

CONTRIBUTION ORDERS

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NOTE

In this publication, “Ministry” and “Minister” refer to the Ministry and Minister responsible for child protection, and “Guide” means this *Guide to the Child Care and Protection Act* (which is published in separate chapters).

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If a child is placed in alternative care by court order, the children’s court may order the child’s parents – or other persons who bear legal liability for the child’s maintenance – to pay a contribution towards the child’s care, if they have the means to do so. This also applies to certain other costs of State intervention to assist a child. A contribution order is similar to a maintenance order, but it is designed to reimburse the State for the costs incurred in assisting children in need in terms of the Act.

1. What is a contribution order?

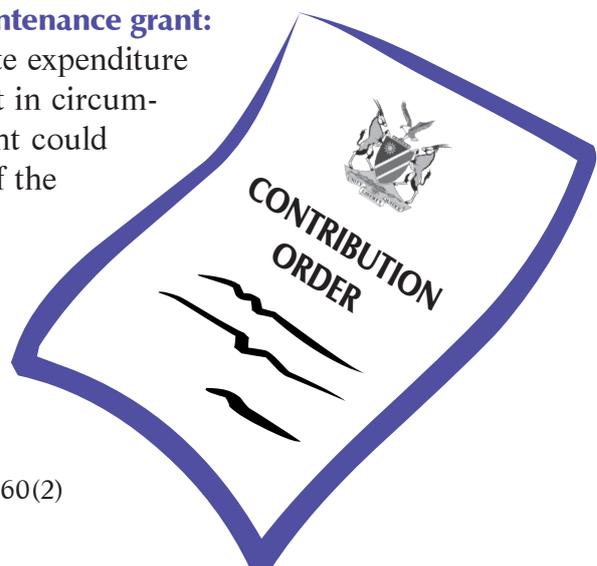
A contribution order is a children’s court order which requires a parent or some other person who is legally responsible for maintaining a child to contribute to the costs incurred in assisting a child who is provided with protective services. It is similar to a maintenance order.

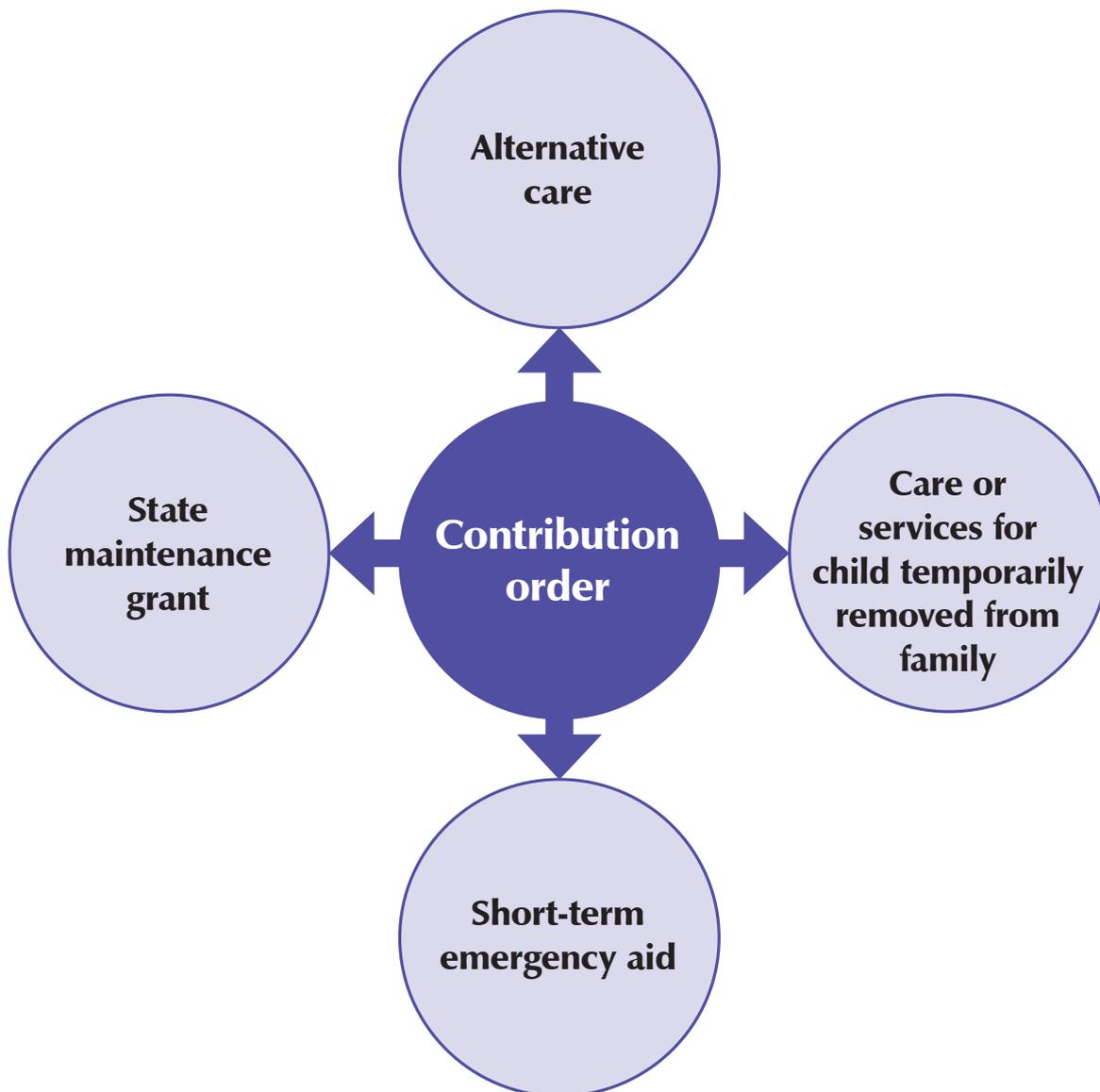
The Act provides for contribution orders in respect of four categories of expenses:

