The family and the legal system

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Introduction
Relevant research is often lost to disciplines other than those in which it originated. The reasons for this vary: little or no media coverage of the research results, a limited print run and inadequate distribution of the research report, unattractive or complicated presentation of the results, inadequate cross-referencing in libraries, and narrow bibliographical searching by readers and students.

Moreover, old and established professions and scientific disciplines – like law – tend to become encapsulated by and in their long traditions, many fields of specialisation and numerous theoretical subdisciplines; and many regard research results from other fields as peripheral to their interests.

The research generated and coordinated during the past ten years under the operative programmes of the Human Sciences Research Council – particularly the HSRC Cooperative Programme on Marriage and Family Life – most probably falls under this peripheral category. Some of it will therefore be discussed briefly under the following headings:

- Family policy (general)
- Family structures: variations and adaptive styles
- Family values, parent–child relationships, the generation gap
- Marital discord, with emphasis on divorce and its repercussions
- Domestic violence and other forms of abuse of family members
- Violence and the family

Family policy (general)
Although most of the reports mentioned here refer to policy on specific issues, a report by E W Harvey addresses family policy as such. In Social change and family policy in South Africa, 1930 to 1986 (1992, translated into English in 1994) Harvey follows the development of social policy in South Africa through the Great Depression and its immediate aftermaths, the Second World War and post-war period (1939–1947), the main apartheid period, and the beginning of the transitional period.

The author refers finally to the National Plan for Family Life (1987) and the Committee for Marriage and Family Life (CMFL) situated in the Department of Welfare’s Division for Family Life. Since the publication of the report, this division, together with the CMFL, has extended its activities to include the identification – and sponsoring – of urgent research as well as the coordination of the South African celebrations of the International Year of the Family (1994). It is expected that all these activities will eventually lead to the formulation of a family policy for South Africa.

Family structures: variations and adaptive styles
Most of the authors mentioned under this heading found several deviations from or adaptations to what many people consider the norm or ideal, namely the nuclear family, consisting of a father and mother and their children.

Anna Steyn’s research (Family structures in the RSA, 1994 – Afrikaans version 1993) revealed that only 37 per cent of the black households in the RSA (former TBVC countries included) were nuclear families, compared with just over 46 per cent among the whites and 55 per cent among the Indians. If man–woman structures are included as nuclear families, the total for the blacks would be barely 40 per cent compared with 61 per cent among the whites and 70 per cent among the Indians.

Structures with high frequencies among the blacks – and to some extent the coloureds – but with low frequencies among the other two population groups were man, woman, child(ren) and additional household member(s); multigenerational families with a male head (14,4 per cent among the blacks, 0,7 per cent among the whites);
and multigenerational families with a female head (11.3 per cent among the blacks, 0.3 per cent among the whites). When one includes those multigenerational families with a male or female head that had additional members, the difference between the blacks and the whites increased.

Among the coloureds and the blacks 9–10 per cent of the households consisted of a woman and child(ren), but the percentage was also relatively high among the Indians (5.8 per cent) and the whites (4.7 per cent).

Steyn therefore concludes: ‘Taking into consideration that the incidence of the multigenerational family among the blacks, coloureds and Asians, and the incidence of the single parent family among the blacks and coloureds is so high that these family structures are regarded as legitimate among these population groups, it is of paramount importance that these structures are taken into account in the development of a family policy and a family building programme.’

One might add that these structures should also be taken into account in specific spheres of family life, such as housing, health insurance, and public assistance. In most of these spheres one finds some kind of support scheme/system, for example, subeconomic or subsidised housing, nutritional support, and allowances for the aged and the disable. However, all these systems or schemes define very strictly the beneficiaries that qualify for such subsidised assistance. Yet, the poor can often survive only if they pool or share resources – whatever the origin of these resources may be. In fact, Susan Ziehl (Household structures and family ideology – a study of whites in Grahamstown, 1993) found that among a group of whites, the nuclear family was less prevalent in the lower than in the upper echelons. Legislation and administrative policy will therefore have to allow for some flexibility in the definitions or criteria that determine who does and who does not qualify for a benefit.

H P Steyn (Huishoudelike groeperinge by die Herero van Otjohorongo, Namibië, 1994, unpublished) found family style ‘adaptations’ among the Herero of Namibia that were similar to those described by Anna Steyn. There was no ‘typical’ structure among the households he studied, although the predominant structures were the multigenerational, extended household, and those which included adult daughters and ‘foster’ children (the latter not necessarily placed there by court order). Although kinship was the basis for co-residence, contrary to traditional practice/custom there was not necessarily a father, or even a male, at the head of the household, and the linear extension of the household occurred through junior females more often than through males.

