

GUIDE TO THE MAINTENANCE ACT 9 OF 2003



Legal Assistance Centre
2007

This guide contains a detailed explanation of the Maintenance Act 9 of 2003. This Act replaces the old Maintenance Act 23 of 1963. The guide explains this new law in simple language and gives examples to help you understand it.

Each part of the booklet lists the sections of the law which you can look at to get more information.

There is also a shorter booklet on the new law which highlights the most important points.

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The Maintenance Act was specifically passed to provide a legal basis of monitoring and ascertaining that parents, especially fathers, take full responsibility for all their children.

President Sam Nujoma, Opening of Parliament, 18 February 2004

To change laws does not seem to be the problem. The big problem is to change our traditional beliefs. It is unfortunate that many men bring children into this world and leave their upbringing to the mothers. It is sad that men alone take the decision of how many children a family should have and when, but it is the women who bear them. It is wrong for husbands to contribute their salaries to such households. It is criminal when husbands use household income to buy alcohol and assault their wives and children in their drunken stupor. These are the attitudes which have to change.

President Sam Nujoma, 9 May 1992

1. MAINTENANCE IN NAMIBIA

WHAT IS MAINTENANCE?

Maintenance is money or goods that a person has a legal duty to provide for the support of his or her dependents.

A dependant is someone who depends upon the support of another person to live. For example, children are dependants of their parents. Elderly parents are sometimes dependent on financial support from their adult children. A husband or a wife is sometimes dependent on the other spouse's financial support.

Maintenance is used for basic living expenses such as housing, food, clothing, medicine and school fees.



If a person who has a duty to pay maintenance does not provide the money, it is possible to get help. This booklet explains how.

Maintenance is primarily intended for food, clothing, accommodation, medical and dental attention, and education in order to prepare children for their place in society.

Hon Kawana, Deputy Minister of Justice
Parliamentary debate on Maintenance Act

BACKGROUND TO THE NEW LAW ON MAINTENANCE

Maintenance was identified as a priority concern shortly after independence. Many women complained about the difficulty of securing maintenance for their children, and about the inefficient operation of the maintenance courts.

In 1993, the Legal Assistance Centre began extensive research into the operation of the maintenance courts, in consultation with the Law Reform & Development Commission. The research findings, which included draft legislation, were published in September 1995.

The Law Reform & Development Commission appointed a subcommittee to study the issue of maintenance. This subcommittee submitted a report on maintenance to the full Law Reform & Development Commission in August 1996. In September 1997, the Law Reform & Development Commission published a report recommending law reform on maintenance.

Further consultation took place. A Maintenance Bill was drafted in 2000 and approved by Cabinet in August 2001. The Maintenance Bill was introduced into Parliament in 2002, and passed in 2003.

The Maintenance Act 9 of 2003 replaces the Maintenance Act 23 of 1963. The basic principles contained in the new law are the same as in the old one. The new law contains some improved procedures. It also clarifies some things that caused confusion under the old law.



The new law is in line with Namibia's responsibilities under the Namibian Constitution, the UN Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child.

THE NAMIBIAN CONSTITUTION

Article 15(1)

Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and **be cared for by their parents.**

THE CONVENTION ON THE RIGHTS OF THE CHILD

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that **both parents have common responsibilities for the upbringing and development of the child.** Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Article 27

1. States Parties recognize **the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.**
2. The **parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.**
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to

implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. **States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad.** In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

Article 27

1. Every individual shall have duties towards his family and society...

Article 29

The individual shall also have the duty:

1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need...

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty...
 - (a) to ensure that the best interests of the child are their basic concern at all times -
 - (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development...

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society... The child, subject to his age and ability... shall have the duty

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need...

The Act creates machinery for the inexpensive adjudication of maintenance disputes in which the State subsidises litigation which financially vulnerable persons might otherwise be unable or reluctant to bring.

Cordiglia v Watson 1987 (3) SA 685 (C)

MYTHS AND FACTS ABOUT MAINTENANCE

The Legal Assistance Centre conducted an extensive study on maintenance in Namibia in 1995. This is still the most recent Namibian study on the topic. The facts in this section are based on that study. Cases brought to the attention of the Legal Assistance Centre in more recent years indicate that the situation has not changed much since the study was done.

MYTH: Some women try to have as many children as possible from different fathers so that they can claim maintenance from all of them.

FACT: Most maintenance cases involve one child per mother.

MYTH: Women get lots of money from maintenance.

FACT: In 1995, the average maintenance order was N\$76/month per child. Mothers typically requested N\$150/month per child. Anyone who buys basic supplies knows that such small amounts of money will not go far, and that N\$76/month is unlikely to be sufficient to provide a child with a basic nutritious diet.

MYTH: Women can't wait to claim maintenance payments from fathers.

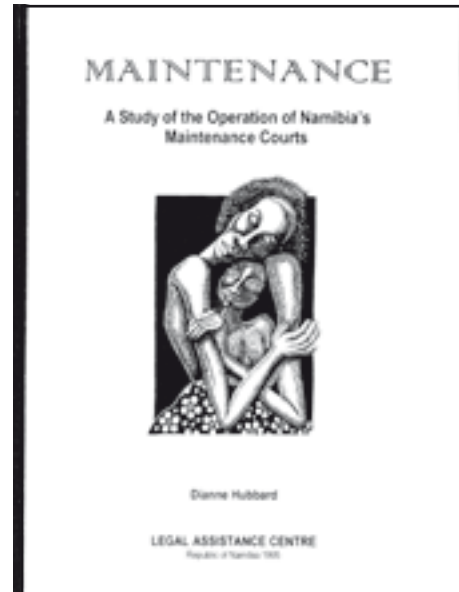
FACT: The child is likely to be six years old when the mother approaches the maintenance court.

MYTH: Maintenance cases always lead to heated disputes between the parents of the child.

FACT: Most maintenance claims are settled by consent. This means that the mother and the father agree on maintenance together with the maintenance officer, without even appearing in court. There have been some isolated cases where a father who was asked to pay maintenance has retaliated with violence against the mother of the child – but this is not the norm.

MYTH: Many women abuse maintenance payments by using the money for things for themselves like new clothes.

FACT: Whilst this may happen in isolated cases, research indicates that it is not a common problem. People do not usually keep money separately for individual members of the household. So people who see a woman spending any money at all on herself tend to think that she is abusing maintenance payments. But both parents of a child also need food, clothes and other necessities of life. Spending some of their total household income on themselves does not necessarily mean that they are abusing maintenance payments.



MYTH: Most men default on maintenance payments.

FACT: Only a minority of fathers default on maintenance payments. The research found that fathers default on maintenance payments in about 26% of cases – but defaulting tends to be a behaviour which is repeated. In other words, a man who falls into arrears once on his maintenance payments is likely to do it repeatedly. Although failure to comply with a maintenance order is a crime, criminal proceedings took place in only about half of all cases where fathers fell into arrears with their payments.

MYTH: If a man misses a maintenance payment, the woman goes running quickly to the maintenance court so that she can get him into trouble.

FACT: Women usually wait for 2 years after the father has failed to provide maintenance before approaching the maintenance court.

MYTH: The maintenance system is unfair because it expects father to pay maintenance even if they are unemployed.

FACT: The law does not require maintenance payments from people who have no job and no financial resources. But many people who do have financial resources fail to support their children. This is where the Maintenance Act can help.

MYTH: Asking for maintenance is a form of begging.

FACT: Requesting maintenance is not begging, but asserting a right. A child has a right to maintenance, and both parents have a legal and moral responsibility to contribute to the costs of raising their children.

Society demands that parents must take care of the children's well-being... I am aware that some parents value alcohol more than their children. What is wrong with our society? Why should the government have to pass legislation to force parents to take care of their children? Is this not a social scandal? What I can only say to those parents who neglect the well-being of their children is that from now on the long arm of the law will catch up with you.

Hon Kawana, Deputy Minister of Justice,
Parliamentary debate on Maintenance Act

Children are our single biggest investment in the future.

Hon A !Naruseb, Parliamentary debate on the Maintenance Act

2. DEFINITIONS

BENEFICIARY – the person who benefits from a maintenance order. This will usually be a child, but it could also be a disabled adult, a parent or a husband or wife. The beneficiary is sometimes called a ‘dependant’.

COMPLAINANT – the person who applies for a maintenance order. The person could be applying on behalf of a beneficiary (such as a child), or for themselves. The complainant will usually be a mother applying for maintenance for her child. Any relative who is caring for a child can request maintenance from one or both of the child’s parents.

DEFENDANT – the person being requested to pay maintenance. The defendant will usually be a father who is being asked to pay maintenance for his child. Under the old law, this person was called the “respondent”.



The Maintenance Act is gender-neutral. That means it does not discriminate against men or women. However, in an extensive study about maintenance conducted by the Legal Assistance Centre, almost all the claims for maintenance were mothers requesting maintenance for their children from the children’s fathers. This is because it is usually women who take care of children on a daily basis. Fathers are often in a stronger financial position because it is easier for men to get jobs in Namibia, and because men usually earn more money than women.

In this booklet we will talk about women as those claiming maintenance and men as those being asked to pay maintenance, because this is the most common situation.



The Maintenance Act is for anyone who is entitled to maintenance. But in practice, it is usually mothers who seek maintenance for their children from absent fathers.

SPOUSE – the husband or wife in a married couple.

CUSTODIAN – the person with legal responsibility for the physical care of a beneficiary. A husband and wife normally have joint custody of their children. If the parents were never married, the mother is usually the custodian. Someone other than a parent might have custody of a child if the parents are dead, or otherwise unable to take care of the child.

PRIMARY CARETAKER – a person or an institution that takes care of a child with the permission of the child's parent or custodian. It is a common situation in Namibia for a grandmother to be the primary caretaker for her grandchildren. For example, the grandmother might keep the children in the rural area while the parents are away working in the city. Another example would be a child who is attending school in an urban area and living with a relative while the parents remain in the family's home village. This relative would be the child's primary caretaker. In the case of a child living in an institution such as a children's home, the institution would be the primary caretaker.

Section 1

Both parents have an equal responsibility towards their children.

Hon. Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Parliamentary debate on the Maintenance Act

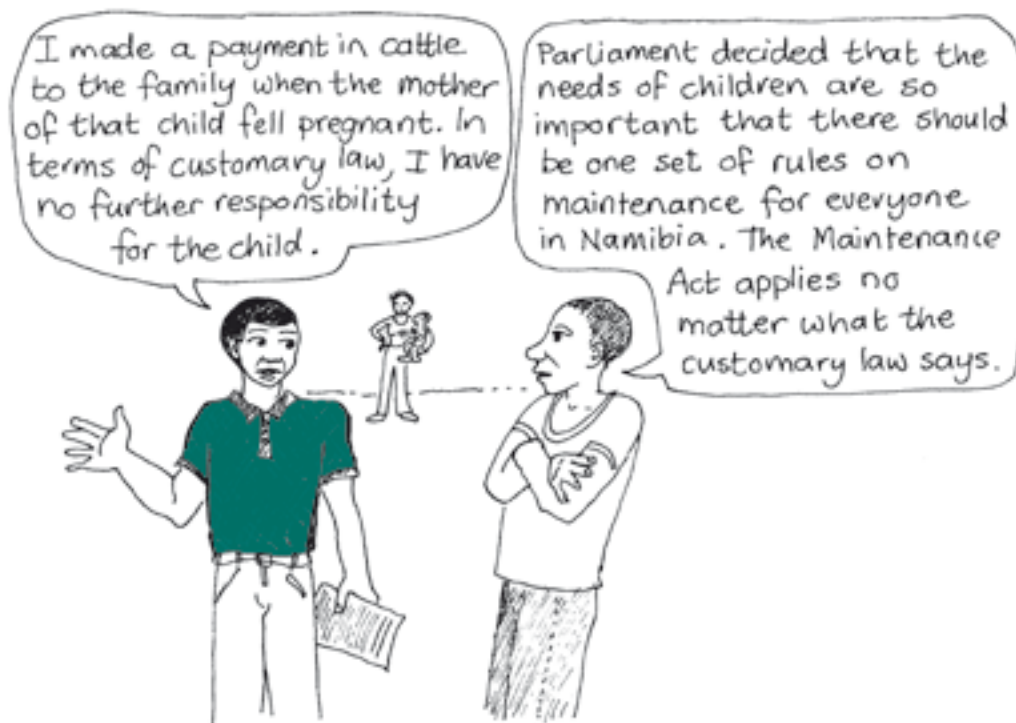
3. GENERAL PRINCIPLES

1. The Maintenance Act applies to any relationship where one person has a legal duty to maintain another person.

Section 2

2. The following basic principles apply to everyone in Namibia, even in communities where customary law says something different:

- ▶ Husbands and wives are responsible for each other's maintenance.
- ▶ The parents of a child share responsibility for the maintenance of that child.
- ▶ Children have a duty under certain circumstances to maintain their parents.



Section 3(2)

3. A maintenance order will be given only if ALL THREE of the following conditions apply:
 - a) The defendant is **legally liable** to maintain the beneficiary of the maintenance order. This means that the defendant must be the beneficiary's parent, spouse or child, or otherwise responsible for the beneficiary in some way.
 - b) The defendant is **able to contribute** towards maintenance. A person who is unemployed cannot be forced to pay maintenance, unless he has other assets, such as cattle or a car, which can be sold for money.
 - c) The defendant is **failing to provide reasonable maintenance for the beneficiary voluntarily**. If reasonable maintenance is already being provided, then there is no need for a maintenance order.



An inability to pay maintenance or to pay the full amount required for maintenance must be real and not apparent. A parent cannot be allowed not to realise the full potential of his/her earning capacity to the detriment of his/her children who are in need of maintenance. In a given case the facts may amply demonstrate that a parent can earn more than he/she is actually earning and that it would be a matter of relative ease for him/her to so adjust his/her position as to be able to earn a higher income. In such a situation the courts would be failing in their duty if they were to accept... that the parent is unable to pay maintenance or to pay maintenance to the extent of the children's needs.

Mgumane v Setemane 1998 (2) SA 247 (Tk D)

It is common in Namibia for some people to run away from their responsibility, and it is beyond one's comprehension for parents to run away from their responsibilities, such as care and protection of their children. This situation is not always caused by inability to fulfil that responsibility, as some members want the nation to believe, but in most cases this is done to 'punish' the other partner, who in most cases is the mother, as opposed to the father – and that is a fact. For heaven's sake, how can people punish innocent children on the pretext that they are punishing the other party? And those children have no one else to care for them but their biological parents who have to do it equally. Just because the relationship between the two adults has failed to make headway, that poor child is the one suffering.

Hon. Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Parliamentary debate on the Maintenance Act

4. THE DUTY OF PARENTS TO MAINTAIN THEIR CHILDREN

BASIC RULES

1. **Both parents of a child have a legal duty to maintain their child.** This means reasonable support to give the child a proper living and upbringing. It includes money for food, accommodation, clothing, medical care and education.

Section 3(3)

2. **It is the primary responsibility of parents to maintain their child.** Even if the child is cared for by someone else, the mother and father both have a duty to maintain the child. *If a child is adopted, the adoptive parents have a duty to maintain the child.*

Section 4(1)(a)

3. The duty to maintain a child is supposed to be shared between the two parents in proportion to their respective means. This means that the duty must be shared on the basis of how much money each of them earns and what they possess. The costs of raising the child will not necessarily be divided half and half between the mother and the father, because their relative wages and resources must be taken into account.

Section 4(1)(b)

Some people misunderstand this rule. Some people think that both parents must have some income before they can use the maintenance court. This is not true. If one parent has no income or property at all, then the other parent will have to carry 100% of the costs of maintenance.



If one parent has some small income and the other parent earns more, then the child's expenses might be divided accordingly – such as 20% for the parent with the small income and 80% for the other parent.



4. **All children are equal in the eyes of the law.** All children are entitled to a fair share of their parents' resources:

- ▶ **regardless of their order of birth.** This means that preference should not be given to any child, such as the firstborn.
- ▶ **regardless of whether the child was born inside or outside marriage.**
- ▶ **regardless of whether the child was born of a first, second or subsequent marriage.**
- ▶ **regardless of what customary law applies.**

The available resources must be distributed amongst all a parent's children, according to their respective needs.

Section 3(1), (2)(b) and (4),
and section 4(1)(c)-(d)

5. The duty to maintain a child has priority over all financial commitments, except for financial commitments which are necessary to the parent's ability to support himself or herself or other dependants.



For example, maintenance payments must take priority over car payments, unless the parent is a taxi driver who earns his or her living with the car.

Section 4(1)(d)



WHAT EXPENSES WILL BE CONSIDERED?

Total maintenance costs for a child must cover all the child's reasonable needs for a proper living and upbringing. Maintenance will include:

- ▶ housing, water and electricity
- ▶ food, clothing and toiletries
- ▶ transport
- ▶ childcare services
- ▶ medical expenses (such as prescription medicine and treatment by a doctor, dentist, psychologist or psychiatrist)
- ▶ education, including pre-school education and sometimes tertiary education. The costs for education will be based on the reasonable expectations of the parents.

