



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 184

2003

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 9 of 2003: Maintenance Act, 2003.

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# ACT

To provide for the payment of maintenance; to provide for the holding of maintenance enquiries and the enforcement of maintenance orders; to repeal the Maintenance Act, 1963; and to deal with incidental matters

*(Signed by the President on 31 July 2003)*

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**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:-

**PART I  
PRELIMINARY**

**Definitions**

1. this Act, unless the context indicates otherwise -

“beneficiary” means any person for whose benefit a maintenance order may, by law, be made or has been made;

“complainant” means -

- (a) a beneficiary;
- (b) a parent or other legal custodian or primary caretaker of a beneficiary; or
- (c) any other person who has an interest in the well-being of the beneficiary, including but not limited to a relative, social worker, health care provider, teacher, traditional leader, religious leader or an employer;

“custodian” means a parent or other person who has legal custody of a child;

“defendant” means any person against whom a maintenance order may, by law, be made or has been made;

“default maintenance order” means an order made under section 19;

“emoluments” includes any salary, wages, allowances, or any other form of remuneration or any other income which is paid periodically to any person, whether expressed in money or not;

“emoluments attachment notice” means a notice issued under section 31;

“financial institution” means any institution which carries on business as a bank or building society;

“maintenance court” means the maintenance court contemplated in section 6 or any other court which is authorised by law to grant maintenance orders;

“maintenance enquiry” means an enquiry conducted under section 13;

“maintenance investigator” means an investigator appointed under section 8;

“maintenance officer” means any person appointed under section 7(1) or deemed to have been appointed under section 7(3);

“maintenance order” means a maintenance order made under section 17, a consent order made under section 18 and a default maintenance order made under section 19, or a maintenance order made by a maintenance court under any other law and includes any sentence suspended on condition that the convicted person makes payments of sums of money towards the maintenance of any other person;

“medical expenses” means expenses incurred in respect of medical, dental, psychiatric and psychological services rendered to any person and includes any pharmaceutical services given on prescription by a person authorised by law to make those prescriptions and “medical services” has a corresponding meaning;

“messenger of the court” means a messenger of the magistrate’s court;

“Minister” means the Minister responsible for Justice;

“prescribed” means prescribed by regulation made under this Act;

“primary caretaker” means -

- (a) a person, other than a parent or other custodian of a child, whether or not related to the child, who; or
- (b) any institution which;

takes primary responsibility for the daily care of a child with or without the express or implied permission of the child's parent or other custodian;

“register” and its derivatives, means register in the prescribed register as contemplated in section 27;

“this Act” includes the regulations.

“witness” for the purposes of this Act means any person summoned or requested to give evidence at a maintenance enquiry and includes the complainant and defendant.

## PART II DUTY TO MAINTAIN

### Legal duty to maintain

2. This Act -
  - (a) applies where a person has a legal duty to maintain another person, regardless of the nature of the relationship which creates the duty to maintain; and
  - (b) must not be interpreted so as to derogate from the law relating to the duty of persons to maintain other persons.

### Parental duty to maintain children

3. (1) Subject to section 26 and to the law relating the duty of a parent to maintain a child who is unable to support himself or herself, both parents of a child are liable to maintain that child regardless of whether the -

- (a) child in question is born inside or outside the marriage of the parents;
- (b) child is born of a first, current or subsequent marriage; and
- (c) parents are subject to any system of customary law which does not recognise both parents' liability to maintain a child.

(2) For the purpose of determining whether or not a person who is subject to customary law is legally liable to maintain another person, a maintenance court must, notwithstanding anything to the contrary at customary law, have regard to the following principles -

- (a) husbands and wives are primarily responsible for each other's maintenance;
- (b) subject to subsection (1), the parents of a child are primarily and jointly responsible for the maintenance of that child;
- (c) subject to section 4(2), the legal principle, which imposes a legal duty on children to maintain their parents must be applied to children and parents who are subject to customary law.

(3) The parental duty to maintain a child includes the rendering of support which the child reasonably requires for his or her proper living and upbringing and this includes provision of food, accommodation, clothing, medical care and education.

(4) From the date of coming into operation of this Act, any law which requires a parent to give priority to the maintenance of children of a first marriage becomes invalid.

**Principles to be applied in respect of maintenance**

4. (1) Where a beneficiary is a child, the maintenance court must, in determining the nature or amount of maintenance payable to that beneficiary, have regard to the following principles -

- (a) both parents of the child are primarily responsible for the maintenance of that child;
- (b) the parents must, in accordance with their respective means, fairly share the duty to maintain their child or children;
- (c) the parental duty to maintain one particular child does not rank any higher than the duty to maintain any other child of that parent or any other person;
- (d) where a parent has more than one child, all the children are entitled to a fair share of that parent's resources; and
- (e) the duty of a parent to maintain a child has priority over all other commitments of the parent except those commitments which are necessary to enable the parent to support himself or herself or any other person in respect of whom the parent has a legal duty to maintain.

(2) Where a beneficiary is a parent, the maintenance court must, in determining the liability of a child to maintain a parent or the nature or amount of maintenance payable to the beneficiary, have regard to the following principles -

- (a) the liability of the child arises where the parent is unable to maintain himself or herself due to circumstances beyond that parent's control;
- (b) the child must, having regard to his or her own needs, be able to support the parent; and
- (c) the right of a parent to be maintained arises only where that parent's spouse or other person who is legally liable to maintain that parent is unable to do so.

**Conditions precedent to granting of maintenance order**

5. A maintenance court must not make a maintenance order unless it is satisfied that the person against whom the order is sought -

- (a) is legally liable to maintain the beneficiary;
- (b) is able to contribute to the maintenance of the beneficiary; and
- (c) fails or neglects to provide reasonable maintenance for the beneficiary.

**PART III  
ADMINISTRATION OF ACT****Maintenance courts**

6. For the purposes of this Act every magistrate's court, other than a regional magistrates' court, is, within its area of jurisdiction, a maintenance court.

**Maintenance officers**

7. (1) Subject to the Public Service Act, 1995, the Minister, or any staff member delegated in writing by the Minister, may, for every maintenance court, appoint a maintenance officer who must perform the functions and duties assigned to or exercise the powers conferred on maintenance officers by this Act.

(2) The Prosecutor-General may, under section 4 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), appoint a maintenance officer appointed under subsection (1), to conduct, on behalf of the State, any prosecution in criminal proceedings under or arising from this Act.

(3) Any person on whom the Prosecutor-General has delegated authority to conduct criminal proceedings in any magistrate's court is deemed to have been appointed a maintenance officer for the relevant maintenance court.

**Maintenance investigators**

8. (1) The Minister, or any staff member delegated by the Minister, may, for a maintenance court or maintenance courts, appoint a maintenance investigator who must, subject to subsection (2), perform the functions and duties assigned to or exercise the powers conferred on maintenance investigators by this Act.

