes (Hesse-Biber & Leavy 2006). I aimed at getting detailed insights into their experiences on claiming child maintenance through the courts. The rich description and perspectives of their court experiences also accorded me, as the researcher, an opportunity to learn and develop (Creswell 1994).

The approach offered me room to directly engage the research participants when gathering data on their court experiences. I used open-ended questions and employed tools such as in-depth interviews, recordings and field notes (Tuli 2011; Pretorius *et al* 2016; Dongre & Sankaran 2015). The direct interaction also allowed me to probe further when necessary as my study required getting detailed and rich narrations from the women court users without limiting them to a few already listed options as the quantitative methodology does (Hesse-Biber & Levy 2006). Through our direct interaction, I was also able to read the markers, and participants' gestures, facial expressions, sighs, signs, clenching of the fist, the silence that I could probe further and empathize with when necessary (Hesse-Biber & Levy 2006). My acknowledgment of such gestures and signs encouraged them to speak more. While some scholars (see Sale 2001 and Newman 2014) have highlighted problems associated with qualitative methodologies, that they can be prone bias and that they are time-consuming, feminist scholars (Cotterill & Letherby 1993; DeVault 1999; Fonow & Cook 2005) have shown that these shortcomings do not undermine the validity of the research where the researcher carefully and reflectively acknowledges the possibility of such bias. I also deliberately made sure that data collection and transcription exercises run parallel to mitigate against the time-consuming factor.

The methodology's emphasis on capturing subjective knowledge and experiences also motivated me to adopt it for my study. I sought the subjective realities of the women court users to have insights into the social inequalities that they are subjected to and need to be challenged and addressed (Tuli 2011; Watson 2008). I was after the women's broad and highly descriptive narrations about their court experiences (Hesse-Biber & Leavy 2006; Creswell 2014). I found the methodology's focus on the subjective experiences that are informed by one's experience in tandem with my research agenda.

Furthermore, I deemed the qualitative framework ideal for the study because of its attempt to reduce the power hierarchies that existed between me and the participants. Whilst I am a postgraduate scholar with a stable job, the participants were mostly poor women who did not even finish their secondary school education, not in formal employment and struggling to earn a basic living. The framework, allowed me to acknowledge them not just as mere respondents but as co-researchers who would play a critical role in the discourse on access to justice for marginalised people (Harding 1987; Hesse-Biber 2006). They were the knowers. The diffusion of the power hierarchies facilitated the smooth establishment of a rapport between me and them to freely interact and engage (Cotterill & Letherby 1993). We were able to meaningfully engage each other over the subject matter.

As discussed above, a qualitative methodology offered the best possibilities of obtaining an in-depth understanding of the experiences of women seeking maintenance through the courts in Malawi. In the upcoming section, I demonstrate how this study is a feminist one. I show how the study resonates with key feminist research principles.

3.2.1 Feminist Research

My study is feminist in its approach. As a methodology, feminist research emerged out of concern, by feminist scholars, about the limitations of conventional academic research methodologies that are androcentric and deliberately ignore, censor and subjugate the circumstances and experiences of women (Beetham & Demetriades 2007; Hesse-Biber 2007; Sarantakos 2013). The study shares some basal attributes of a feminist study.

One unique feature of a feminist study is the focus on marginalised groups, and this is a key aspect of my study. My study has accorded a story-telling platform to women seeking child

maintenance whose voices have been marginalised. Feminist studies offer room for the subjugated and silenced voice to be heard (DeVault 1996; Morton & Wilkinson 2007). Their experiences have not been captured by studies on violence against women, including the national ones conducted by the National Statistics Office (NSO 2010; 2013; 2015), despite child maintenance cases that dominating the Malawi's Police Victim Support Units (VSU) and the child justice courts. I also aimed at empowering my participants by encouraging them to bring to light their subjective court ordeals and perceptions (Olivier & Tremblay 2000; Hesse-Biber 2007). The study gave them an opportunity through which to share their experiences and perspectives on child maintenance issues and the court's operations concerning themselves as a group with common interests.

Besides, my study advocates for social justice. It is aimed at unearthing and bringing to light the hidden experiences of women in their pursuit of justice through the courts (Sarantakos 2013). It exposes the gaps and structures that perpetuate the women's unpleasant experiences at the courts. Consequently, recommendations have been made, in chapter six, on how some of the challenges could mitigated (Morton & Wilkinson 2007; Sarantakos 2013).

As indicated in the introductory chapter, under the section of significance of the study, I envisage that the findings will contribute toward the discourse on access to justice for the marginalised and poor Malawians. The organisation I work for, MHRRC, has in the past engaged the judiciary on how to become more gender-responsive in its operation. Various training targeting magistrates and clerks have thus culminated from such interactions. I, therefore, expect some of the recommendations to be mainstreamed into the training materials for such programmes. It is a requirement in my organisation that officer present the findings of their studies to the Organisation's technical team.

The findings will also inform the programming of non-state actors whose work focuses on the rights of women and children. I am a member of the proposal development team at our office. I will, therefore, ensure that some of the findings and recommendations are being mainstreamed into the programme proposals that the team develops. It has been done before, when the team adopted some ideas from my postgraduate diploma in gender studies paper into one of its interventions.

My organisation also chairs the NGO - Gender Coordination Network (NGO-GCN) whose membership comprises all NGOs that deal with gender and women's rights interventions. I will request to make a presentation to the NGO-GCN's thematic group on gender- laws and

gender-based violence. I expect a positive response from the network members adopt some of the study's recommendations.

Lastly, I have explicitly acknowledged my political stand. I have admitted and fore-grounded my own human and women's' rights work experience to the research topic (Cotterill & Letherby 1993; Hesse-Biber & Leavy 2006). I have on numerous occasions, accompanied women and girls to the courts, on various GBV issues, including child maintenance. I reflected on my positionality and this has been discussed in detail in the section on reflexivity that comes later on in this chapter.

In the upcoming section, I look at the methodological framework and data gathering and analysis methods that the study adopted. I have also explored the criteria that I used for selecting the participant.

3.2.2 Data Collection

3.2.2.1 Methods

I began my study by formally writing to the Registrar of the Judiciary in Malawi (appendix 4) to express my research agenda and to seek the Institution's consent to access its premises and records. The registrar granted the consent letter without hesitation. I used that letter to approach the Lilongwe Child Justice Court.

There were numerous feminist qualitative methods that I could have used to get the data once I had access to the court and its records. I could have used a focus group discussion to bring the participants together, stimulate a discussion and ask questions to get their opinion and thoughts on the subject matter (Wilkinson 1998; Hesse-Biber 2007). That approach could have yielded huge data and allowed me to triangulate the individual's narratives within the group (Morgan 1997). However, the approach had the risk of capturing only dominant voices as some participants tend to speak more than others and it needs seasoned facilitators to manage such a scenario (Hesse-Biber 2007; Morgan 1997). So some participants' experiences could have thus remained obscured. It might also have been difficult to arrange and get all the women together at the same time as all of them are now the sole providers for their family and have a lot of errands to make.

I could also have obtained data through the Observation method. I could have attended the court proceedings on child maintenance cases, just as I have done on numerous official errands, to observe and analyse the events and behaviors that surround such cases (Marshall & Rossman 1989; Dewalt & Dewalt 2002). Through this method, I could have observed events and processes as well as things that the participants might have been unwilling to share (Marshall & Rossman 1995). However, as a man, I still would have had very limited insight into ways in which women themselves experienced the events and processes that I witnessed. As Dewalt and Dewalt (2002:59) notes, males and females have "access to different information, as they have access to different people, settings, and bodies of knowledge". So I did not adopt the method.

There was also room to use in-depth unstructured interviews where I would have had limited control over how the participant responds to my questions and run the risk of drifting away from the focus of my research (Hesse-Biber 2006). Another possibility was that of an in-depth structured interview but this would have meant me, rather than my participants, having total control of the agenda of the interview (Hesse-Biber 2006: 116). This could not have given me the detailed perspectives that I sought as their responses could not have gone beyond the set of fixed choices developed by me. It could have also defeated the whole purpose of capturing unique experiences and perspectives.

I, therefore, chose to use the in-depth semi-structured interview as the protocol to collect data from the participants, to get their understanding of their court experiences. I thus developed an interview guide (appendix 1) to ensure that our conversation touched on all critical areas that I wanted information on (Hesse-Biber & Leavy 2006). In-depth semi-structured interviews offered the participants the freedom to speak on the issues I raised, with minimal interruptions, and without striving to conform to written script and also to raise issues that they thought were important (Hesse-Biber 2006; Hesse-Biber & Leavy 2006). I aimed at providing adequate space for my participants to share their experiences through an interview exercise that looked more of a mere conversation than an inquiry (Hesse-Biber & Leavy 2006; Neuman 2006).

3.2.2.2 Participants' selection.

I adopted the purposive sampling strategy to identify and select potential participants from the court records. Besides the ability to quickly reaching out to potential participants, the technique is suited for case sampling (Saunders 2012; Creswell 2014). The criterion for selection was that one had to be a woman that specifically claimed child maintenance through the court. Otherwise, all the women who met this key criterion regardless of differences in age, marital status, ethnicity, academic qualifications, and employment status were eligible to participate. Most of my participants came from areas within Lilongwe City, except for three women who came from Lilongwe rural. Despite the court catering mostly for urban dwellers, I deliberately included the three on the basis that due to their difference in geographical location, they could offer unique experiences as well as the opportunity to explore more intersectional factors. I also made a deliberate effort to include participants from all age groups, from teenage mothers to some above the age of 40 years as the table below reflects. All the women were not formally employed by the time of the interviews.