Sections 3(3), 16(3)(a) and (c), 26(1)(d)

Maintenance is for the reasonable costs of living, not for luxuries. But the court will look at the parents resources and lifestyle to determine the needs of the child. For example, a parent with a small income might be expected to pay for school uniforms but not for fancy designer clothes. But it will not be reasonable for a parent with a large income to expect his or her child to eat nothing but mealie pap.

A parent cannot escape the duty to support a child... by donating away all property or by resigning from work and going back to university or by living on a scale which unduly interferes with the needs of his or her children... he or she must rather adjust his or her own standard of living so that his or her children are not prejudiced in the important years of their upbringing.

E Spiro, *Law of Parent and Child*, 4th edition, 1985
(page 393 and footnote 80)

PREGNANCY AND BIRTH-RELATED EXPENSES

An order for child maintenance can also include **contributions towards the expenses of the mother in connection with pregnancy and childbirth**. This can include the costs of medical and hospital expenses, as well as other expenses.

Such expenses could be for medical care or nutrition – such as fresh fruit, vegetables and milk – which are essential for the healthy development of the child before it is born. This provision emphasises the fact that both parents share responsibility for a child from the moment of conception.

A claim for a contribution towards pregnancy and birth-related expenses should normally be made before the child's first birthday. But the mother can claim these expenses later if she can show a good reason for the delay.

For example, suppose the father of the child moved overseas before the child was born and only returned to Namibia when the child was five years old. This would be a good reason for not claiming pregnancy and birth-related expenses sooner.

Section 17(3)

Maintenance must start with pregnancy, because as all of us know, pregnancy requires things like healthy eating, bigger clothing and routine check-ups at clinics, which cost money. We should not just look at the time when the baby arrives; we must look at the time when the baby comes into being.

Hon. Siska, Parliamentary debate
on the Maintenance Act



WHO CAN CLAIM MAINTENANCE ON BEHALF OF A CHILD?

- ▶ **A parent.** One parent can claim maintenance contributions from the other parent for the child, regardless of whether the parents are living together or apart. Even if parents are married or living together, it is possible that one of them may not be fulfilling the duty to contribute to the child's expenses.
- ▶ **A primary caretaker.** Anyone who is caring for a child can claim maintenance for the child from either parent, or from both parents. For example, a grandmother taking care of her grandchild can claim maintenance from both the mother and father of the child.
- ▶ **The child.** A child can claim maintenance from one or both parents. A child may suffer because the mother does not claim maintenance from the father. Children can go to the maintenance court on their own, or ask someone else (such as a family member or teacher) to apply to the maintenance court on their behalf.
- ▶ **Any concerned person.** Any person who has an interest in the child's well-being can apply for maintenance on the child's behalf. The person making the application could be a relative, social worker, doctor, nurse, teacher, traditional leader, religious leader, employer or other concerned community member.

*Section 1
(definition of complainant),
3(2), 9(3)*



The message is that the entire community must take responsibility for the well-being of Namibia's children.

This bill is one of those Bills which are politically neutral. The problem to be addressed through this Bill affects our citizens regardless of their political affiliation.

Hon. Kawana, Deputy Minister of Justice
Parliamentary debate on the Maintenance Act

Suppose that you are receiving maintenance payments for your children while someone else is actually looking after them. You have a duty to give the money to the person who is taking care of the children.



GUIDELINES ON CHILD MAINTENANCE

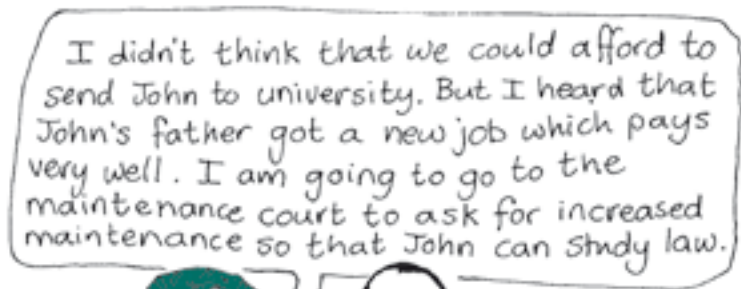
The maintenance court must consider these factors:

► the **financial, educational and developmental needs of the child**

This includes expenses for housing, water, electricity, food, clothing, transport, toiletries, childcare services, education (including pre-school and in some cases tertiary education) and medical services. Medical expenses can include the costs of prescription medicines or supplies, and treatment by a doctor, dentist, psychologist or psychiatrist. Maintenance can also include other expenses which are not listed in the law.

► the **age of the child**

The needs of children may vary at different ages. For example, the school fees for primary school and high school may differ.



► the **manner in which the child is being educated or trained**

The child's school and level of education must be based on the reasonable expectations of the parents.



► **any special needs of the child**

This could include needs arising from a disability or some other special condition.



► the **direct and indirect costs to the complainant of providing child care**, including lost opportunities.

This would include the costs of child care during working hours, as well as the value of lost career opportunities.



► the **value of the complainants labour in providing childcare**

For example, this includes the value of labour on tasks such as cooking meals for the child, washing the child's clothes and helping the child with homework.



Sections 1 (definition of "medical expenses"), 3(3), 4(1), 16(3)

HOW LONG MUST A PARENT PAY MAINTENANCE FOR A CHILD?

A maintenance order for a child should end when the child becomes self-supporting. This will usually be when the child reaches the age of 18, if the maintenance order does not say anything different.

The maintenance order could come to an end sooner if the child becomes self-supporting. For example, suppose that the child dropped out of school at age 17 and found a steady job with a good income. The parent who was paying maintenance could apply to have the order cancelled in these circumstances.

A maintenance order can be extended beyond age 18 if there are special circumstances, such as a case where a child is disabled or is unable to become self-supporting for some other reason.

For example, the parents may have money whilst the child is unemployed and cannot find a job. Another example might be a girl who had a teenage pregnancy and is still struggling to survive.

Once the child turns 18, the child or anyone acting on behalf of the child can apply to the maintenance court to get the order extended.

The maintenance order will automatically remain in place until the child reaches age 21 if the child is attending an educational institution to complete a course that will enable that child to become self-supporting – unless the maintenance order says something different.

Any maintenance order for a child will come to an end if

- ▶ **the child dies**
- ▶ **the child is adopted** by someone else
- ▶ **the parents divorce** and a new maintenance arrangement is included in the divorce order
- ▶ **the child marries.**

Section 16(4) and 26(1)-(3)

The mutual duty of support between parent and child never completely comes to an end. Throughout their lives, parents and children are expected to take care of each other whenever this help is really needed. The parents' duty to support their child falls away when the children are able to support themselves. But the fact that a child is earning an income does not necessarily mean that the child is self-supporting. The child might be only partially self-supporting, meaning that the parents would still have a duty to provide some assistance.

If a child is independent but then becomes unable to support himself or herself for some reason at a later stage in life, then the parents' duty to provide maintenance might come back into action.

Although the duty of support persists into the child's majority, the nature thereof changes. It is then confined to necessities; in other words, the child must be in indigent circumstances in the sense that he or she is in need of a contribution towards his or her maintenance.

B v B & Another 1997 (4) SA 1018 (SECLD)

The Maintenance Act emphasises maintenance as a way of providing for the **needs of children** instead of a power struggle between mother and father. It should be a step forward in putting children first.

5. THE DUTY OF CHILDREN TO MAINTAIN THEIR PARENTS

Children have a duty under certain circumstances to maintain their parents. This will usually apply only after the children have become adults themselves.

The duty of a child to maintain a parent applies only where ALL of the following circumstances apply:

1. **The parent is unable to maintain himself or herself** because of circumstances beyond that parent's control.

For example, a child might have a duty to maintain a parent who is too old or ill to work.

2. **The child has enough resources** to support the parent as well as taking care of his or her own needs.

The law will not force children to take bread out of their own mouths to feed their parents.

3. **Other people who have a legal duty to maintain the parent**, such as the parent's spouse, **are not able to do so.**

For example, a child will not be responsible for supporting a parent where that parent has a rich spouse.

Section 4(2)



Just as parents have a duty to maintain their children, children also have a duty in some circumstances to maintain their parents. But children are not expected to sacrifice their own welfare completely for the sake of their parents. Parents are expected to take care of themselves if possible, or to look to other family members before turning to their children.



These rules about the duty of children to maintain their parents apply to everyone in Namibia, even if customary law says something different.

Section 3(2)(c)

6. THE DUTY OF HUSBAND AND WIFE TO MAINTAIN EACH OTHER

Husbands and wives are primarily responsible for each other's maintenance.

Section 3(2)

This means that if a husband or wife needs maintenance, they should first seek help from the other spouse (husband or wife). If that is not possible then they may seek maintenance from another family member.

This responsibility is gender-neutral. Husbands and wives both have a responsibility to maintain each other, and both have a duty to contribute to the basic expenses of the household in proportion to their financial resources.

This duty applies in both civil marriage and in customary marriage. It applies regardless of whether the marriage is in community of property or out of community of property.



If a couple are separated, a husband or wife who needs maintenance can claim it from the other spouse.

This applies if the marriage is a civil marriage or a customary marriage.

If a couple married in a civil marriage are getting **divorced**, the one who is in the weaker financial position can claim maintenance from the other spouse as part of the divorce. Maintenance cannot be claimed after the divorce. This is because husbands and wives do not have any legal responsibilities to each other after the marriage comes to an end, beyond what is stated in the divorce order.

This rule applies only to civil marriages. The rules on divorce in a customary marriage will depend on the customary law of the community, until new laws on this point are passed by Parliament.

There is a quick and easy procedure to request maintenance from the High Court while the couple is in the process of getting divorced. This is to make sure that one spouse is not unfairly disadvantaged while the divorce is underway. (Rule 43 of the High Court Rules.)

The maintenance court can enforce or change orders about maintenance made by the High Court in connection with a divorce.

If the final divorce order made by the High Court includes maintenance, the ex-spouse who is supposed to receive the maintenance can use the maintenance court to enforce the divorce order if necessary.

Either ex-spouse can also use the maintenance court to request a change or a cancellation of the maintenance amount contained in the divorce order, if there is a good reason for the change.

Using the maintenance court is cheaper and easier than having to go back to the High Court to get help with enforcement or to request changes.

Maintenance payments from an ex-spouse will stop when the person receiving the payments dies or remarries.



This Bill is completely gender neutral... Nowhere in the Bill can any person find gender bias in favour of one sex at the expense of the other.

Hon. Kawana, Deputy Minister of Justice
Parliamentary debate on the Maintenance Act

7. DUTY OF MAINTENANCE BETWEEN OTHER FAMILY MEMBERS

There is a mutual duty of support between blood relatives, starting with the family members who are closest to each other.

GRANDPARENTS AND GRANDCHILDREN

The mutual duty of support that exists between parents and children can extend to other living ancestors and descendants. But this applies only if the parents or children cannot fulfil their duty of maintenance for some reason. For example, if a child's parents are deceased or not able to maintain the child, the duty of support next passes to the grandparents (both the fathers parents and the mothers parents), then to the great-grandparents and so on. In the same way, the child's duty to support his or her parents would pass next to grandchildren, then great-grandchildren and so on.

In the past, only the mother's parents had a duty to help maintain a child born outside of marriage. As of 2004, this rule is in the process of being changed by the Children's Status Bill. This law will require equal treatment of children born outside and inside marriage. Once it is passed, the duty of support for children born outside of marriage will spread outward to other family members on both the mother's side and the father's side, in the same way as for children born inside of marriage.

Sections 2-3

OTHER EXTENDED FAMILY MEMBERS

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 help – but their duty is not as strong as the duty 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. For example, a brother would be expected to help before the duty would pass to a half-brother.

In terms of the civil law (the general law that applies to everyone in Namibia), the duty of support between parents and children does NOT pass to other family members who are related only by marriage. For example, under civil law you do not have a legal duty to support your step-child or your step-parent, or your mother-in-law or your father-in-law, or your sister-in-law or your brother-in-law, or the children of your spouses brothers and sisters.

The customary law in different communities may apply different rules about the duty of support between extended family members.

Sections 2-3



The law reflects the way that loving families work in practice. The duty of support that falls on extended family members is becoming more important in Namibia now, because so many families are losing members to AIDS.



We believe that it is only through family unity and support that Namibia can have a strong and united nation. Our call is that those who can afford to maintain vulnerable family members should do so. If they fail, the law must step in and force them to comply...

Hon Kawana,
Deputy Minister of Justice
Parliamentary debate on the
Maintenance Act

Most of the law on the maintenance duties of different family members is contained in cases decided by the courts instead of in the Maintenance Act, because every family situation is different. The law on the duty of support between extended family members is summarised in *S v Koyoko* 1991 NR 369 (HC).

In the *Koyoka* case, a man took in a young boy who was not related to him. The boy's parents were poor, so the man gave him a home, paid his school fees and treated him like his own son. The boy eventually graduated from college and got a job as a teacher. The man who had helped him ran into hard times. He grew old, and his business failed. He had once been a rich man, but was now in dire need of help. The court ruled that there was no legal duty of support on the teacher who had once received assistance from the old man. They had no blood relationship, and there was no formal adoption. There might be a moral duty of support, but the old man cannot use the Maintenance Act.

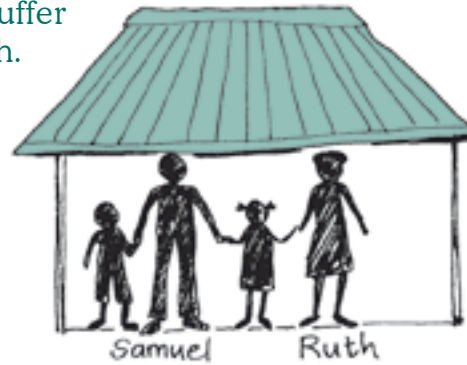
S v Koyoka 1991 NR 369 (HC)

STEP-PARENTS AND STEP-CHILDREN

There is no duty of maintenance on step-parents, but there are situations where step-parents may feel that their income is being used to maintain someone else's children. This can happen where a man or a woman already has a child by one person and then gets married to another person in community of property.

Suppose that Samuel has two children with Maria, but then marries Ruth in community of property and has two more children. Samuel has a duty to maintain all four of his children. The money that he must pay to maintain his children by Maria will come out of the joint estate that he shares with Ruth. Ruth may not be happy about this, but the law says that the needs of the children must come first.

Maria's children should not suffer because Samuel has married Ruth. Ruth's children by Samuel should not suffer because Samuel already had children with Maria. Samuel's income must be fairly divided between ALL his children.



**All children are equal
in the eyes of the law**



STEP-PARENTS AND STEP-CHILDREN IN OTHER COUNTRIES

In a few countries, the law gives step-parents parental rights and responsibilities for their step-children under certain circumstances. For example, in England and Scotland, step-parents can be held responsible for the maintenance of a step-child where the child is "accepted as a child of the family". In the USA, 20 of the 50 states have laws imposing financial responsibility on the step-parent while the step-child is living in the same household.

Should Namibia give step-parents and step-children any rights and responsibilities towards each other? This is an important question to discuss. It might be a topic for law reform in Namibia sometime in the future.

Many parents and especially fathers do not give the necessary love and care to their children, let alone taking responsibility for their offspring.

Hon. Nghidinwa, Parliamentary debate on the Maintenance Act

8. MAINTENANCE OF PERSONS WITH DISABILITIES

Maintenance for persons with disabilities can be requested at any age, because the disability might prevent the person in question from ever becoming self-supporting.

The following factors should be taken into account:

► **How severe is the disability?**

A slight disability which does not stop the person from working may mean that no maintenance is required. But if the disabled person cannot work, the primary duty to maintain that person rests with his or her parents.

► **How long is the disabled person likely to live?**

If the disability will prevent the person in question from ever becoming self-supporting, then the duty of maintenance will last as long as that person lives.

► **How long is the disabled person likely to need maintenance?**

It may be that the person with the disability will be able to work at some stage. For example, perhaps that person is undergoing rehabilitation which will eventually lead to increased physical abilities. There is no specific cut-off age for maintenance for persons with disabilities, because each situation will be different.

► **What are the costs of medical care and other care, such as nursing, that the person needs because of the disability?**

This might include the costs of items like a wheelchair or an artificial limb that will help the person with the disability to become more independent.



Section 16(4)

9. HOW TO CLAIM MAINTENANCE

Claiming maintenance involves:

- ▶ making a complaint to the maintenance officer
- ▶ providing information to support the claim
- ▶ attending a meeting with the maintenance officer, and possibly an enquiry in the maintenance court.

The result could be a maintenance order which directs the defendant to make a regular contribution towards the needs of the beneficiary. This process is explained step-by-step below.

A complaint on oath must be made to a maintenance officer alleging that a person legally liable to pay maintenance has failed to do so and the maintenance officer, after investigating the complaint, may institute an enquiry to deal with the matter. The person alleged to have a duty to maintain is summoned to appear before that court together with any other person who can give relevant evidence bearing on the matter... The procedure is relatively uncomplicated and based on common-sense.

Tsaoseb v Geingos 1995 NR 107 (HC)

STEP 1: MAKE A COMPLAINT TO THE CLERK OF COURT

The clerk of court at the maintenance court is the first court official that will help you to claim maintenance. You do not need an appointment to see the clerk. All you need to do is go to the maintenance court, and the clerk will help you.