- (1) **costs of alternative care:** a contribution towards the costs of maintenance or treatment for a child placed in foster care or a residential child care facility by court order, including any costs resulting from a child’s special needs
- (2) **costs for a child temporarily removed from the family environment:** a contribution towards the costs of maintenance or services for a child temporarily removed from the usual home by a court order for treatment, rehabilitation, counselling or other reasons, including any costs resulting from a child’s special needs
- (3) **short-term emergency aid:** a contribution towards maintenance, treatment or other costs resulting from “any urgent needs” of a child
- (4) **reimbursement of expenditure on State maintenance grant:** a contribution towards reimbursement of state expenditure for the payment of a State maintenance grant in circumstances where it is shown that the respondent could have contributed towards the maintenance of the child in question.

A contribution order must instruct a respondent to pay “a sum of money or a recurrent sum of money”. It cannot cover contributions in kind.

◆ Child Care and Protection Act, section 160(2)





“ A social worker’s report in a care and protection matter should, as a matter of good practice, include information on whether there is a person, currently liable to maintain the child, who could afford to contribute financially towards costs of the child if the child should be found by a children’s court to require services [as a child in need of protective services]. The children’s court should then as part of its responsibilities conduct a financial investigation into that person’s ability to pay. Such an investigation is separate from the care and protection investigation, but can be conducted at the same time. [...] The primary mechanism for obtaining financial assistance is a contribution order. A ‘contribution order’ [...] means a children’s court order to the effect that a person who is legally liable to maintain a child must pay a specified sum of money towards certain forms of alternative care, services or treatment needed by that child. This money will be due as a financial contribution towards expenses that will be incurred by the state in providing such care, services or treatment. By means of the contribution order a parent, guardian or other relative thus assists the state in providing for the needs of the child. ”

◆ Carmel Matthias & Noel Zaal, “Child in need of care or protection” in CJ Davel and AM Skelton (eds), *Commentary on the Children’s Act, 2007*, updated in 2012, page 10-2 (discussing similar provisions in the South African Children’s Act 38 of 2005)

I am glad that the court took my children away and put them into foster care! Now they are off my hands, and I don't have to waste my hard-earned money on their food and clothing!



My friend, you are wrong. You have financial means, so the State can order you to pay a contribution towards the amount that the State spends to keep the children in foster care. You cannot escape your legal duty to maintain your children!

2. Procedure for obtaining contribution orders

The respondent: The person who is being asked to pay the contribution is the “respondent”. The respondent must be a parent or some other person who is legally liable to maintain the child.