Even where an adult child did not live in a household he might still be regarded as part of it, either because the absent child received financial or other material support from his household or because the child continued to provide for the household.

The spatial arrangements are changed often, as and when required, but the basic philosophy of interdependence and pooling of resources – from whatever source – remains strong. Nevertheless, the constant coming and going, and recurrent changes of address as well as of the number of dependants and dwellers in a home, tax a multitude of legal and administrative rules that have been established in society to achieve a measure of stability and permanence in human relations.

The studies by Tessa le Roux (‘We have families too’. Live-in domestics talk about their lives – in press) and Margo Russell (Parenthood among black migrant workers to the Western Cape, 1995) focus on the circumstances of families who have to maintain relationships across, sometimes, quite long distances.

Even those domestic workers who do not live on the employer’s premises may work long hours and travel long distances, within a framework of job uncertainty, and therefore may choose to have children schooled and cared for elsewhere. These children temporarily – but sometimes over quite a long term – become part of new households.

The care arrangements for such children often interfere with parent–child relationships, while the mother (domestic worker) may have to accept unsatisfactory care and unpleasantness on the part of the caregiver. On the other hand the mother may fail to pay for the caring, leaving the caregiver in an unenviable position.

The core of the matter, however, is that the definitions of ‘family’ and ‘dependency’ and ‘responsibility’ are sometimes stretched to extreme limits.

Margo Russell raises the issue of support by migrant workers for their families who live far away. Most of the absentee fathers in her sample claimed that they supported their children, but the female informants reported a ‘more chaotic picture of greater responsibility among fathers’. It would seem, however, that the real chaos arises in the circumstances of the different sets of children with their varying levels of material wellbeing on their migrant fathers’ ability to pay and willingness to continue a relationship in which face-to-face contact could be fairly infrequent.

Moreover, the research shows the complex
responsibilities of many of the migrant workers because they may also be supporting their own parents - long after they (the workers) have started having and supporting children of their own. However, particularly in the rural areas, these grandparents often reciprocate by raising the grandchildren.

Russell looks at the kinds of households migrant workers actually live in - over and above the households to which they are linked through their remittances. One of these is the contemporary workers' hostel in South Africa in which a significant proportion of the population spends a substantial part of its life. In addition to acquiring many household characteristics, these hostels and their inhabitants develop a political character which isolates them from the rest of the neighbourhood and often leads to ethnic clashes and political unrest.

J C Kotzé and C S van der Wall (Violent social relationships and family life in two Transvaal Lowveld settlements, 1995) hint at the association between local (micro) structures and processes and macro processes. They found that the relationships among the poor in the settlements studied were characterised by great insecurity and mobility. Many, especially young people, had their meals and slept at more than a single residence. Those who had access to resources - whether a job, income, a house, or animal stock - asserted themselves, often in violent ways. Male and older members of a family or household were usually the predominant parties in such relationships, and used their power aggressively.

Moreover, living conditions in the two settlements which Kotzé and Van der Wall studied were generally harsh and inhospitable, and seemed to lead to ruthless measures and callous treatment of one inhabitant by another.

Kotzé and Van der Wall also found that the people they studied dealt with their affairs at a local level, perhaps informally or in a headman's court, but hardly ever in the formal court system.

Women and children are thus particularly vulnerable in areas such as these where poverty prevails, access to material and social resources is limited and uncertain, and where the weak have little hope of protection by the formal legal system.

In conclusion, therefore, while so many relationships and actions in society are guided by the legal definitions of and middle-class assumptions about the family, and about the relationships and responsibilities between spouses and those between parents and children, the 'fluidity, fragmentation and mobility that have characterised so many communities in the country' (P F Reynolds: Youth, family dynamics and political activism, 1995) make more flexible and accommodating definitions essential.

**Family values, parent–child relationships, the generation gap**

References has been made to the work of Kotzé and Van der Wall (1995) which reveals poor children's limited - and insecure - bonds with their families; adults' high expectations in relation to children's physical, psychological and economic independence at an early age and at a level usually expected only from the adults in an affluent society; and attitudes of irreverence towards others, even older relatives, especially from youngsters who fend for themselves and have a life of their own.