MAINTENANCE COURTS

Every magistrates court is a maintenance court. In some large towns, there is a magistrate's court set aside only for maintenance cases. *For example, in Windhoek, there is a special maintenance court at the Magistrate's Court Buildings in Katutura.*

The right court is the one closest to the place where either the complainant (e.g. the mother) or the beneficiary (e.g. the child) lives. *For example, suppose the mother of the child lives in Windhoek but leaves the child in Oshakati with the child's grandmother. If the mother wants to claim maintenance from the child's father, she can go to the court in Windhoek or in Oshakati. If the grandmother made the complaint, she would go to the court in Oshakati.*

Sections 6 & 9(1)

The clerk will ask you some questions and help you fill in a complaint form. For example, if you are claiming maintenance from your ex-boyfriend (the defendant) for your two children (the beneficiaries), you will have to give the following information:



- basic information about yourself, the defendant and the children (such as the children's names and dates of birth and contact details for yourself and the defendant)

The defendant's contact details are very important because you will not be able to get maintenance if he cannot be found. The maintenance officer or the maintenance investigator can try to trace the defendant if you do not know where to find him.



- a statement explaining why the defendant is legally liable to maintain the beneficiary

For example, you can say that the defendant has a duty to maintain the children because he is their father.

- a statement saying that the defendant has either paid no maintenance in the past, or saying what contribution he has made in the past

For example, perhaps the defendant made regular contributions to the children's maintenance until he became involved with another woman. Perhaps the defendant sometimes provides money, but not regularly enough to cover the child's needs.

- details of your assets (money and property) and income (such as wages or pension)

If possible, you should bring along documents to support what you say – such as pay slips. You can attach copies of these documents to the complaint form to support your case.

- details of the amount you spend on the children

If possible, you should bring along documents to support what you say – such as receipts for school fees or municipal accounts that show the amount you pay for rent, water and electricity.

- how much maintenance you are asking the father to pay

This should be a realistic amount which is in line with the respondent's financial position. If you are not sure about the level of the defendant's income and assets, the maintenance officer or the maintenance investigator can help.

The clerk will ask you to take an oath that the information on the form is true, and sign it or make your mark. The clerk will tell you when to come back to court.

There is a copy of the complaint form at the back of this book. You can use the example to see how to fill in the form. Ask the clerk to help you if you are not sure. You can also get anyone that you trust to help you fill in the form before you go to court.



The court is not allowed to ignore your complaint. If you make a maintenance complaint, then the maintenance officer **MUST** investigate your complaint and start the steps for a maintenance enquiry.

Section 9(4)(a)

STEP 2: INVESTIGATION BY MAINTENANCE OFFICER OR MAINTENANCE INVESTIGATOR

The maintenance officer should investigate your complaint. Investigations can take place at any stage in the process of claiming maintenance, whenever questions arise. For example, the maintenance officer may have to find the defendant. The maintenance officer may need more details about your financial position and the defendant's financial position. The maintenance officer may ask you or the defendant or other persons to come to the court to give more information, or to provide relevant documents.

The maintenance investigator (if there is one at your court) is supposed to help with collecting information.

Both maintenance officers and maintenance investigators have very wide powers of investigation. For example, both can contact employers to get information about wages. Both can contact banks to get information about assets. The advantage of a maintenance investigator is that this person will have more time for collecting information, without having to attend to other responsibilities at the same time.

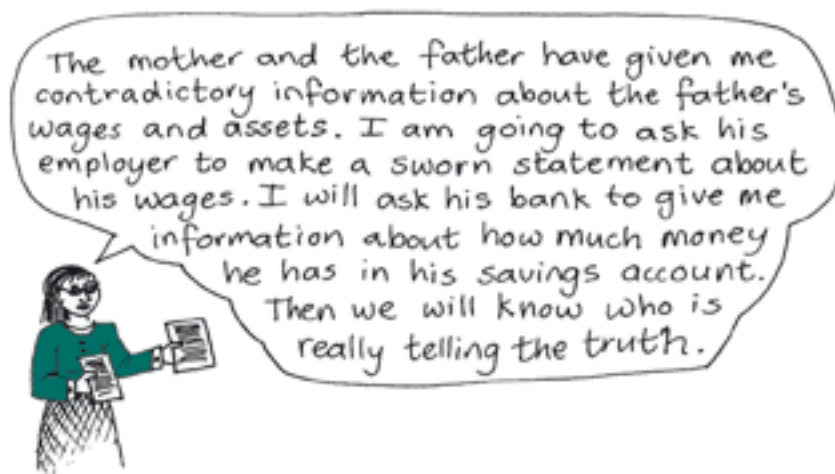
Sections 10-11, Regulations 3, Form C1A

One problem is that government officials do not always **USE** the powers that they have. You should urge the maintenance officer or maintenance investigator to collect and verify any information that might be relevant to your case. **The law says that the maintenance officer MUST investigate your complaint.**

Section 9(4)(a)

The Maintenance Act says that the Minister of Justice must “take all reasonable steps within the available resources of the Ministry of Justice” to gradually appoint at least one maintenance investigator for each maintenance court in Namibia. As of the beginning of 2005, not a single maintenance investigator had yet been appointed. In practice, clerks of court sometimes carry out investigations.

Section 8(4)



THE ROLE OF MAINTENANCE OFFICERS

Every magistrate's court has a prosecutor assigned to it, and every prosecutor is also a maintenance officer. Courts with many maintenance cases have full-time maintenance officers.

The job of the maintenance officer is to help persons who are seeking a maintenance order, so that they will not need to use a lawyer. But the maintenance officer is not supposed to take sides in the complaint. The job of the maintenance officer is to make sure that the process runs smoothly. The maintenance officer is also supposed to make sure that all relevant information is gathered before any decision is made.

Maintenance officers have the power to –

- ▶ collect information about the financial position of the complainant and the defendant
- ▶ order people to come to see them (or another maintenance officer who is closer) to give information
- ▶ order people to bring documents to court
- ▶ allow people who have relevant information to give statements in writing instead of coming to court in person
- ▶ arrange for magistrates to summon people to court to give information to the magistrate about the identification, location, employment or financial position of anyone who is legally liable to maintain another person. This preliminary questioning by the magistrate can take place in private rather than in open court.

The maintenance officer may also ask the maintenance investigator to check into particular matters.

Sections 7, 10, 11

THE ROLE OF MAINTENANCE INVESTIGATORS

The new law provides for the appointment of maintenance investigators who will work under the supervision of a maintenance officer.

Maintenance investigators have the power to –

- ▶ try to locate persons who are supposed to attend maintenance court proceedings if their addresses are unknown
- ▶ deliver court papers in connection with maintenance cases. If there is no maintenance investigator, then court papers will be delivered by the messenger of the court.
- ▶ trace the assets of persons involved in maintenance proceedings, and gather information about their financial position. If there is no maintenance investigator, then the maintenance officer can carry out the financial investigations.
- ▶ take statements under oath from anyone who has information that might be relevant to the maintenance case – such as employers or bank officials
- ▶ perform any other powers and duties in their job descriptions.

The introduction of maintenance investigators will make it harder for people to hide themselves or their income. This should help stamp out abuse of the maintenance courts by dishonest persons on either side of the case.

Sections 8 & 10, Regulation 28(1)

GETTING INFORMATION FROM BANKS

Either the complainant or the defendant might benefit from access to information about each other's financial position.

Banks have a duty of confidentiality to their customers, but they can still be ordered by law to provide the courts with information about their clients in some circumstances. Maintenance officers have the power to trace and evaluate the assets of responsible persons. Maintenance officers have the power to gather information concerning the financial position of any person who is responsible for maintaining someone else. These powers appear to overrule a bank's duty to keep client information confidential.

Banks can be ordered to produce account books as evidence in court cases. At least 10 days written notice must be given to the person on the other side of the case. This person can ask the magistrate to order that the financial information be kept confidential. It is up to the magistrate to decide.

A bank cannot be forced to produce accounts and other financial documents without a court order. Section 31 of the Civil Proceedings Evidence Act says:

No bank shall be compelled to produce its ledgers, day-books, cash-books or other account books in any civil proceedings *unless the person presiding at such proceedings orders that they shall be so produced.*

Sections 8, 10

Civil Proceedings Evidence Act 25 of 1965, sections 27-32
Swart & Another v Marais & Others 1992 NR 47 (HC)

CRIMES RELATING TO MAINTENANCE INVESTIGATIONS

The following are crimes:

- ▶ giving false information to a maintenance investigator or maintenance officer or magistrate during the maintenance investigation
- ▶ failing to obey a summons to appear before a magistrate to give information about a maintenance case without a reasonable excuse
- ▶ refusing to answer questions or to provide information without a lawful excuse while being questioned by a magistrate.

The penalty is a fine of up to N\$4000 or imprisonment for up to 12 months.

Sections 35 and 37(2)

STEP 3: THE COURT CONTACTS THE DEFENDANT

The clerk of the court will send a summons to the defendant saying when he must come to court. The summons will say how much maintenance is being requested.

The summons will be “served on” (officially given to) the defendant by the messenger of the court or by the maintenance investigator. It must be delivered personally to the defendant, or left at his house or workplace. If he tries to avoid the summons by refusing to let anyone come to the door, the summons can be left on the outside door or security gate.



It is a crime to disobey a summons. If the defendant does not come to court on the date stated in the summons, the court can tell the police to arrest him.

Sections 12 & 18, Regulations 4 & 28

THE DEFENDANT'S OPTIONS

The defendant has three options:

- (1) Ignore the summons and do nothing.

If a defendant ignores a summons to come to court for an enquiry, a **default maintenance order** can be made in his absence. The default order will be served on the defendant, who will have 10 days to apply to the court to change or cancel the order. The idea is to make it impossible for a defendant to benefit from ignoring the court's authority. Default maintenance orders are explained in more detail below.

- (2) Agree in writing to pay the maintenance which is being requested.

If the defendant agrees, he can sign a form that says this (Form G). The form will be included with the summons. The defendant must return the form to the clerk of the court by post or in

person. If the defendant agrees to the maintenance that is being requested, then he does not have to appear before the maintenance officer or the magistrate. **A maintenance order agreed to by the defendant in this way has the same effect as any other maintenance order and can be enforced in the same way.**

- (3) Come to the court on the specified date to give his side of the story to the maintenance officer or the magistrate.

If the defendant chooses this option, he must fill in a form on his income, assets and financial responsibilities (Part B of Form C1). This form is similar to the one filled in by the complainant. This form will be included with the summons. The defendant must bring the form to court along with supporting documents, such as pay slips and receipts for major expenses. The defendant can ask the maintenance officer or the clerk of court to help him complete this form.

Sections 18-19, Regulations 4, 10, 11



STEP 4: MEDIATION (INFORMAL ENQUIRY)

The maintenance officer (or the clerk of the court) will often sit together with the parties to try to reach agreement on maintenance before the case goes to court. This is called mediation. Some people refer to it simply as a “meeting” or an “informal enquiry”.

The Maintenance Act is silent about this step. Mediation can be useful. Many maintenance cases are resolved in this way. But mediation should not be used to delay the case unnecessarily. There is usually no need for more than one attempt at reaching agreement between the parties.

If there is going to be an attempt at mediation, the maintenance officer will tell the complainant and the defendant what day to come to the court for this informal meeting. Even if the dispute about maintenance is not resolved, the maintenance officer may collect useful information from the discussion. The meeting may be a combination of investigation and mediation.

At the preliminary meeting, the maintenance officer (or clerk) must first find out whether the defendant agrees that he has a legal duty to contribute to the maintenance of the beneficiary.

For example, the defendant might say that he is not really the father of the child. If this is the case, then the maintenance officer might arrange a paternity test. The procedure for paternity tests is discussed below.

The maintenance officer (or clerk) will probably ask both the complainant and the defendant questions about their wages, assets and expenses.

They may be asked to provide documentation of their expenses, such as pay slips.

The maintenance officer (or clerk) will then discuss the amount of the monthly maintenance payment with the complainant and the defendant.

The maintenance officer is supposed to give some guidance to the discussion by explaining what the law says. But the maintenance officer should not take sides. The maintenance officer should not put unfair pressure on either the complainant or the defendant to agree to anything they are not really comfortable with.

If the complainant and the defendant are able to agree on an amount at this meeting, then the maintenance officer (or clerk) will fill in a written form. This agreement will be made into an order of court.

A maintenance order agreed to in this way has the same effect as any other maintenance order and can be enforced in the same way.

Sections 10-12 & 18



The mediation is often conducted by the clerk of the court instead of by the maintenance officer. This is because there is a shortage of maintenance officers. The maintenance officers at many courts are also prosecutors who have many other duties.

Many maintenance cases are resolved by mediation, but **the law does not require this step**. If you do not want to attempt to resolve the disagreement about maintenance by mediation, say so when you make your complaint. Mediation is usually **NOT** a good idea if there is a history of violence between the parties. If you do not want to confront the person you are requesting maintenance from, ask the maintenance officer to meet with you separately.

If the defendant does not show up at court on the date set for mediation, this should not be allowed to delay the process. The maintenance officer should make arrangements for an enquiry as soon as possible.

Where the interests of minor children are at stake and where every delay in the finalisation of an ... enquiry prejudices those interests, the maintenance officer should make every effort to ensure that the enquiry is expeditiously proceeded with.

Nguza v Nguza 1995 (2) SA 954 (Tk GD)

ONE WOMAN'S EXPERIENCE

...I would like to comment on the poor service that we receive from Ministry of Justice with regard to maintenance issues. I have... been to the Katutura Maintenance Court to make a case against my ex-husband for child support. Firstly, after a month of waiting for the hearing, we appeared in court (or at least a room) to settle the matter calmly. However, my ex-husband is not the calm and conservative type. After a long lecture about why we are here and bla bla bla (as if I don't know why I'm there) the debate began. After making known the amount that I request for maintenance, we started debating about how he could not afford it and such. Not once was he asked to produce a salary advice, a list of expenses or supporting documents to prove that he was in such financial dilemma. I was completely thrown that the clerk of the court seemed more interested in his (my ex-husband's) version than mine. I can honestly say that the conversation may well have been between the two men and I may just as well have been sitting outside the door with the hundreds of other desperate women dependent on our justice system...

Unhappy Mother

excerpt from reader's letter in *The Namibian*, 19 November 2004

STEP 5: ENQUIRY BY THE MAGISTRATE

If the question of maintenance is not resolved by mediation, or if no mediation takes place, the maintenance court will set a date for an enquiry.

An “enquiry” is similar to a court hearing. The magistrate will listen to all sides of the story and decide what is fair to both parties and to the beneficiary.

A maintenance enquiry is **NOT** just a disagreement between two parties. The point of the enquiry is to decide on the fairest way to provide for the needs of the beneficiary.

The complainant and the defendant will be informed of the date for the enquiry.

If there was **no** preliminary meeting with the clerk or the maintenance officer, the clerk of the court will send the defendant a summons saying when he must come to court for the enquiry. The complainant will usually be given a copy of the summons so that she will also know when to come back to the court.

If there was a preliminary meeting with the clerk or the maintenance officer, the complainant and the defendant will simply be told what date they must come back to court again for the enquiry. This has the same effect as a summons.

THE PROCEDURE AT THE ENQUIRY

The complainant and/or the defendant may get a lawyer to help them if they wish, but this is not necessary. The maintenance officer is there to help the complainant. The magistrate in a maintenance case is also supposed to take an active role to help both parties present relevant information to the court.

The magistrate can ask both parties questions. The magistrate can ask other people to give information to the court. The magistrate can also make suggestions about the case. The magistrate's job is to make sure that there is a fair outcome. The magistrate also has a duty to keep the needs of the beneficiary in mind.

... the maintenance officer conducts the case for the complainant in the same manner as the prosecutor does for the State, and the complainant, in a criminal trial...

Nodala v The Magistrate, Umtata 1992 (2) SA 696 (Tk)

The responsibility of placing evidence before the court no longer rests only on the parties concerned, but is shared by the maintenance officer and the presiding judicial officer. Thus, even where the parties are legally represented, the maintenance officer and the presiding officer may have to call relevant evidence not called by the legal representatives.

Buch v Buch 1967 (3) SA 83 (T)

When the parties are unrepresented... the maintenance officer... must really enquire into all relevant aspects of the case. Ordinary laymen do not know how to conduct an enquiry of this nature. It therefore... becomes, where there is no legal representation, the duty of the maintenance officer to do the things normally done by legal representatives. It is... not sufficient to take up the normal passive attitude of a judicial officer presiding at a trial and let the parties present such evidence as they think fit...

Pieterse v Pieterse 1965 (4) SA 344 (T)

The proceedings in the maintenance court are private. Only people who are taking part in the enquiry are allowed to be present, unless the magistrate gives permission for someone else to attend.

The magistrate may decide to hold the enquiry in some private place other than the courtroom. For example, if a child will be giving information, the child might be more comfortable speaking in a more informal place such as the magistrate's office.

Section 13



The magistrate will consider the following information:

► what the complainant says

The complainant will be asked to swear that everything she says is true, and to produce documents to support her statement, such as pay slips, bills and receipts. The defendant will be able to ask the complainant questions. The maintenance officer may also ask her questions, to help her present her information clearly and thoroughly.