(2) Without derogating from the generality of subsection (1), the functions and duties of a maintenance investigator include -

- (a) locating the whereabouts of a person required to attend a maintenance enquiry under section 13 or of a person required to attend at a maintenance prosecution under this Act;
- (b) serving of court process on the persons referred to in paragraph (a);
- (c) tracing and evaluating of assets of responsible persons; and
- (d) performance of other functions and duties which may be specified in his or her appointment.

(3) Where a maintenance investigator serves any court process which has been issued in connection with a maintenance enquiry or a maintenance prosecution under this Act, that service is as good service as service effected by a messenger of the court.

(4) The Minister must take all reasonable steps within the available resources of the Ministry of Justice to achieve the progressive realisation of the appointment of at least one maintenance investigator for each maintenance court.

(5) If a maintenance investigator has not been appointed for a maintenance court, the court may, where it considers it necessary having regard to the nature of the case and other surrounding circumstances, authorize that any maintenance court process be served by the messenger of that court.

**PART IV  
MAINTENANCE COMPLAINTS AND ENQUIRIES**

**Maintenance complaints**

9. (1) Subject to subsection (3), a person who wants to lodge a complaint under this Act must, in the prescribed form and manner, lodge the complaint with the maintenance officer of the maintenance court which has jurisdiction in the area where the complainant or beneficiary resides or, in the case where there is an existing maintenance order, with the maintenance officer of the maintenance court where the order is registered.

(2) The complaint referred to in subsection (1) must be made under oath or affirmation and must state that -

- (a) the person against whom the complaint is made is legally liable to maintain the beneficiary of the claim but that he or she fails to maintain that other person; or
- (b) sufficient cause exists for the suspension, substitution or discharge of an existing maintenance order,

(3) A complaint made under subsection (1) may be made by a complainant, beneficiary, defendant or any person who is affected by a maintenance order or any other order, directive or notice issued under this Act.

(4) On receipt of a complaint made under subsection (1), the maintenance officer must -

- (a) where there is no existing maintenance order, investigate the complaint and institute a maintenance enquiry in the relevant maintenance court; or
- (b) where there is an existing maintenance order, investigate the complaint for evidence of -
  - (i) the existence of new circumstances which developed since the date of the order; or
  - (ii) misuse, by any person, of any payment made in terms of a maintenance order;

and if evidence to prove those new circumstances or the misuse is found, institute an enquiry in the relevant maintenance court.

(5) For the purposes of this section "misuse" means failure, without a reasonable or lawful excuse, to use any maintenance payment for the benefit of a beneficiary.

#### **Powers of officers when investigating maintenance matters**

**10.** (1) When investigating any complaint relating to maintenance, a maintenance officer may -

- (a) cause any person, including the defendant or complainant, to be directed to appear before that maintenance officer and to give information or produce any book, document, statement or other relevant information;
- (b) obtain statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of that complaint;
- (c) gather information concerning -
  - (i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;
  - (ii) the financial position of any person referred to in subparagraph (i); or
  - (iii) any other matter which may be relevant concerning the subject of that complaint;

- (d) request a maintenance officer of any other maintenance court to obtain, within the area of jurisdiction of that maintenance officer, information which is relevant to the complaint; or
  - (e) require a maintenance investigator of the maintenance court concerned to perform functions which are necessary or expedient to achieve the objects of this Act.
- (2) A maintenance investigator must, subject to the directions and control of a maintenance officer -
- (a) locate the whereabouts of persons who are -
    - (i) required to appear before a maintenance court;
    - (ii) to be summoned or who have been summoned to appear at a maintenance enquiry;
    - (iii) to be summoned or who have been summoned to appear in a criminal trial for contravening this Act; or
    - (iv) accused of the failure to comply with this Act,
  - (b) serve or execute the process of any maintenance court;
  - (c) serve summons in respect of criminal proceedings instituted for the failure to comply with a maintenance order as if the maintenance investigator has been appointed as a person who is authorised to serve summons in criminal proceedings;
  - (d) take statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of any complaint relating to maintenance;
  - (e) gather information concerning -
    - (i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;
    - (ii) the financial position of any person referred to in subparagraph (i); or
    - (iii) any other matter which may be relevant concerning the subject of that a complaint; or
  - (f) gather relevant information concerning a request referred to in subsection (1)(d).

#### **Examination of persons by maintenance officer**

11. (1) A magistrate may, before or during a maintenance enquiry and at the request of a maintenance officer, require the summoning and appearance before him or her or before another magistrate, for examination by the maintenance officer, of any person who is likely to give relevant information concerning -

- (a) the identification or the place of residence or employment of any person who is legally liable to maintain any other person or who is allegedly so liable; or

(b) the financial position of the person referred to in paragraph (a).

(2) Sections 162, 163, 164(1), 165, 179 to 181, 187, 191 and 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), do, with the necessary changes, apply in respect of the examination of any person under this section.

(3) If the person who is required to appear before a magistrate furnishes the information in question to the satisfaction of the maintenance officer concerned before the day on which he or she is required so to appear, the maintenance officer may discharge him or her from the obligation so to appear.

(4) The examination of any person under this section may be conducted in private at a place designated by the magistrate.

#### **Attendance of witnesses at maintenance enquiries**

12. (1) A maintenance officer who has instituted a maintenance enquiry in a maintenance court must cause any person, including the complainant and defendant, to be summoned to appear before the maintenance court and give evidence or to produce any book, document or statement in his or her possession or under his or her control.

(2) The book, document or statement referred to in subsection (1) includes -

(a) any book, document or statement relating to the financial position of the defendant; and

(b) in the case where the person referred to in paragraph (a) is in the service of an employer, a statement which gives full particulars of that person's earnings and which is signed by the employer.

(3) The summoning of any person to attend at a maintenance enquiry must be done, subject to paragraph (4), in the same manner that witnesses are summoned to appear before a magistrate's court in a criminal trial.

(4) The Minister may prescribe the manner in which process of the maintenance court is to be prepared and served and the form of the summons to be used under this Act.

(5) Section 181 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not, subject to subsection (7), apply to a person against whom a maintenance order may be made under this Act.

(6) The clerk of the maintenance court must, in the prescribed manner and subject to subsection (7), pay the prescribed allowances to a person who attends a maintenance enquiry as a witness.

(7) The allowances payable under subsection (5) or (6) must not be paid to the defendant in the maintenance case unless the maintenance court has directed that the allowances be paid to the defendant.

#### **Maintenance enquiry**

13. (1) On the date specified in the summons issued under section 12 the maintenance court must enquire into the matter of the complaint.

(2) The enquiry referred to in subsection (1) must be held in the presence of the defendant, or if he or she is absent, on production of proof that the defendant was served with the summons referred to in section 12.

(3) The person presiding at the maintenance court must conduct the maintenance enquiry in a manner that is aimed at ensuring that substantial justice is achieved between the parties as well as the beneficiary of the maintenance claim.