Table 1. Demographic details (all names are pseudonyms)

Name	Age	Ethnicity	Language	Location	Education levels	Marital status	Children		
							No.	Gender	Ages
Nyagondwe	23	Tonga	Tumbuka	Urban	MSCE[2]	Single	2	Boys/ twins	4 yrs
Naliyera	21	Chewa	Chewa	Urban	MSCE	Single	1	Boy	8 months
Nyakayira	31	Ngoni	Chewa	Urban	JCE[3]	Divorced	1	Girl	5 yrs
Najere	25	Ngoni	Chewa	Rural	JCE	Divorced	1	Boy	1 year
Nyapathima	28	Ngoni	Chewa	Town	JCE	Divorced	1	Girl	3 yrs
Nakalinga	24	Ngonde	Tumbuka	Town	MSCE	Divorced	2	Boy and girl	5 and 3yrs
Nabanda	17	Chewa	Chewa	Rural	JCE	Divorced	1	Boy	2
Nabieni	42	Chewa	Chewa	Rural	Primary school	Divorced	3	2 boys and 1 girl	18, 5, 3yrs
Nyasibande	24	Ngoni	Tumbuka	Town	JCE	On	2	Girls	6 & 4

[2] Malawi School Leaving Certificate, an equivalent of the O-level and the Matrix
[3] Junior Certificate of Education sat for in form 2 (grade 10)

						separation			yrs
Namunkhondya	40	Lambya	Tumbuka	Town	Diploma	Divorced	1	Boy	12yrs
Nachisale	24	Lomwe	Chichewa	Town	MSCE	Single	1	Boy	2 years

3.2.2.3 Venue

The interviews were initially planned to be conducted at Lilongwe Summer Park, but in discussions around their participation in my study, most participants indicated that they would prefer them to be conducted at the NGO section of the Child Justice Courts. I agreed to these suggestions partly because, in line with feminist research methodology, I wanted participants to have some control over the research process. Another reason was that the Child Justice Court as relocated from the Lilongwe Magistrate Courts premises to a newly constructed complex that only handles cases involving minors, including issues of child maintenance. I felt the venue was ideal as it is secure and secluded from the public eye and can easily be accessed from all angles of the city with public transport. The new place also has a section allocated to NGOs for services such as paralegal. The women deemed the NGO section convenient and safe (Hesse-Biber 2007). In addition, the section has counseling services that could have been utilized in the event of some participants being traumatised due to the reigniting of the harsh memories and experiences, concerning their cases, by the interviews.

3.2.2.4 Interviews

I had planned for 10 participants on the basis that this number would provide adequate data for a small scale qualitative study of this nature at this level. However, I ended up recruiting 11 participants. I conducted all the 11 interviews over 10 days in July 2018. Each interview was completed within a single sitting and lasted close to an hour. Notes, as well as voice recordings, were taken during the interviews upon being granted consent by the participants. The recordings cushioned against some omissions, those that were not captured in the notes.

I conducted interviews in the local languages that my participants preferred. I am multi-lingual and fluent in the two dominant local languages spoken across the country, *Chichewa*

and *Tumbuka*. Adopting the language preferred by my participants exemplified the feminist qualitative methodology of empowering research participants and diffusing power hierarchies. The participants were able to share the experiences in the language they are most fluent, without being restricted on word choice as a second language would have done. I was also able to understand and reflect on some of their loaded words, idioms, and "muted language" and engage them further if necessary and relevant. The sharing of common languages also facilitated open dialogue between me and the participants (Hesse-Biber & Leavy 2006). It also mitigated against misunderstandings that could have emerged out of translation if I had used a translator (Hesse-Biber 2006). All the interviews were conducted, transcribed and translated by myself.

In the next section, I have outlined the method and steps I used to analyse the data. I have also offered the rationale behind the adoption of the method.

3.2.2.5 Data Analysis

I employed the Qualitative Thematic Analysis to analyse the data. I used this method due to its ability to analyse complex data and unearth subthemes that allow a study to go deeper into its research topic (Sgier 2012; Braun & Clark 2013). The method is also versatile and flexible to accommodate different frameworks, for different types of research questions (Boyatzis 1998). As discussed below, I followed all the steps recommended by various scholars in undertaking Thematic Analysis (Braun & Clark 2006; Hesse-Biber 2006; Vaismoradi *et al* 2016).

First, I had to get acquainted with the data I had gathered. I, therefore, spent time reading and re-reading my transcripts and my notes to deepen my familiarity and understanding of the issues my participants thought were important (Braun & Clarke 2006; Hesse-Biber & Leavy 2006; Vaismoradi *et al* 2016). After getting familiar with the data and identifying patterns that appeared dominant I generated codes (Boyatzis 1998). From the coded material I searched and developed themes that related to my research question (Braun & Clarke 2006). The themes were named, defined and developed into categories that were further analysed to see if there was any relation between them. The familiarity with the data also allowed me to reflect on my position as their experiences triggered memories of some of the experiences I have had on my errands of escorting women to seek relief from the courts.

In the following section, I explore the ethical considerations that I upheld to ensure that this research would not in any way, intentionally or non-intentionally, harm the participants.

3.2.2.6 Ethical Considerations

I maintained the highest ethical practices in this study to protect my participants from any possible harm from the research processes and its outcome. These ethical considerations are critical for qualitative studies involving the participation of marginalised groups, such as my participants, to avoid inadvertently marginalising them further (Orb *et al* 2000; Smith 2003).

I began by sharing the information sheet with all potential participants. The information sheet which was developed by myself was translated into two main local languages of *Chichewa* and *Tumbuka* that are widely spoken in Malawi to accommodate potential participants that could not be able to read and converse in English. I did the translation to ensure that all the potential participants thoroughly understood what participation in the study entailed. Fortunately, all the participants were literate and able to read the translated versions of both the information sheet and the consent forms by themselves.

The information sheet included critical details of the study such as aims and objective of the study; the voluntary and non-coercive nature of its interviews, and participant's liberty to not get involved in the study at all and withdraw in the course of the study's interview without being penalised in any way. The sheets also included details of aspects such as the confidential nature of the study; the participants' right to allow or not allow me to record our conversation; as well as the contact details of myself, the study's supervisor and those of the Chairperson of the Research Ethics Committee at the University of the Western Cape. In sum, I shared and appraised them with all relevant information about the study for them to make a free and informed choice whether to participate or not (McNamee 2001; Raab 2004; UWC 2008). Their consent to participate in the study was therefore from an informed perspective.

I put in place measures to ensure that the research participants and their data remain anonymous and confidential throughout the entire research exercise. I have not used their real names or images, or those of their children and ex-spouses in the collection and analysis of the data, and presentation of the findings as any breach of this principle could result into some undesirable implications such as social embarrassment and stigmatization (Orb *et al* 2000; Jelsma & Clow 2005). Instead, I have consistently used pseudonyms. This will ensure

that the data is not traced back to any of the participants at any point in time (Khotari 2006). Also, I put passwords on the transcripts and they can only be accessed by me, the researcher. The notes and recordings were shredded and deleted, respectively, soon after I had finished the transcription processes.

As discussed earlier, the interviews were conducted at the NGO section of the Child Justice Court following recommendations from a few potential research participants. They deemed the place as being a safe space for them where they would not be hurt physically (Smith 2003; UWC 2008). I was not hesitant to embrace their recommendation as, indicated earlier on, the NGO section provides counselling services which I could have utilised in the event I had cases of emotional and psychological breakdowns during the interviews. Narrations of court's experiences, as well as some family ordeals, can at times be traumatizing (Coutts 2014). However, all the interviews went well and I did not have such an experience and the facility was, therefore, never utilized.

The succeeding section, on Reflexivity, outlines how I have attempted to be conscious of how my social background and assumptions and my position have impacted on the whole research, starting from my choice of the topic, all the way to data analysis and findings reporting.

3.2.2.7 Reflexivity.

During the entire research project, I have deliberately engaged in a self-introspection as required by feminist research. I have recognized, examined, and attempted to understand how my social background, assumptions, and experience intervened and impacted the entire research agenda (McGraw *et al* 2000; Hesse-Biber & Leavy 2007). I have constantly scrutinized my position in relation to powered relations in research processes such as data collection, interpretation and how it could impact the processes and the study findings (Sheffer *et al* 2006; Sultana 2007).

As a man I acknowledge that I was always going to be an outsider in a project involving women, especially a project in which women were struggling to make men live up to their obligations as fathers. Some participants might have wanted to withhold some information which they might have easily shared if the interviewer was a woman, someone they could have identified as being part of them (Fonow & Cook 1990; Hesse-Biber 2007). This was exacerbated by the fact that child maintenance cases usually cascade from divorce or family

separation issues, which in most typical African societies are considered as private matters, not to be spoken about anyhow, to strangers for that matter. Studies attest that women are discouraged, from speaking out or reporting incidences of violence as it brings shame to their families (NSO 2010).

In addition, being a man resulted in some of the participants regarding me a VAW perpetrator, bundling me into the same category as their former spouses that could not honor child maintenance payments. On more than two occasions, two participants jokingly identified me with VAW perpetrators saying "you know you men can be cruel". So while the women were comfortable interacting with me, they also still viewed me through the lenses of their child father's treatment and conduct towards them.

Furthermore, my academic qualifications and professional work put me in an outsider position. As required by research ethics, I properly introduced myself to all the potential participants as a student doing postgraduate studies outside Malawi, in South Africa and working for one of the reputable NGOs in the country. At the same time, the participants had low academic qualification, as most of them did not go beyond their secondary school education and this created what Sultana (2007) calls the "irreconcilable position" where the educated and elites are respected and revered, and this might have, in one way or the other, have an influence over our discussion.

While the social locations I have identified above positioned me as different to my participants, it should also be noted that insider or outsider status is not always rigid and can be mitigated by careful preparation, and through sharing perspectives during the interview. The participants also knew, as I had to thoroughly introduce myself to them, that I work with a human rights NGO that also facilitates court referrals of similar cases to theirs. I was thus taken as an ally who appreciates their plight and cause. Actually, at the end of the interviews, most participants requested if I could link them with my office so they could access free legal assistance. In essence, the participants' knowledge that I work with human rights NGO contributed to the smooth establishment of a rapport between us and helped minimize the differences between us.

I was also an "insider" in the sense that I am conversant with the operation of the courts, having on numerous occasions accompanied violence survivors to the courts in my official capacity. That experience enabled me to probe further on some critical areas that I felt were relevant to the research question but had hardly been touched upon by the participants in their

responses. This "insider" status accorded me with the advantage of getting very rich data that could not have been acquired had the interviewer been someone with limited experience of dealing with the courts.

My ability to fluently engage the participants in local languages which they are fluent in also assisted in removing “the outsider” boundary. I effectively sustained our conversation be it in *Chichewa* or *Tumbuka,* the dominant mother tongues for most participants. We were even able to chat on other social things in our country and all this facilitated the smooth establishment of a rapport between us.

Finally, like my participants, I am also a parent, a father of one child, who appreciates the importance of always acting in the best interest of the child. The affection and attachment I have to our son have deepened my interest in child rights. So based on parenthood, I empathized with the participants and appreciated their experiences and situation.

