

# SUMMARY OF THE MAINTENANCE ACT



**Legal Assistance Centre**  
2005

This is a summary of the Maintenance Act 3 of 2003. This Act replaces the old Maintenance Act 23 of 1963. The summary explains this new law in simple language and gives examples to help you understand it. A more detailed guide to this law is also available from the Legal Assistance Centre.

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# TABLE OF CONTENTS

<b>MAINTENANCE IN NAMIBIA .....</b>	<b>3</b>
<b>DEFINITIONS .....</b>	<b>8</b>
<b>GENERAL PRINCIPLES .....</b>	<b>11</b>
<b>THE DUTY OF PARENTS TO MAINTAIN THEIR CHILDREN .....</b>	<b>13</b>
<b>THE DUTY OF CHILDREN TO MAINTAIN THEIR PARENTS .....</b>	<b>24</b>
<b>THE DUTY OF HUSBAND AND WIFE TO MAINTAIN EACH OTHER .....</b>	<b>26</b>
<b>THE DUTY OF MAINTENANCE BETWEEN OTHER FAMILY MEMBERS .....</b>	<b>29</b>
<b>MAINTENANCE OF PERSONS WITH DISABILITIES ....</b>	<b>33</b>
<b>HOW TO CLAIM MAINTENANCE .....</b>	<b>35</b>
STEP 1: MAKE A COMPLAINT TO THE CLERK OF COURT .....	35
STEP 2: INVESTIGATION BY MAINTENANCE OFFICER OR MAINTENANCE INVESTIGATOR .....	39
STEP 3: THE COURT CONTACTS THE DEFENDANT .....	43
STEP 4: MEDIATION ("INFORMAL ENQUIRY") .....	45
STEP 5: ENQUIRY BY THE MAGISTRATE .....	49
STEP 6: THE MAGISTRATE MAKES A DECISION .....	57
STEP 7: THE MAINTENANCE ORDER .....	62
STEP 8: COLLECTING THE MAINTENANCE MONEY .....	70

<b>PATERNITY TESTS .....</b>	<b>71</b>
<b>CHANGING OR CANCELLING A MAINTENANCE ORDER .....</b>	<b>73</b>
<b>WHAT TO DO IF THE MAINTENANCE IS NOT PAID .....</b>	<b>78</b>
<b>INTIMIDATION OF A PERSON SEEKING MAINTENANCE .....</b>	<b>90</b>
<b>MISUSE OF MAINTENANCE PAYMENTS .....</b>	<b>92</b>
<b>GETTING MAINTENANCE FROM SOMEONE IN ANOTHER COUNTRY .....</b>	<b>94</b>
<b>GETTING MAINTENANCE FROM THE ESTATE OF A DECEASED PERSON .....</b>	<b>98</b>
<b>STATE MAINTENANCE GRANTS .....</b>	<b>101</b>

# 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.



**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.**

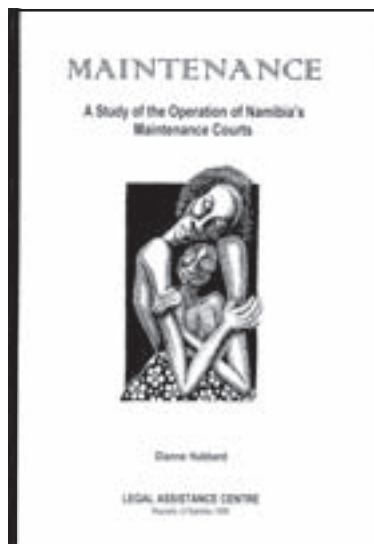
**President Sam Nujoma,**  
Opening of Parliament, 18 February 2004

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 makes some things clearer that caused confusion under the old law.



## **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 show that the situation has not changed much since the study was done.



MYTH: Women get lots of money from maintenance.

**FACT: In 1995, the average maintenance order was N\$76/month per child. Mothers requested, on average, 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 enough to provide a child with a basic healthy 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.

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

**FACT: Whilst this may happen in a few cases, research shows 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 fail to pay maintenance payments.** The research found that fathers fail to pay maintenance payments in about 26% of cases – but failing to pay 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.