◇ Child Care and Protection Act, section 160(1)

Who is legally liable to maintain a child?

- (1) The duty of maintenance lies first and foremost with the child's **parents**.
- (2) The duty of support that lies with parents can extend to other **ancestors** if the parents cannot fulfil their duty of maintenance for some reason. For example, if a child's parents are deceased or unable to maintain a child, the duty of support next passes to the grandparents (both paternal and maternal grandparents), then to the great-grandparents.
- (3) The duty of support can also extend to **other blood relatives**. For example, if the parents cannot provide maintenance, brothers and sisters (and half-brothers and half-sisters) also have a duty to maintain each other — but their duty is not as strong as that of parents and grandparents. For example, in a case where a parent might be expected to provide for university education for a child, this level of maintenance might not be expected from a brother or sister. The duty to provide maintenance spreads outward in the family. Nearer blood relatives are expected to help if they can, before the duty passes on to more distant blood relatives.

◇ See Legal Assistance Centre, *Maintenance Matters: An Assessment of the Operation of Namibia's Maintenance Act 9 of 2003*, 2013, Chapter 4, section 4.1.3, available at <www.lac.org.na/projects/grap/grapmaintmattersreport.html>

“ The law relating to the duty of support can be summarised as follows: Biological parents of children, whether married or unmarried, have a duty of support. Adoptive parents are considered the parents of a child once the adoption is concluded, and have a duty of support. This is also true of children conceived by artificial fertilisation and surrogacy arrangements. Both maternal and paternal grandparents, regardless of whether the mother and father were married, have a duty of support. Siblings have a duty of support. Step-parents generally do not have a duty of support, but have been found to have a limited duty of support in narrowly defined circumstances. (In *Heystek v Heystek* 2002 (2) SA 754 (T) the mother had remarried in community of property, and the court awarded maintenance *pendente lite* as a result of the shared responsibility. In *MB v NB* 2010 (3) SA 220 (GSJ) the child was not formally adopted, but used the surname of the stepfather. The stepfather was found liable for school fees as he had held himself out to be ‘the father’ on the school application form.) Aunts and uncles bear no responsibility to support their nieces and nephews. In determining whether any person has a legal duty of support in respect of a minor child, cognisance must also be taken of customary law. ”

◆ *SS v Presiding Officer, Children’s Court, Krugersdorp* 2012 (6) SA 45 (GSJ)
(footnotes omitted), paragraph 33

Jurisdiction: A contribution order may be made by the children’s court which covers the area

- Ⓞ where the respondent ordinarily lives, works or carries on business
- Ⓞ where the child involved in the matter ordinarily lives
- Ⓞ where the child has been placed in terms of a children’s court order

Note that this geographical jurisdiction is different from the standard geographical jurisdiction of children’s courts set out in section 41 of the Act.

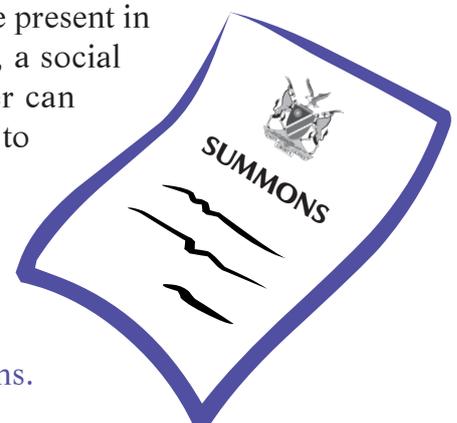
◆ Child Care and Protection Act, section 161(1)

Request for contribution order: A children’s court may issue a contribution order on the recommendation of a **social worker** or on the **court’s own initiative**.

In practice, contribution orders are often issued in the course of the child protection hearing which results in the order giving rise to the expenses in question.

◆ Child Care and Protection Act, section 160(2)

Summons to respondent: The respondent may already be present in court when the issue of a contribution order arises. If not, a social worker involved in the case or the children’s commissioner can request the clerk of the children’s court to issue a summons to the respondent, calling on the respondent to come to court on a specified date and to provide details of his or her financial position.



This summons should be issued on **Form 18A**, which is appended to the Child Care and Protection Regulations.