Catherine Campbell (Township families and youth identity, 1994) points to other origins for feelings of alienation and disrespect, inter alia, the children's better education coupled with their better employment status, their membership of politically sophisticated peer groups, and the lack of a stable father figure in new working-class families. In both principle and practice, young people ignore their parents' 'recipes for living' although they may still, according to Campbell, feel love and loyalty towards their parents. The parents themselves feel bewilderment, anger or fear. They do not always understand the children or the situations they face and admit that they as parents do not know how to guide their children although the law expects that they should.

Yet, most of all, respect is what these parents value. According to the respondents in Sylvia Viljoen's study (Strengths and weaknesses in the family life of black South Africans, 1994), respect forms part of a number of aspects of life but, as norms and traditions change, respect is lost when, for example, bridewealth is not paid, when a wife not only goes out to work but earns more than her husband, or when children question the moral authority of older generations and manifest defiant rather than submissive behaviour. Many different interpretations of the rights and responsibilities of different parties surface under changing circumstances, and lead to conflict which is not easily arbitrated.

Against the background of women's increasing questioning of the advantages of marriage (Campbell 1994:120 et seq), the increase in the incidence of co-habitation, and the disappearance of the taboo against premarital sex (Viljoen 1994:78 et seq, Ziehl 1993:61), factors that enhance marital stability seem to be decreasing. In the black
community, one of the stabilising factors that remain in the practice of *ilobolo* (C R M Dlamini, *The juridical analysis and critical evaluation of ilobolo in a changing Zulu society*, 1994). As was the case in the past, *ilobolo* still validates the marriage, purchases the reproductive capacity of the woman and guarantees her good conduct, while compensating for the loss of a daughter and for the expenses incurred in her upbringing. Now, however, *ilobolo* may also be seen as payment for marriage expenses, a test of the suitor's intentions and his ability as a provider as well as his assurance of good treatment once he has become the husband. Dlamini’s conclusion (1994:57) about these functions of *ilobolo* may also apply to other so-called deviations from what is considered the social norm: ‘They [the functions of *ilobolo*] are not legal functions, but are merely social in nature. They are, however, not legally irrelevant’.

**Marital discord, with emphasis on divorce and its repercussions**

This theme, more than any of the others, straddles both the different HSRC cooperative programmes and the period they have been in operation. The first project – on child maintenance default – was undertaken in 1986–87 by the HSRC Cooperative Programme: Affordable Material Provision. The report (Ina Snyman: *Ondersoek – betaling van onderhoud*, 1987) reveals extensive default in child support in South Africa, mainly by absentee fathers. One of the repercussions of such default is the demand made on government revenue by thousands of mothers who cannot manage without the fathers' income.

Subsequent research elicited the following recommendations to the helping professions with regard to family breakdown:

- Strengthen the support networks of low-income single mothers (Rumilla Naran: *Social support systems and social networks for low-income single mothers*, 1991) (see also an earlier HSRC publication by Ina Snyman: *Enkeloverskap in Pretoria: probleemdimensies, stufaktore en die behoefte aan gemeenskapsfasiliteite by 300 enkelowergesinne*, 1986).
- Communicate with and assist the children when divorce seems inevitable (Diane Braude & Frieda Francisco-La Grange: *Support system in the life situation of children of divorce*, 1993).
- Do not disregard husbands/fathers in divorce guidance/counselling efforts – particularly in the post-divorce phase (Sulette Ferreira: *n Kwalitatiewe ondersoek na die emosionele belewenis van enkele Suid-Afrikaanse blanke geskeide mans*, 1994).

Predivorce counselling was addressed by Bettie Luttig in *An evaluation of in-depth marital therapy with special reference to the psychodynamics and possible pathology of marital partners* (1993). She found that very often marital therapy for the couple could only progress once they had been helped with their personal or individual pathologies. Even where there are strong indications that the breakdown in a couple's marriage is inevitable, the marriage may (still) be salvaged if confirmed psychopathology in the spouses is first attended to.

Scott-Macnab (Mediation in the family context, 1991, unpublished) writes on the different circumstances in which mediation in family disputes is appropriate. He points out that mediation may be useful even in cases of violence; also that mediation could be initiated by the judiciary itself. A large number of appropriate cases are quoted in this report.