► what the defendant says

The defendant will be asked to swear that everything he says is true, and to produce documents to support his statement, such as pay slips, bills and receipts. The complainant (or the maintenance officer on her behalf) will be able to ask the defendant questions.

► what witnesses say

The complainant and the defendant can both bring witnesses to support what they have to say. For example, suppose the complainant says that the child has a medical problem which needs special treatment. She might ask the child's doctor to come to the enquiry to explain how much the treatment costs.

If a witness does not want to come voluntarily, the complainant or the defendant can contact the maintenance officer before the enquiry to discuss this problem. The maintenance officer can send a summons (an official notice) ordering that person to come to court for the enquiry.

The clerk of the court will pay small allowances to witnesses who attend an enquiry (other than the complainant and the defendant), to help cover the costs of coming to court.

► information collected by the maintenance officer

The maintenance officer has the power to collect information in advance of the enquiry. This can include statements made under oath by people who have useful information, or documents such as pay slips and bank account information. Information collected by the maintenance officer can be used at the enquiry, but the maintenance officer must use the procedure for admission of written statements explained in the box below.

► written statements

People who are asked to come to court to give specific information may be allowed to send written statements instead. For example, an employer may send a statement about the wages earned by the complainant or the defendant instead of coming to court in person to give this information.

The complainant and the defendant cannot use this option. They are the parties to the case, so they are expected to come to court in person.

► information and evidence from previous maintenance proceedings

If there has been a previous claim for maintenance involving the same two people, any evidence from this previous case may be used in the new enquiry.

Sections 10-12 & 15, Regulations 4-5

PROCEDURES FOR USING WRITTEN STATEMENTS AT THE ENQUIRY

There is a special procedure for using written statements at the enquiry, because the parties (the complainant and the defendant) may want the person giving the information to come to the court in person so that they can ask questions.

People involved in a court case normally have the right to cross-examine a person who is giving information that might count against them. If the information is presented to the court in written form, it is harder to challenge it or to get clarification. This is why it is possible for the parties to object to the use of written statements instead of statements made in person.

The party who wants to use the written statement must give the other party a copy of it at least 14 days before the enquiry, together with any documents mentioned in the statements.

For example, suppose that the defendant wants to use a written statement from his employer which refers to pay slips. He must give copies of these pay slips to the complainant at the same time as the statement, so that she has all the information she needs to decide whether or not to make an objection.

The person who receives the copy of the statement may object to the request to use the statement at the enquiry.

For example, suppose that the defendant wants to bring in a statement from his wife about their current household expenses. The complainant may prefer that the wife come to court in person so that she can ask questions about which expenses are really necessary.

The objection must be made at least 7 days before the enquiry. The copy of the statement that is sent for approval will include a form for making an objection. If there is an objection, this form must be sent back to the court.

If there is an objection to a written statement, it cannot be used at the enquiry. Instead, the person who made the statement must be ordered to come to court to give the information in person. The maintenance officer can help to arrange this.

There is another simpler procedure for using written statements. The party who wants to use a written statement can bring the statement along to the enquiry and try to reach agreement with the maintenance officer or the other party about this immediately before the enquiry begins.

For example, suppose that the statement is a verification of the defendant's income from his employer. If there is no real dispute about his wages, the complainant will probably have no objection. The parties will probably agree that the employer's written statement can be used at the enquiry.

Section 14, Regulations 6-7



Where legislative remedies specifically designed to vindicate children's rights as efficiently and effectively as possible fail to achieve that purpose, they do not provide effective relief.

Bannatyne v Banntyne
on the South African Maintenance Act,
which is very similar to the Namibian law

WHAT HAPPENS IF THE DEFENDANT DOES NOT COME TO THE ENQUIRY?

If the defendant ignores the official summons to come at the enquiry, then the magistrate must listen to the complainant's side of the story. The magistrate can make a **default maintenance order** against the defendant even when he is not present. This is explained in more detail below.

This is the same thing that happens in other kinds of court cases between private individuals. If one party to the case knows about the court date but does not come, then that party will lose "by default".

This new rule in the law on maintenance is designed to make sure that defendants do not benefit from ignoring notices saying that they must come to court. They must not be able to use this tactic to delay the outcome of a maintenance case.



Section 19

WHAT HAPPENS IF THE COMPLAINANT DOES NOT COME TO THE ENQUIRY?

If the complainant does not show up, the case will probably be cancelled by the maintenance officer and the magistrate, because they will assume that the complainant is no longer interested.

If the defendant is also not present, the court might tell the police to arrest the defendant for ignoring the order to come to court.

PAYING FOR WASTED COSTS

If either one of the parties fails to come to the enquiry without a good reason, the magistrate has the right to make that person pay for the wasted costs. **For example, this might include the extra witness allowances that have to be paid. If the party who did come to court has a lawyer, the party who failed to come might have to pay the lawyer's fees for the wasted time.**

If you have a good reason for not coming to court for the enquiry (such as being in hospital), you should contact the clerk of the court or the maintenance officer **BEFORE THE ENQUIRY STARTS** to explain.



Section 20

CONFIDENTIALITY AND PRIVACY

It is a crime for people working with the Maintenance Act, such as maintenance officers or clerks of court, to give out any information they learned through their jobs. The punishment is a fine of up to N\$4000 or imprisonment for up to 12 months.

For example, the people involved in a maintenance case will usually have to show the maintenance officer their pay slips. The maintenance officer is not allowed to tell other people how much money they earn.

It is a crime for anyone to publish any information which is likely to reveal the identity of a child involved in any way in a maintenance enquiry – even the name of the child's school. The punishment is a fine of up to N\$8000 or imprisonment for up to 2 years.

There is one exception. A magistrate can authorise the publication of this kind of information if the magistrate believes that it will be in the best interests of the child.

Sections 42-43



The judiciary must endeavour to ensure for vulnerable children and disempowered women their small but life-sustaining legal entitlements. If court orders are habitually evaded and defied with relative impunity, the justice system is discredited and the Constitutional promise of human dignity and equality is seriously compromised for those most dependent on the law.

Bannatyne v Banntyne
on the South African Maintenance Act,
which is very similar to the Namibian law

CRIMES RELATING TO MAINTENANCE ENQUIRIES

The following are crimes:

- ▶ giving false information relating to the enquiry
- ▶ failing to obey a summons to attend a maintenance enquiry without a reasonable excuse
- ▶ refusing to answer questions or to provide information at a maintenance enquiry without a lawful excuse
- ▶ insulting or obstructing the work of the magistrate, the maintenance officer, the maintenance investigator or the clerk of the court
- ▶ interrupting the proceedings or otherwise misbehaving at the enquiry.
- ▶ The penalty is a fine of up to N\$4000 or imprisonment for up to 12 months.

Sections 36-38

STEP 6: THE MAGISTRATE MAKES A DECISION

BASIC REQUIREMENTS

A maintenance order will be given only if ALL THREE of the following conditions apply:

- The defendant is **legally liable** to maintain the beneficiary of the maintenance order.
- The defendant is **able to contribute** towards maintenance.
- The defendant is **failing to provide reasonable maintenance for the beneficiary voluntarily**.

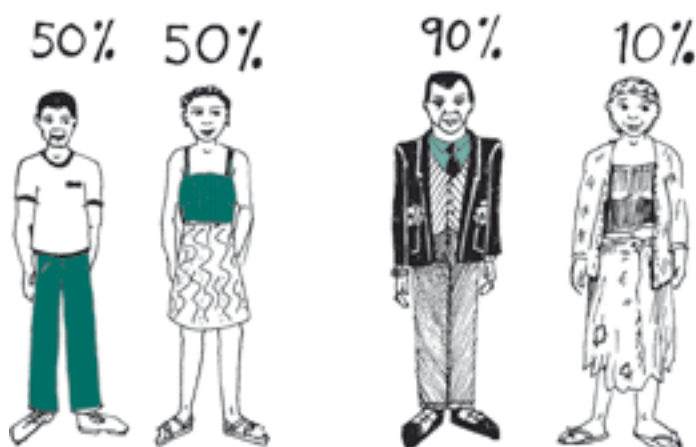
These conditions are discussed in more detail in the previous section on general principles.

Section 5

OTHER FACTORS TO CONSIDER

These factors must be taken into account in decisions about ANY maintenance order:

- ▶ the **lifestyle, income and earning capacity** of the defendant (for example, the father), the beneficiary (for example, the child), and any other person liable to maintain the beneficiary (for example, the mother) – now and in the foreseeable future



Suppose the father and the mother both earn the same wage and have no other property. It might be reasonable to expect them to contribute equally to the upbringing of the children. But if one of them earns more than the other, they must contribute in proportion to their financial resources.

- ▶ the present and future **property and resources** of the defendant, the beneficiary, and any other person liable to maintain the beneficiary

A person without a job might have valuable property or financial resources. For example, an unemployed man might own some taxis or some livestock. All of the financial resources of the parties must be taken into account, not just their wages.

- ▶ the **responsibilities and financial needs** of the defendant, the beneficiary, and any other person liable to maintain the beneficiary

For example, imagine a father has two children, Mary and Samuel, by two different women. Mary is disabled, and her mother has to stay at home to look after her. There are extra expenses for Mary, because she has to take a taxi to the clinic regularly for special treatment. Samuel has no unusual financial needs, and Samuel's mother may be able to get a job. The maintenance payments for Mary should probably be higher than the maintenance payments for **Samuel**.



- ▶ If the defendant has contributed to an **unnecessary delay** in the maintenance process, this could count against him.

In the past, men have often tried to delay the maintenance process in hopes that this would save them a few months' worth of maintenance payments. Under the new law, this will not be possible. For example, if the man has caused unnecessary delay, the maintenance order can be dated from the date of the initial complaint or the first court appearance – so that he does not benefit financially from the delay.

Section 16(2)

How can the magistrate consider future income and resources?

Sometimes it is possible to predict future changes. For example, suppose that the defendant's employer says that the defendant is busy with a training programme and will get a promotion and a significant increase in pay very soon. Or suppose that a relative of the complainant has died, and the complainant will inherit a house as soon as the estate is finalised. Future developments such as these are fairly certain and can be taken into account.

Must you have documentation for all of your expenses?

No. Receipts and other documents are helpful but not always required. It is not necessary to provide documentation for particular items unless the expense in question appears to be unreasonable or excessive.

*...There is a duty on the maintenance officer to enquire into all aspects of the case and ... the presiding officer should play an active role in ascertaining the facts. **But that is not to say that in a maintenance enquiry it is necessary to require the parties to produce documentary proof of every alleged item of expenditure.** It may be that a figure appears on its face to be unreasonably high, in which case documentation in the form of receipts will be required but where the figure appears to be reasonable and is unchallenged the maintenance court is perfectly entitled to accept the witnesses' sworn testimony at face value. And the presiding officer, in gauging what is reasonable or not, can, of course, rely on his own experience.*

Van Zyl v Fourie 1997 NR 85 (HC)

Additional factors to consider depend on the relationship between the beneficiary and the parties, and on the circumstances of the case. Previous chapters have discussed guidelines for specific kinds of cases:

- ▶ the duty of parents to maintain their children
- ▶ the duty of children to maintain their parents
- ▶ the duty of husband and wife to maintain each other
- ▶ the duty of maintenance between other family members, such as grandparents and grandchildren
- ▶ maintenance of persons with disabilities.

Sections 3-5, 16 & 26

After considering all of these factors, the magistrate will make a decision. The magistrate will either make a maintenance order or decide not to make a maintenance order.

The magistrate might refuse to make a maintenance order if

- ▶ the defendant does not have sufficient money, income or property to pay maintenance, or
- ▶ the magistrate thinks the complainant has so much more money, income or property than the defendant that it is not fair to ask the defendant to make a contribution, or
- ▶ it has not been proved that the defendant is legally liable to maintain the beneficiary.

Section 17(1)

The proceedings are inquisitorial in nature and it is the duty of the maintenance officer and the judicial officer who presides at the hearing to ensure that a proper enquiry is held. The presiding officer, in general, will endeavour to look after the interests of the children concerned and see that justice is done between the parties in accordance with their means and ability to pay.

Tsaoseb v Geingos 1995 NR 107 (HC)

HOW THE COURT DECIDES WHAT IS FAIR: AN EXAMPLE

The Namibian case of *van Zyl v Fourie* explains how the magistrate should go about making a decision in a maintenance enquiry. This case involved maintenance for a 5-year-old child.

According to this case, **a good starting point is to see what monthly amount is needed to maintain the child.** The mother provided information on the costs of rent, water and electricity, child care, pre-primary school fees, clothing, groceries and the costs of putting the child on her medical aid scheme. She did not provide documentation for all of these expenses, but this was not necessary. For example, the magistrate found that a monthly expenditure of N\$1 400 on groceries in Mariental was reasonable, on the basis of his own experience that prices are high there due to the lack of competition.

The mother said that she might be able to reduce the grocery bill if the family cut back to bare basics. But the court said that there is no reason for the mother and child to cut back on their standard of living unless it is unreasonable or beyond the means of the parties.

The next step is to look at the financial resources and circumstances of each parent.

The father was a single man, and his monthly salary was more than three times what the mother was earning. The court found that he could afford to pay maintenance of about N\$1000/month. The father claimed that he was in debt and was not able to make ends meet. But the court found that he could afford the maintenance payments if he made some adjustments to his lifestyle, such as finding cheaper accommodation. He was paying over N\$4000/month on a bond for his house, so the court suggested that he could sell the house and rent a flat for about N\$2000/month. According to the court, "he should do so if the needs of his child require it".

To test the fairness of the respective contributions from each parent, the court calculated what percentage of their respective incomes the mother and father would be paying towards their child's basic needs. The mother would be paying 12% of her monthly income and the father would be paying 11% of his monthly income. This would clearly be fair.

Van Zyl v Fourie 1997 NR 85 (HC)

STEP 7: THE MAINTENANCE ORDER

ORDINARY MAINTENANCE ORDERS

A maintenance order must include the following things:

- ▶ the contribution to be paid
This will usually be a certain amount of cash per child, to be paid once a month. But the "contribution" could include payment in kind, which is explained in more detail below.
- ▶ the date when the defendant must start paying maintenance
As noted above, if the defendant has caused unnecessary delay, this might be taken into account. For example, if the defendant has used unnecessary excuses to get postponements, the date set for payments to begin could be the initial date set for the enquiry.

- the time periods when payments should be made

For example, the order might say that the payments must be made on or before the last day of each month.

- where and how the money should be paid

In the past, maintenance had to be collected in person from the maintenance court. This was very expensive and time-consuming for complainants. Now the payments can be collected at the court, or paid directly into an account at a bank or post office.

For example, the order might say that money must be paid each month by a stop order from the defendant's bank account to the complainant's bank account. (A "stop order" is an instruction to the bank to make a regular payment automatically.)

The maintenance order might say that some or all of the maintenance payments should go directly to a specific person or institution other than the complainant – such as to a grandmother who is caring for the child, or to the school the child attends to be applied towards hostel fees.

The maintenance order can be tailored to fit the situation of the people involved.

Section 17, Regulation 8

PAYMENTS IN KIND

The magistrate has the power to allow all or part of the maintenance to be paid "in kind". Payment in kind is payment in some form other than money – such as property or livestock.

For example, the maintenance order might require the defendant to make a certain monthly payment plus annual delivery of one head of cattle. It might say that the defendant can provide the complainant with a house to live in instead of contributing towards the costs of rent. A taxi driver might arrange to give a child a free lift to school each day to reduce the other parent's expenses.

This new rule should help to make the law workable for rural families as well as urban ones. It will also be helpful in situations where a defendant has assets but no regular cash income.



Remember that a maintenance order made in favour of a mother for a beneficiary who is a child can include pregnancy and birth-related expenses. This request must be made before the child's first birthday, unless the mother can show a good reason for claiming them at a later date.

Section 17(3)



There is an example of a completed maintenance order at the back of this booklet.

PHOTOGRAPHS OF THE DEFENDANT

The maintenance court has the power, at the request of a maintenance officer, to order the defendant to provide either two photographs or a certified copy of his ID document. The defendant's name and contact details must be written on the back of the photograph or photocopy.



One copy must be filed with the maintenance file. The other will be attached to the register of payments which is kept at the court. Copies can be given to anyone who is serving an official court document on the defendant in the maintenance case.

This measure is intended to make it easier to enforce maintenance orders. If court officials have a photograph of the defendant, the defendant cannot pretend to be someone else when an official tries to deliver court documents.

Section 48, Regulation 27

DEFAULT MAINTENANCE ORDERS

If the defendant ignored the official notice to come to court for the enquiry, then the magistrate can make a default maintenance order in his absence. The magistrate will first make sure that the defendant really received the notice about the court date.

The official who delivered the notice fills out a form called a "return of service" which shows that the notice was really delivered.

The magistrate will listen to the complainant's case and then make a decision without knowing the defendant's side of the story. The magistrate may decide to give a default maintenance order in the absence of the defendant.

As noted above, this is the normal procedure in civil cases (disagreements between two individuals). People who ignore a formal notice to come to court must do so at their own risk.