(4) Subject to subsection (5), the Civil Proceedings Evidence Act, 1965 (Act No. 25 of 1965) in so far as it relates to the admissibility and sufficiency of evidence, the competency, compellability and privileges of witnesses, subject to necessary changes, applies to an enquiry conducted under this Act and any matter relating to the conduct of proceedings at an enquiry which is not provided for in that Act or this Act must be dealt with in accordance with the practice and procedure followed in civil proceedings in a magistrates court.

(5) Section 236 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) does, with necessary changes, apply to accounting records and documents of banks produced or to be produced under this Act.

(6) The maintenance court holding an enquiry may at any time during the enquiry cause any person to be summoned as a witness or examine any person who is present at the enquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined.

(7) Subject to subsection (4), the maintenance court must administer an oath to, or accept an affirmation from, any witness appearing before the maintenance court and must record the evidence of that witness.

(8) Any party to proceedings under this Act has the right to be represented by a legal practitioner.

(9) A person whose presence is not necessary must not be present at a maintenance enquiry, except where that person has been given permission to be present by the maintenance court.

(10) Where a maintenance court considers that it would be in the interests of justice or the interests of any persons who have an interest in the enquiry, it may direct that a maintenance enquiry be held in private at the maintenance court or at a place designated by the maintenance court.

#### **Production of written statements as evidence**

14. (1) Notwithstanding anything to the contrary in this Act or in any law, at a maintenance enquiry, a written statement made in the prescribed manner by any person, other than the defendant or complainant is, subject to subsection (2), admissible as evidence to the same extent as oral evidence by that person is admissible in a court.

(2) A party to a maintenance case who wants to produce the statement referred in subsection (1) as evidence must, in the prescribed manner and at least 14 days before the date on which the statement is to be produced, serve, on the other party, a copy of the statement, together with a copy of every document referred to in the statement.

(3) The statement referred to in subsection (2) must be accompanied by a prescribed notice which requests the other party to, if he or she so wishes, at least seven days before the commencement of the enquiry, object to the statement being produced as evidence at the enquiry.

(4) If a party to a maintenance case -

(a) objects to the production of a statement as contemplated in subsection (3) that statement must not be produced as evidence at the enquiry but that party may still call the person who made that statement to give oral evidence; or

- (b) does not object to the production of the statement referred to in subsection (1) or has entered into an agreement contemplated in subsection (5), that statement may be produced and admitted as evidence at the enquiry.

(5) A party against whom a statement referred to in subsection (1) is to be produced may, before or during the enquiry, come to an agreement with the maintenance officer or the defendant that any statement referred to in subsection (1), even if the statement was not served as contemplated in subsection (2), be produced and admitted as evidence at an enquiry.

(4) Any document referred to or identified as an exhibit in the statement produced and admitted as evidence under this section must be regarded as an exhibit produced and identified by the person who made the statement.

#### **Evidence from previous maintenance proceedings**

15. (1) Subject to subsection (2), the maintenance court holding a maintenance enquiry may take into consideration evidence produced in any proceedings in respect of an existing maintenance order or, in the absence of evidence to the contrary, accept any finding of fact made in those proceedings as proof of any of those facts.

- (2) For the purposes of subsection (1) -
- (a) the record of any evidence or finding of fact in any proceedings in respect of the existing maintenance order; or
- (b) any copy, transcription or extract certified as a true copy of the original by the registrar or clerk of the court or other officer having the custody of the records of the court where the order in question was issued,

is, on its production at the maintenance enquiry, admissible as evidence.

### **PART V MAINTENANCE AND ANCILLARY ORDERS**

#### **Factors to be considered when making maintenance orders**

16. (1) In this section a "relevant person" means -
- (a) the defendant;
- (b) the beneficiary; and
- (c) any person, other than the defendant, who is liable to maintain the beneficiary.

(2) When making a maintenance order under this Act or exercising any of the powers conferred on it by this Act, a maintenance court must have regard to the evidence adduced at the maintenance enquiry, all the circumstances of the case, and in particular to -

- (a) the lifestyle, income and earning capacity which each of the relevant persons has and is likely to have in the foreseeable future, including any increase in earning capacity, which the court considers a relevant person should reasonably take steps to acquire;
- (b) the property and resources which each of the relevant persons has and is likely to have in the foreseeable future;

- (c) the responsibilities and financial needs which each of the relevant persons has and is likely to have in the foreseeable future; and
- (d) the fact that the defendant delayed the process since filing of the complaint or that he or she contributed partially to the delay.
- (3) Where the beneficiary is a child, the court must also have particular regard to -
- (a) the financial, educational and developmental needs of the beneficiary, including but not limited to housing, water, electricity, food, clothing, transport, toiletries, child care services, education (including pre-school education) and medical services;
- (b) the age of the beneficiary;
- (c) the manner in which the beneficiary is being, and in which his or her parents reasonably expect him or her to be, educated or trained;
- (d) any special needs of the beneficiary, including but not limited to needs arising from a disability or other special condition;
- (e) the direct and indirect costs incurred by the complainant in providing care for the beneficiary, including the income and earning capacity forgone by the complainant in providing that care; and
- (f) the value of the labour expended by the complainant in the daily care of the child.
- (4) Where the beneficiary has disabilities, the court must have particular regard to -
- (a) the extent of the disability;
- (b) the life expectancy of the beneficiary;
- (c) the period that the beneficiary would in all likelihood require maintenance; and
- (d) the costs of medical and other care incurred by the beneficiary as a result of the disability.
- (5) When considering a complaint relating to the substitution or discharge of an existing maintenance order, the maintenance court must have regard to the evidence adduced at the enquiry, and all the circumstances of the case, and in particular to -
- (a) whether there has been any change in the circumstances of the case since the date on which the existing maintenance order was made, including any change in the matters set out in subsections (2) and (3); and
- (b) whether sufficient cause exists for the suspension, substitution or discharge of the existing maintenance order.

#### **Maintenance orders**

17. (1) At the conclusion of a maintenance enquiry and after consideration of the matters referred to in section 16, the maintenance court may, subject to Part II -

- (a) in the case where no maintenance order is in force, make a maintenance order against the person who has been proved to be legally liable to maintain a beneficiary;
- (b) in the case where a maintenance order is in force -
  - (i) substitute that maintenance order by another maintenance order; or
  - (ii) discharge such maintenance order; or
  - (iii) suspend such maintenance order on such conditions which the maintenance court determines;
- (c) make no maintenance order.

(2) An order made under subsection (1) -

- (a) must direct the defendant to contribute to the maintenance of the beneficiary from the date specified in the order;
- (b) must specify the period or periods and the time or times within which contributions must be made;
- (c) must specify the person to whom or organisation, financial institution or other institution to which the contributions may be made; and
- (d) must, subject to rules or regulations made under this Act, specify the manner in which the contributions may be made to the person or institution referred to in paragraph (c); or
- (e) may specify that all or part of contributions made under the order be made to a specific person or institution for a purpose specified in the order.