3.2.2.8 Challenges faced during the study

The most significant challenge encountered during this study was the delay in securing the research clearance letter from the University of the Western Cape's Research Ethics Committee. The process was characterized by what I believe were unnecessary protractions. Instead of providing comprehensive feedback on the entire package of the research clearance application package, the Committee, for whatever reasons, adopted a piecemeal approach of giving feedback on just a single item or section of the documents. This resulted in numerous back and forth re-submissions. These protractions, coupled with the delays in responding to each re-submission that could at times go as far as eight weeks, resulted in me securing the clearance in June 2018, over six months since I initiated the process. Consequently, the data gathering exercise was conducted quite late and this affected the subsequent study schedules. Besides this hiccup, there were no other significant challenges.

Chapter Four: Data Analysis and Findings

4.0 Introduction

This chapter presents an analysis of the lived experiences of women who claim child maintenance through the Lilongwe Child Justice Court as shared by my research participants. Several themes emerged from the analysis of the dataset. However, due to some limitations, in terms of the scope of the study, not all of them could be explored. A few dominant ones were therefore considered for thorough analysis and sharing.

The first section explores the theme of the court as the ultimate source of hope for women seeking child maintenance. The discussion then looks at logistical costs associated with the numerous visits that the claimants make to the court, and how such expenses negatively impact their already weak financial position and the whole maintenance pursuit agenda. The chapter then goes on to explore the theme of evidential burdens, how the court's position and insistence on some evidence that cannot be easily secured by the claimants' compromise their right to fair maintenance. Lastly, the chapter looks at other themes such as perceived bias and corruption amongst the court's officers.

4.1 Courts as last resort and the ultimate source of hope

Various studies conducted in Malawi show that the courts are often deemed as the ultimate source of hope for marginalised people that seek to have their grievances addressed (Nyirenda 2015) and that they are usually approached as a last resort after parties have exhausted all available alternative conflict resolution avenues such as family members, NGOs and religious forums (Kaunda 2012; WILSA 2002). Even in the Republic of South Africa, mothers claiming maintenance first try all reasonable means to get support for their children from their father and only opt to engage the court when the latter refuse or are reluctant to do so (Khunou 2006). My research supports these findings as illustrated by Naliyera's, Najere's and Nyapathima's experiences below:

Naliyera: When I fell pregnant, he refused responsibility. We tried to engage his family but they too were not accommodating. That is when we thought of approaching the courts.

Najere: What you have to know is that we tried to resolve this [issue] at the family level using our marriage counsellors to no avail. That is the reason why I decided to come to court.

Nyapathima: Of all the processes and negotiations that have been there, it is only the courts that he seems to respect.

As can be seen, all the above participants had initially tried to resolve their issues at the family level but the men ignored such attempts. Since there are no mechanisms of enforcing family forums' resolutions on such matters, many men deliberately disregard them (WILSA 2000). The men's contemptuous attitude is heightened by the fact that most of them are better off, financially, than the family counsellors that facilitate the mediation (WILSA 2000). After exhausting all possible avenues, women finally walk through the corridors of the courts.

Although the courts are generally approached last, research shows that women engage them with a huge sense of hope. Nyirenda (2015) contends that marginalised people approach the court as their last bastion hope, and the experiences of the women in this study support Nyirenda's contention. All my participants had this huge expectation that the court would offer them some relief over their child maintenance grievances as Nyagondwe's and Nakalinga's perspectives below highlight:

Nyagondwe: When you are coming (to the courts), you have all the expectations that you will be properly assisted.

Nakalinga: The court should always strive to help those that require help. We approach it with a lot of hope.

Nyakayira: I came to the court hoping that things would work.

This belief is also reflected in Najere's viewpoint. She had just lodged her case with the system when I spoke with her and it was yet to be heard. But she was radiating with a huge sense of hope that the court would facilitate her access to the much-needed maintenance:

Najere: I am banking all my hope on the court to assist me to secure some money from him for the household's needs and the house rentals. I have this expectation that I will be properly assisted by the court.

However, as it will be seen later, in the next chapter, the women's initial anticipation of some relief is gradually replaced by a feeling of frustration, disappointment, and resignation. They soon realize that the wheels of justice grind very slowly. In sum then, and in support of research by (Banda *et al* 2002; WILSA 2000; Kaunda 2012), the women in this study approached the courts only when other avenues had failed and approached it with high hopes that the system would provide a solution to their issue.

The next section looks at how logistical costs exacerbate the challenges that confront women that pursue and claim child maintenance through the courts.

4.2 Logistical costs

Transport emerged as one of the key barriers to women's access and interaction with the Lilongwe Child Justice Court, which is located at the center of the city of Lilongwe. This theme was foregrounded by my participants because it impacted their first approach and subsequent interactions with the court. While research on access to justice in Malawi (Banda *et al* 2002; Kanyongolo & Gloppen 2007; Kaunda 2012) suggests that it is usually rural folks that face huge logistical challenges to access the courts, as public transport does not ply the rural routes and that the few private lorries that brave the tough rural roads charge exorbitantly high prices, the experiences of the participants demonstrate that some urban dwellers, despite living relatively in proximity to the courts, are also confronted by mobility challenges when they try to interact with the courts. Except for three participants that lived either in the rural areas or the peripherals of Lilongwe city, most claimants lived within a radius of 15km from the court. Whilst the city offers alternative means of transport such as meter taxis, most of them could not afford such a service. At the same time, the distances cannot easily be walked as most of the time these women carry their children with them. They, therefore, rely on the mini-buses that ply through most of the city routes.

4.2.1 Case hearing and determination costs

All the participants complained about huge transport expenses that swell due to the protracted nature of the maintenance cases. Although the transport costs are reasonably fair within the city, usually K1000[4] per round trip, it is the numerous trips that the women make to the courts, before the case is finally heard, that balloon this expense. Since most fathers rarely respect the court summons and do not turn up for hearings, the court is forced to adjourn the

[4]An approximate of ZAR 20 or 1.3 USD

case on several occasions. The women, on the other hand, keep on honoring the new dates, set for their cases, expecting that their cases will finally be heard. In the process, they incur significant transport costs, which at times overshoot the maintenance they receive:

Nyakayira: The hearing of the case was adjourned twice as he was not turning up. It was on the third occasion that he turned up and the case was heard. We were then given another date for judgment. So it was on the fourth occasion that the determination was given. All this time I had to meet the transportation costs for me and relatives that accompanied me.

Nyagondwe: We started in May and in the entire month of June we could just come and go as the case took long to be heard. As he kept on not turning up for the hearing, the court finally just heard my side of the story.

Nakalinga: ….but it is the several adjournments that consume a lot of your time and finances. Originating the summons cost as little as K500[5]. But then you have to come to the court now and then for the case, without even being sure whether it will be completed at all.

The transport costs affect the women's finances significantly, as it will be later shown since, as alluded to earlier on, most of them are not formally employed and have to rely on piece work or small-scale businesses to provide for their households. However, the challenge of huge logistical cost is not limited to the Malawian women as their counterparts, across the SADC region, also encounter similar challenges. In her review of South Africa's 1999 Maintenance Act, De Jong (2009) found that logistical difficulties such as transport expenses frustrate the good intentions of the maintenance law in the country that strives to make maintenance easily accessible.

There is also a consensus amongst writers (see Khunou 2006; Kaunda 2012; Coutts 2014) that the huge transportation costs, at times, force poor and marginalised litigants to lose interest in their cases. Coutts's (2014) study conducted in Eastern Cape in RSA found that the pursuit of the maintenance often costs more, through transport expenses, and most women found themselves worse off, financially, than when they initiated the process. Coutts (2014) contends that logistical costs prove to be a burden too heavy for many claimants to bear as most of them are usually already in dire need of help. So whilst existing research (Banda *et al* 2002; Kanyongolo & Gloppen 2007; Kaunda 2012) indicates that it is mainly rural people

[5] Approximately 0.72USD

who struggle with transports costs, my study adds to their finding by showing that even for urban women the cost of travelling to the courts are heavy.

4.2.2 Maintenance checking costs

The women who participated in my study indicated that they continue to confront transport costs beyond the determination of their case. As indicated earlier on, many fathers skip the maintenance payment dates, forcing the women to come to the court regularly, sometimes three or four times within a single month, just to check if the maintenance has been remitted. Since the court does not have a system that could alert the women about the deposits, the onus is upon the women to keep on checking. As illustrated below, regular trips thus consume significant funds. The situation is worse for those women, such as Nyapathima and Nabieni, who live in the city outskirts. Their transport costs are significantly higher, around K2000[6] per round trip, as they have to connect at least two mini-buses before reaching the courts. In a country where the majority of citizens are ultra-poor and survive on less than a dollar per day (UNDP), K2000 is a huge amount to part with on single occasion, cognizant of the fact that most claimants do not have a stable source of income:

Naliyera: I have to come to the courts several times before I finally access the maintenance. Sometimes, what I lose through bus fares is more than the maintenance I get.

Nyakayira: I have been coming to this court twice or thrice every month only to find out, on most occasions, that there is nothing for the child.

Nakalinga: The man delays and skips payment and I have to come to the court now and then just to check if he has left the funds with the court. So I end up losing transport.

Nabanda: There are times when I have come to the court several times within a month just to check whether he has paid, only to realize on most occasions that he has not paid. So I end up exhausting the little funds I might have on transport. I could have used that transport money on some equally important things.

An analysis of the logistics costs reveals that, by the end of the day, most participants take home almost nothing as the transport expenses alone consume almost the whole monthly maintenance. For instance, Naliyera gets monthly maintenance of K7000. Transport within

[6]An equivalent of ZAR 40 or 2.6 USD

the city usually costs K500 one way, and this translates into K1000 for every court errand. And since she makes three visits within a single month to check for the maintenance, her transport expenses go beyond K3000 per month. But as we see later on in this chapter, these are not the only transport expenses that the women incur as they also meet the court's expenses for deliveries of summons and judgments. So as Naliyera above puts it, what she loses through bus fares is indeed far more than what she realizes at the end of each monthly cycle.

My participants' experiences correspond with the findings of similar studies in South Africa. Scholars such as Bonthuys (2008) and Coutts (2014) have problematised the absence of mechanisms that could alert women of their maintenance accounts status before they start their trip, arguing that it puts women in a more disadvantageous position as they keep on losing money on futile journeys. Coutts (2014) found that oftentimes women have been lied to when they have visited the cash halls to access the maintenance that the computers are down and therefore advised to come another day. In essence, the transport costs continue even after the courts have ruled in favour of the women.