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 going to the maintenance court.**

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

**FACT: The law does not require maintenance payments from people who have no job and no money or assets (such as cattle, or a car which can be sold for cash).** But many people who do have money or other assets 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?**

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

# 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.



**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.

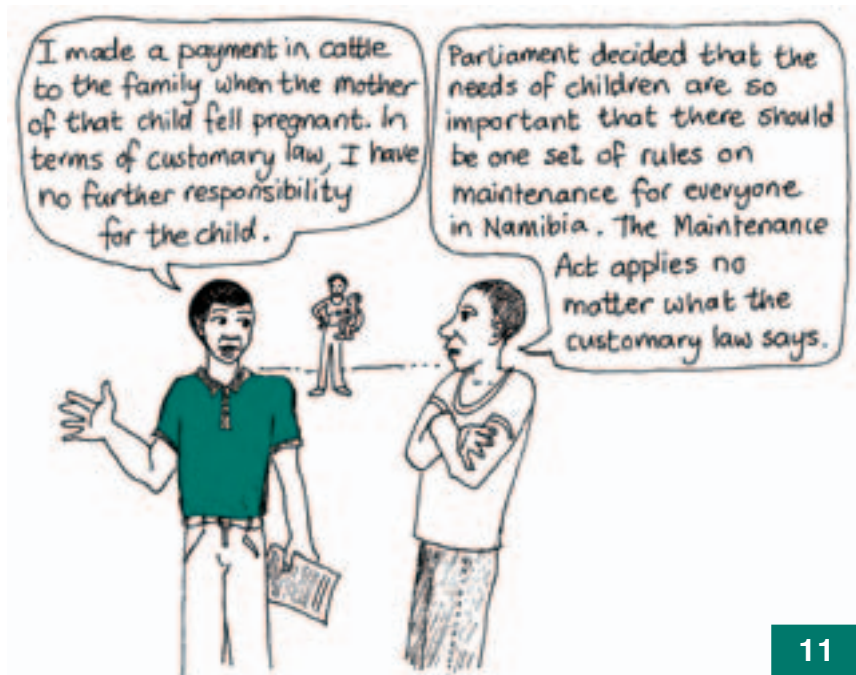
**PRIMARY CARETAKER** – a person or an institution that takes care of a child with the permission of the child's parent or custodian. It is a common situation in Namibia for a grandmother to be the primary caretaker for her grandchildren. For example, the grandmother might keep the children in the rural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

**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

# GENERAL PRINCIPLES

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



**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.

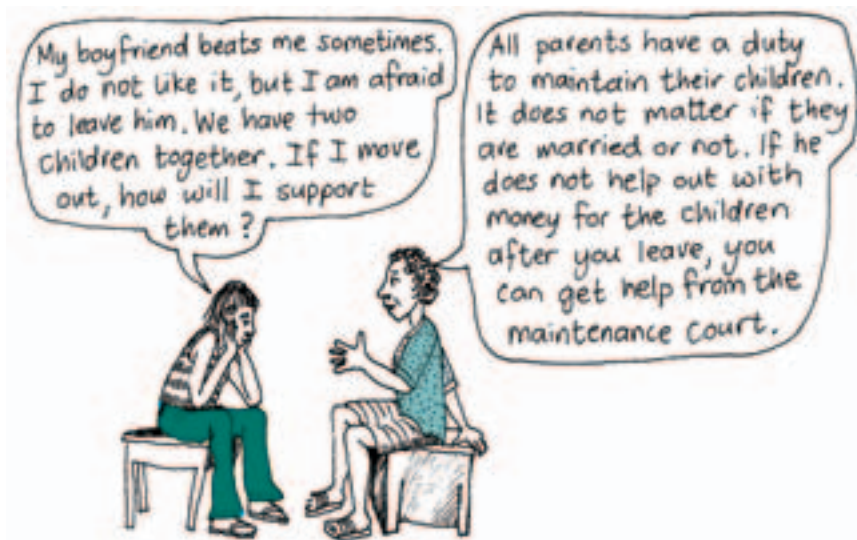
This means that the defendant must be the beneficiary's parent, spouse or child, or otherwise responsible for the beneficiary in some way.

- 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.



# 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.
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.
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 the wages and resources of each parent must be taken into account.

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. One parent will have to carry 100% of the



Dad  
100%

costs of maintenance if the other parent has no income or property.

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.

Mom  
20%



Dad  
80%

**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 needs.



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

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.



## 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 university or other higher education. The costs for education will be based on the reasonable expectations of the parents.

**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.

## **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.



## 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.



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**

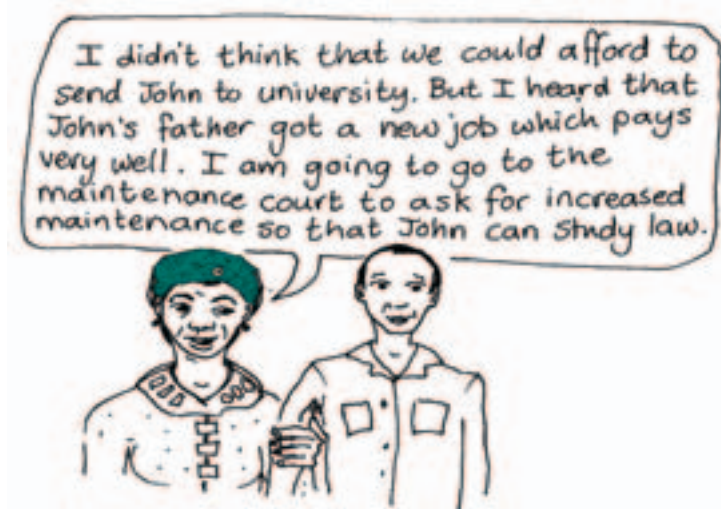
This includes expenses for housing, water, electricity, food, clothing, transport, toiletries, childcare services, education (including pre-school and in some cases tertiary education) and medical services. Medical expenses can include the costs of prescription medicines or supplies, and treatment by 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.