(3) If the beneficiary of a maintenance order is a child, the maintenance court may order that maintenance contributions be made to the mother of the child for expenses incurred by the mother in connection with the pregnancy and birth of the child, including but not limited to medical and hospital expenses, but a claim under this subsection must be made within 12 months from the date of birth of the child or within such other reasonable period as the court may allow on sufficient grounds shown by the mother.

(4) A maintenance order may direct that payment be made in kind by specified goods or livestock, for all or some portion of the settlement of amounts already owing or the future payment of instalments.

(5) If a defendant changes his or her place of residence or employment during the existence of the maintenance order, he or she must, within seven days after the day of such change and in the prescribed manner, give written notice to the maintenance officer of the court where the maintenance order is registered, and, if payment in terms of that order is to be made to any person, organisation or institution, then also to the person, organisation or institution to whom payment is to be made, and must state fully and clearly where his or her new place of residence or employment is situated.

#### **Consent maintenance orders**

**18.** (1) A defendant on whom a directive issued under section 10 or a summons issued under section 12 has been served may, on or before the date of the maintenance enquiry and in writing, consent to the granting of the maintenance order applied for and submit the written consent to the maintenance officer.

(2) On the date of the hearing the maintenance court may, without hearing or taking any evidence, make a maintenance order in accordance with the written consent referred to in subsection (1).

(3) A copy of the maintenance order referred to in subsection (2) must, in the prescribed manner, be served on the defendant by any maintenance officer, messenger of the court or maintenance investigator, and proof of service by that officer, messenger or investigator is sufficient evidence that the defendant was aware of the terms of the order in question.

### **Default maintenance orders**

19. (1) If a defendant who, under section 12, has been properly summoned to appear at a maintenance enquiry fails so appear at the place and on the date specified in the summons, the maintenance court must, at the request of a maintenance officer for a default maintenance order, call on the complainant or any other person whose evidence might be relevant to, either in writing or orally, adduce evidence which would assist the court in making an order.

(2) At the conclusion of the enquiry contemplated in subsection (1) the maintenance court must consider the evidence adduced at that enquiry after which the maintenance court may, in default, make any of the orders contemplated in sections 17 and 20 or any other order which the court considers appropriate in the circumstances of the case.

(3) A copy of the default maintenance order referred to in subsection (2) must, in the prescribed manner, be served on the defendant by any maintenance officer, messenger of the court or maintenance investigator, and proof of service by that officer, messenger or investigator is sufficient evidence that the defendant was aware of the terms of the order in question.

(4) A person against whom a default maintenance order as contemplated in this section has been made may, in the prescribed form and manner and within 10 days of his or her becoming aware of the order, apply to the maintenance court for the substitution or setting aside of the default maintenance order.

(5) If, after an application has been made to it, a court is satisfied that a person against whom a default maintenance order was made had reasonable grounds for failing to make an application for substitution or setting aside of the default maintenance order within the period contemplated in subsection (4), the court may extend that period for such a longer period which the court determines.

(6) The application referred to in subsection (4) must specify the date on which the application is to be heard and determined.

(7) After making an application under subsection (4) the defendant must, in the prescribed form and manner, give to the complainant notice of the application and that notice must be served on the complainant at least 14 days before the day on which the application is to be heard.

(8) On the date set for the hearing of the application, the maintenance court may call on -

- (a) the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or
- (b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

(9) At the conclusion of the hearing contemplated in subsection (8), the maintenance court must consider the evidence adduced, after which the maintenance court may -

- (a) make an order confirming the default maintenance order referred to in subsection (2); or
- (b) vary the order referred to in subsection (2), if it appears to the court that good cause exists for the variation; or
- (c) set aside the order referred to in subsection (2), if it appears to the court that good cause exists for the setting aside, and convert the proceedings into a maintenance enquiry.

(10) A complainant who has been served with the application referred to in subsection (4), may, before or at the hearing of the application, consent in writing to the variation or setting aside of the order and that consent must be submitted to the maintenance officer of the relevant maintenance court before or at the hearing of the application.

#### **Orders as to costs**

20. (1) The maintenance court holding a maintenance enquiry may, having regard to the conduct of the persons involved in the enquiry so far as it may be relevant, make such order as the court may consider just relating to the costs of the service of process and wasted costs due to a party's failure without good cause to attend an enquiry.

(2) In making the order contemplated in subsection (1), the court must have regard to the conduct and means of the person against whom the order for costs is to be made.

(3) An order for payment of costs made under this section has the same effect as a civil judgment and it may be enforced by any of the methods specified in Part VII.

#### **Orders for scientific tests**

21. (1) If a maintenance officer reasonably believes that -

- (a) the paternity of any child is in dispute;
- (b) the mother of that child as well as the person who is alleged to be the father are prepared to submit themselves as well as that child to the taking of blood or tissue samples in order to carry out scientific tests regarding the paternity of that child; and
- (c) the mother or the alleged father or both the mother and the alleged father are unable to pay the costs involved in the carrying out of the scientific tests,

the maintenance officer may at any time during a maintenance enquiry, but before the maintenance court makes any order, request the court to hold an enquiry referred to in subsection (2).

(2) On receipt of a request made under subsection (1), the maintenance court may enquire into the -

- (a) means of the mother as well as that of the alleged father; and
- (b) other circumstances which the maintenance court reasonably believes should be taken into consideration.

(3) At the conclusion of the enquiry referred to in subsection (2), the maintenance court may -

- (a) make a provisional order that both the mother and alleged father or that either of them pay or pays part or all of the costs to be incurred in the scientific tests;
- (b) make a provisional order directing the State to pay the whole or any part of the costs of the scientific tests; or
- (c) make no order.

(4) When the maintenance court subsequently makes any maintenance order, it may -

- (a) make an order confirming the provisional order referred to in subsection (3)(a) or (b); or
- (b) set aside any provisional order or substitute therefore any order which the court considers just relating to the payment of the costs incurred in the carrying out of the scientific tests in question.

#### PART VI

### FURTHER PROVISIONS RELATING TO MAINTENANCE ORDERS

#### Variation or setting aside of certain orders

22. A maintenance court that has made an order under section 17(1)(a) or (b) may, at the request of the maintenance officer -

- (a) vary such order by designating as the person, officer, organisation, institution or account to whom, to which or into which payment is to be made, any other person, officer, organisation, institution or account at a financial institution or by determining any other manner in which payment is to be made; or
- (b) if the maintenance court has made an order referred to in section 17(4), set aside that order,

and the maintenance officer must, in the prescribed manner, inform the defendant, the complainant or the person on whom a notice referred to in section 31(1) has been served of the variation or setting aside of the order in question.