4.2.3 Summons delivery and communication costs

The high costs of going to court are exacerbated by another set of costs, those associated with what is called 'conduct money'. My participant's revealed that the "conduct money" arrangement allowing the courts in Malawi to share their communication and documents delivery costs with the litigants adds to the expenses they confront. The Malawi Judiciary established the "conduct money" as a mechanism to safeguard its meagre budget that was being quickly exhausted by logistical costs associated with civil cases (Banda *et al* 2002). The women are therefore requested to meet such costs whenever there is communication or documents to be made or served, respectively, on the fathers involved. However, due to the elusiveness of so many of the fathers that often ignore court documents and rarely pitch up for the hearings, the women end up providing the "conduct money" three or four times before the fathers are forced, usually with the threat of a warrant of arrest, to avail themselves. Since these women are already in a precarious financial situation and have to bear their own as well as witnesses' travel expenses, the constant meeting of the "conduct money" adds, yet again, to their costs of going and interacting with the court, as the experiences below illustrate:

Nyakayira: All this time I had to pay for airtime whenever the court clerks wanted to call him. I also pay K3000 each time there is a summon to be delivered to him. So I pay K3000 on many occasions without him paying a single maintenance coin. So I end up losing more money in the process.

Naliyera: When he is not giving the funds, they send him a summons and I pay them K2500 for transport for the court marshals to go and serve them to him. Almost the whole maintenance fund is consumed by the transport cost. When I transferred my case to this court, he did not turn up on three occasions despite being served with the summons. On the fourth occasion, I bought airtime for the officers to call him and he came.

Nabieni: They also take away the little funds that you have. I usually give them K1500 for transport to deliver the summons. This is the money I painfully earn through doing piece work in people's gardens. I just pay hoping that it will unlock the access to the maintenance, only to lose it as he rarely respects the summons.

The "conduct money' provision has also been observed to be prone to abuse. Some courts marshals use it to make unreasonably and unrealistic demands on the litigants (Banda *et al* 2002). This is not surprising as the feminist intersectional approach acknowledges such abuse in social institutions, arguing that those with non-marginalised status can at times take advantage to enjoy the benefits created by someone's disadvantageous position (Hill-Collins 2004). The women's position makes them vulnerable to further exploitation. The court marshals are taking advantage of the claimant's desperation for the maintenance to make unreasonable demands fully aware that the latter would not want their cases to stall. It is evident from this study that besides the obvious logistical expenses that the women confront, there are also some subtle yet significant administrative costs that they meet.

4.2.4 Logistical implications

Whilst transport and the "conduct money" are the most obvious and evident costs in the maintenance pursuit, there are some other subtle and opportunity costs that the women also incur. Due to the protracted nature of the maintenance cases, the women spend a lot of their time navigating the court systems, consequently losing precious time and opportunities through which they could have earned some money. As indicated earlier on, most of the

maintenance claimants are not formally employed and engage in small scale business or piece works as Nabieni, above, does. They, therefore, need time to fend for their households. On some occasions, the whole day is lost when they come to the court as they are kept waiting without knowing when exactly they would be attended to. Despite being told to come to the courts very early, they are often times attended to very late as Nakalinga's experience below shows.

Nakalinga: *It is the magistrates that have a problem. They come very late. They tell you to come at 8 am but most of the time it is usually beyond 2 or 3 pm when you are called to appear before them. So they take the time that I could be doing some business. Why not just tell me to come at 2 pm, if they know that that's the time that I will appear before the magistrate? But we come here at 8 and the wait for the whole day, doing nothing*.

This loss of time is, however, not limited to women in informal employment, as studies in the Republic of South Africa (See Coutts 2014) have revealed that even women in formal employment are equally affected. The employed women are subjected to hostile treatment at their workplaces such as deduction of their annual leave days, reduction of income and in worst scenarios termination of contracts, all due accrual of absenteeism that emanates from the frequent court appearances (Coutts 2014). So while the financial aspect may be the most prominent logistical aspect, it should be acknowledged that there are also some subtle ways, such as time losses, through which the pursuit of child maintenance cases impacts on the lives of women.

In summing up the discussion on logistical costs, it is evident that despite most participants living within the city of Lilongwe and relatively near the courts, unlike their rural counterparts, the child maintenance claimants are still confronted by a myriad of logistical challenges. They have to repeatedly approach and engage the court if their case is to be heard and register any significant progress and, in the process, incur a lot of transport expenses that are not limited to their own but are also inclusive of some that are otherwise supposed to be met by the courts.

The discussion has also shown that some court officers capitalize on the women's desperate situation to make an unfair financial request to them. As noted by some scholars, the huge logistical costs and subsequent administrative fatigue wear down most marginalised people and they eventually give up pursuing their cases (Banda *et al* 2002). This research supports

Khunou's (2006) findings of the South African maintenance systems that the cost of trying to navigate the court to obtain child maintenance can outweigh whatever maintenance the claimants eventually realize, and that going to court for maintenance is a very risky investment of scarce resources. The women hardly know what will happen, as the system is unreliable. They spend the little they have and get nothing in return. It is also clear from the discussion that most women keep on pushing for maintenance due to limited alternative sources of income. In essence, the court systems and its associated costs have been observed to pose a huge barrier to most women's pursuit of child maintenance.

The next section looks at how the courts' demand for evidence, which cannot be easily accessed and presented by the women, affects the outcome of the most maintenance cases.

4.3 Evidential burdens.

Another theme that emerged out of conversations with my participants revolved around the issue of evidence that the Child Justice Court calls for the women to submit to support their claims. This theme was deemed significant as it has huge ramifications on the life of the women and the children on whose behalf the claims are made. The general rule of the court requires magistrates to consider only relevant facts and evidence when determining a case (Nyirenda 2015). The magistrates, therefore, call for evidence on some of the women's allegations, usually pay slips depicting the fathers' income levels, and most claimants do not meet this requirement.

As shown below, most participants expressed frustration with the court's insistence on some evidence, which according to them, cannot easily be accessed, as it has to be solicited from employers of the father of the child. Such documentation is hard to release without the indulgence of the court because it is the father who has a contract with the employer and disclosing the salary details to a third party would be considered a breach of contract as well as a violation of the employee's privacy. Worse still, some of the fathers are not in formal employment as such records on their income are never available. Namunkhondya's and Naliyera's experiences below illustrate the women's dismay with the system.

Namunkhondya: The magistrates also need to understand that women cannot bring forth some of the evidence they call for. The magistrate said I should provide evidence that proves that he earns more. So where could I get such evidence when I cannot even go beyond the first security gate at his office?

Naliyera: The magistrate insists that I should bring in the evidence that he is still working. But for sure, how can I get that information from his office? Will his colleagues just release such documents to me when they already know that we are divorced? I think it is done deliberately by the magistrate as he knows I will not be able to bring it forth.

While the Malawian law calls the case presiding officers to stick to relevant facts, justice demands corroboration of factual with circumstantial evidence. Nyirenda (2015:4) contends that case presiding officers "must have the faculty and skill of immediately assessing the ability and capacity of those appearing before them, and must be ready to control the proceedings accordingly". However, demanding evidence regardless of the women's circumstances, adopted by the Child Justice Court magistrates in Malawi, correlate to the findings of an earlier countrywide study in Malawi, by Banda *et al* (2002), which revealed that some magistrates lack basic skills such as fact-finding, and critical analysis, hence make determinations without sufficient information.

It is worth noting that Malawi's court approach towards evidence in maintenance cases is quite different from its counterpart in the Republic of South Africa where the law mandates the courts through the maintenance officers and investigators to solicit and present all the relevant documentation and evidence to a case when a woman has no legal representation (Coutts 2014). The maintenance officers are also mandated to subpoena relevant witnesses, such as relevant officers from the father's office, to testify and provide evidence relating to the financial position of the parties (Bonthuys 2008; Coutts 2014; De Jong 2009). Despite the South African maintenance system having its own challenges, its approach to evidence eases the burden off the women and also reduces unnecessary adjournment of cases.

In the final analysis of the challenges that women face in obtaining evidence, it can be observed that my study participants who believed had made genuine claims to the Lilongwe Child justice Court, had their cases weakened due to their failure to produce backing documents on income levels of the child/children fathers. This in turn, grossly compromised the determinations on the maintenance that the courts made.

4.3.1 Perception of Magistrates' Bias

My participants perceived the court to have some prejudice against them. They wondered why magistrates, that are predominantly male, were dismissive of their submissions on the father's income even when what they presented was credible enough to demonstrate that the men earned substantively. Nyapathima and Nabanda cited the property and assets that the

men own, such as houses and cars, and even the men's lifestyle to demonstrate that the fathers earned adequately, but the court downplayed their submissions.

Nyapathima: All the evidence was there that we had accumulated a lot of property together and yet it (the court) chose to pay a blind eye to such evidence.

Nabanda: I have stayed with him for years and I know how much he makes. He also has cars that he rents out. But the magistrate insisted that I should bring evidence of his income.

Nachisale: They said I should bring evidence that his earnings are above average. I mentioned the cars that he can afford to buy. But they maintained that I should bring payslip from his work which I cannot access.

The women felt that the property they mentioned should suffice in the absence of the payslips. The magistrates' were, however, firm on the demand for the payslips. The women felt the system was working against them as Nyakayira's and Nachisale's experiences, below, underscores. Comparatively, the experience of my participants is contrary to those of their counterparts in the Republic of South Africa (see Mamashela 2006; De Jong 2009; Coutts 2014) where the courts easily ascertain the women's submissions through the investigation officers that probe both parties' financial status.

Nyakayira: Why do they easily understand his explanations and at the same time fail to appreciate my predicament and ordeal? The system is not helping women like me.

Nachisale: This was my husband and I lived with him for 20 years and I know how much he gets but the court never believed my version.

The women's perception in this regard resonates with the findings of studies on access to justice in Malawi (see Banda *et al* 2002) that revealed the existence of gender bias within the system. The Malawi courts have ninety per cent men and ten per cent women in the workforce, and this gender imbalance was found to be a recipe for gender bias and prejudice in the delivery of justice delivery where men are perceived to be favoured by the system (Banda *et al* 2002). The verbatim below point to their assertion.

Namunkhondya: Despite granting both parties the opportunity to be heard, the court listens more to what the man is saying than the experiences of the women. I am sure it is equally tough for most women who are coming to this court for child maintenance.

Nabanda: They all (magistrates and clerks) appear to be on his side. It seems whatever he says to them makes more sense than what I say.

Naliyera: I wonder why the court believes his narration that he is jobless yet one of the court clerks lives close to his house and knows the truth (that he goes to work)…..

Nachisale: As I have told you I have lived with him and I know how much he gets. I was very surprised to see the court buying his version that he earns so little yet, in reality, he earns more.