The way women are dealt with in the law-enforcement system was the subject of an independent (not a project of the cooperative programmes) HSRC publication on victimisation (see Ina Snyman in Schurink, Snyman & Krugel: *Victimization – nature and trends*, 1992). It is cited here, because women's contact with the law-enforcement system often arises from marital disruption, domestic violence and maintenance default.

Other contributions in this publication are equally relevant, for example the one on the victimisation of women in a marital context and the victimisation of children. However, the theme of abused and violence within the family is the subject of the next few paragraphs.

**Domestic violence and other forms of abuse of family members**

The cooperative programmes have generated little research on abuse or violence within families. However, three significant studies were produced. The first, sponsored by the Cooperative Programme: Affordable Personal Safety, is a work by Ronald R Graser (*A study of selected cases of family murder in South Africa*, 1992) and consists of a number of cases studied. Of great importance, however, is the analysis in which precipitating factors are highlighted. What becomes particularly clear from this analysis is that threats of and attempts at suicide and family murder should not be ignored.

The second study, by Moira Maconachie, Teresa...
Angless and Mikki van Zyl (Battered women seeking solutions, 1993), deals with accounts of former residents of the Rape Crisis shelter in Cape Town. They discuss the problem of violence at home, the advantages of a temporary stay in a shelter and the difficulty of finding accommodation in order to escape from a violent relationship. The weak response of the law-enforcement system to domestic violence is highlighted.

Diana Russell's study (Incestuous abuse: its long-term effects, 1995) furnishes abundant information to support the notion that incest victims often suffer severe long-term effects. The readiness of victims to discuss the matter with a stranger and their ability to describe events – as well as their associated feelings – in great detail years after the events occurred, suggests a serious unresolved problem: 'It' does not go away.

Kotze and Van der Wall (1995), already referred to, discuss violence in general in loosely knit, extended families, while Campbell (1994) includes young men's violence against female acquaintances.

However, ultimately it appears that most types of violence occur where there is a considerable inequality of power and where the dominant party is in some way and for some reason protected from the disapproval of society, particularly the judicial expression of that disapproval.

Violence and the family

Not all the violence mentioned by Kotze and Van der Wall (1995) and by Campbell (1994) took place within the family context. Much of it was part of a violent subculture and was meted out to strangers and acquaintances alike.

Other publications introduce the effect of political violence on the lives of families. One of these is In the shadow of The Island (1994) by Hylton White and Pamela Reynolds. These authors conducted in-depth interviews with the family members of young activists in the Western Cape who had clashed with the law because of their political activities in the early-middle 1980s. The detailed accounts in the report show how originally apolitical or conservative parents/wives developed political awareness and aggression because of the way their kin were being treated in the judicial system. The most serious displays of violence were once again found in situations out of the public eye and where the inequality of power between parties was greatest, for example in detention quarters.

Violence by the young activists – as expressed in acts of insurrection and sabotage – is also mentioned in the report but is not given prominence because it is considered to be of a more impersonal nature.

A publication in press, entitled Violence and South African families (editors: Lorraine Glanz and Andrew Spiegel), covers all aspects of violence in, and in relation to, the family, such as corporal punishment, sexual abuse and other categories of violence within the family, as well as political violence.

Some of the papers included in the publication have been compiled by authors already referred to in earlier sections of this overview and, seen together, the papers promise to provide a condensed survey that comprehensively covers aspects of violence involving the family and family life.

Conclusion

This short overview highlights the HSRC's cooperative research on the family and family related matters in South Africa. The emphasis in this discussion has been on aspects with criminological ramifications. The following guidelines are only broad principles for dealing with the matters referred to here. More details are to be found in the reports themselves (see bibliography).

- Allowance should be made for a somewhat broader and more flexible interpretation of 'family', 'family members' and 'qualifying beneficiaries'. This flexibility should particularly be applied in negotiations about who qualifies for housing, an insurance benefit or state aid, and it should be understood that family relations could cover vast distances and long periods of time. (Obviously, a broader interpretation of rights would imply a broader interpretation of familial responsibilities also.)
- Criminal activities taking place within the family should not be seen as mere 'domestic affairs' or 'huismoles'. The potential for abuse in the unequal and hidden power relations in the family – between men and women and between adults and children – should never be underestimated.
- People from the legal and social disciplines should likewise learn to recognise early 'warning' signs of increasing danger in family, and even neighbourhood relations and above all be particularly alert to the 'triggering' factors which could precipitate a disastrous outburst.
References