#### Effect of substitution or discharge of maintenance orders

23. If a maintenance court has, under this Act or under any other law, suspended varied, rescinded, substituted or discharged a maintenance order or direction -

- (a) the original maintenance order becomes ineffective; and
- (b) the maintenance officer must give notice of the decision to the clerk of the court where the maintenance order is registered and that clerk of the court must accordingly amend the relevant register in the prescribed manner.

#### Transfer of maintenance orders

24. (1) Where a complainant in whose favour a maintenance order or any other order under this Act was made or given changes his or her place of residence he or she must, within the prescribed period and in the prescribed manner, notify the

maintenance officer of the maintenance court which has jurisdiction in the area where the complainant now resides.

(2) On receipt of a notice made under subsection (1) the relevant maintenance officer must request the clerk of the court of the maintenance court where the maintenance order or other order is registered to forward the order to the clerk of the court of the maintenance court which has jurisdiction in the area where the complainant now resides.

(3) On receipt of the order requested for under subsection (2), the clerk of the court of the maintenance court where the complainant resides must register that order in the prescribed manner after which he or she must, in the prescribed manner, notify the defendant and any person who, in terms of a maintenance order or direction or a writ of the court, is required to pay or deliver any money or other property to the complainant.

(4) Any maintenance order registered in terms of subsection (3) must for the purposes of this Act be deemed to be a maintenance order made by the maintenance court where the order has been so registered.

#### **Effect of maintenance order**

25. (1) Save as otherwise provided in this Act, any order or direction made by a maintenance court under this Act has the effect of an order or direction of the said court made in a civil action.

(2) An order made under section 17(3), 20 or 21(4) is independent of and may be enforced separately from any other order made under this Act.

#### **Termination of maintenance order**

26. (1) A maintenance order made in favour of a child must, unless the order otherwise provides, with respect to that child, cease if and when -

- (a) the child dies or is adopted by another person;
- (b) in respect of the marriage between the child's parents, an order of divorce or a decree of nullity, which includes an order for the maintenance of the child is made;
- (c) the child marries; or
- (d) subject to subsection (2), the child attains the age of 18 years, but if the child is attending an educational institution for the purpose of acquiring a course which would enable him or her to maintain himself or herself, the maintenance order does not terminate until the child attains the age of 21 years.

(2) Where a child in whose favour a maintenance order was made attains the age of 18 years, the child or any person acting on the child's behalf, may, in the prescribed manner, apply to the maintenance court for an extension of the maintenance order beyond the age of 18 years.

(3) On receipt of an application made under subsection (2), the maintenance court must -

- (a) in the prescribed manner, notify the person who is liable to maintain the child to appear before the maintenance court on a date specified in the notice and to show cause why the maintenance order should not be extended; and

- (b) on the date referred to in paragraph (a), inquire into the matter and -
  - (i) grant the application conditionally or unconditionally; or
  - (ii) refuse the application.
- (4) A maintenance order made in favour of a spouse must, with respect to that spouse, cease if and when -
  - (a) that spouse dies or remarries; or
  - (b) subject to the law relating to divorce, an order of divorce or a decree of nullity is made in respect of the marriage.
- (5) A maintenance order made in respect of a parent remains in force for as long as -
  - (a) the parent is unable to maintain himself or herself;
  - (b) no other person has become liable to maintain the parent; and
  - (c) the child is able to support the parent.

## **PART VII ENFORCEMENT OF MAINTENANCE ORDERS**

### **Registration of maintenance orders**

27. (1) The clerk of the maintenance court must, in the prescribed manner, register all maintenance orders -

- (a) made under this Act or made by any other maintenance court;
- (b) transferred to the maintenance court under section 24; and
- (c) emanating from foreign courts and which, in terms of any law, are required to be enforced in Namibia.

(2) An order registered under subsection (1) may, subject to anything to the contrary in that order, be dealt with or enforced as if it were an order made by the maintenance court where it is registered.

(3) An order registered under subsection (1)(b) or (c) may, subject to anything to the contrary in that order, be dealt with or enforced as if it were an order made by the maintenance court where it is registered.

### **Maintenance order enforceable by civil action**

28. (1) Where a defendant against whom a maintenance order or an order under section 17(3), 20 or 21(4) has been made fails, within 10 days from the date on which payment becomes due, to comply with the order, the complainant may apply to the maintenance court where the order is registered for enforcement of the order.

(2) An application made under subsection (1) must be in the prescribed manner and must be accompanied by -

- (a) a copy of the maintenance order in question; and

- (b) a statement under oath or affirmation setting forth the amount which the defendant has failed to pay; and
- (c) a statement indicating the manner in which the order is sought to be enforced; and
- (d) any other information or document which may be prescribed.

(3) On receipt of an application made under subsection (1), the maintenance court may authorise enforcement of the order in order to recover the amount due together with any prescribed interest which has accrued on the amount and the only means by which the order may be enforced are -

- (a) by execution against property as contemplated in section 29;
- (b) by the attachment of emoluments as contemplated in section 30; or
- (c) by attachment of any debt as contemplated in section 32.

(4) A maintenance court must not, in the circumstances contemplated in section 47(5), authorize the issue of a warrant of execution or make any order for the attachment of emoluments or any debt in order to satisfy a maintenance order until the appeal has been finalised.

(5) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit is liable to be attached or subjected to execution under a warrant of execution or an order issued or made under this Part in order to satisfy a maintenance order.

### **Warrants of execution**

**29.** (1) On receipt of an application made under section 28 the maintenance court may authorise the issue of a warrant of execution against the movable property of the defendant and, if the movable property is insufficient to satisfy the amount outstanding, then, subject to subsection (2), against the immovable property of the defendant to the amount necessary to cover the amount outstanding, together with any interest thereon and the costs of execution.

(2) Where the warrant of execution contemplated in subsection (1) is issued against the immovable property of a defendant who is married in community of property to another person, that warrant of execution is valid and may be executed only in respect of the share of the property which the defendant is entitled to in terms of the marriage in community of property.

- (3) The -
  - (a) complainant must prepare;
  - (b) clerk of the maintenance court must issue; and
  - (c) the messenger of the court must execute,the warrant of execution authorised under this section in the prescribed manner.

(4) The maintenance investigator, or in his or her absence, the maintenance officer of the maintenance court where a maintenance order is to be enforced must assist the complainant in preparing the warrant of execution and in taking the prescribed steps to facilitate the execution of the warrant.

(5) A defendant against whom a warrant of execution has been issued may, within 10 days of becoming aware of the existence of the warrant of execution and in the prescribed manner, apply to the maintenance court where the warrant was issued to set aside the warrant of execution.

(6) An application made under subsection (5) must -

- (a) state the grounds on which the warrant of execution should be set aside; and
- (b) be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard.

(7) On the date set for the hearing of an application made under subsection (5) the court, must, subject to subsection (12), consider the matter and, if it is satisfied that the defendant has complied with the maintenance order, it may set aside the warrant of execution in question.