It is, however, important to take note that studies on maintenance, across the SADC region, which involved men as participants revealed that men are of the view that maintenance law as well as the entire court system favors women. They too wonder why the system does not fairly accord them equal treatment in court (Khunou 2006 and Mapuranga 2016). The men argue that their submissions are received the prejudice and that they are handled summarily (Khunou 2006 and Mapuranga 2016). The ripple effect of such perceptions are unhealthy relations between men and women, whose final impact lands on the children, who are supposed to be protected by the same courts.

All in all, the women perceive the court system to work against them as it rarely accommodates what they believe to be their credible submissions while at the same time quickly embraces the men's narrations. However, according to Nyirenda (2015), the differences in bias perceptions towards the system may arise due to the Magistrates strict adherence to the laws and court's procedure, playing everything by the book, even in those situations that require them to go beyond the obvious facts to appreciate the circumstances of the parties that appear before them.

4.3.2 Men taking advantage of the evidence demands.

My participants revealed that they believe that men take advantage of the court's insistence on "pay slips" to deliberately misinform it about their actual income so that they get away with low maintenance determinations. In their view, men know that the court cannot investigate and establish their actual income and therefore deliberately capitalize on that gap to submit that they earn low salaries. My participants thus support claims made by Khunou (2006) and Mamashela (2006) about the South African maintenance courts who contend that most men know how the maintenance system works and have the power and ability to manoeuvre and evade it. Similar practices are understood, by my participants, to be at play at

the Child Justice Court in Malawi, where fathers deliberately lied about their financial situation and earnings, as the experiences below illustrate.

Namunkhondya: He lied to the court that his income is very low, K90,000. How can someone who gets that amount live in Area 47[7], has two cars and even sends his children to the best private schools in town?

Naliyera: When the court asked him how much he earns, he said he gets K22,500 and could only manage to pay K1000 per month. He was lying and there were disagreements on the amount he said he was getting. The court then advised me to go and get his payslip from his workplace, the Lilongwe Water Board.

Nachisale: The court asked me how much he gets and I said K500,000 per month as he gets K200,000 per trip and can make 3 trips to RSA per month. I, therefore, pleaded with the court that he should be paying K50,000 per month. He, however, lied that he can only manage K15,000 per month as he gets K106,000 per month. I complained but to no avail.

In the absence of maintenance investigators, as in the South African context, there are limited chances that the court can investigate and ascertain the actual income of the fathers. The perceived lies could however easily be avoided if the investigation surrounding the parties' income were taken by the court or any other state agency that is privy to such information upon being granted a search warrant by the courts. It has however been argued (see Khunou 2006) that the fathers lie due to their belief that women's demands are often unreasonable and could, therefore, be using the maintenance to exploit them. All in all, fathers at Lilongwe Child Justice Court in Malawi have been observed to lie to the court about their income just because there is no system in place that can prove otherwise.

In summing up the discussion on evidential burdens, the experiences of my participants illustrate that the ability to acquire and present evidence plays a critical role in successful claiming of maintenance. Their experience shows how the court system works to disadvantage them, supporting finding of an earlier research by Banda *et al* (2002). And in a justice system that is disproportionately dominated by men, the women have viewed the courts as being as androcentric as it easily accommodate the men's, unlike their submissions, no matter how plausible they might be. From my participants' perspective, men can capitalize on the system.

[7] One of the affluent areas in Lilongwe city

The next part of this chapter looks at the theme of corruption and how my participants outline processes they consider to be corrupt in the maintenance systems.

4.3.3 Elements of Corruption

Corruption was one of the surprising themes emerging out of our conversation. Most literature on access to courts and justice in Malawi rarely alludes to it. It is only Kanyongolo's (2007) study on the "Justice Sector and the Rule of Law" that mentions "a few isolated cases" involving judiciary staff but is also quick to highlight that there is no widespread public perception that the institution is corrupt. And the findings of a recent study by Afro-Barometer (2017), a pan African research network, confirms Kanyongolo's findings as the Malawian general populace still view the judiciary as one of the least corrupt institutions in the country. However, most participants in this study felt otherwise, and their experiences challenge the dominant understanding of the courts as corruption-free as outlined below:

Nyapathima: The clerk that was assisting me in my case demanded that I pay him some money if I wanted the case to go in my favour. But I know that I am not supposed to pay him, so he was not successful in his demands.

Nyangondwe: But others [officers] receive bribes from the fathers of the children and their cases are not even heard at all. Some officers are very inhumane and engage in corruption. Maybe they receive a little salary and would like to top up……,

Najere: It is baffling that each time, even before I reach his house to deliver the court summons, he calls telling me that he knows I have been to the Court and have the summons to serve on him. He brags about knowing all my movements at the courts. He says he has networks.

While this study is unable to confirm the existence of such networks, my participant's narratives reveal their belief that corrupt practices compromise their ability to obtain justice. Processes that impeded their cases, such as repeated adjournments, were construed as evidence of corruption. And whatever the reason for delays, they had costs that impacted negatively on my participants as most participants, as Nyagondwe's ordeal highlights:

Nyagondwe: My father had to call some people at Legal Aid, Gender [Ministry] and Police for the case to commence, otherwise, I could not have been assisted by the courts. The Police officer from Area 3 Police Victim Support Unit told me that "you should have told us right from the beginning that you are Mr. X's daughter".

Nyagondwe's experience agrees with the findings of similar studies across the region. Women participants in Coutts'study (2014) that was undertaken in the Eastern Cape Province in South Africa felt that the court staff were corrupt and that maintenance pursuit and its outcome depended on "who you know" within the court system. Similarly, a study conducted by Khunou (2006) in Johannesburg revealed that the maintenance system favours those that understand how it works, plays along with it and that women are expected to pay a bribe to the police to have the maintenance determinations enforced.

Further reinforcing my participants' belief that the courts operate in favor of men were stories about how some male officers of the court seemed to have relationships with the fathers. The women were suspicious that such officers were compromised as they adopted a 'soft' attitude towards the fathers involved in maintenance cases, as the experience below depicts.

Nabanda: The clerks are always saying "just wait, he will pay". Now I don't know the kind of relationship that has developed between them and my ex-husband. They all appear to be on his side…. It seems some of them communicate with him behind my back and I do know what they discuss.

Nyasibande: For instance when our child was just one-month-old I received a summons to come to court for a hearing over child custody. How could the court allow him to raise summons over custody of a one month child, in the first place? How? You start asking yourself a lot of questions, whether you dreaming or not? Something is rotten at this court.

Nyagondwe: At one point, one court officer even assisted him [the father] in drafting a letter, addressed to the same courts. How can you understand that? An officer of the court assisting the father to write a response to the same institution that he serves? …He [the father] revealed it to me, later on.

Naliyera: I wonder why the court buys his narration that he is jobless as one of the court clerks lives close to his house and knows the truth.

As indicated earlier on, the court, as an institution, is a masculine space, dominated by men and as described above, my participants believe that there is a tacit system where male officers consciously or subconsciously tend to sympathize with the fathers. The women's perceptions, echoes the finding of a study (Khunou (2006) in South Africa that revealed that preconceived negative stereotypes about women and their pursuit of maintenance works against them.

The women believe that it is court officers who initiate corruption. They revealed that some court officers approached them with promises to sway the outcome of the case in their favour. Nyapathima says since most women are in dire need of a favourable outcome and quick accesses to the maintenance, such requests are enticing. Nyapathima was, however, knowledgeable and bold enough to resist such temptation and in her narrative, she draws attention to how low levels of education amongst women compromise their access to justice.

Nyapathima: The clerk that was assisting me on my case requested that I pay him some money if I wanted the case to go in my favour. But I know that I am not supposed to pay him, so he was not successful in his demands. But some clerks can be very oppressive towards women. They take advantage of low literacy levels among women and want to take even the little that you have on you. So if you meet a corrupt officer then you are in trouble. Most of them are oppressive and capitalize on your desperation.

My participants also reported inconsistencies in court variation orders and they attributed these discrepancies to corruption. Procedurally, when a party applies to the court for maintenance variation, the court sets for an inter-party hearing and depending on the arguments presented, it varies or sustains the maintenance (GoM 2010). However, from the women's experiences, it seems the variation orders are issued and affected without the knowledge of the women. The women only learn about the reduction of the maintenance amounts when they go to collect the maintenance, as Namunkhondya's and Nakalinga's experiences highlight:

Namunkhondya: He started paying in May but pays K15,000 instead of K20,000 that the court had determined. When I asked at the accounts department about the change in the amount, they said I should approach the court again over the amount. So I enquired directly from him and he replied that he had complained to the court over the K20,000 amount and

the court had allowed him to be paying K15,000. I was shocked. The court never summoned and heard me over that matter. So where and how did the change take place? Where did they discuss it?

Nakalinga: However, what makes me sad is that he pays K10,000 instead of the K20,000 that the court had earlier determined that he should be paying. He says that that's the amount they later agreed that he should be paying.

In South Africa, similar things happen, as research by Khunou (2006) and Coutts (2014) shows corruption to be one of the main barriers that affect maintenance claims as files can deliberately be misplaced or given to the fathers by officers of the court, thereby thwarting any progress the case might have registered. They contend that some women lose interest in their cases due to the corrupt practices and the lethargic pace and protracted processes surrounding them (Khunou 2006; Coutts 2014). As indicated earlier under this section, there is truly "a degree of corruption amongst South African court staff and that the outcome of a person's matter is dependent on "who you know" at court and this situation is complicated by officers' close association with some fathers (Coutts 2014). The officers go to the extent of refusing to serve the subpoenas on the fathers (Coutts 2014). While the claimants might fulfil every procedure in filing a case, the commencement of the case depends on the commitment of the enforcing agencies.

Although, literature on access to justice in Malawi does not cover enough ground to contest that corruption is a significant barrier to the pursuit of justice in the courts, the experiences of my participants narrated above, give support to the notion that corruption deters women in Malawi, specifically at the Lilongwe Child Justice Court, from accessing child maintenance at the Court. Corruption in the formal justice system in Malawi would therefore be a broader subject of subsequent scholarly study as my participants' perceptions may be just a tip of an iceberg.

