

Problems with maintenance

Anne Rimmer, Legal Assistance Centre, 2006

In 1995 the Gender, Research & Advocacy Project of the Legal Assistance Centre carried out research into the operation of the system of maintenance under the Maintenance Act 23 of 1960.

Many of the concerns raised by this report were covered by the new Maintenance Act of 2003. However, while the law is good in theory, its implementation on the ground leaves a lot to be desired.

For example, a significant problem experienced by mothers seeking maintenance for their children from absent fathers is **'disappearance' or non-disclosure of assets** on the part of the fathers. The new law sought to change that by providing for the appointment of maintenance investigators, whose role would include:

- trying to locate persons supposed to attend maintenance court proceedings if their addresses are unknown
- tracing the assets of persons involved in maintenance proceedings and gathering information about their financial position
- taking statements under oath from anyone who has information that might be relevant to the maintenance case – such as employers or bank officials

However, to date no maintenance investigators have been appointed.

In the absence of a maintenance investigator, the maintenance officer can carry out financial investigations, but in practice it seems that, due to workload and staffing levels, this does not happen to any great extent.

The system can be **very slow**. For example, although the Act allows for a complainant to make a complaint if a maintenance payment has not been made 10 days past the due date, the LAC has received reports that it takes months to deal with arrears. Falling into arrears is an habitual practice for some fathers. It is important to recognize the effect of this on mothers and their children – when the father does not pay, the children still have to eat, school fees and rent must still be paid.

Typical payments are unrealistically low. The LAC's research in 1995 found that the average payment per child per month was N\$76. Although no formal research has been carried out in Namibia since then, discussions with mothers claiming maintenance suggest that the situation has not changed. For example, one unemployed mother living in Katutura is receiving N\$50 per child per month from the absent father who earns over N\$6,000 per month.

The LAC's research showed that there were significant differences in the amounts of maintenance received depending on location. That may be related to differences in the cost of living or in wages in different areas. However, it is not clear how magistrates arrive at decisions on the amount of maintenance to be paid. It might be better to have a **formula which would allow uniformity in assessing how much maintenance** should be paid per child, given the correct information about the financial situation of both father and mother.

There is a provision in the Act regarding **confidentiality** and privacy. This makes it 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. A number of mothers claiming maintenance have alleged that there are breaches of confidentiality when the person at the court dealing with the complaint knows the father of the children. In such cases, the LAC has been told, court dates are postponed, files are lost and no help is given to the complainant.

There is a serious need for **in-service training** for court officials on maintenance. Clerks of court are most likely to be the officials assisting complainants to fill in the forms, but many have not received training.

People do not know their rights – the LAC has produced short film clips urging fathers to take a fair share of responsibility for their children, and has also produced a simple guide to the law in a number of different languages. The Gender, Research & Advocacy Project at the LAC has carried out training on maintenance for magistrates, prosecutors, social workers and communities. But their funds and capacity are limited and they are not aware of any government efforts to publicise this Act. Areas of misunderstanding which should be given special attention include the following:

1. The public needs to be informed that the maintenance courts are available to parents who are single, married, divorced or separated as well as to extended family members such as grandmothers who are caring for the children of their sons or daughters.
2. Parents should be educated on the usefulness of formalizing private agreements as court orders, in order to provide access to enforcement mechanisms.
3. Both women and men need to be informed of the possibility of requesting an increase or decrease in a previous maintenance order in light of changed circumstances.
4. More public information is needed on the procedure to be followed when the respondent falls into arrears.

5. There should be more public education for men on their responsibilities to maintain their children. For example, public attitudes might be affected if prominent men such as politicians, sports stars and musicians spoke out on this point.

6. Public education should emphasise maintenance as an issue affecting children's rights rather than as a dispute between men and women.