The messenger of the court or the maintenance investigator will deliver a copy of the default maintenance order to the defendant. If the defendant wants to oppose the default maintenance order, he must complete a form and give it to the maintenance officer **within 10 days**. This form will say that he wants the default maintenance order to be changed or cancelled.

The form which the defendant must complete is available at any magistrate's court. It is Form I.

The defendant can be allowed to make the application after more than 10 days IF he can show a good reason for the delay – such as being in hospital or being out of town to attend a funeral. If the defendant's application is late, he must explain the reason to the magistrate. The magistrate will decide if the reason is good enough to allow the late application.

If the defendant does NOT send a notice to the court saying that he wants to apply to have the default maintenance order changed or cancelled, then it remains in place as a final maintenance order. It has the same effect as any other maintenance order and can be enforced in the same way.

If the defendant sends a notice opposing the order, the maintenance court will set a date for hearing the defendant's application.

The defendant must inform the complainant of the new court date. The notice to the complainant must include copies of any information that the defendant will use to support his application, so that the complainant can be prepared.

Court officials will not deliver the document this time, because it is not fair for the government to bear extra expenses caused by the defendant's irresponsibility.

The defendant must deliver a copy of Form I to the complainant. Part B of this Form is a notice telling the complainant about the date of the application.

THE COMPLAINANT'S OPTIONS

1. AGREEING WITH THE DEFENDANT'S REQUEST

When the complainant receives the defendant's application to have the default maintenance order changed or cancelled, she may accept his reasons. For example, perhaps she did not know when she made her maintenance application that the defendant has lost his job or fathered another child. **If the complainant agrees with the defendant**, she can write to the maintenance officer to consent to the change or the cancellation that the defendant is requesting. In this case, she will not have to come to court again.

2. NOT AGREEING WITH THE DEFENDANT'S REQUEST

The complainant does not have to agree. She may think that the defendant is not telling the truth, or not offering a fair amount of money. **If the complainant does NOT agree with the defendant**, then she must come to court on the date of the application and explain her response.

If the matter is not settled by agreement between the complainant and the defendant, then both of them must come to court on the date set for hearing the application. The defendant will then have a chance to explain why he thinks that the default maintenance order should be changed or cancelled. The complainant will have a chance to give her opinion. Both of them can bring documents (such as pay slips, bills and receipts) to support their arguments.

At the end of this hearing, the magistrate may:

- ▶ **confirm** the default maintenance order (leave it in force)
- ▶ **change** the default maintenance order
- ▶ **cancel** the default maintenance order.

In this case, the magistrate will change the proceedings into a new enquiry. Now that both parties are present, the magistrate can start all over again to decide if there should be a maintenance order.

Section 19, Regulation 11



APPEALS

A complainant or a defendant who is not happy with the decision of the magistrate after the enquiry can appeal against the decision to the High Court. If you want to make an appeal, you must tell the clerk of the maintenance court within 21 days of the date that the maintenance order was granted.

A person who was ordered to pay maintenance must keep making payments while the appeal is being decided.

The government will help a child or a person who is taking care of a child to make an appeal, or to argue against an appeal made by the defendant. If such a complainant

cannot afford a lawyer, she must tell the clerk of the court. The clerk of the court will arrange for a prosecutor to help her in court, and the maintenance officer will do all the paperwork.

If the defendant cannot afford a lawyer for an appeal, he could try asking for legal aid.

If the order was a default maintenance order, the defendant must first oppose it in the magistrate's court before he can appeal to a higher court.

Section 47, Regulation 17



...the proceedings in the maintenance court are initiated by a maintenance officer who is a government official and a civil servant. Children may be involved, and a complainant may be an indigent person seeking to obtain some money to support herself and/or her children. It seems to me that it would be unjust and unfair if as a respondent she were left high and dry when an appeal has been noted against the decision of a maintenance court in her favour.

Govender v Manikum 1981 (1) SA 1178 (N)

STEP 8: COLLECTING THE MAINTENANCE MONEY

The maintenance order will say how the maintenance money must be paid each month. It might be paid directly to you by the defendant. It might be paid into your bank or post office account. You can tell the maintenance officer what method of payment you prefer.

The maintenance order may say that the defendant will pay the maintenance money to the court, for you to collect. This will probably be the case if you have no bank or post office account.

You must go the cashier's office at the magistrate's court in person to collect the money. You must take along an ID. It can be a Namibian ID, an old South West African ID or a passport. If you are a refugee, then you must take your refugee registration certificate.

What should you do if your ID is lost? The maintenance court will accept a certified copy of your ID – but only IF it is an official certified copy from the Ministry of Home Affairs. As of 2004, the Ministry was charging N\$25 for providing these official certified copies. A certified copy is when an official called a commissioner of oaths looks at the original document and swears that the photocopy is just like the original. The maintenance court will accept certified copies of IDs only from the Ministry of Home Affairs. The Ministry of Home Affairs requires you to come in person to get the copy. This is so they can look at your face and check it against their original files if necessary.

It is a function of the state not only to provide a good legal framework, but to put into place systems that will enable these frameworks to operate effectively. Our maintenance courts and the laws that they implement are important mechanisms to give effect to the rights of children protected by... the Constitution. Failure to ensure their effective operation amounts to a failure to protect children against those who take advantage of the weaknesses of the system.

Bannatyne v Banntyne
on the South African Maintenance Act,
which is very similar to the Namibian law

10. PATERNITY TESTS

What happens if a man who is asked to pay maintenance for a child denies that he is the child's father? He can ask for a paternity test. This test requires some blood or saliva from the child, the mother and the man who is alleged to be the father of the child. The test is expensive, but it is very accurate.

What if you cannot pay for the test? If one or both of the parties involved is unable to pay for the costs of the paternity test, the maintenance officer can ask the magistrate to have a small enquiry into the question of costs. The magistrate will consider information about the financial situation of the parties involved and any other relevant circumstances that are relevant. Then the magistrate will decide who should pay the costs of the paternity test.

The magistrate might decide that the costs should be shared, or that the government should pay all or part of the costs. The magistrate can reconsider the preliminary decision on the costs of the test at the time of the final decision on the maintenance order.

Section 21



Paternity tests should not be misused. If a man asked for a paternity test when there was no real doubt about who was the father of the child, then he is likely to be asked to contribute towards the costs of the test. Likewise, if a woman names a man as the father of her child when she knows that this is not possible, she is likely to be asked to contribute towards the costs of the test.

NEW RULES ABOUT PATERNITY TESTS

The **Children's Status Bill** which was being considered by Parliament in 2005 contains provisions on paternity tests.

Once it is passed, this law should clarify some of the legal rules about paternity. It says that a man will be assumed to be a child's father if –

- ▶ he was married to or living with the mother at the relevant time
- ▶ he is registered as the father on the child's birth certificate (which cannot happen without his permission)
- ▶ both he and the mother acknowledge that he is the child's father
- ▶ there is evidence that he had sexual intercourse with the mother around the relevant time.

If these circumstances are present, then it is up to the man to provide evidence that he is **NOT** the child's father.

The Children's Status Bill also says that the court will assume that anyone who refuses to have the test done (or to let the test be done on a child in their care) must be trying to hide the truth.

These rules are intended to prevent people from using paternity tests to cause unnecessary delays when there is no real question about paternity.

Courts need to be alive to recalcitrant maintenance defaulters who use legal processes to side-step their obligations towards their children.

Bannatyne v Banntyne
on the South African Maintenance Act,
which is very similar to the Namibian law

11. CHANGING OR CANCELLING A MAINTENANCE ORDER

BIG CHANGES

The complainant or defendant may want to change a maintenance order after it is in force. The can happen at any time. The changes may be:

- ▶ a request to **increase** the amount paid

For example, the complainant may want to increase the amount paid for a child because the child will be going to secondary school and the school fees are more expensive.

- ▶ a request to **decrease** the amount paid

For example, the defendant may want to decrease the amount paid for a child because he has just had a child with his new wife and cannot afford to pay so much for the previous child.

- ▶ a request to **suspend** the maintenance order temporarily

For example, the defendant may be a self-employed taxi driver who has had to stop work temporarily because of an operation. He might want to stop making payments during the period that he is unable to work.

- ▶ a request to **stop** payment altogether

For example, the defendant may want to stop paying maintenance because he has lost his job.

The person who wants the change must contact the maintenance officer and fill in forms requesting the change.

There will be an enquiry which will involve the complainant, the defendant and any other relevant people (such as a grandmother taking care of a child who benefits from the maintenance).

The enquiry will work in the same way as an enquiry for any other maintenance order. The maintenance officer may bring the complainant and the defendant together informally before the enquiry to see if they can agree on the change.

Sections 9, 17(1)(b) & 23, Regulation 13

There must be a good reason for requesting the change. If there is no reason for changing the initial maintenance order, then the maintenance officer will not arrange an enquiry. The reason for the change will usually involve changed circumstances, but there could be some other 'sufficient cause'.

Section 16(5), Beukes v Beukes 1995 (4) SA 429 (OPA)



It is possible for the complainant to ask for an increase at the same time that the defendant is asking for a decrease. The magistrate can consider the two competing requests at one enquiry.

The magistrate can also propose an increase in an enquiry started by a defendant seeking a decrease, and vice versa.

The maintenance courts have flexibility to look at the information they are given, and then do whatever is necessary to protect the beneficiaries.

Van Zyl v Steyn 1976 (2) SA 108 (O)

SMALL CHANGES

There are some **small changes to maintenance orders** that can be approved by the maintenance court at the request of the maintenance officer, **WITHOUT** a new enquiry. These are:

- ▶ a change in **who** should receive the maintenance money on behalf of the beneficiary

For example, suppose that the child who benefits from the maintenance is going to live with the grandmother. The mother might request that the maintenance be paid directly to the grandmother in future.

- ▶ a change in **how** the maintenance money will be paid

For example, suppose that the mother receiving maintenance for her child has just opened a post office savings account for the first time. She might request that the money be paid into her account so that she no longer has to travel to the court to collect it.

- a cancellation of an order allowing payment **in kind** instead of in cash

For example, suppose that the order said that part of a maintenance order would be paid in the form of cattle, but all the defendant's cattle died in a drought. He could request that all of the maintenance be paid in cash.

The party who wants one of these small changes must go to the maintenance officer to request the change. If the request is approved, the maintenance officer will notify the other people who are affected.

The amount of the maintenance and the beneficiary of the maintenance order can NOT be changed in this way.

Section 22, Regulation 12



CHANGE OF ADDRESS BY COMPLAINANT

If the complainant changes address, she must contact the maintenance officer closest to her new home within 30 days of the move. The maintenance order will be transferred to the court closest to the complainant to be more convenient. The clerk of court will notify the defendant and other relevant persons of the change of address.

Section 24, Regulation 14

CHANGE OF ADDRESS OR JOB BY DEFENDANT

If the defendant changes his address or job while the maintenance order is still in force, he must tell the maintenance officer and the complainant within 7 days. He must also contact any other person or institution which is receiving the money (such as a bank or children's home). He must give clear details about his new address or job. Failing to give this information is a crime, and the penalty is a fine of up to N\$2000 or imprisonment for up to 6 months.

Sections 17(5) & 45, Regulation 15

12. WHAT TO DO IF THE MAINTENANCE IS NOT PAID

In the past, the only option when maintenance was not paid was to lay a criminal charge for violation of a court order. The new law focuses on other approaches. When someone fails to pay, you can use simple procedures to get the money owing from that person's wages or property. Criminal charges should be a last resort, meaning that the sentences for failure to pay maintenance should become tougher.

TRYING TO GET THE MAINTENANCE MONEY

If you have not received a maintenance payment 10 days after you expected it, you should go to the clerk of the court. You should take along a copy of the maintenance order if possible.

It is never too late to go to the court for help with missed maintenance payments. But you can start the process as soon as 10 days after the first payment has been missed. It is usually better for you and the defendant and the child involved if you take action soon, before the arrears mount up.

The clerk will help you make a sworn statement giving –

- ▶ **the amount which has not been paid**
- ▶ **the method of enforcement** you are seeking (such as having the money owing deducted from the defendant's wages, or selling his property to get the money owing)
- ▶ **any information you have about the defendant's property, finances or employment** which might help with enforcement.

Section 28(1)-(2)

The maintenance officer will give the documents to the magistrate. The magistrate will then make an order for enforcement to pay –

- ▶ the arrears (the amounts owing for past maintenance payments that were not made) and
- ▶ interest on the arrears.

Section 28(3)

OPTIONS FOR GETTING MAINTENANCE MONEY

You can ask the court to apply any of the following options:

- ▶ If the defendant has a job, his employer could take the maintenance payment from his **wages** and send it to you each month.

Section 31

- ▶ If the defendant owns **property** (such as a car, livestock or land), the maintenance court has the power to order that the property be sold so that the maintenance can be paid. **The sale of immovable property (such as houses and land) is a last resort. If the defendant has moveable property (any property that can be moved from one place to another), the court will deal with this kind of property first.**

Section 29

- ▶ If someone owes the defendant money (such as repayment for a loan, or rent paid to him by someone who lives in a house that he owns), the court could order that part or all of this **debt** be paid directly to you to cover the maintenance.

Section 32

- ▶ If the defendant is receiving **a pension or an annuity** or similar payments, part or all of these payments could be paid directly to you to cover the maintenance.

Section 28(5)

Any of these steps can be taken without the defendant's consent.

A NOTE TO DEFENDANTS

There may be a good reason why you have not been able to make the maintenance payments. Perhaps you have been ill, or perhaps you have lost your job. Perhaps you have just learned something that makes you suspect that you are not really the father of the child you have been maintaining. Perhaps the child you are paying maintenance for has come to stay in your house.

These might be good reasons for changing, suspending or cancelling maintenance order. **BUT YOU CANNOT SIMPLY IGNORE A COURT ORDER.** If you have a problem, or if the circumstances have changed, it is your responsibility to go to the court and explain. The order stays in force until the court changes it.

Jantjies v Jantjies & others 2001 NR 26 (HC)



It has become common for most men to place priority on having "the biggest house or car" in town, rather than providing for their offspring's basic needs.

Hon. Amukugo,
Parliamentary debate on the Maintenance Act

ATTACHMENT OF WAGES

If the magistrate makes an order for attachment of wages, the clerk of the court will send a notice to the defendant's employer within 7 days. (This can be done in person, or by fax with another copy sent by registered post as a safeguard.)

The employer must then deduct the maintenance payment from the defendant's wages, and send the money directly to the person or place stated in the maintenance order (such as to the complainant's bank account, or to the maintenance court for collection by the complainant).

The defendant can request to have the order for deduction from his wages cancelled, changed or suspended. He must go to the clerk of the court and fill in an application. He must also give the complainant notice of his application at least 14 days before the date that the magistrate will decide on it.

On that date, the magistrate will consider oral or written evidence from the complainant and the defendant. The magistrate will then decide if the deduction from the defendant's wages will continue. **This procedure is not about the maintenance order itself, but only about the method for enforcing it.**

Sections 30-31, Regulation 22

A NOTE TO EMPLOYERS

An employer has a duty to obey a notice from the court to make deductions for maintenance payments. The employer also has a duty to inform the court if the defendant is no longer employed there. The penalty for failing to carry out these duties is a fine of up to N\$2000 or imprisonment for up to 6 months.

The Labour Act allows deductions from wages in terms of a court order. The Labour Act says that total deductions from wages must not add up to more than one-third of the defendant's basic wage. But this rule does NOT apply to deductions made in terms of a court order. The defendant's total financial resources and responsibilities should have been taken into consideration before the maintenance order was made in the first place.

An employer can apply to the maintenance court to change or cancel the order for deducting the maintenance from wages, if there is a good reason. The procedure is the same as for the defendant.

Sections 30-31, 44, Regulation 22

The complainant and the defendant might agree from the beginning to arrange for a deduction of the maintenance payments from the defendant's wages. This can be a good way for the defendant to make sure that he never gets into arrears.

ATTACHMENT OF PROPERTY

If the magistrate makes an order for attachment of property, the magistrate will issue a special kind of order called a **‘warrant of execution’**. This document authorises the messenger of the court to take property belonging to the defendant, sell it, and use the cash from the sale to pay the maintenance arrears and interest on the arrears.

The complainant must give information on how much maintenance is owed for past payments that have been missed. The clerk of the court will prepare the warrant of execution, and the messenger of the court must put it into action. The maintenance investigator (or the maintenance officer if there is no investigator) is required to assist with the process.