In concluding this chapter, the discussion has shown that, while my participants approach the court as a last resort and with a lot of hope, there are multiple logistical and evidential burdens confronting them. It has revealed that my participants spend funds on transport. They have to carter for their expenses when going to the court to raise summons, attend the hearings and check if the maintenance has been remitted. It has also shown that the

participant meets administrative costs, such as those related to the delivery of the summons and making any communication with the fathers, which under normal circumstances are supposed to be met by the courts. The analysis has further revealed that due to the protractions that characterize the maintenance pursuit, the participants spend a lot of logistics. The second dominant observation that the study has made is that evidential burdens also affect the outcome of maintenance cases as the courts have been shown to call for some evidence that cannot easily be accessed by the women. One other significant finding is that women perceive the court to be biased and corrupt. Taken together, it is evident that women are confronted with logistical and evidential hurdles when interacting with the courts, and that the maintenance system does not favour women.

The next chapter discusses the maintenance amounts, how unreasonable and unreliable they are perceived by the women as they tend to ignore other critical factors such as the daily needs of the children, the men's real financial capacities and that they can hardly be accessed in time.

Chapter Five: Data Analysis and Findings

5.0 Introduction

This chapter continues with analysis on women's experiences of claiming child maintenance through the Lilongwe Child Justice Court. The first section considers the maintenance amounts determined by the courts and ways in which my participants are critical of these amounts. The next section deliberates on the impact that the pursuit of maintenance has on the lives of my participants. I then analyse the pressure the women are constantly subjected to, as they strive to meet the daily needs of children, something that at times breaks some of them down mentally. Finally, the chapter considers how the women, who had high hopes when they first approached the courts, gradually become disillusioned with the system.

5.1 Maintenance amounts

5.1.1 Unreasonable Amounts

In our conversations participants foregrounded the issue of 'unreasonable' maintenance determined by the courts, deeming them too small. They indicated that they were left with little or nothing to maintain their children after factoring in all the logistical expenses as outlined in chapter four. Their perceptions are supported by monthly studies by Centre for Social Concern (2018) that reveal that an average household, in the city of Lilongwe, needs at least K200,000[8] a month to meet its necessities such as food, utility bills, and rentals. This amount is exclusive of other essential costs such as children's school fees.

Nabanda: The court ruled that he should be paying K5000[9] per month. So despite the good processes, I found the amount of K5000 to be an insult to me as a mother of the child.

Nachisale: How can a man who earns well be allowed to pay K15,000 per month? Even if I were to give him that K15,000 to go and buy the groceries or needs for the child he would see that the amount is very little.

Nyagondwe: The court ruled that he should be paying only K15,000 per month for both children but that amount is not even enough to cater for a single child.

[8]Equivalent of R4000 or 267USD
[9]An equivalent of R100 or 6.7 USD.

Nabieni: The court determined that he should be K12,000 for the three children, and that is K4000 per child. You can see that the total amount is not even enough to provide for a single child.

While Mapuranga (2016) suggests that Zimbabwean women seek maintenance as a cushion against tough economic situations and/or to sustain opulent lifestyles, other studies conducted in South Africa (Khunou 2006; Coutts 2016) have revealed the central motivation for maintenance revolves around children's needs.

Many fathers deliberately mitigate for small maintenance amounts, on the basis that women's demands are unreasonable (Khunou 2006; Coutts 2016). Unlike the Zimbabwe scenario (Mapuranga's 2016) where women are shown to be shrewd by calculatingly choosing to marry the elite and later on use maintenance as a mechanism for self-sustenance, there was evidence of attempts at self-enrichment in my participants. My research does not support Mapuranga's (2016) finding. My participants claims were all premised on the genuine need to provide for the children.

5.1.2 Maintenance exclusive of other basic needs

All the participants believed that the magistrates erred in determining the maintenance amounts. They felt the amounts awarded were too little to cater to the needs of the child/children. As shown below, my participants felt that magistrates should have considered and factored in more realistic needs when determining the amounts:

Nabanda: The magistrate should have considered a lot of factors before determining that amount. K5000 is just too little. The kid is living with me alone and I have to fend for all his needs. I have to provide food, clothes, and shelter for him. So is K5000 enough to cover all that? Every rational human being can see that this amount is just too little.

Nyagondwe: I don't know what the court looks at when deciding the maintenance amount. The amount is just too little for the two children to be supported by it. They are still very young and prone to a lot of infections. And when they fall ill, I take them to the hospital

where I am charged K5000 or K6000. Yet from the same K15000, I have to provide for their daily school needs.

Namunkhondya: K2000 is not enough for 2 children. If you consider today's markets, that amount is just too little. The children have to eat from the 1st to the 31st day of each month.

The women's suggestion that the court should consider critical factors when deciding maintenance augers with *The Child Care Protection and Justice Ac*t (2010) that provides that maintenance should include other necessities of the child's life. As indicated in the introductory chapters, the Act (GoM 2010, Section 3)" places an obligation to parents to provide "maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention. The Act (GoM 2010) further upholds that the maintenance should take into account the cost of living in the particular locality where the child lives. However, my participants' experience suggests that the court pays minimal attention to those provisions as the amounts awarded are indeed not adequate to meet the necessities of child survival and development in the most expensive city in Malawi as the survey by CSC (2018) indicates.

Scholars on maintenance in other locations concur with my study participants' sentiments. In her study of the South African maintenance system Bonthuys (2008) contends that the approach where the court simply asks the father how much he can afford to pay is quite misplaced as the amounts mentioned by men usually ignore critical expenses that are eventually borne by women. Similarly, in calling for SA courts to consider the expenses on the daily necessities of life when determining maintenance, Coutts (2014) suggests that these expenses are not considered. However, operating in a context where studies have shown that magistrates lack basic fact-finding and analytical skills (Banda *et al* 2002), such a call may currently be far-fetched. As indicated earlier on, some magistrates do not fully inquire into the facts of the cases brought to them, rarely appreciate that they must establish the truth of the matter, hence make judgments based on insufficient information (Banda *et al* 2002). Consequently, the women who are usually poor and unemployed solely bear the burden of meeting most needs of the child: physical; social; financial; and emotional.

5.1.3 Unattractive appeal processes.

My participants also complained about the process of applying for a variation of the maintenance. Most of them were dissatisfied with the amount awarded and indicated that they would have preferred to apply for variation to have the amount raised. The law provides for such right to party that is unsatisfied with the maintenance amount as set by the court (GoM 2010). However, upon approaching the courts for maintenance variance, my participants were again advised to submit relevant evidence to prove that the fathers indeed earned more than they had earlier submitted to the court.

Nachisale: When I complained about the amount, the court said I should apply for another hearing and bring evidence that he earns more.

Nyapathima: The evidence was all there that we had accumulated a lot of things together and yet it chooses to pay a blind eye to such evidence. They instead called for more evidence.

As indicated earlier on, securing such evidence is not an easy task. The women cannot, without proper court orders, approach the men's workplaces or banks to request for such information. The challenge of securing such evidence, coupled with the fear of the protracted and bureaucratic nature of court processes, forces the women to accept the initial amounts awarded to them. The participants were not ready to start the court processes all over again, to come three or four times to the courts before the matter is heard and in the process incur substantial logistical costs. Given the fact that maintenance cases are not given a priority, treated shoddily, by the courts (Mamashela 2006; Coutts 2014), it is not surprising that most women just opted to continue receiving the unreasonable amounts. And according to Bonthuys (2008), "the original maintenance orders are seldom adjusted". So while the RSA's system of the courts having its investigation officers has been shown to have some challenges (see Mamashela 2006; De Jong 2009; Bonthuys 2008; Coutts 2014) such as inadequate numbers of investigating officers and some fathers shrewdly opting to register some of their property under new lover's names to avoid it is attached to the case, the approach still provides room for the system to know the right income of the men and consequently award reasonable maintenance amount. It is critical to the maintenance pursuit.

However, it is worth paying attention to the findings of Khunou's studies (2006). The study revealed that maintenance pursuit works for those that remain resilient and continue to push the system to work on their claims (Khunou 2006). This finding highlights the need for the

women to constantly draw the court's attention to their case. It echoes the experience of one of the participants, Nyagondwe, who has had to exert some pressure on the court officers to work on her case.

Nyagondwe: But through experience, you realize that you need to constantly push thing for you to get the maintenance. You have to come and push the court to issue the summons to him. When they call him and he tells them to call him later, you have to wait until such a call is made, otherwise, they do not make it when you move out of these premises.

So despite having legal provisions that allow women to apply for a variance of the amount awarded, the discussion has shown that my participants found the procedures lethargic, unnecessarily protracted, and therefore opted to accept the initial amount.

5.1.4 Erratic Payments

Even when women have reluctantly accepted low maintenance amounts, my participants reported that they are still confronted by a myriad of challenges to access the funds, and one of them is the erratic remittance of the maintenance funds. They highlighted that several months can pass without accessing a single payment, as the fathers keep skipping the dates and the system does not make proper follow-ups on them.

Nyakayira: He did not pay anything for the first three months and the amount accumulated to K90,000. Even after seven months, he had not paid anything and the amount had reached K210,000.

Nyapathima: He just paid once and stopped. He was summoned and he agreed to pay K6000 and the arrears of K4000 for each month. He started paying but then stopped again.

Nabanda: He can skip three months without paying and all what the court says is "he will pay, let us give him time". So now it is him that decides when to pay and not the court.

The above experiences demonstrate a lack of proper enforcement mechanisms for the maintenance rulings. Despite the court determining that the men are liable to pay maintenance, many of them ignore the dates set by the court and only pay when it suits them. The issue of inadequate enforcement of courts' determinations is well documented by most literature on access to justice in Malawi. A study by Banda *et al* (2002) revealed that even

after the judgments are delivered, most parties do not comply with the orders and that they are never compelled to do so. The study (Banda *et al* 2002) further problematised the court's arrangement that allows defendants in civil cases to pay at their terms arguing that the provision put vulnerable and poor people at a disadvantage. Similarly, studies conducted in South African on maintenance (see Khunou 2006; Coutts 2014; Mamashela 2009) highlighted poor coordination of enforcement mechanisms as one of the huge setbacks confronting the maintenance system in the country. Khunou (2006) revealed that men in the maintenance enforcement agencies such as the police had some prejudice towards women and maintenance issues and were therefore not adequately assisting the claimants in enforcing the courts' determination.

The experience of my participants demonstrates that despite the courts concluding their cases, many of them could still not access the maintenance as remittance of the same is very erratic due to lack of enforcement mechanisms. Several months can elapse without the women accessing a single payment.

In the next section, I discuss impact of the court processes and inequalities on the lives of the women and children involved in the maintenance pursuit.