If the summons cannot be personally served on the respondent, the clerk of the children's court must attempt to notify the respondent by telephone, fax, email, courier or registered post – or by sending an official to his or her last known residential address or workplace to attempt to find out the current contact details. If the clerk of the court is still unable to contact the respondent by means of these alternative methods, the clerk must provide the court with proof of the attempts which were made.

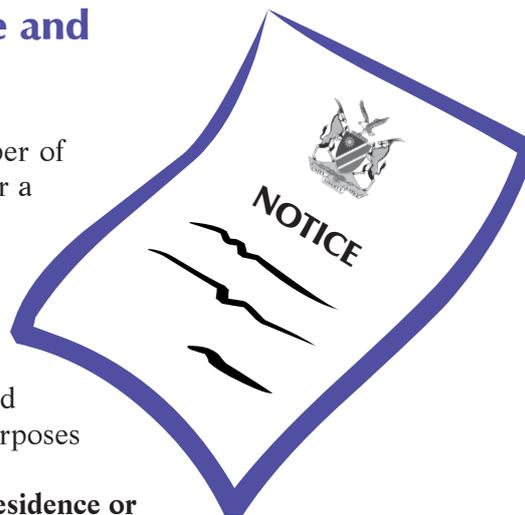
◆ Child Care and Protection Act, section 167(1)

◆ Child Care and Protection Regulations, regulation 57(1)

Notices under the Child Care and Protection Regulations

Notices from the court must be served by a member of the police, a messenger of the magistrate's court or a person authorised by the children's commissioner in the following manner:

- (1) The notice can be served **personally** on the person.
- (2) The notice can be given to the person's **legal practitioner**, if the legal practitioner's name and address have been provided to the court for purposes of proceedings under the Act.
- (3) The notice can be left at the person's **place of residence or business**, with anyone who appears to be at least 16 years of age and residing at the residence or working at the business.
- (4) The notice can be left at the person's **place of employment**, to anyone who appears to be at least 16 years of age, and employed at the same place or in charge of the place of employment.
- (5) In the case of a **legal person (such as an organisation)**, the notice can be left at its **registered office or main place of business**, with a director or a responsible employee.



If the person to be served in any way **prevents the notice from reaching him or her**, it is sufficient service to **attach a copy of the notice to the outer door or security gate** of the relevant place.

If a notice cannot be served in any of these ways, the member of the police, messenger of the magistrate's court or other person authorised by the children's commissioner must attempt notification in one or more of the following ways:

- (1) The person can be notified by **telephone**.
- (2) The person can be notified by **fax**.
- (3) The person can be notified by **e-mail**.
- (4) The person can be notified by **courier** or **registered post**.
- (5) The member of the police, messenger or other person can visit the last known residential address or place of business or employment of the person in question, to **attempt to discover the current contact details** of the person, and then try to use that contact information to serve the notice.

If all efforts to serve notice on the person in question fail, the member of the police, messenger of the magistrate's court or other person who attempted service must give the children's **court proof of the attempts made**.

Proceedings in a children's court may begin or continue in the **absence of a person who was notified, or attempted to be notified**, to attend the proceedings or to make representations – IF the children's court considers it to be in the **interests of justice** and in the **best interests of the child**.

The court must **postpone** the matter due to the **absence of a person who was notified to attend** in any one of these circumstances:

- ⦿ The person who is not present at children's court proceedings is **likely to make a valuable contribution** regarding the best interests of the child in question.
- ⦿ The court is of the opinion that the presence of the person is **necessary** for the purposes of the court proceeding.
- ⦿ The person who is absent is the relevant child's **parent, guardian, custodian, care-giver or a person identified by the court or the relevant social worker as having an interest in the matter** (see section 56(3) of the Act).
- ⦿ The person who is absent is the **investigating social worker** (see section 56(3) of the Act).

In such a case, the court can postpone the matter and arrange for the issue of a **subpoena** to the absent person on **Form 4**, which is appended to the **Regulations relating to Children's Court Proceedings**.

A person who fails to appear before the children's court without a reasonable cause after being issued with a notice or a subpoena commits a crime punishable by a fine of up to N\$5 000 or to imprisonment for up to one year or both.