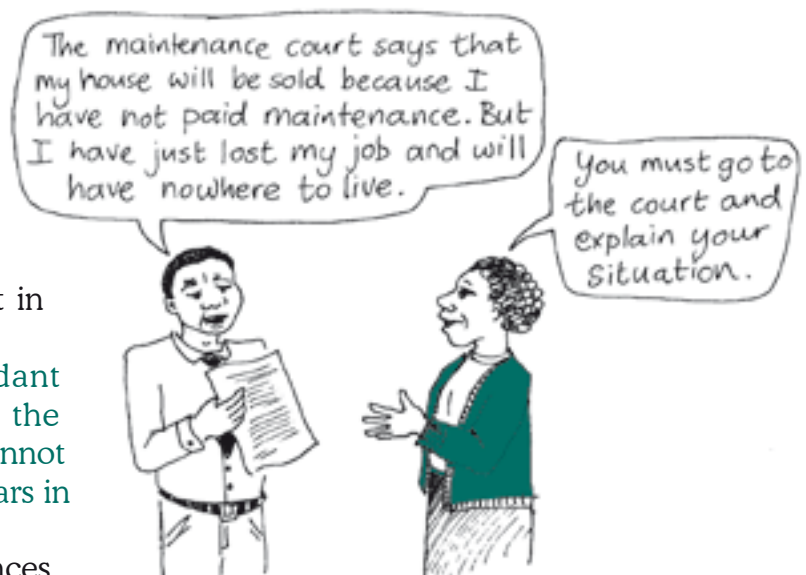
The messenger of the court will deliver the warrant of execution to the defendant. If the defendant does not pay all the maintenance owing to the messenger of the court within half an hour, then the messenger of the court will “attach” property to be sold to cover the arrears. This means that the messenger identifies the property to be sold, and makes an official list of the property and its estimated value. The defendant can point out which property should be sold to cover the amount of money owed. If the defendant does not do this, then the messenger can choose the property. The messenger can search for property if necessary.

The property that is “attached” may be left in the physical possession of the defendant until the sale is arranged, but it would be illegal at this stage for the defendant to hide it or give it away. A complainant who is worried about this possibility can request that the property be moved to a secure place as soon as it is attached.

The defendant has 10 days to go to the maintenance court to request that the warrant of execution be cancelled. As in the case of attachment of wages, he must go to the clerk of the court and fill in an application. He must also give the complainant notice of his application at least 14 days before the date that the magistrate will decide on it. On that date, the magistrate will consider oral or written evidence from the complainant and the defendant.

The magistrate will consider these factors:

- ▶ the defendant’s current and future financial position
 - ▶ the needs of other persons who are being maintained by the defendant
 - ▶ the defendant’s past conduct in paying maintenance
- For example, if the defendant habitually falls into arrears, the magistrate may feel that he cannot be trusted to pay off the arrears in any other way.
- ▶ any other relevant circumstances.



The magistrate will then decide whether or not to go forward with the warrant of execution. **This procedure is not about the maintenance order itself, but only about the method for enforcing it.**

If the magistrate decides that property should be sold to cover unpaid maintenance, the rights of anyone else with a share in that property will be protected.

For example, suppose that the property in question is owned by the defendant and a spouse who are married in community of property. Only the defendant's half-share in the proceeds of the sale can be taken to pay the outstanding maintenance. The spouse's half-share in the property cannot be used to pay off the maintenance.

The amount of maintenance owing, plus interest, will be taken out of the income from the sale and paid to the complainant. Money for the costs of the procedure – such as the costs of delivering the warrant of execution and the costs of holding the sale – will also be taken from the proceeds of the sale. Any money which is left over will be given to the defendant, or held by the court in case future maintenance payments are missed.

If at any time during this process the defendant offers an alternative way of giving the complainant the unpaid maintenance, the magistrate may decide to stop the sale of property.

*Section 29, Regulations 19-21
Magistrate Court Rules 36-49
Magistrates' Courts Act, sections 66-68*

PROPERTY THAT CAN BE ATTACHED FOR PAYMENT OF MAINTENANCE DEBTS

Moveable property (property that can be moved from one place to another) will be attached first. Cash, cheques and other papers with value (such as stocks and bonds) can also be attached. Immoveable property (such as houses and land) will be attached only if there is not enough moveable property to pay the debt.

The following property can NOT be attached to pay maintenance debts:

- ▶ beds, bedding and clothes of the defendant and his family
- ▶ necessary furniture and household utensils, up to a value of N\$1000
- ▶ the livestock and tools of a farmer, up to a value of N\$1000
- ▶ enough food and drink for the defendant and his family for one month
- ▶ tools and implements used in the defendant's business, up to a value of N\$1000
- ▶ professional books, documents and similar items used in the defendant's business, up to a value of N\$1000
- ▶ arms and ammunition which the defendant is required to use in his job.

Magistrates' Courts Act, sections 66-68

Warrants of execution are used any time a person fails to obey a court order that involves the payment of money. The procedure is simplified in the case of maintenance, to make the procedure more accessible. The complainant does not have to pay any of the costs of the enforcement procedures. These costs must not take the bread out of the mouth of the beneficiary.



The procedures for attaching debts owed to the defendant, or a pension or an annuity being paid to the defendant, are similar.

Section 32, Regulation 23
Pension Funds Act 24 of 1986, section 37A

CRIMINAL CHARGES

Failing to obey a maintenance order is a crime.

If the defendant misses a maintenance payment, you should contact the maintenance officer. You will be asked to fill in a form stating the amount which is owing. Take along a copy of the maintenance order if possible.

If criminal enforcement seems to be the best option, the defendant will be summoned to appear in court. The case then becomes a criminal case that will be dealt with in the criminal court by a prosecutor.

If the defendant does not come to court on the given date, then he will be arrested.

The court will listen to the prosecutor and then give the defendant a chance to tell his side of the story.

A good faith inability to pay is a defence to the crime of failing to obey a maintenance order. For example, maybe the defendant could no longer pay because he lost his job. But inability to pay is no excuse if the defendant is unwilling to work or suffering from his own misconduct.

The magistrate must explain this defence to a defendant who is charged with failure to pay – especially if he does not have a lawyer to help him.

If the defendant was truly unable to pay, he must give the magistrate evidence of this. It will not be enough for him to simply say that he lost his job – perhaps he has not really looked for another job, or perhaps he has some savings that he could use to pay maintenance.

The magistrate has the power to convert the criminal trial into a new maintenance enquiry if it appears that there are good reasons why the maintenance order should be changed, suspended or cancelled.

Section 39

S v Geiseb 1994 NR 175 (HC)

S v de Koe 1993 NR 359 (HC)

S v Exabuja 1992 NR 196 (HC)

S v Shivute & several other cases 1991 NR 433 (HC)



The punishment for failing to obey a maintenance order is a fine of up to N\$4000, or imprisonment for up to 12 years.

If the defendant is sent to prison, he cannot work to get the money to pay maintenance. But this does not mean that he cannot be punished. The court can impose a punishment of imprisonment only on weekends ("periodical imprisonment") or community service ("correctional supervision") in appropriate cases.

If someone has been convicted for failure to pay maintenance, this information can be given to businesses which give credit or credit ratings. For example, if the defendant wants to get a credit card or a car loan sometime in the future, the conviction may count against him.

ARREAR MAINTENANCE

If the defendant is convicted on a criminal charge of failure to pay maintenance, the prosecutor can also request an order for recovering the **arrears**. This could be done in any of the ways described above – such as attaching wages, debts or property. **The goal of both civil enforcement and criminal enforcement is to get the money for the needs of the beneficiary.**

Sections 33-34, 39, Regulations 24-25

Dad lands weekend lock-ups over child support

A Windhoek resident who failed to obey a High Court order to pay N\$500 in maintenance a month for his two children will now have to spend part of every weekend until the end of November behind bars.

The tough line against the non-payment of court-ordered child support was taken by Magistrate Leah Shaanika in the Windhoek Magistrate's Court in Katutura on Tuesday.

Appearing before her was Dirk van Wyk, who had been charged with failing to pay maintenance for the two children born out of his marriage that ended in a divorce in the High Court four and a half years ago.

When the marriage was dissolved in April 1998, the High Court ordered Van Wyk to pay his ex-wife N\$250 in maintenance for each of his two children every month.

However, according to a sworn declaration from a Justice Ministry official attached to the maintenance division of the Windhoek Magistrate's Court, Van Wyk was N\$25 000 in arrears

with the child support payments by August this year. He had paid nothing since the divorce was finalised.

During his trial this week it was indicated to the Magistrate that the two children had stayed with him for part of the time since his marriage had ended. During the rest of the time, though, he still failed to pay child support.

Magistrate Shaanika ordered Van Wyk to continue paying maintenance of N\$500 a month, and to pay an additional N\$300 a month until the remaining N\$10 000 in arrears had been paid off.

She added a further sting of punishment to his sentence, ordering that he has to serve 150 hours of periodical imprisonment. He has to report to be locked up behind bars at 17h00 every Friday, until he is set free again at 24h00 every Saturday, from today until the full jail term had been served by the end of November, she directed.

The Namibian, 25 October 2002

Rod won't be spared when it comes to 'deadbeat' parents

ONANIME – The Oshana Regional Governor, Clemens Kashiupulwa, says Namibia's Maintenance Act is in full force and legal action will be taken against fathers and mothers who deliberately fail to support their children.

Kashiupulwa issued the warning at an occasion commemorating the Day of the Namibian Child, held at Onanime's Shikoyeni Junior Primary School in the Okatana Constituency on Monday.

Criticising fathers and mothers who do not look after their children properly, Kashiupulwa stressed that parents are obliged to provide

children with food, shelter, education and health care.

The Governor also criticised wives who prevent their husbands from paying maintenance for children they fathered with other women.

Kashiupulwa, who is also the Councillor for the Okatana Constituency, urged all parents in the constituency to ensure that orphaned children in their care are registered with the Ministry of Women's Affairs and Child Welfare at Oshakati for possible Government support.

The Namibian, 25 October 2004

There is a South African case which says that the complainant can choose the remedy which seems to her most likely to succeed. *Martin v Martin*, 1997 (1) SA 491 (NPD). In Namibia, the complainant requests a method of enforcement which must be authorised by the magistrate.

Section 28(2)(c) & (3)

13. INTIMIDATION OF A PERSON SEEKING MAINTENANCE

What if you are afraid to get a maintenance order because the person you want to claim maintenance from (or someone else) is threatening you?

It is a crime to try to stop someone from filing a maintenance complaint –

- ▶ by threatening to kill or hurt them or anyone else
- ▶ by threatening to cause any kind of damage to them or anyone else
- ▶ by threatening to damage property belonging to them or anyone else.

This crime covers any kind of threat, including witchcraft. The penalty is a fine of up to N\$20 000 or imprisonment for up to 5 years.

Section 41

For example, suppose that your ex-boyfriend hears that you are planning to try to get maintenance from him for your child. He tells you that if you go anywhere near the court, he will take your child far away so that you will never see the child again. This is a serious crime.



DOMESTIC VIOLENCE

Sometimes a person who is being asked to pay maintenance can become very violent towards you or your child. If you are experiencing this problem, you can get a **protection order** saying that the abuser must stop the violence. The protection order can also say that the abuser must stay away from you. If you are living together, the protection order can say that the abuser must move out of the shared household, no matter who owns or rents it. Threats of violence against you or your child are also a form of domestic violence – you do not have to wait until there is an injury to get help.

You can also **lay a charge** against the abuser with the police. There are special procedures for bail in crimes involving domestic violence which can help to protect you.

The Legal Assistance Centre has booklets explaining more about the law on domestic violence.



14. MISUSE OF MAINTENANCE PAYMENTS

What if someone misuses the maintenance that they receive for a child or another beneficiary?

Failing to use maintenance money for the intended beneficiary is a crime. The penalty is a fine of up to N\$4000 or imprisonment for up to 12 months.

It is important to remember that money is interchangeable. For example, suppose that you see a woman pick up a maintenance payment at the court. She gets into a taxi and takes the money to her new boyfriend. Is she abusing the maintenance payment? Maybe. But it may also be that her new boyfriend loaned her money for groceries during the month which she is now re-paying.

Research conducted by the Legal Assistance Centre did not find abuse of maintenance money to be a problem. The typical maintenance payments are very low. Someone looking for easy money would most likely look elsewhere. But the provision on abuse is still a welcome one – anyone who misuses maintenance money for their own selfish purposes should be punished.

A NOTE TO DEFENDANTS

If you suspect that maintenance money is being abused, this is **NOT** a good reason for failing to pay. The right course of action is to ask the maintenance officer to investigate. But you must continue to obey the maintenance order as long as it remains in force.



It is true, there are some women who receive maintenance benefits and do not use it in the best interest of the children. At the same time, it is also true that there are men who do not maintain their children. It is a fact, and that is why this law is clearly focusing on both parents, that we must take care of our children and not to think that somebody else will do it for us. Therefore, this law should not really be seen as a law for women, it is a national law because everybody is going to benefit.

Hon. Nandi-Ndaitwah,
Minister of Women Affairs and Child Welfare
Parliamentary debate on the Maintenance Act

15. GETTING MAINTENANCE FROM SOMEONE IN ANOTHER COUN-

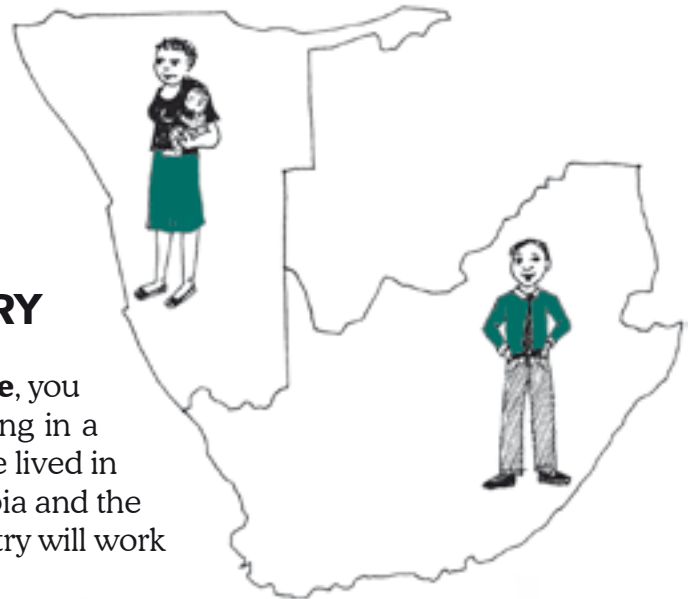
It is sometimes possible to claim maintenance from a person who is living in another country.

For example, suppose that you are in Namibia with your baby and the father of your child is living in South Africa. You can still claim maintenance from him.

There is a law that provides for the reciprocal enforcement of maintenance orders between Namibia and countries that Namibia has made special agreements with (“designated countries”).

GETTING A MAINTENANCE ORDER IN ANOTHER COUNTRY

If there is no maintenance order in force, you can claim maintenance from a person living in a designated country in the same way as if he lived in Namibia. The maintenance court in Namibia and the maintenance court in the designated country will work as partners to deal with the case.



The person living outside the country should be given notice of the Namibian enquiry if possible.

He can consent to the maintenance that is requested, just as if he were living in Namibia, by signing a consent form.

If it is not possible to give notice to the person living outside the country, or if he got notice but did not attend, the enquiry can go ahead in Namibia in the usual way in his absence. The information which is given to the court will be written down and signed by the different witnesses. The magistrate can make a **provisional maintenance order** at the end of the enquiry. Then the Namibian government will send a copy of the provisional maintenance order and the evidence that was given at the enquiry to the government of the designated country.

The person who is being asked to pay maintenance will then have a chance to tell his side of the story in the country where he lives. A maintenance court in the designated country will hold “the other half” of the enquiry.

The magistrate in this court will decide whether to confirm the provisional maintenance order. This magistrate can also decide to change the provisional order, or to send the case back to the maintenance court in Namibia for more information. If the respondent received fair notice of the enquiry which was held in Namibia – whether or not he attended the enquiry – then the court in the designated country can limit its portion of the enquiry to a consideration of the amount of maintenance to be paid.

A maintenance order made in this way can be enforced in the designated country in a similar way as a maintenance order made in Namibia. If necessary, the government of the designated country will get the maintenance money and send it to Namibia so that it can be collected by the complainant.

Namibia will help in the same way if someone living in a designated country is trying to get maintenance from a person who lives in Namibia.

ENFORCING A MAINTENANCE ORDER IN ANOTHER COUNTRY

If a Namibian maintenance order is already in force against a person who moves to another country, you can go to the maintenance court to ask for help in getting the maintenance. The Namibian government will work together with the government in the designated country to enforce the order.

Methods of enforcement similar to the ones used in Namibia will be used by the courts in the designated country (such as attachment of wages or property).

A similar procedure is applied to cases where an order for the attachment of wages is made against a person who lives in Namibia but receives wages in a designated country. The two governments will work together to make sure that the complainant gets the money.

DESIGNATED COUNTRIES

The only country that the Ministry of Justice has designated in terms of this law so far (as of the beginning of 2005) is South Africa. Namibia does not have international agreements with other foreign countries on enforcing maintenance orders. But it may be possible for the government to help you get maintenance from a person living in a foreign country other than South Africa. The Ministry of Justice has dealt with other countries such as Germany and Cuba through diplomatic channels, even though no formal agreements are in place.

Reciprocal Enforcement of Maintenance Orders Act 3 of 1995
South African Reciprocal Enforcement of Maintenance Orders
(Countries in Africa) Act 36 of 1989
South African Maintenance Act 99 of 1998

16. GETTING MAINTENANCE FROM THE ESTATE OF A DECEASED PERSON

WHO CAN CLAIM MAINTENANCE FROM THE ESTATE

Children have a right to claim maintenance from the estate of their deceased mother or father if they do not have adequate means to support themselves from other sources. Creditors (people who were owed money by the deceased) must be paid first. Claims for maintenance will be considered next, before any money or property can go to the deceased's heirs.