5.2 Impact on the lives of women and children

The court processes, biases, inequalities, and untimely remittance of the maintenance as discussed in the preceding chapters matter precisely because they have much broader long term effects that shape the lives of both the women and children involved. Coutts (2014) and Bonthuys (2008) contend the issue of maintenance, although it is commonly overlooked, is devastating in the lives of both the women and the children involved and that is a form of violence. The discussion that follows aims to highlight the high mental and emotional costs associated with the maintenance pursuit.

5.2.1 Desperation Moves

The numerous challenges associated with the maintenance pursuit and the need to see that the children are provided for, have at times forced some of the women to think of relinquishing custody of the child/children to the fathers. The women are desperate to see their child being

adequately assisted by their fathers whom they believe are capable of doing so. They are certain that the fathers would be forced to spend and provide for the children if they could be under their custody.

Najere: If he thinks I will be benefitting from such funds, I am ready to relinquish custody of the child, if that will be in the child's best interest. All I want is to see the child having his needs and not suffering when his father is alive, working and has money.

Nabanda: There are times when I feel like giving the child to him again. I once presented the child to him and he took her to the police, claiming I had dumped and neglected the child. I was arrested and beaten heavily for doing that.

It can be seen from the above experiences that the impact of the maintenance pursuit is not limited to the women's finances, as it is also affecting them emotionally and mentally, to the extent of brooding thoughts of relinquishing custody of the child, which is a huge thing to do. On another note, it is worth highlighting that the Malawian context is slightly different from the experiences in other countries across the region. South African mothers expressed discomfort at the thought of giving away their children to their fathers who, for failure to provide for their children, had already demonstrated as being irresponsible (Khunou 2006). The mothers were also sceptical of the treatment the children would receive from their father's new wives or lovers and therefore felt it would be better for them to continue struggling to provide for children than present them to their father (Khunou 2006).

In essence, the discussion has shown that the maintenance system wears down the claimants. Besides, having significant financial costs in the lives of the women involved, it is clear that the pursuit also has the possibility of breaking some of them down mentally and emotionally as Najere and Nabanda's experiences above highlight.

The next section discusses the feelings of frustrations and resignation that gradually take a grip of the maintenance pursuit.

5.2.2 Frustrations and resignation

My participant's initial anticipation, that the court will adequately offer them relief is however gradually replaced by a feeling of frustrations, disappointment, and resignation as Nakalinga and Nyakayira's experiences below illustrate. They soon realize that the wheels of justice through the courts grind slowly.

Nakalinga: We come to it with a lot of hope, but so far I have been disappointed.

Nyakayira: But now I have started to lose hope in the court and its system

As shown below, my participants are so resigned over their maintenance cases such that they do not care whether or not the system would incarcerate the men. Since the men neither honour the maintenance nor provide any other support towards the children, the women perceive them as being already imprisoned or dead as the two experiences below reveal.

Nyakayira: The man is as good as dead to me. He has never helped the child for the past 5 years.

Nyasibande: The situation is as good as him being in prison. So even if they commit him to prison, it will have minimal impact as he is doing nothing for the children.

The frustrations over the maintenance pursuit have forced some mothers to lose interest in the case. Khunou (2006) found that women opt out of the cases rather than chasing around the fathers that are reluctant to meet their obligation of providing for the children. They would rather sacrifice their comfort and confront the challenges of raising the children single handedly than continue engaging the system (Khunou 2006). This view is shared by Kaunda (2012) who contends that despite the apparent need for the courts, many poor and marginalised people steer clear of it as they believe, often correctly, that the system does not help solve their problems. Nyapathima's and Nachisale's ordeals, below, sum up the womens' frustrations and resignation best.

*Nyapathima: There is nothing one can do as there is no other option remaining (Shrugging shoulders and making a face)**.** So I have just accepted that maybe this is how the court conducts its business.*

Nachisale: *The whole maintenance system is a total betrayal to women that have so much hope in the court.*

In summary, the women's experiences above illustrate the hope that they initially hold when they first approach the court. The women expect the court would adequately address their grievances. Their hope is however gradually replaced by a sense of frustration over among other things the slow pace of the case, the low and erratic accessibility of the maintenance. The frustrations eventually culminate into a feeling of resignation where the entire sense of hope that they initially had vanished.

Overall, the findings in this chapter have demonstrated that the women are unsatisfied with the maintenance amount as determined by the courts. The amounts are perceived to be far beyond their expectations as they fail to meet some critical necessities, such as housing, in the lives of the children involved. The discussion has also shown that the situation is compounded by the erratic remittances of the maintenance that drains more resources from the women, through the numerous court errands to check if the maintenance has been remitted. It has further been illustrated that the inefficient functioning of the maintenance system has long term profound effects that shape the lives of both the women and children involved. The women assume the breadwinner role, where they have to meet all financial obligations of their families, and this exerts a lot of pressure on them as they do not stable sources of income to fend for the children. Their desperation of seeing that the children are well provided for has driven some of the women into mental breakdown to the extent of brooding thoughts or attempting to relinquish custody of the children to their fathers with little regard for the legal provisions for such procedures. Finally, the discussion has shown that the hope that the women had in the court system is gradually eclipsed by a feeling of frustration, resignation, and betrayal. They soon realize that what they initially considered as their ultimate bastion of hope in their pursuit of maintenance will not be of help to their cause.

The next chapter provides a summary of the thesis and its core arguments. The chapters also give some recommendations and concluding remarks.

Chapter 6: Conclusion

6.0 Summary of the findings

It is evident from this study that women who pursue child maintenance through the courts, in Malawi, are confronted by a myriad of challenges that they cannot easily navigate due to a number of factors. My study participants' experiences have demonstrated that despite the availability of a transformative and progressive legal framework, one that strives to promote and protect the rights of marginalised groups, there is a huge disconnect between the utopic promises enshrined in the legislation and the actual practice. The practice is shown to be miles behind in terms of fairness to women that come into contact with the system to seek legal relief.

The study has highlighted that women, in Lilongwe City, despite living relatively in proximity to the Child Justice Courts, incur huge logistical costs due the protracted nature of maintenance cases. The cases take long to be heard and the women have to make regular visits to the court to check if maintenance has been deposited. The study also revealed that there are also some subtle administrative costs, such as the "conduct money" and communication expenses, which in an ideal situation are supposed to be met by the courts but are instead incurred by the women, who are mostly poorly educated, not in formal employment and lacking stable sources of income. The women spend the little resources they have and get nothing in return. The research supports Khunou's (2006) findings of the South African maintenance systems that the cost of trying to navigate the courts to obtain child maintenance can outweigh whatever maintenance the claimants eventually realize and that going to courts for maintenance is a very risky investment of scarce resources.

In addition, the study has shown that evidential burdens, perceived gender bias and corruption, are some of the critical barriers that work against women and compromise the outcome of the child maintenance pursuit. The research has revealed that some of the evidence the courts demand the women to submit, such as pay slip, to substantiate their claims, cannot be easily accessed by them and that this weakens their cases. It has also illustrated how women perceive the courts to be androcentric and having prejudice against them in its administration of justice. The courts have been shown to be dismissive of women's submissions, on evidence, while at the same time being accommodative of men's narratives which the women' believe are mostly lies. However, such treatment towards women is expected as institutions such as the courts are usually dominated by men who are

custodians and agents of patriarchy (Gqola 2015). The courts are considered to be a patriarchal space and the magistrates are ready to hear what is already preconceived as being plausible to them and any departure from it renders the narration of the women incredible (Gqola 2015). The courts choose what they want to hear. So despite the women making a good case before it, their pleas fall in deaf ears as the magistrate attitudes towards the case is already prejudiced against them due to patriarchy.

Furthermore, the study has demonstrated that the women are unsatisfied with the maintenance amounts awarded by the courts. They perceive the amounts to be far beyond their expectations as the amounts fail to meet some critical needs in the lives of the children involved. It has been shown that the court pays minimal attention to those statutes' provisions governing child maintenance (MoG 2010; 2012) as amounts awarded are not adequate to meet the necessities of child survival and development in a city that has been shown by CSC (2018) to be the most expensive in Malawi. Furthermore, it has been found that women are reluctant to apply for variance of the maintenance as the appeal process in unattractive and entails going through the hearing processes that have proved to be protracted and lethargic. Access to maintenance has been shown to be compounded by the erratic remittances of the same that makes it difficult for the claimants to plan. Several months lapse without accessing a single monthly remittance as many fathers keep on skipping the remittance dates and the system does not make proper follow-ups on them. There are no effective enforcement mechanisms by courts determination on maintenance cases and many fathers do not comply with them.

Besides, the study has revealed that the inefficient functioning of the maintenance system has long term profound effects that shape the lives of the women. It has shown that women assume the breadwinner role, fending for the children and meeting all financial obligations of their families, and this exerts a lot of pressure on them. The desperation to seeing that the children are well provided for has been found to drive some of them into mental breakdown to the extent of attempting to relinquish custody of the children to their fathers without following proper procedures. Finally, the study has found that the hope that the women had when they first approached the court gradually diminishes and is replaced by a sense of frustration and resignation, as they realise that the courts will not help their cause. The women believe the system betrays them. The study concludes that despite having good legal frameworks on maintenance, the good intentions and spirit behind such progressive

legislation are being betrayed by a lethargic, inefficient administrative system that seem to have some prejudicial and patriarchal traits against maintenance pursuits.

6.1 Recommendations.

In view of the challenges surrounding the maintenance pursuit as highlighted by the findings, my research has proposed recommendations towards the maintenance system in Malawi. I must acknowledge that some of the challenges would require strategic or medium term solutions that would usually attract huge financial investment. However, there are also short-terms ones that demand minimal financial investment and I believe state and non- state actors on access to justice, women and child rights, can quickly look into.

Firstly, there is need to put in place electronic systems to facilitate some of the maintenance transactions. Currently, there is no mechanism that alert women of the status of their maintenance accounts, as the Child Justice Court uses manual system, which is similar to the cash hall system in South Africa, that entails claimants to go and interact with accounts department personnel at the courts each time they would like to check and access the maintenance. The establishment of an electronic system that could alert the women of the maintenance deposit and facilitate the funds transfer could go a long way to significantly reduce the logistical costs the claimants incur on each errand they make to the court to check if the maintenance has been remitted. Such a system that has ever been piloted and proved effective in South Africa also allows both, the men and the women, to make transactions without necessarily having to visit the courts, thereby saving their time as well (see Bonthuys 2008; Dejong 2009; Coutts 2014). I find the use of such system quite feasible in the Malawian context where there has been a proliferation of funds transferring platforms that are secure, user-friendly and available on all mobile phone services providers in all corners of the country. The platforms allow users to send, receive and keep money through their phones. So besides knowing the status of the maintenance accounts through their mobile phones, the women could also utilize such services to access the maintenance whilst within their locality.