A person is not subject to a penalty for non-attendance if the children's court decided to proceed in that person's absence.

◇ Child Care and Protection Regulations, regulation 120

Terms of a contribution order: A contribution order must state three things: (1) who must pay; (2) what amounts must be paid; and (3) who the payments must be made to.

The order can instruct a respondent to pay one lump sum of money or to make regular periodical payments.

Payments under contribution orders must be made to an officer of the court which made the order, or to another officer specified by the court. The payments do NOT go directly to the child or the child's care-giver. They go **to the State** for disbursement as appropriate. This is because, where a child has been placed in alternative care (such as foster care or placement in a residential child care facility), the foster parent or facility will be eligible to receive a State grant to offset the costs of the child's care.

The contribution order can take effect from the date of the order, or from an earlier or later date.

This means, for example, that the court could make a retroactive order from the date on which the child was placed in alternative care. The order could not validly extend past the point when the situation which gave rise to it ceased to exist – such as after a child in alternative care was returned to the family.

◇ Child Care and Protection Act, sections 160(2)-(3), 162(1)
◇ *S v Mujee* 1981 (3) SA 800 (Z)

Maximum age of child: Contribution orders are usually made only for children **under age 18**.

However, a contribution order can cover **someone who is older in these circumstances:**

- (a) to enable the person to complete his or her **education**
- (b) if the person suffers from a **disability, chronic illness or some other special condition** which prevents them from becoming self-supporting.

The court can impose conditions on contribution orders for children who are age 18 or older.

For example, a contribution order made in respect of a child who was still completing his or her education might include the condition that it remains in force only as long as the child continues his or her studies.

- ◆ Child Care and Protection Act, section 160(1)-(2), 162(2)
- ◆ Child Care and Protection Regulations, regulation 58

What is a disability for the purpose of a contribution order? It is defined in the same way as for a disability grant. This includes

- ⊕ a mental disability
- ⊕ a chronic or terminal illness, including HIV or Diabetes Type I
- ⊕ partial or complete deafness or blindness
- ⊕ cerebral palsy
- ⊕ missing one or both legs or arms
- ⊕ partial or complete paralysis
- ⊕ a speech impediment that prevents the child from communicating with others
- ⊕ epilepsy that cannot be controlled adequately with medication
- ⊕ albinism
- ⊕ another condition or disability that would warrant a disability grant.

- ◆ Child Care and Protection Regulations, regulation 58(1) read together with regulation 109(3)(f)

Notice of contribution order: The clerk of the children's court must arrange for a certified copy of the contribution order to be served on the respondent (if the respondent is not present in court to be served with it personally at the time).

Service of the order can take place by any of the methods applicable to service of the summons to attend the proceedings. See the box on pages 5-6.

The clerk of the court must also send a certified copy of the contribution order to the Minister and the social worker involved in the matter.

- ◆ Child Care and Protection Regulations, regulation 57(4)

Appeal: There is a right of appeal to the High Court against the decision of a Children's Court to grant or refuse to grant a contribution order.

Such appeals work in the same way as an appeal against a civil judgment of a magistrate's court. If the respondent appeals a contribution order, the appeal must be brought against the Minister as the party on the other side.

- ◆ Child Care and Protection Act, sections 46, 166

Change of address: A person who is subject to a contribution order is required to give notice to the children's court of any change of residential address or place of work. The penalty for failure to comply is a fine of up to N\$2 000.

- ◆ Child Care and Protection Act, section 165



Contribution orders against persons living outside Namibia

The children's court can make a provisional contribution order against a person who lives in any country which Namibia has designated under the Reciprocal Enforcement of Maintenance Orders Act 3 of 1995. As of 2019, these countries were: South Africa, United Kingdom, Canada (only the North-West Territories and the Province of Alberta) and the United States (only the State of California) – with South Africa being the only country designated for this purpose since independence.