(8) A defendant against whom a warrant of execution was issued under this section may at any time, in the prescribed manner, apply to the maintenance court for substitution or suspension of the warrant of execution.

(9) An application made under subsection (8) must -

- (a) state the grounds on which the warrant is sought to be substituted or suspended; and
- (b) be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard.

(10) On the date set for the hearing of an application made under subsection (8) the court may, subject to subsection (11) and (12), in a summary manner enquire into the matter, suspend the warrant of execution and substitute the warrant with an order -

- (a) for the attachment of emoluments referred to in section 30(1); or
- (b) for the attachment of any debt referred to in section 32(1).

(11) In making an enquiry under subsection (10) the maintenance court must take into consideration -

- (a) the existing and prospective means of the defendant;
- (b) the financial needs and obligations of, or in respect of other persons maintained by the defendant;
- (c) the conduct of the defendant in so far as it may be relevant concerning his or her failure to satisfy the maintenance or other order in question; and
- (d) any other circumstances which should, in the opinion of the court, be taken into consideration.

(12) Before determining an application made under subsection (5) or (8), the maintenance court may call on -

- (a) the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
- (b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

**Attachment of emoluments**

30. (1) A maintenance court may -
- (a) on receipt of an application made under section 28; or
  - (b) when the court suspends the warrant of execution under section 29(10),

make an order for the attachment of any emoluments at present or in future owing or accruing to the defendant to the amount needed to cover the amount which the defendant has failed to pay, together with any interest thereon, as well as the prescribed costs of the attachment or execution, which order authorises any employer of the defendant or any person who, in terms of a contract is obliged to make periodical payments to the defendant, notwithstanding section 37(g)(i) of the Labour Act, 1992 (Act No. 6 of 1992), to deduct from the defendant's emoluments and to make on his or her behalf such payments as specified in the order until such amount, interest and costs have been paid in full.

(2) The maintenance court may, on application by the defendant or his or her employer or the person who is obliged to make periodical payments to the defendant and on good cause shown, suspend, amend or rescind an order made under this section.

(3) A person who wishes to make an application for the suspension, amendment or rescission of an order as contemplated in subsection (2) must submit the application to the clerk of the maintenance court and that person must, in the prescribed manner, give notice of his or her intention to make the application to the complainant, which notice must be served at least 14 days before the day on which the application is to be heard.

(4) On the date set for the hearing of the matter the maintenance court may, before suspending, amending or rescinding an order as contemplated in subsection (2), call on -

- (a) the defendant or the defendant's employer or the person who is obliged to make periodical payments to the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or
- (b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

**Notice of attachment of emoluments**

31. (1) After an order for the attachment of emoluments has been made under section 30(1), the maintenance officer must, within seven days after the date on which the order was made, in the prescribed manner cause a notice, together with a copy of such order, to be served on the employer concerned or the person who is obliged to make periodical payments to the defendant directing that employer or person to make the payments specified in the notice at the times and in the manner so specified.

- (2) If -
- (a) the defendant leaves the service of the employer on whom a notice has been served under subsection (1); or
  - (b) the person against whom a notice has been served under subsection (1) is discharged from the liability to make periodical payments to the defendant,

that employer or person must, within seven days after the day on which the defendant leaves the service or that person is discharged from the obligation, give notice thereof in the prescribed manner to the maintenance officer of the court where the order is registered.

(3) A person on whom a notice has been served under subsection (1), must give priority to the payments specified in that notice over any order of court requiring payments to be made from the emoluments due to the defendant.

(4) The defendant's employer, or the person who, under this section, is required to make periodic payments on behalf of the defendant, may for each payment that is made on behalf of the defendant, deduct such amount which the court has, under section 30(1) determined to the prescribed costs of attachment.

#### **Attachment of debts**

**32.** (1) A maintenance court may -

(a) on receipt of an application made under section 28; or

(b) when the court suspends the warrant of execution under section 29(10),

make an order for the attachment of any debt at present or in future owing or accruing to the defendant to the amount needed to cover the amount which the defendant has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order directs the person who has incurred the obligation to pay the debt to make such payment as may be specified in that order within the time and in the manner so specified.

(2) The maintenance court may, on application by the defendant or the person against whom a debt attachment order has been made under this section and on good cause shown, suspend, amend or rescind an order made under this section.

(3) A person who wishes to make an application for the suspension, amendment or rescission of an order as contemplated in subsection (2) must submit the application to the clerk of the maintenance court and that person must, in the prescribed manner, give notice of his or her intention to make the application to the complainant, which notice must be served at least 14 days before the day on which the application is to be heard.

(8) On the date set for the hearing of the matter, the maintenance court may, before suspending, amending or rescinding an order as contemplated in subsection (2), call on -

(a) the defendant or the person against whom an order was made to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or

(b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

(9) An order made under subsection (1) may be enforced by the complainant in the same manner that a civil judgment of the magistrates' court is enforced.

#### **Recovery of arrear maintenance**

**33.** (1) Where a magistrate's court has convicted a defendant of an offence under section 39(1) the court may, on the application of the public prosecutor, in addition to the penalty which the court may impose in respect of that offence, grant an order for the recovery from the defendant of any amount he or she has failed to pay in accordance with the maintenance order, together with any interest thereon, and the order so granted has the effect of a civil judgment of that court and that order may, subject to subsection (2), be executed in the same way as a maintenance order made under this Act may be executed.

- (2) In considering the granting of an order under subsection (1) the court may -
- (a) in a summary manner enquire into the circumstances mentioned in subsection (3); and
  - (b) if the court so decides, authorise the issue of a warrant of execution against the movable or immovable property of the defendant in order to satisfy such order.
- (3) In making an enquiry under subsection (2)(a) the court must take into consideration -
- (a) the existing and prospective means of the defendant;
  - (b) the financial needs and obligations of, or in respect of, the beneficiary;
  - (c) the conduct of the defendant in so far as it may be relevant concerning his or her failure to pay in accordance with the maintenance order; and
  - (d) any other circumstance which should, in the opinion of the court, be taken into consideration.
- (4) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit is liable to be attached or subjected to execution under an order granted under this section.

#### **Conversion of criminal proceedings into maintenance enquiry**

34. If during the course of criminal proceedings in a magistrate's court in respect of -
- (a) an offence referred to in section 39(1); or
  - (b) the enforcement of a sentence suspended on condition that the convicted defendant make periodical payments of sums of money towards the maintenance of the beneficiary,

it appears to the court that it is desirable that a maintenance enquiry be held, or when the public prosecutor so requests, the court must convert the proceedings into such enquiry.

