

THE NEW MAINTENANCE ACT: MAKING OUR MAINTENANCE COURTS MORE EFFECTIVE

Dianne Hubbard, Legal Assistance Centre, April 2002

Maintenance emerged 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. Now, at long last, a new Maintenance Act is before Parliament.

What is maintenance? The new law defines it as the support needed for a child's 'proper living and upbringing', which includes 'food, accommodation, clothing, medical care and education'. The court must consider all of the financial, educational and developmental needs of the child when calculating a maintenance order – including the costs of housing, water, electricity, food, clothing, transport, toiletries, child care services, education (including pre-school) and medical services (including treatment by a doctor, dentist, or psychologist and all prescription medicines). Special needs, such as disabilities, must also be taken into account.

The basic principle of the new law has not changed: both parents should contribute to the maintenance of their children in accordance with their means. However, the court must also take into account the value of the labour of the parent who has custody of the child, for the extra time spent in child care.

This new act will harmonise the work of different maintenance courts, by setting out detailed guidelines for maintenance officers and magistrates. For example, different people have taken different approaches to the situation where there is more than one child to be maintained – do the firstborn children take priority over those who came later? The new law answers this question by making it clear that all children are equal. It says that 'where a parent has more than one child, all the children are entitled to a fair share of that parent's resources'. It also says that 'the parental duty to maintain one particular child does not rank any higher than the duty to maintain any other child of that parent'.

The new law will also operate more effectively. One big problem in

the past has been men (and they usually are men) who ignore the summons to come to court. This is sometimes used as a delaying tactic, and sometimes as an attempt to duck responsibility altogether. This problem has caused a great deal of expense and inconvenience in the past, to our mothers and to our courts. Under the new law, no one will be able to get away with this any more. If an irresponsible father ignores the summons to come to court, then the maintenance order can be made in his absence. People will no longer be able to benefit by ignoring the court's authority.

The new law offers better enforcement mechanisms for cases where a person ignores a maintenance order. In the past, enforcement could take place only by laying a criminal charge. The new law emphasises civil enforcement remedies – such as attaching the property or wages of the person who is in arrears. Criminal charges will be used only as a last resort. This makes sense for everyone – the enforcement procedure is simpler for the mothers, and the fathers can be forced to pay without getting a criminal record.

Another new provision that will help with enforcement gives the maintenance court the power to request a photograph of the person who is supposed to pay maintenance. This will be used to help court officials and police trace the defaulter in problem cases. There are men who pretend to be someone else whenever an official comes knocking on their door to talk about maintenance. This new provision is going to make it harder for irresponsible parents to hide.

The introduction of maintenance investigators will also make it harder for people to hide themselves or their income. Maintenance investigators can also make sure that the maintenance court has accurate information about the respective financial resources of both parents, and so can help stamp out abuse of the maintenance courts by complainants or defendants who are not honest.

Where someone does not have a cash income to use for maintenance, the new law allows for payment in kind – such as maintenance in the form of cattle. This has been done in an effort to make sure that the law can work for our rural mothers as well as for our urban mothers.

Of course men can claim maintenance as well as women, and so can anyone who is taking care of a child. For example, a grandmother who is taking care of her grandchildren could claim maintenance from both of the children's parents. This is not new, but the new law makes it more clear, so there will be no confusion. The new law also makes it clear that the responsibility to maintain children applies to all parents, from every community in Namibia, no matter what principles of customary law apply. Every child in Namibia will get equal protection from this law.

There has been a lot of publicity about the new provision which can be used to punish abuse of maintenance money. It needs to be said that the research which was conducted found that this is not a widespread 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

One of the new provisions of the law is a very simple practical one. At present, people must come to the court to pick up maintenance payments in person. This can be very difficult and expensive. Mothers must take time off work, and they must spend money on transport each month just to get the payments. But the new law will make it possible for the money to be paid directly into bank accounts. This small change will make a big difference to many of the people who use the courts.

Another welcome change is the provision on pregnancy and birth-related expenses. There are few children who come into the world without these expenses, and from now on both parents will be expected to share them – as long as the mother makes a claim for these expenses within one year. This emphasises the fact that both parents share responsibility for a child from the moment of conception.

This new law should help to change the focus of maintenance, away from the struggle between the child's parents towards a stronger focus on the needs of the child. It should be a big step forward towards putting our children first.