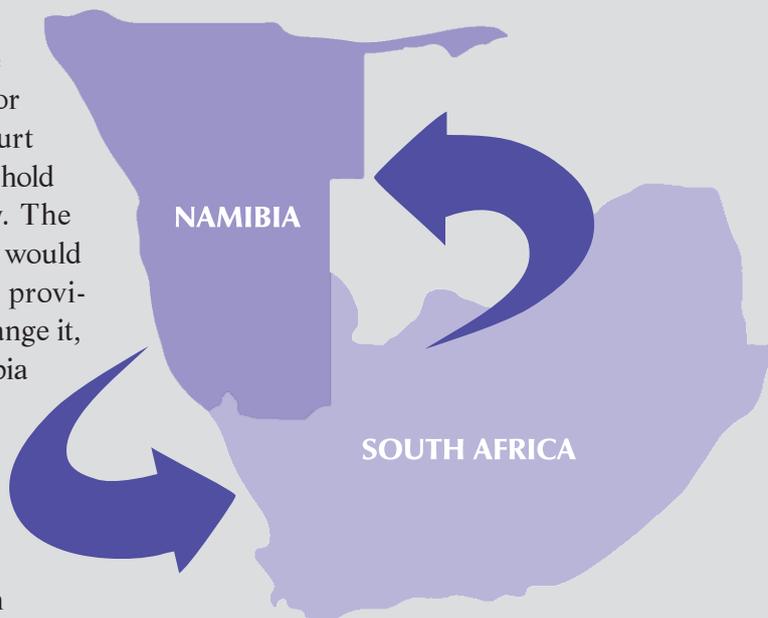
Neither the Act nor the regulations provide any details about the procedure for provisional contribution orders. Thus, it is not clear how the process is intended to work. If the procedure mirrors the procedure set out in the Reciprocal Enforcement of Maintenance Orders Act 3 of 1995, it would work as follows:

The children's court in Namibia would work with its counterpart in the designated country to deal with the case. A respondent living outside Namibia would be given notice of the Namibian enquiry if possible. The Namibian court could issue a provisional contribution order at the end of the enquiry, whether or not the respondent had provided input. The Namibian government would then provide the government of the designated country with a copy of the provisional contribution order and information about the evidence that was given at the enquiry.

The respondent would have a chance to tell his or her side of the story in the country where he or she lives. In other words, the court in the designated country would hold “the other half” of the enquiry. The court in the designated country would decide whether to confirm the provisional maintenance order, to change it, or to send the case back to Namibia for more information.

A contribution order made in this way could be enforced in the designated country in a similar way as a contribution order would be enforced in Namibia.

The procedure would work in the opposite direction when a contribution order is made in the designated country and the respondent is resident in Namibia. This is why the process is referred to as a “reciprocal” one.



- ◆ Child Care and Protection Act, section 161(2), 163(1), read together with the Reciprocal Enforcement of Maintenance Orders Act 3 of 1995
- ◆ See Legal Assistance Centre, *Maintenance Matters: An Assessment of the Operation of Namibia's Maintenance Act 9 of 2003*, 2013, Chapter 4, section 4.1.3.

3. Enforcement of contribution orders

There are several avenues for enforcing a contribution order.

(1) Attachment of remuneration: A children’s court which has made a contribution order against a respondent may order the employer of the respondent to deduct the amount of the contribution which the respondent has been ordered to pay from the respondent’s remuneration and pay it to the person or institution specified in the order.

For this purpose, “remuneration” includes any salary, wages, allowances or any other form of income paid periodically to any person. An order for attachment of remuneration can be made regardless of whether the respondent has defaulted on any payments; this means that it could be made together with the contribution order.

An order for attachment of remuneration must be served on the respondent’s employer by any of the methods applicable to service of the summons and the contribution order on the respondent. See the box on pages 5-6. It is a crime for an employer to fail to comply with an order for attachment of remuneration, punishable by a fine of up to N\$4 000.



Section 162(1) of the Act says that a contribution order must direct the respondent to pay a specified amount specified “to an officer of the court granting or confirming the order, or to such other officer as the court may determine”. Section 164(2)(b) of the Act says that an order for attachment of remuneration can direct the employer to pay the amount in question “to a person or institution specified in the order”. It would seem that the order to the employer would have to be consistent on this point with the underlying contribution order.

- ◆ Child Care and Protection Act, section 164
- ◆ Child Care and Protection Regulations, regulation 57(5)

(2) Criminal offence: A contribution order has the same effect as a maintenance order in some respects. Failure to comply with a contribution order is a crime, in the same way as failure to comply with a maintenance order, punishable by a fine of up to N\$4 000, or imprisonment for up to 12 months, or periodical imprisonment.