### **PART VIII OFFENCES AND PENALTIES**

#### **Offences relating to examinations by maintenance officer**

35. At an examination conducted under section 11 any person who -
- (a) after having been sworn or admonished to tell the truth by the magistrate or after having taken an affirmation, intentionally makes a false statement at the proceedings;
  - (b) is summoned to attend the examination but who, without reasonable excuse, fails to attend or to remain in attendance at the examination;
  - (c) is warned by the magistrate to remain in attendance at the examination but fails to remain in attendance;

- (d) is summoned or warned to appear but who, without reasonable excuse, fails to appear at a place and on a date and time to which the examination was postponed to or fails to remain in attendance at the postponed examination;
- (e) is required to give evidence at the examination but refuses to be sworn or to take affirmation as a witness, or after having been sworn or having taken affirmation, refuses or fails, without lawful excuse, to answer any question put to him or her or to produce any evidence to be produced by him or her;

commits an offence, and is liable to a fine which does not exceed N\$4 000 or to be imprisoned for a period which does not exceed 12 months.

#### **Offences relating to witnesses**

- 36.** (1) Subject to subsection (2), any person who -
- (a) after having been sworn or admonished to tell the truth by the presiding officer or after having taken an affirmation, at a maintenance enquiry held under section 13, intentionally makes a false statement at the proceedings;
  - (b) is, under section 12, summoned to attend at a maintenance enquiry but who, without reasonable excuse, fails to attend or to remain in attendance at the enquiry;
  - (c) is warned by the court to remain in attendance at a maintenance enquiry held under section 13 but fails to remain in attendance;
  - (d) is summoned or warned to appear but who, without reasonable excuse, fails to appear at a place and on a date and time to which the maintenance enquiry was postponed to or fails to remain in attendance at the postponed enquiry; or
  - (e) is required to give evidence at the maintenance enquiry but refuses to be sworn or take affirmation, as a witness or after having been sworn, or having taken affirmation, refuses or fails, without lawful excuse, to answer any question put to him or her or to produce any evidence to be produced by him or her

commits an offence and is liable, to a fine which does not exceed N\$4 000 or to be imprisoned for a period which does not exceed 12 months.

(2) Subsection (1)(b) does not apply to a complainant or defendant who has been summoned to attend a maintenance enquiry.

#### **Offences relating to false information**

**37.** (1) Any person who, in a statement which is admitted as evidence under section 14, intentionally makes a false statement commits an offence and liable to a fine which does not exceed N\$4 000 or to a period of imprisonment which does not exceed 12 months.

(2) Any person who is requested by a maintenance investigator or a maintenance officer to furnish information in the performance of the maintenance investigator's or maintenance officer's functions under this Act, and who intentionally furnishes information which he or she knows to be false or does not know or believe to be true, commits an offence and is liable a fine which does not exceed N\$4 000 or to a period of imprisonment which does not exceed 12 months.

**Offences relating to maintenance enquiries**

38. A person who intentionally -
- (a) insults or obstructs the person presiding at a maintenance enquiry, the clerk of the maintenance court, a maintenance investigator or maintenance officer in the course of his or her duties during a maintenance enquiry;
  - (b) interrupts the proceedings at a maintenance enquiry or otherwise misbehaves himself or herself at the place where the maintenance enquiry is held;

commits an offence and is liable to a fine which does not exceed N\$4 000 or to be imprisoned for a period which does not exceed 12 months.

**Offences relating to maintenance orders**

39. (1) Subject to subsection (2), any person who disobeys a court order by failing to make a particular payment in accordance with a maintenance order commits an offence and is liable to a fine which does not exceed N\$4 000, to be imprisoned for a period which does not exceed 12 months or to periodical imprisonment in accordance with section 285 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was due to lack of means on the part of the person charged, he or she is not, merely on the grounds of such defence entitled to an acquittal if it is proved that the failure was due to his or her unwillingness to work or to his or her misconduct.

(3) If the name of a person stated in a maintenance order as the person against whom the maintenance order has been made corresponds substantially with the name of the particular person prosecuted for an offence under this section, any copy of the maintenance order certified as a true copy by a person who purports to be the registrar or clerk of the court or other officer having the custody of the records of the court where the maintenance order was made, is, on its production, evidence which in the absence of evidence to the contrary, will prove that the maintenance order was made against the person so prosecuted.

(4) If a person has been convicted of an offence under this section, the maintenance officer may, notwithstanding anything to the contrary contained in any law, furnish that person's personal particulars to any business which has as its object the granting of credit or is involved in the credit rating of persons.

**Offences relating to misuse of maintenance money**

40. Any person who receives payment of money or payment in kind on behalf of a beneficiary in terms of a maintenance order and misuses the said payment by failing to use it for the benefit of the beneficiary, commits an offence and is liable to a fine which does not exceed N\$4 000 or imprisonment for a period which does not exceed 12 months.

**Offences relating to intimidation**

41. Any person who with intent to compel or induce a complainant not to file a complaint at the maintenance court or not to lay a criminal charge against a defendant for his or her failure to support a specific person, in any manner threatens by whatever means, including the use of witchcraft, to kill, assault, injure the complainant or any other person or to cause damage to that complainant or any other person, or that complainant's property or another person's property, commits an offence and is liable to a fine which does not exceed N\$20 000 or to imprisonment for a period which does not exceed five years.

**Offences relating to publication of information in respect of children**

42. (1) Save as otherwise provided for in subsection (3), a person must not publish in any manner whatsoever the name or address of any person under the age of 18 years who is or was involved in any proceedings at a maintenance enquiry or the name of that person's school or any other information likely to reveal the identity of that person.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine which does not exceed N\$8 000 or to imprisonment for a period which does not exceed two years.

(3) Notwithstanding subsection (1), if the magistrate presiding at the maintenance enquiry or the Minister reasonably believes that the publication of information in respect of a particular person under the age of 18 years would be just and in his or her interest, the magistrate or the Minister, as the case maybe, may in writing authorise the publication of information specified in the authorisation.

**Offences relating to disclosure**

43. (1) A person must not disclose to another person any information acquired by that person in the performance of that person's functions under this Act, unless the disclosure is made for the purpose of performing functions under this Act or is authorised by a court of law or by any law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine which does not exceed N\$4 000 or to imprisonment for a period which does not exceed 12 months.

**Offences relating to notices**

44. Any person who, without sufficient cause, refuses or fails to -

- (a) make any payment in accordance with an order made under section 30(1) or 32(1); or
- (b) give notice to a maintenance officer as required by section 31(2),

commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.

**Offences relating to notice of change of address**

45. Any person who refuses or fails to give notice of any change of his or her place of residence or employment as required by section 17(5) commits an offence and is liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months.

**PART IX  
GENERAL AND SUPPLEMENTARY****Record of proceedings to be kept**

46. (1) The presiding officer must keep a record of the proceedings at maintenance enquiries and those records must be accessible to people on conditions and payment of fees as prescribed.

(2) Any fees payable under this section must be prescribed by the Minister in consultation with the Minister responsible for Finance.

**Appeals**

47. (1) A person who is aggrieved by any order made by a maintenance court under this Act may, within the prescribed period and in the prescribed manner, appeal against that order to the High Court.