Children of the deceased can claim maintenance from the estate even if there was no maintenance order in place before the parent died.

Elderly parents who cannot maintain themselves would probably have the same right to claim maintenance from the estates of any of their adult children who were deceased, although this is not common in practice.

Divorced spouses can claim maintenance from the estate of their deceased husband or wife IF they have a divorce order that provides for maintenance for them. Spouses who were still married at the time of death do NOT have a right to claim maintenance from the estate.

MAINTENANCE FOR SPOUSES IN OTHER COUNTRIES

South Africa has passed a statute called the Maintenance of Surviving Spouses Act 27 of 1990. This law gives a spouse the right to claim money from the estate of a deceased husband or wife for "reasonable maintenance needs". This maintenance can continue until the surviving spouse dies or re-marries. Should Namibia allow a similar system?

THE PROCEDURE

The person who wants to claim maintenance must contact the executor of the estate. The "executor" is the person who is in charge of distributing the property of a deceased person. People who leave a written will usually name an executor in the will. If there is no will, the Master of the High Court will appoint an executor.

You can contact the office of the Master of the High Court to find out who is acting as the executor of the estate.

Postal address: Private Bag 13190 Windhoek
Telephone: (061) 292 1111

The executor may not have information about all the children of the deceased, especially if there are children who were born outside of marriage or children of previous marriages. It is important to contact the executor as soon as possible about any maintenance claims.

What if there is a question about whether or not the deceased was really the parent of the child who is applying for maintenance? The executor will look at the evidence (such as checking the child's birth certificate). If the executor cannot tell if the claim is genuine, then the High Court must decide.

A child who wants to claim maintenance will need an adult to help with the claim for maintenance. If the child has no surviving parent, then the child's guardian can help. If there is no guardian, the executor can apply to the High Court to appoint a responsible adult to help the child.

If maintenance is paid out of the estate, the amount of money that will be needed for this purpose will be estimated and set aside in a Guardian's Fund administered by the government. The money will be paid over to the beneficiary in regular allowances by the office of the Master of the High Court. The money which is being held back until it is needed will be invested, and the interest will be paid over to the beneficiary each year. The government does not charge any administrative fees for this service.

If money was held back for maintenance but is not needed (for example, because the person receiving the maintenance died in a car accident), the funds that are left over will go to the heirs of the deceased.

17. STATE MAINTENANCE GRANTS

CHILD MAINTENANCE GRANTS

Some parents with children under age 18 may be able to get small amounts of money for maintenance of the children from the Ministry of Gender Equality and Child Welfare. This is called a “**maintenance grant**”.

A maintenance grant is different from a maintenance order. A maintenance grant is a fixed amount of money which the government pays to particularly needy parents for the support of their children. Only parents with very small incomes can get maintenance grants.

The grant criteria at the beginning of 2005 are as follows:

- ▶ **AGE:** The application for the grant must be made before the child turns 18. A child who is 7 years old or older must be attending school in order to be eligible for the grant – unless he or she is unable to attend school because of a disability.
- ▶ **MEANS:** The income of the parent who is making the application must not be more than N\$500/month.
- ▶ **CIRCUMSTANCES:** One of the following three situations must apply-
 - (1) The other parent was the breadwinner but is now receiving an old age pension or a disability grant.
 - (2) The other parent was the breadwinner but has died.
 - (3) The other parent was the breadwinner but has been sentenced to go to prison for 3 months or more.

It does not matter if the parents of the child are (or ever were) married. The criteria are the same for married parents and single parents.

A maintenance grant will NOT be approved if the other parent who was the breadwinner has disappeared. The Ministry requires a death certificate, even if the parent who has disappeared has been gone for a long time. There is a procedure for getting a certificate of “presumption of death” from the High Court in such circumstances. You could ask the government to appoint a lawyer to help you with this process, by applying to the Directorate of Legal Aid at the Ministry of Justice. You can apply for legal aid at any magistrates’ court.

A person who is acting as a parent to the child may apply for a maintenance grant for the child. For example, suppose that one of the child’s parents is dead and the other is receiving a disability grant. The person who is caring for the child could apply for the maintenance grant. In such a case, a social worker will decide if the person who has applied for the maintenance grant is really acting in the role of a parent.

The grant will be paid for a maximum of three children. At the beginning of 2005, the grant amounts are N\$200 for the first child and N\$100 for each additional child up to a total of three children. The amount is higher for the first child because part of the money is intended for the survival of the parent.

HOW TO APPLY FOR A CHILD MAINTENANCE GRANT

Application forms are available from social assistance clerks, social workers and magistrates' courts. The Ministry of Gender Equality and Child Welfare has offices with social assistance clerks in every region.

The person who gives you the application form can help you to fill it in. You will need the following documents:

- ▶ a certified copy of the child's birth certificate and your identity document.
- ▶ a certified copy of your marriage certificate (if you are or were married to the child's other parent)
- ▶ the child's school report if the child attends school
- ▶ proof that the other parent receives an old age pension or disability grant OR a certified copy of a death certificate for the other parent OR a letter from a prison confirming that the other parent is imprisoned
- ▶ proof of your monthly income (such as a pay slip) OR a sworn statement from the police confirming that you are unemployed
- ▶ if the child is disabled, a medical certificate and a social worker's report confirming this
- ▶ proof that you are a Namibian citizen or a permanent resident of Namibia.

What if your child does not have a birth certificate? The social assistance clerk can give you a letter to take to the Ministry of Home Affairs to request a "confirmation of birth" document for your child. There is no charge for this. If this document is unavailable or incomplete, then you can use a certified copy of the child's baptism certificate. If this is also unavailable, then you can get a sworn statement about the child from the police, from a traditional leader in your area or from some community leader who knows your child.

It usually takes about three months from the date of application until the first grant payment is made.

The grant can be collected in cash from pension payout points, or paid directly into a bank or post office account.

The grant can continue until the child leaves school or turns 21, whichever comes first. But you must give certain documents to the social assistance clerk. If your child is in school, you must provide copies of each school report. You must also give proof of your income once each year. If there is some change in your situation (such as an increase in wages), you have a duty to notify the social assistance clerk.

Foster parents and institutions such as children's homes can also get government grants for the children in their care. You can get information about these grants from the social assistance clerk in your region.

Children's Act 33 of 1960
Ministry of Gender Equality and Child Welfare



OLD AGE PENSIONS

Old age pensions are available to all Namibian citizens and permanent residents over the age of 60. As of the beginning of 2005, these pensions were N\$300/month.

You can apply for this pension at the Ministry of Labour and Social Welfare in Windhoek, or at any of the Ministry's district offices throughout the country. You will need to bring:

- ▶ your birth certificate
- ▶ an ID document
- ▶ if you are a married women, your marriage certificate. **Your marital status does not affect your pension application. The marriage certificate is required because your married name may be different from the one on your ID document.**

If you were not born in Namibia, you will also need to show proof that you are now a Namibian citizen or a permanent resident.

If you are missing any of these documents, you must apply to the Ministry of Home Affairs to get them. The Ministry of Home Affairs will give you a "waiting card" to show that your application is being processed. You can take the "waiting card" to the pension office so that you can get the pension in the meantime.

You can also show your voter registration card instead of a "waiting card" if your documents are missing. The voter registration card contains information about your age and identity number.

Old age pensions can be collected each month at payout points throughout the country. These payout points have been set up so that no one should have to travel more than 10 km to reach them. Pensioners get a special card that includes their ID number and photo. The cash machines also check the pensioners' fingerprints, as a way of reducing fraud.

It is possible to arrange to have your old age pension paid directly into a bank or post office account. The Ministry also arranges for pensions to be distributed at various old age homes.

National Pensions Act 10 of 1992

DISABILITY GRANTS

Disability grants are available to Namibian citizens and permanent residents who are 16 years or older, and who have been medically diagnosed by a state doctor as being either temporarily or permanently disabled. This includes blind people. As of the beginning of 2005, these pensions were N\$300/month.

You can apply for a disability pension at the Ministry of Labour and Social Welfare in Windhoek, or at any of the Ministry's district offices throughout the country. You will need to bring:

- ▶ your birth certificate
- ▶ an ID document
- ▶ a doctor's certificate confirming your disability.

If you were not born in Namibia, you will also need to show proof that you are now a Namibian citizen or a permanent resident.

Disability grants are delivered by the same methods as old age pensions.

If your disability is temporary, you will be monitored to make sure that you are following a rehabilitation programme.

National Pensions Act 10 of 1992

A NEW SOCIAL WELFARE GRANT SYSTEM FOR NAMIBIA?

In June 2003, just over 4000 children in Namibia were receiving state maintenance grants – even though the number of children orphaned by AIDS was estimated at that stage to be 115,000. Over 100,000 people were receiving old age pensions. This was estimated as being about 88% of the people who are eligible for the pension. There were almost 12,000 people receiving disability grants.

Some people have difficulty obtaining the official documents they need to apply for grants, and there are complaints that it can take a long time for the government to process grant applications.

The government is planning to reform the system of social welfare grants in Namibia.

Some people have suggested that there should be a small Basic Income Grant of about N\$100/month for every man, woman and child in Namibia. This would ensure a basic level of support for everyone. It would save on administrative costs, because it is time-consuming and expensive to check means and criteria for eligibility. People who did not really need the grant for maintenance would have to pay it back to the government along with their taxes. Some people say that this kind of grant would be the best way to reduce poverty and inequality, and to stimulate the economy.

You should tell your representatives in Parliament what kind of support you would like to see from the government for maintenance.

18. APPLYING FOR A MAINTENANCE ORDER: THE KEY FORMS

There are several forms involving in getting a maintenance order. To make it clearer, the relevant forms are listed below and key sections of the most important forms have been completed as an example.

Please note that you may photocopy these forms to use – the example is written in special ink so that these details will not appear on the photocopies.

THE EXAMPLE

Aron Tjiramba and Vivienne Muruko have a child, Samuel, who was born in 1998 when the parents were both 18. Aron and Vivienne are not married or living together. They do not have any other children. Aron lives in Katutura with his uncle. Vivienne and Samuel live in Khomasdal with her mother.

Aron works as a labourer for Rukoro Construction. Vivienne works as a domestic worker two days a week.

Vivienne has never claimed maintenance from Aron. She has decided to do so now because Aron has got a job and Samuel is about to start school. Samuel has asthma and so needs to visit a doctor regularly.

Samuel's basic needs

medical expenses (small fee for each visit to state hospital) – N\$20 per month

school fees – N\$200 per year, which equals N\$17 per month

school uniform bought second-hand from school – N\$85 per year, which equals N\$ 7.10 per month

other clothes and shoes – N\$120 per year, which equals N\$10 per month

transport – nothing (Samuel walks to school)

books/stationary – N\$50 per year, which equals N\$4.20 per month

electricity and water = N\$20 per month (a portion of the family's total monthly bill for Samuel's share of the municipal account for electricity and water)

toiletries = N\$10 per month

groceries = N\$153 per month

TOTAL = N\$241.30

Vivienne estimates the total costs for Samuel's basic needs to be N\$241.30 per month. She earns N\$480 per month (N\$50 per day plus N\$10 taxi fare per day). Aron earns N\$800 per month. If both parents contribute 19% of their income (N\$89.28 from Vivienne, N\$152.02 from Aron), this totals the amount required. Vivienne is asking for this contribution from Aron each month.

Aron does not come to the enquiry. The magistrate agrees the amount Vivienne has asked for is fair and makes out a default maintenance order for this amount.

Aron receives a copy of the maintenance order. However, he ignores it and does not pay anything.

Vivienne's mother, who was paying the rent for the house where she lives with Vivienne and Samuel, loses her job. Vivienne has been using money from her wages to make up for Aron's share of Samuel's maintenance instead of helping her mother with the rent like usual. The rent falls into arrears and the family is threatened with eviction. Vivienne needs money urgently to pay the rent arrears.

Vivienne talks to the maintenance officer. He says that she can apply for the maintenance arrears from Aron by asking for an order to take an amount out of his wages every month, or to have some of his possessions sold. She prefers the second option because she can get the whole amount of the maintenance arrears in one sum, which will pay off the rent arrears. Aron has a car which can be sold.



THE FORMS

The regulations include a large number of forms. But not all of these forms are used in every maintenance case. This outline uses our example to explain the uses of the different forms.

Form A: *Complaint*

Vivienne will need to complete a complaint form to make the application for maintenance.

Form B: *Changes to existing maintenance order*

Suppose Vivienne later wants to change the amount of maintenance requested because, for example, the school fees for Samuel increase. She would have to fill in Form B to request a change. Form B is also the form that Aron would have to fill in if he wanted to change the amount of maintenance he pays because, for example, his employer has reduced the number of days he works.

Form C1: *Summons of complainant or defendant*

After the court receives Vivienne's complaint, the magistrate will fill in **Part A** of this form. The first section of Part A tells the maintenance officer or messenger of the court to issue a summons to Aron. The second section of Part A tells Aron what maintenance is being requested and warns him that an order can be issued in his absence if he does not come to court on the date set for the enquiry. (When the summons is given to Aron, it will be accompanied by Form G, which Aron can use to consent to the maintenance order without coming to court. Form G is discussed below.)

Part B of this form is for Aron to fill in details about his assets, income and expenditure, in the same way that Vivienne has done on her complaint form. This will help the court to compare the financial situation of the two parents.

Part C of this form is supposed to be completed by the person who delivers the summons. This confirms that the summons was given to Aron or left at his home or his workplace.

Form C1 could also be used to summon Vivienne if she did not appear on the date set for the enquiry, or if Aron later wanted to request a change to the maintenance order.

Form C1A: *Directive to witnesses*

Form C1A is used when the maintenance officer or investigator wants to order someone to come to give information to the maintenance office in advance of the enquiry, as part of the investigation into the case. For example, the maintenance officer might want the employers of one or both of the parents to come and give information about their wages if there is a dispute on this point.

Form C11: *Summons of witnesses*

Form C11 is used to summon witnesses to the *enquiry* if they refuse to attend the enquiry voluntarily – for example, a busy doctor who is needed to give details about Samuel's medical condition.

Form D: *Notice to admit statement as evidence*

Form D is used if Vivienne or Aron want to present written statements from other people at the enquiry. They must attach the written statements to this form and give the papers to the other party at least 14 days before the enquiry.

If the other party does not agree with what is being said, then they must object to the proposal to use the written statement at the enquiry. They can insist that the person who wrote the statement be forced to come to the enquiry in person instead, to answer questions about the statement.

For example, Aron might ask his mother to make a statement saying that she looks after Samuel 1 week a month, so therefore he should pay less maintenance to Vivienne. Vivienne may disagree, saying that Samuel only visits Aron's mother once every 2 weeks for lunch, which does not really make any difference to the amount she is asking for. In this case, Vivienne should not agree to let Samuel bring a written statement from his mother. She should insist that his mother come to court in person so that she can challenge the information she is giving.

Form E: *Maintenance order*

The court fills in a maintenance order when the maintenance case has been settled by the magistrate after an enquiry. This says how much Aron has to pay. This form will also be used if the amount to be paid is changed, or if the maintenance order is suspended for any reason.

Form F: *Directive to Defendant's Debtor*

Form F is used in enforcement proceedings. **Part A** of this form is given to a person who owes money to the defendant, so that the debt owed to the defendant can be paid directly to the complainant to pay off maintenance arrears which are owing. For example, maybe the defendant rents out a room to a tenant. The form could notify the tenant to pay the money for the room directly to the complainant each month instead of giving it to the defendant. In this case, Aron does not have any debtors so this will form not be used.

The debtor can use **Part B** of this form to inform the court if they no longer owe any money to the defendant – for example, the tenant would fill in this form and give it to the court if he stops renting a room from the defendant.

Form G: *Defendant's written consent*

When Aron receives Form C1 (see above), he will also receive Form G. If he agrees with the amount of maintenance he is being asked to pay, he can sign Form G and return it to the maintenance court. Form G is then signed by the magistrate, and it becomes a maintenance order. A maintenance order written on Form G after the defendant consents has the same effect as a maintenance order written on Form E at the end of a maintenance enquiry.

Form H: *Default maintenance order*

If Aron does not show up at the enquiry, the magistrate can issue a default maintenance order by filling in **Part A** of this form.

Part B of this form notifies Aron that a default maintenance order has been issued.

Part C of this form is filled in by the maintenance officer or messenger of the court, confirming that the default maintenance order has been given to Aron.

Form I should be given to Aron along with this form, so that he can notify the court if he wants to oppose the default maintenance order.

If Aron does not challenge the default order, then it remains in place. A default maintenance order written on Form H after the defendant does not show up at the enquiry has the same effect as a maintenance order written on Form E at the end of a maintenance enquiry attended by both parties.

Form I: *Application for variation/setting aside of a default maintenance order*

If Aron disagrees with the default maintenance order, he must fill in **Part A** of this form. Part A asks the court to change or cancel the default maintenance order. Aron must include reasons explaining why he disagrees with the order. He can attach sworn statements from other persons to help his case if he wishes. Aron must sign the form in front of a Commissioner of Oaths and take it to the clerk of the court, who will give him a date for the enquiry.