As in the case of a maintenance order, a good faith inability to pay is a defence. For example, maybe the defendant could no longer comply with the contribution order because of unemployment. But inability to pay is no excuse if the respondent is unwilling to work or if the lack of means results from his or her own misconduct.



- ◆ Child Care and Protection Act, section 163, read together with Maintenance Act 9 of 2003, section 39

(3) Execution against property: If the respondent is convicted of the crime of failure to comply with a contribution order, the prosecutor can also request an order for recovering the arrears. This can be done by attaching the respondent's property, in the same way as this would be done to satisfy a civil judgment of a magistrate's court.

Following on the conviction, the children's court can hold a summary enquiry into the respondent's circumstances to decide whether or not to issue a warrant of execution against the respondent's property. The court must take into consideration the existing and prospective means of the respondent, the respondent's conduct, the expenses which the contribution order was issued to cover and any other relevant circumstance. The property that can be attached includes land, as well as any pension, annuity, gratuity, compassionate allowance or other similar benefit.

◇ Child Care and Protection Act, section 163,
read together with the Maintenance Act 9 of 2003, section 33

4. Changing or cancelling a contribution order

A children's court may vary, suspend or rescind a contribution order, or revive the order after it has been rescinded.

A **social worker** acting on behalf of the child concerned may apply for any of these types of changes, by submitting **Form 18B** to the clerk of the children's court. If the social worker is the applicant, the application must be served on the **respondent** by any of the methods applicable to service of the summons to attend the proceedings. See the box on pages 5-6.

A **respondent** may apply for any of these types of changes, by submitting **Form 18C** to the clerk of the children's court. If the respondent is the applicant, the application must be served on the parent or other person responsible for the child by any of the methods applicable to service of the summons to attend the proceedings. See the box on pages 5-6.

The process otherwise works in the same way as for an initial contribution order.

If a court other than the court which made the original contribution order varies, suspends, rescinds or revives it, the clerk of this court must immediately inform the clerk of the court which made the initial contribution order

◇ Child Care and Protection Act, section 160(4)-(5)
◇ Child Care and Protection Regulations, regulation 57(5)



The respondent's application should probably be served on the Minister instead of on the child's parent or alternative care-giver.

The contribution order reimburses the State, so it is logical for the State to be the opposing party to any request for change. On this issue, note that the Minister has a right to be a party to any children's court proceeding.

◇ Child Care and Protection Act, section 53(1)
◇ Child Care and Protection Regulations, regulation 53(3)(c)

5. Costs

Police are not allowed to charge any fees for service of documents in respect of contribution orders, and no court fees can be charged in connection with the issue or furnishing of any document in contribution order proceedings.

If the respondent's property is attached to pay arrears in respect of a contribution order, the costs of execution must be paid out of the proceeds of the sale of the property that is attached.

No other costs can be recovered from any other party, including a party to an appeal concerning a contribution order.

The logic here is that the contribution order proceedings are designed primarily to generate money which reimburses the State for its child protection expenditures. Thus, it would be counterproductive for the State to charge for the process of obtaining such orders.

◆ Child Care and Protection Act, section 167

“ The majority of adults legally responsible for the maintenance [of] children taken into alternative care are too impoverished to provide much, if anything, by way of financial support. Nevertheless, it is appropriate that the Act, like its predecessor, includes provisions requiring financial assistance from persons who would be required in terms of private law to maintain a child. Given the numbers of children in need of care and protective services [...], it is entirely appropriate that maintenance which can be afforded by private individuals related to such children be collected and utilised. It is important that social workers, when conducting care and protection investigations, check carefully to see whether there are any persons closely related to the child who may have sufficient means to contribute towards the needs of that child while in alternative care or receiving services [...] Regarding quantum of contribution payments, the wide discretion accorded to magistrates empowers them to set payments individually on a case-by-case basis so that they are within the means of respondents. ”

◆ Carmel Matthias & Noel Zaal, “Child in need of care or protection” in CJ Davel and AM Skelton (eds), *Commentary on the Children's Act*, Juta, 2007, updated in 2012, page 10-8 (discussing similar provisions in the South African Children's Act 38 of 2005)