



CONTRIBUTION ORDERS

A contribution order is a court order that requires a parent (or any other person who has a legal responsibility for maintaining a child) to contribute to the costs of caring for the child. A contribution order is similar to a maintenance order. A contribution order is paid to the state to help with the costs of caring for child who has been found to be in need of protection. The provisions for contribution orders in the draft Child Care and Protection Act are very similar to the current provisions in the Children’s Act 33 of 1960.

The draft Child Care and Protection Act

The draft law recommends that contribution orders should be made for the following purposes:

- (a) the cost of maintaining a child in a place of safety, a children’s home or an educational and vocational centre
- (b) the cost of treatment, rehabilitation, counselling or other interventions provided to a child who has been temporarily removed from the usual home by a court order
- (c) a “short-term emergency contribution” towards maintenance, treatment or other costs resulting from the special needs of “a child in urgent need”.

The order can be issued by a Children’s Court in the area where the respondent resides, works or runs a business, or in the area where the child resides. The contribution order can take effect from the date of the order, or from an earlier or later date. This means that the court could make a retrospective order from the date on which the child was placed in alternative care, to cover costs that have already been incurred.

When an order is made it should state who the money is to be paid to, on what schedule and in what manner. For example, the order could specify monthly payments, or a single lump sum. Currently, payments can only be made to officers of the Children’s Court. The draft Child Care and Protection Act allows for payments to be made to the government, or directly to the institution where the child is in alternative care.

As in the Maintenance Act, the court can make a provisional contribution order against a person resident in any country with which Namibia has an agreement under the Reciprocal Enforcement of Maintenance Orders Act 3 of 1995. At present, Namibia has such an agreement only with South Africa.

Age limit for payments

The current law states that contribution orders can be made for children up to the age of 21. The draft Child Care and Protection Act states that a contribution order will normally last only until the child is 18, but the court has discretion to make an order for an older child. This is similar to the rules on maintenance orders in the Maintenance Act. The regulations will set out the circumstances when an extension can be made.

Enforcement

A person who is subject to a contribution order is required to give notice to the Children’s Court of any change of residence or place of work. Failure to do this could result in an unspecified fine or imprisonment for up to 10 years. This is a much stronger punishment than is currently given (a fine or imprisonment for up to one year) or for the same offence committed in connection with a maintenance order (a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months).

The draft law states that failure to comply with a contribution order is a criminal offence in the same way that failure to comply with a maintenance order is a criminal offence. It also provides for the same methods of enforcement that apply to maintenance orders. However, it allows for the attachment of wages for a contribution order at any stage, even if there has not yet been a default in payments. In contrast, the Maintenance Act allows for the attachment of wages only *after* there has been a default in payments.

ISSUES FOR DISCUSSION

- ⦿ Are contribution orders currently effective? If not, what problems are experienced?
- ⦿ What costs should contribution orders cover?
- ⦿ Should contribution orders apply to the costs of maintaining children in foster care? (Foster care is currently excluded from the draft.)
- ⦿ Should wages be attached in respect of contribution orders at any stage (as in the current law on contribution orders), or only after the respondent has defaulted on payment (as in the case of maintenance orders)?
- ⦿ Is the punishment for failing to report a change in circumstances too strict, particularly in comparison to the current provisions in the Maintenance Act?
- ⦿ Are any other rules and procedures needed for effective implementation of contribution orders?

WHAT DO YOU THINK?

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For more information on the draft Child Care and Protection Act, contact Monalisa Zatjirua (061-2833116) or Celeste Feris (061-2833179) at the Ministry of Gender Equality and Child Welfare, or Rachel Coomer at the Legal Assistance Centre (061-223356).