I also believe the establishment of maintenance and investigation officers at the Child Justice Courts in the Malawian could alleviate some of the evidential burdens that confront the women. It is evident from the South African context (Dejong 2009; Coutts 2014) that despite a myriad of other administrative challenges, such as acute human and material resources gaps, facing that country's maintenance system, the available maintenance and investigation

officers do a commendable job. Unlike the Malawian scenario where the onus is upon the women to submit all the necessary evidence and documentation to the court, it is the duty of the maintenance and investigation officers to solicit and furnish the South African maintenance courts with such information (Dejong 2009; Coutts 2014). In that way, they ease the evidential burden off the women. The establishment of these two offices at the Child Justice Courts would therefore be worthy exploring as it would assist the courts in awarding fair maintenance that is premised on the actual earnings and responsibilities of the parties involved.

Furthermore, the system would also be fair to apportion the logistical costs that the women incur to the fathers. The study has demonstrated that due to many protractions that characterise the maintenance pursuit, women incur significant logistical costs during the case hearing stage and also when they come to check the status of their maintenance accounts. It has been shown that most fathers rarely respect the court summons and do not turn up for hearings thereby forcing the court to adjourn the matter on several occasions. The women keep on honoring the new dates and in the process incur significant transport costs, which at times overshoot the maintenance that the courts later on award. The study has further revealed that many fathers skip the maintenance payment dates, forcing the women to make several errands to the court within a single month just to check if the funds have been deposited, and that these trips consume significant funds as well. Since it is the fathers that does not honour the dates, it would be fair to have procedures that could push all logistical costs associated with the subsequent trips that the women makes to the court to the former. Mamashela (2006) contends that the courts should have the discretion to issue a costs order against the defaulting parties to end unnecessary postponement of cases. The unnecessary additional costs ought to be deflected off these women, who, as the study has shown do not have stable and reliable sources of income. Such measure would also serve as a deterrent to deliberate and unnecessary case postponement or deferment of the remittances.

In addition, there is need to build capacities of court's personnel, especially clerks and magistrates in some areas such as Human Rights Based Approach (HRBA), Gender Responsive and Transformative Approaches, GBV, and Ethics in relation to their work. It is evident from the study that to some extent, the attitude and conduct of both the court clerks and the magistrates towards the women lack a human face and further traumatise them. The study has shown that courts are perceived as a space that is biased toward men and against

women, and is very ready to accommodate a father's voice unlike that of a woman. In addition, some courts officers have been shown to have some suspicious relationship with the fathers who the women believe compromise their positions and permit corrupt practices such as the issuance of variation orders in their absence and without their knowledge. Through the capacity building interventions, the court staff would come to appreciate the impact that their negative attitude and practices have on the lives of the women and children involved in the maintenance cases. There are a number of NGOs, both local and international, and development partners that focuses on women's and child rights issues, and could support the implementation of such interventions. As Nyirenda (2015) contends, the courts have to be responsive to the needs of those that contact it to seek relief and redress especially the poor and marginalised.

Finally, I personally subscribe to Bonthuys (2008) recommendation that child maintenance should include compensation towards the mother on the impact that the gendered role of child care has on their financial position. There is no monetary value attached to the mothers' caring roles (Lorber 1994), yet if the children were to be under the custody of their fathers, they would definitely employ someone, to look after them, whom they would be paying at the end of every month. Whilst it might appear as the women do not contribute to the households finances, in essence they immensely do so. And since the women assume the total responsibility of looking after the child, when it is under their custody, that role has to be compensated as it withholds them from fully engaging in their own economic activities. Gendered caring roles should not leave women more impoverished.

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Appendixes

Interview Guide

Research title: Women and Law in Malawi: The experiences of women seeking child maintenance at Lilongwe Child Justice Court.

1. What are your experiences of the court systems and procedures in relation to your child maintenance case?
2. How have the systems and procedures worked for you?
3. How did you find the processes to be like from the application, hearing and conclusion of your case?
4. In what ways have the court's processes and procedures impacted on your ability to access child maintains funds?
5. Are there any laws or provision that you know that governs the issue of child maintenance?
6. How do you perceive the courts determination on your case?
7. What are your experiences of dealing with officers of the court in relation to your case?
8. In relation to your case, how do you look at the justice systems, in terms of effectiveness towards assisting women?
9. Are there some challenges that you have experienced in this case, and at this court?
10. What is your lasting impression about the courts and justice system in Malawi?
11. Any other thing about the courts, in relation to your case, that you would like to share?

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INFORMATION SHEET

Project Title: Women and Law in Malawi: The experiences of women seeking child maintenance at Lilongwe Child Justice Court

Researcher: Limbani Zakeyo Phiri, Student Number: 3766830

Supervisor: Prof. Lindsay Clowes

My name is Limbani Zakeyo Phiri. I am a student at University of the Western Cape in South Africa doing a Masters' Degree in Women and Gender Studies Programme. One of the requirements for me to finish the programme and get the degree is to write a long paper called thesis. The thesis requires me to collect and analyse some information. Currently, I am collecting that information.

My research interest is to explore the experiences of women that get child maintenance through the Lilongwe Magistrate Court**.** Although the primary purpose for the research is academic, it is expected that the information that it will generate will contribute to the ongoing discussion on access to justice in our country. The findings will also help NGOs that focus on women's rights to come up with relevant programmes that will assist women that seek justice through the court system.

It is in this regard that I have approached you, to request for your participation an interview. I got your name from the records of the Lilongwe Court, after I had submitted a formal request. The interview will be are confidential and your responses will not be shared in any way that could trace you as the source. Besides, your name and those of the children involved, or their father will not appear anywhere in the interview as well as the results. Pseudonyms will

instead be used. The recording and the notes that I will make will be destroyed once I am done with analysis of the data I will get from you.

While your participation in the interviews will not in any way compromise your access to the court and its services, there is a likelihood that the narration of your court ordeals may rekindle some bad and traumatizing experiences that you have had on this case. It is in this regard that this venue, NGO-section of the Child Justice Court, was chosen as it is secluded from the public and one can easily access free counselling services.

Your participation in the exercise is voluntary. You are free to refuse to participate in the study and also withdraw your consent by curtailing the interview at any point you would wish to do so and you will not be penalized for doing so. Your participation is for free. I will therefore not pay you any allowance for participating in the interviews. However, I am obliged to pay you a modest transport refund, of K2000, taking into consideration that you have travelled all the way from your area to this place just meet me.

If you agree to my request, I will then proceed to ask you some questions on your court experience. I will take notes as you speak. With your permission, I will also be recording the interview, so that I can later on capture some issues that my notes may miss. Both the recordings and the notes will be disposed, through deleting and shredding, once am done with my analysis. The interview will take approximately one hour to finish.

You are also free to ask any questions and seek more information about the interview. In case you want more information or have questions you can ask me on telephone numbers +265 888 601 549 (Malawian Line), +27735329611 (South African Line), or through my email: limbanizp@gmail.com,3766830@myuwc.ac.za. You can also contact my supervisor, Professor Lindsay Clowes on telephone numbers +27 21 959 3599 or through on email: lclowes@uwc.ac.za,

I thank you in anticipation of your support.

Limbani Zakeyo Phiri

University of the Western Cape,

Faculty of Arts,

Women and Gender Studies Department,

Private Bag X17, Bellville, 7535,

South Africa.

Consent Form

Please initial box

1. I confirm that I have read and understand the information sheet explaining the above research project and I have had the opportunity to ask questions about the project. ☐
2. I understand that my participation is voluntary and that I am free to withdraw at any time without offering any justification and there will be no any punitive measures against me for doing. ☐
3. I understand that I have the authority to allow or not allow the researcher record conversation ☐
4. I give permission to the researcher to record and take notes of our conversation ☐
5. I understand that I am free now not to answer any particular question if I feel so. ☐
6. I understand my responses and personal data will be kept strictly confidential. ☐
7. I give permission to the researcher to have access to my anonymised responses. ☐
8. I understand that my name will not be linked with the research materials, and I, my child or their father will not be identifiable in the reports or publications that result for the research. ☐
9. I will not discuss or divulge information shared with the researcher. ☐
10. I agree that the data collected from me could be used in future research. ☐
11. I am free to seek for more clarifications from the researcher or his supervisor ☐
12. I agree to take part in the above research project. ☐

Name of Participant (*or legal representative*)	Date	Signature
Name of person taking consent *(If different from lead researcher)*	Date	Signature
Limbani Zakeyo Phiri Lead Researcher (*To be signed and dated in presence of the participant*)	Date	Signature

Copies: All participants will receive a copy of the signed and dated version of the consent form and information sheet for themselves. A copy of this will be filed and kept in a secure location for research

Researcher:

Limbani Zakeyo Phiri,
Department of Women and Gender Studies,
University of the Western Cape.

Supervisor:

Prof. Lindsay Clowes,
Department of Women and Gender Studies,
University of the Western Cape.
Tel: +27 21 959 3599

The Chairperson:

UWC Research Ethics Office,
Email: research-ethics@uwc.ac.za,
Tel: +27(0) 219504111

Letter from the Malawi Judiciary

Telephone: 01 880 034
Fax No.: 01 873 873
Email address: highcourt@judiciary.mw
Website: www.judiciary.mw

REGISTRAR'S OFFICE
High Court of Malawi
P.O. Box 30244
Chichiri
Blantyre 3

12th April, 2018

Mr. LimbaniZakeyo Phiri,
Women and Gender Studies Department,
Faculty of Arts,
University of the Western Cape,
Private Bag X17, Bellville, 7535,
South Africa.

Dear Sir,

REQUEST FOR PERMISSION TO ACCESS COURT REGISTARS FOR A STUDY.

I am pleased to inform you that the office of the Registrar for the Judiciary in Malawi has considered and approved your request to access and use court registers at the Lilongwe Magistrate Court to assist you in coming up with a sample for your academic study titled "Access to Justice for the Vulnerable Groups: An Exploration of the Experiences of Women Seeking Child Maintenance at the Lilongwe Magistrate Courts". You may now proceed to access theregisters.

We sincerely hope that your study adheres to the international and national ethical guidelines and requirements. Otherwise, we wish you all the best in your study.

Yours sincerely,

AGNES THOKOZANI PATEMBA
REGISTRAR OF HIGH COURT AND SUPREME COURT OF APPEAL