Aron must also fill in **Part B** of this form and give a copy of both parts of the form to Vivienne at least 14 days before his application is to be heard. She must also get copies of any statements from other people which Aron is using to support his case. This is so that Vivienne will then know that Aron is opposing the default maintenance order, as well as his reasons. Aron has to give the documents to Vivienne himself, because he is at fault for not showing up in court for the enquiry which is already taken place. He must keep some proof that he really gave the papers to Vivienne, in case she does not show up in court.

If Aron applies for the amount of maintenance in the default order to be changed and the Magistrate agrees, then the magistrate will issue a new maintenance order on Form E.

Form J: *Notice of variation or setting aside of certain orders*

This form is used to give notice of certain minor changes to maintenance orders that do not involve new enquiries, such as a change in who receives the money on behalf of the beneficiary, a change in how the money is going to be paid, or a change in an order for payment of maintenance “in kind” (in the form of goods or services). For example, suppose that Vivienne opens a post office savings account and wants Aron to deposit the money directly into her account so that she does not have to go to the court in person to collect the cash each month. The court could agree to this change and notify Aron on Form J.

Form K: *Application for enforcement of maintenance order*

When Aron does not pay the maintenance, Vivienne goes back to the maintenance officer. The maintenance officer helps her to fill in Form K. Vivienne has the right to choose the method of enforcement that she prefers (attachment of wages, attachments of property or attachment of debts owed to the defendant). In this case, Vivienne asks that Aron’s car be sold to pay for the maintenance arrears. Vivienne must give the maintenance officer any information she has that might be helpful, such as details about Aron’s car and other property.

Form L: *Warrant of execution against property*

The maintenance officer and Vivienne then fill in Form L, which is a warrant of execution (authorisation for the messenger of the court to take Aron's property). If Aron pays the outstanding amount within half an hour after receiving the form, the maintenance arrears are then paid off and his property is safe. The messenger of the court must fill in part of this form to say that either the maintenance arrears were paid, or property was attached (taken). In this case, Aron's car is attached to be sold. (The car might be left with the Aron until the sale actually takes place. But once the property to be sold is identified by the messenger of the court, Aron is not allowed to hide it or sell it or give it away.)

Form M: *Application for setting aside of a warrant of execution*

Aron can use this form to apply to have the warrant of execution against his property cancelled. Aron fills in this form, saying that his car should not be sold because he needs it to get to work. He suggests as an alternative that a certain amount of money be taken from his wages every month to pay off the maintenance arrears. The maintenance officer decides to listen to what Aron has to say, and so sets a date for a hearing. Both Aron and Vivienne are informed of the date.

Form N: *Application for suspension, amendment or rescission of an order for the attachment of emoluments (wages)*

Suppose that Vivienne had requested in the first place that the arrears be paid off by attaching part of Aron's wages, so that the employer paid a portion of the wages directly to her for the maintenance and the arrears each month. If Aron was not happy with this method of enforcement at any stage, he could fill in Form N. The court would hold a hearing, listen to both sides of the story and then decide what to do.

Form O: *Notices to and by employer*

If the maintenance court decides that money should be taken from Aron's wages by his employer and given to Vivienne each month, then the court will use Form O to inform the employer.

Part A of this form tells the employer how much to pay and where.

Part B is filled in by the maintenance investigator of the messenger of the court to confirm that the employer has been notified about the arrangement.

The employer must fill in **Part C** of the form if the employee in question resigns or gets dismissed from the job. It is the employer's responsibility to notify the maintenance officer of such changes.

Form P: *Application for suspension, amendment or rescission of an order for the attachment of debts*

Another option available if the maintenance is in arrears, is for debts to the respondent to be attached (taken). In this case there is no one who owes money to Aron, so this option is not considered.

If this option is used, it is possible that either the defendant or debtor may want to apply to change or cancel the order attaching the debt repayments. For example,

perhaps the debtor has fallen behind in the payments because he is ill, or perhaps the debt is paid off. The debtor or the defendant will fill in Form P and include the reasons for the request. This may lead to a hearing to determine whether this explanation is acceptable.

Form Q: *Complaint for the purposes of section 33(1) of the Act*

If Vivienne decides that she wants to lay a criminal charge against Aron for not paying maintenance, she would fill in Form Q. This would probably make sense only a last resort, if there is no other way to enforce the maintenance order.

Form R: *Notice in terms of Section 24 (complainant's change of address)*

If Vivienne moves house, she must tell the maintenance court. If she has move into an area served by a different magistrate's court, her maintenance file will be moved to the maintenance court closest to her new home. The maintenance officer at the old court will fill in Form R. **Part A** of this form tells the clerk of the court to transfer the file. **Part B** of this form notifies the defendant of the change and direct him to make payments to a different court.

Form S: *Notice in terms of Section 17(5)*

If Aron moves house or changes jobs, he must notify the maintenance court by filing in Form S.

Form T: *Complaint of misuse of maintenance*

If Aron, or anyone else, believes that Vivienne is misusing the maintenance money they can make a complaint to the maintenance court by filling in Form T. The maintenance court will use the information given on the form to investigate the situation.

Let us really make sure that we take care of our children, as children are the future...

Hon. Nandi-Ndaitwah, Minister of Women Affairs and Child Welfare
Parliamentary debate on the Maintenance Act

FORM A**Maintenance
application****ANNEXURE****FORM A
(Regulation 2(a))****COMPLAINT IN TERMS OF SECTION 9(1) OF THE ACT
(NEW COMPLAINT)**

Reference No.....

*(This information should, as far as possible, be given in order to investigate the complaint)*I, Vivienne Muruko
(full name of complainant)born on 01. 09.1981 (date) / age 23

identity number

living at Khomasdal

telephone number

Working at 54 Mission Village, LudwigsdorfTelephone number 225717

Hereby *declare under oath/truly affirm as follows:

The "I" here
is an error
which should
be ignored.

I, Aron Tjiramba
(full name of defendant)born on 28.06.1981 (date) / age 23

Identity number

Living at 28 Clemens Kapuuo St, Katutura

telephone number

working at Rukoro Construction,Jakob Marengo St, Khomasdal

telephone number

is legally liable to maintain *me and/or the following beneficiary(ies), who is/are under my care:

Samuel Muruko born on 18th March 1998

..... born on

..... born on

..... born on

..... born on

2. *The defendant is legally liable to maintain me or the beneficiary(ies) because

.....
He is the father of the child
.....

3. *The beneficiary(ies) mentioned in paragraph 1 is/are under my care because.....

.....
I am his mother
.....

4. The defendant has since.....not supported *myself/
the said beneficiary(ies) and has made *no contribution towards maintenance/the
~~following contribution towards maintenance:~~
.....
.....

5. I request that the defendant be ordered to make the following contribution(s)
towards maintenance:

- (a) A*weekly/monthly contribution of -

N\$	Name of Beneficiary
N\$ In respect of myself (complainant)
N\$ In respect of 152.02	Samuel Muruko
N\$ In respect of
N\$ In respect of
N\$ In respect of
N\$ In respect of

The total child
maintenance
required is
N\$241.30.

If both parents
pay 19% of
their respective
incomes, the
father's share
is N\$152.02.

The mother's
share is N\$89.28.

- (b) The first payment should be made on 30th Jan 05..... and after
that on or before thelast..... day of each succeeding *week/month. All
payments should be made

to.....
Vivienne Muruko
.....

in favour of Samuel Muruko
.....

and/or

- (c) Other contributions (for example medical and dental costs, school fees, fees to tertiary institutions, school clothes, expenses for sport and/or cultural activities, birth expenses and maintenance for beneficiary(ies) from birth):

.....

.....

.....

.....

6. Particulars of my assets and *weekly/monthly income and expenditures (supported by documentary proof, where possible) are as follows:

Assets	
Fixed property	N\$
Investments	N\$
Savings	N\$
Shares	N\$
Motor vehicles	N\$
Other:	N\$
.....	N\$
.....	N\$
.....	N\$
Total value of Assets	N\$

Income	
Gross salary	N\$ 480 per month (including N\$40 taxi fares per month)
Minus deductions:	
Tax	N\$
Medical Aid	N\$
Pension	N\$
Other:	N\$
.....	N\$
.....	N\$
.....	N\$
Total nett salary	N\$ 480
Other income (state source)	N\$
.....	N\$
.....	N\$
Total income	N\$ 480

Expenditure (per month)			
	Self	beneficiary(ies)	Total
1. Lodging(bond repayment/ levy/rent/board)	N\$	N\$	N\$
2. Food: Groceries	N\$	N\$ <u>33</u>	N\$
Meat	N\$	N\$ <u>20</u>	N\$
Bread and milk	N\$	N\$ <u>80</u>	N\$
Fruit and vegetables	N\$	N\$ <u>20</u>	N\$
Baby food	N\$	N\$	N\$
Lunches	N\$	N\$	N\$
3. Household expenditure:			
Water and electricity/	N\$	N\$ <u>20</u>	N\$
Gas/paraffin	N\$	N\$	N\$
Rates and taxes	N\$	N\$	N\$
Cleaning materials	N\$	N\$	N\$
Laundry/Dry-cleaning	N\$	N\$	N\$
Toiletries	N\$	N\$	N\$
Telephone	N\$	N\$	N\$
Domestic worker	N\$	N\$	N\$
Garden services	N\$	N\$	N\$
Insurance (short term)	N\$	N\$	N\$
4. Clothing:			
Clothes and shoes	N\$	N\$ <u>10</u>	N\$
School uniforms	N\$	N\$ <u>7.10</u>	N\$
Sports clothes	N\$	N\$	N\$
5. Personal care (including hair care/ cosmetics, etc.)	N\$	N\$ <u>10</u>	N\$
6. Transport:			
Bus	N\$	N\$	N\$
Car: Installments	N\$	N\$	N\$
Maintenance	N\$	N\$	N\$
Fuel	N\$	N\$	N\$
Licenses	N\$	N\$	N\$
Insurance	N\$	N\$	N\$
Taxi	N\$	N\$	N\$
Lift Club	N\$	N\$	N\$
Parking	N\$	N\$	N\$
Other	N\$	N\$	N\$
7. Educational expenditure:			
School fees	N\$	N\$ <u>17</u>	N\$
After school care	N\$	N\$	N\$
Day care	N\$	N\$	N\$
Study policy (insurance)	N\$	N\$	N\$
Books	N\$	N\$ <u>4.20</u>	N\$
Stationery	N\$	N\$	N\$
Outings	N\$	N\$	N\$
Sports	N\$	N\$	N\$
Extramural	N\$	N\$	N\$
Other school expenditure.....	N\$	N\$	N\$
8. Medical expenditure:			
Doctor/dentist/etc.	N\$	N\$ <u>20</u>	N\$
Medication (prescription)	N\$	N\$	N\$
Hospital	N\$	N\$	N\$
Other medical expenditure	N\$	N\$	N\$

Expenditure			
	Self	beneficiary(ies)	Total
9. Insurance:			
Life	N\$	N\$	N\$
Annuity	N\$	N\$	N\$
House owners/holders	N\$	N\$	N\$
10. Pocket money/allowances			
.....	N\$	N\$	N\$
11. Holidays			
.....	N\$	N\$	N\$
12. Maintenance, House			
replacement Household appliances	N\$	N\$	N\$
and repairs Kitchenware	N\$	N\$	N\$
of items Linen, towels, etc.	N\$	N\$	N\$
Bicycles/bikes/scooters	N\$	N\$	N\$
Other items	N\$	N\$	N\$
13. Entertainment & recreation (incl.M-net)			
14. Personal loans	N\$	N\$	N\$
15. Security alarm system	N\$	N\$	N\$
16. Membership fees	N\$	N\$	N\$
17. Religious contributions/charities	N\$	N\$	N\$
18. Gifts	N\$	N\$	N\$
19. TV License	N\$	N\$	N\$
20. Reading materials: Books	N\$	N\$	N\$
Newspapers	N\$	N\$	N\$
Periodicals	N\$	N\$	N\$
21. Lease/instalment Furniture	N\$	N\$	N\$
sales payments Appliances	N\$	N\$	N\$
Other	N\$	N\$	N\$
22. Pets			
Food	N\$	N\$	N\$
Veterinary surgeon	N\$	N\$	N\$
Licence	N\$	N\$	N\$
23. Other (not specified above)	N\$	N\$	N\$
Total expenditure	N\$	N\$ 241.30	N\$

Dated at 2005 This 14th day of January

Vivienne Muruko

Signature of Complainant

Oath/Affirmation

1. I certify that before administering the *oath/affirmation I asked the complainant the following questions and wrote down *his/her answers in *his/her presence:

(a) Do you know and understand the contents of the above declaration?

Answer *Yes*

(b) Do you have any objection to taking the prescribed oath?

Answer *No*

(c) Do you consider the oath as binding on your conscience?

Answer *Yes*

2. I certify that the complainant acknowledged that *he/she knows and understands the contents of this declaration. The complainant uttered the following words *"I swear that the contents of this declaration are true – so help me God"/"I truly affirm that the contents of this declaration are true". The *signature/mark of the complainant was affixed to the declaration in my presence.

Signature
.....
Commissioner of Oaths

Full name and surname
(block letters)

Designation (Rank) Ex Officio

Business address
(street address must be stated)

.....

Dated at this day of

*Delete whichever is not applicable

FORM E**Maintenance
order****FORM E
(Regulation 8)****ORDER IN TERMS OF SECTION 17 OF THE ACT
(MAINTENANCE ORDER)**

Reference No.

(Form G must be used in the event of an order by consent and form H must be used in the event of a default order)

In the maintenance matter between:

Vivienne Muruko

(complainant)

and

Aron Tjiramba

(defendant)

In terms of the provisions of section 17(1)(a) or (b) of the Act, it is ordered that -

I, Aron Tjiramba

(full name of defendant)

identity number

living at 28 Clemens Kapuuo St,

Katutura

and working at Rukoro Construction,

Jakob Marengo St, Khomasdal

- *(a) must pay on a *weekly/monthly basis with effect from 30th Jan 05
..... towards the maintenance of *the complainant and/or the following
beneficiary(ies) the sum of -

total
maintenance →breakdown of
total amount {

N\$ 152.02	Name of Beneficiary Samuel Muruko
N\$ In respect of	complainant
N\$ In respect of 152.02	Samuel Muruko
N\$ In respect of
N\$ In respect of
N\$ In respect of
N\$ In respect of

the first payment is to be made on 30th Jan 05 and after that on or
before the last day of each succeeding *week/month to
Vivienne Muruko in favour of
Samuel Muruko

and/or

* (b)

.....

(other contributions, for example medical and dental costs, school fees, fees to tertiary institutions, school clothes, expenses for sport and/or cultural activities, birth expenses and maintenance for beneficiary(ies) from birth.
or

*2 It is ordered that in terms of section 17(1)(b)(i) of the Act, the maintenance order, dated, made by the is hereby **substituted** by the following order.....; or

*3 It is ordered that in terms of section 17(1)(b) (i)/(ii) of the Act, the maintenance order dated, made by the is hereby **suspended or discharged**.

Dated at 2005 this 14th day of January

Signature

Magistrate

*Delete whichever is not applicable

FORM K

Application for enforcement of maintenance order

FORM K (Regulation 18)

APPLICATION FOR ENFORCEMENT OF MAINTENANCE ORDER OR OTHER ORDER IN TERMS OF SECTION 28 OF THE MAINTENANCE ACT

Reference No.

In the maintenance matter between:

Vivienne Muruko

(complainant)

and

Aron Tjiramba

(defendant)

To the Maintenance Officer of the Maintenance Court,

I, Vivienne Muruko

(full name of complainant)

identity number

1. hereby apply -

*(a) for the authorisation to issue a warrant of execution;

~~*(b) for an order for the attachment of emoluments; or~~

~~*(c) for an order for the attachment of a debt.~~

2. The following information is important for the purposes of my application:
(submit information relating to property and/or debts of the defendant or his or
her employer and income)

Aron owns a car

3. The whereabouts of the defendant are as follows:

28 Clemens Kapuuo St, Katutura

4. In support of my application I hereby * declare under oath/truly affirm that:

(a) on 28th Jan 05 (date) the attached order in terms of the Act was
made by the above-mentioned court;

(b) the order has remained unsatisfied; and

(c) the amount of N\$ 912.12 is still outstanding. This amount has
been calculated as follows:

N\$152.02 per month x 6 months

Dated at2005..... this4th..... day ofAug.....

.....Vivienne Muruko.....

Complainant

Oath/Affirmation

I certify that before administering the *oath/affirmation I asked the deponent the following questions and wrote down *his/her answers in *his/her presence:

- (a) Do you know and understand the contents of this declaration?

Answer.....Yes.....

- (b) Do you have any objection to taking the prescribed oath?

Answer.....No.....

- (c) Do you consider the oath binding on your conscience?

Answer.....Yes.....

I certify that the deponent acknowledged that *he/she knows and understands the contents of this declaration. The deponent uttered the following words *"I swear that the contents of this declaration are true, so help me God."/"I truly affirm that the contents of this declaration are true." The *signature/mark of the deponent was affixed to the declaration in my presence.

.....Signature.....

Commissioner of Oaths

Full name and surname
(block letters)

Designation (Rank)Ex Officio

Business address.....

.....
(street address must be stated)

Dated at this day of

*Delete whichever is not applicable