(2) If the aggrieved person is a child, or the custodian or primary caretaker of a child, and that aggrieved person so requests -

- (a) the maintenance officer must prepare and submit the notice of appeal on behalf of the aggrieved person; and
- (b) the Prosecutor-General, or a person designated by the Prosecutor-General, must, in the High Court, act on behalf of the aggrieved person.

(3) If an appeal is noted against a person who is a child, or the custodian or primary caretaker of a child, and if that person so requests, the Prosecutor-General, or a person designated by the Prosecutor-General, must, in the High Court, act on behalf of that person.

(4) In determining an appeal made under subsection (1), the High Court may, subject to section 19 of the High Court Act, 1977 (Act No. 16 of 1990), make any order which is appropriate in the matter.

(5) Notwithstanding anything to the contrary contained in any law, an appeal under this section does not suspend the payment of maintenance in accordance with the order in question, unless the appeal is noted against a finding that the appellant is legally liable to maintain the complainant.

- (6) For the purposes of subsection (1) "order" -
  - (a) does not include a consent maintenance order referred to in section 18, a default maintenance order referred to in section 19(2) or a provisional order referred to in section 21(3);
  - (b) includes a discharge, confirmation, setting aside, substitution or variation of a maintenance order or of any of the orders referred to in paragraph (a); and
  - (c) includes any refusal to make a maintenance order as well as a refusal -
    - (i) to make a provisional order; or
    - (ii) to make a default maintenance order.

**Photographs of persons**

48. (1) After making a maintenance order under this Act, the maintenance court must, at the request of the maintenance officer, direct that photographs of the defendant be taken and handed to the maintenance officer, or that a certified copy of the defendant's identity document be handed to the maintenance officer.

(2) The photographs referred to in subsection (1) must be taken in the prescribed manner and the maintenance officer must deal with them or the copy of the identity document in the prescribed manner.

**Regulations**

49. (1) The Minister may make regulations relating to -

- (a) the powers, duties and functions of the maintenance officer, the maintenance investigator or the clerk of the maintenance court;
- (b) the procedure to be followed at or in connection with a maintenance enquiry;
- (c) the guidelines or the factors to be taken into account by a maintenance court when making a maintenance order;
- (d) the enforcement of maintenance or other orders of a maintenance court;
- (e) any matter required or permitted to be prescribed by regulation under this Act;
- (f) any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N\$4 000 or imprisonment for a period of 12 months.

(3) Any regulation made under this section which may result in financial expenditure for the State must be made in consultation with the Minister responsible for Finance.

#### **Repeals, amendments and savings**

50. (1) The following laws are repealed -

- (a) the Support of Dependants (Natives) Proclamation, 1936 (Proclamation No. 9 of 1936);
- (b) the Maintenance Act, 1963 (Act No. 23 of 1963),
- (c) the Maintenance Amendment Act, 1967 (Act No. 19 of 1967); and
- (d) the Maintenance Amendment Act, 1970 (Act No. 39 of 1970).

(2) The Pension Fund Act, 1956 (Act No. 24 of 1956) is amended in section 37A by the substitution in subsection (1) for the phrase "Maintenance Act, 1963 (Act No. 23 of 1963)" of the phrase "Maintenance Act, 2003 (Act No. 9 of 2003)";

(3) The Reciprocal Enforcement of Maintenance Orders Act, 1995 (Act No. 3 of 1995) is amended -

(a) in section 1 -

(i) by the substitution for the definition of "Maintenance Act" of:

"Maintenance Act" means the Maintenance Act, 2003 (Act No. 9 of 2003); and

(ii) by the substitution for the definition of "maintenance court" of:

"maintenance court" means a maintenance court referred to in section 6 of the Maintenance Act;";

(b) in subsection (1) of section 5 by the substitution for the words "section 5 of the Maintenance Act" of the words "section 13 of the Maintenance Act";

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- (c) in subsection (6) of section 6 by the substitution for the phrase “sections 8, 9 and 10” of the phrase “sections 12, 13, 14, 15, 36 and 38”;
- (d) by the substitution for section 7 of the following section:

“7. Any maintenance order registered in terms of section 4 or confirmed under section 6 shall, for the purposes of sections [11, 12 and 14] 17(5), 28, 29, 30, 31, 32, 33, 39 and 45 of the Maintenance Act, be deemed to be a maintenance order made under section [5(4)] 17 of the said Act by the Maintenance court where such order has been so registered or confirmed, as the case may be: Provided that the provisions of section [13] 34 of the said Act shall not apply to any proceedings in respect of a contravention of [subsection (1) of the said section 11] section 39 of the said Act in so far as such proceedings relate to a maintenance order registered in terms of section 4 of this Act.”;

- (e) in section 8 by the substitution for the phrase “section 12(1)” of the phrase “section 30”; and
- (f) in section 9 by the substitution for subsection (3) of the following subsection:

“(3) Any order registered in terms of subsection (1) and any notice served in terms of subsection (2) shall, for the purposes of [section 12(2) and (3)] sections 31(3) and 44 of the Maintenance Act, be deemed to be an order made or a notice served under [section 12(1)] section 30(1) or 31(1) of the said Act.”.

(3) The Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended in section 195 by the substitution for paragraph (c) of subsection (1) of the following paragraph:

- “(c) any contravention of any provision of [section 11(1)] Part VIII of the Maintenance Act, [1963 (Act No. 23 of 1963)] 2003, or of such provision as applied by any other law;”.

(4) Notwithstanding the repeal of any law by subsection (1), anything done under any such law and which could be done under this Act, is deemed to have been done under this Act.

(5) Notwithstanding the repeal of the Maintenance Act, 1963 (Act No. 23 of 1963) by subsection (1) the rules which were made under that Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act, continue in force until repealed, withdrawn or amended by regulations made under section 49.

### Transitional arrangements

51. Until such time as regulations relating to the enforcement of maintenance or other orders of maintenance courts made under section 49 come into operation, the -

- (a) Magistrates' Courts Act, 1944 (Act No. 32 of 1944) in so far as it relates to the enforcement of any judgment or order of a magistrate's court; or
- (b) rules made under section 25 of the Magistrates' Courts Act in respect thereof, must, in so far as it or they are not inconsistent with this Act or are not otherwise clearly inappropriate, apply in respect of the enforcement of maintenance or other orders of maintenance courts as if the Act or the rules were regulations made under section 49, and any enforcement of any maintenance or other order of a maintenance court commenced

under the Act or rules immediately before the coming into operation of regulations made under section 49 must continue and be disposed of under the Act or rules.

**Short title and commencement**

52. (1) This Act is called the Maintenance Act, 2003 and it will come into operation on a date fixed by the Minister by notice in the *Gazette*.

(2) For the purposes of subsection (1), different dates may be fixed for the coming into operation of different parts or sections of this Act.

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