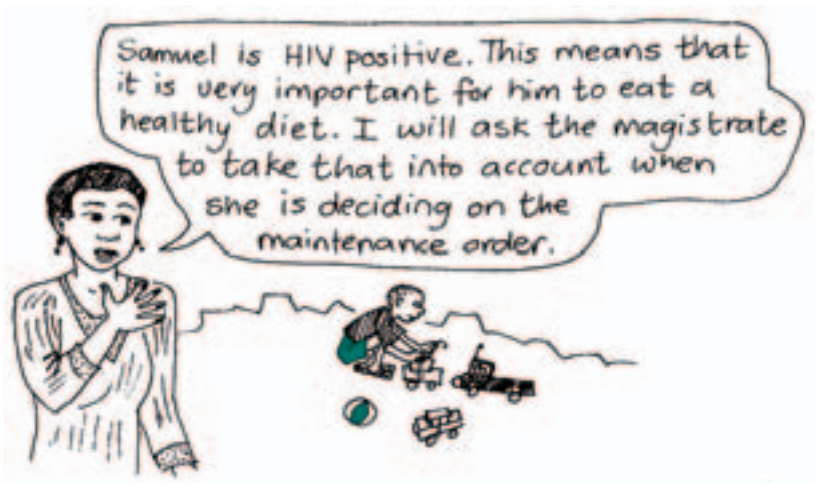
- ▶ **the manner in which the child is being educated or trained**

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 complainant's 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.



## **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.**

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 parent's duty to provide maintenance might come back into action.

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.

**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

# 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.

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



**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.**

# THE DUTY OF HUSBAND AND WIFE TO MAINTAIN EACH OTHER

**Husbands and wives are primarily responsible for each others' maintenance.**

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 try to get it from another family member.

This responsibility is gender-neutral – it does not favour women or men. 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.

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

# 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 father's parents and the mother's 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.

## 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.



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.

**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 spouse's brothers and sisters.

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

## **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



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

# 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 medical treatment 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.



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

# HOW TO CLAIM MAINTENANCE

In this section, the complainant is 'you', the beneficiary is 'the child' and the defendant is the father of the child.

To claim maintenance you need to:

- ▶ make a complaint to the maintenance officer, through the clerk of court
- ▶ provide information to support the claim
- ▶ attend 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 child. This process is explained step-by-step below.

## STEP 1: MAKE A COMPLAINT TO THE CLERK OF COURT

The clerk of court at the maintenance court is the first court official who 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 magistrate's 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 you or the child lives. For example, suppose you live in Windhoek but leave the child in Oshakati with the child's grandmother. If you want to claim maintenance from the child's father, you can go to the court in Windhoek or in Oshakati. If the grandmother made the complaint, she would go to the court in Oshakati.

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 for your child, you will have to give the following information:

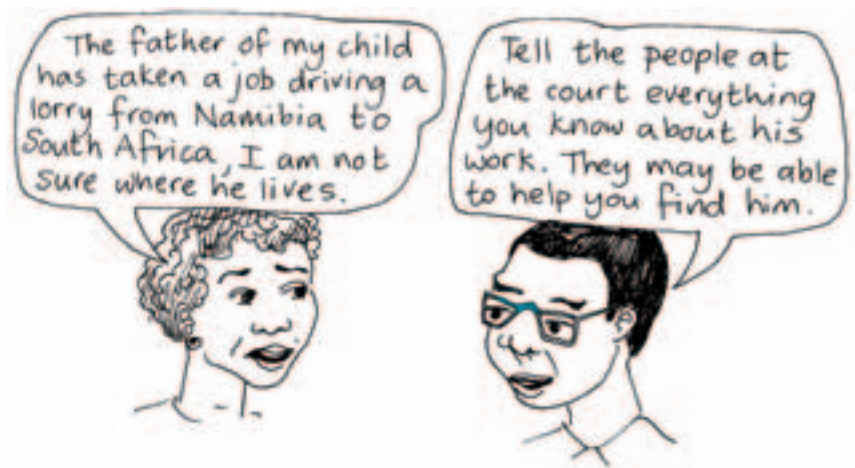


- ▶ basic information about yourself, the defendant and the children (such as the child's name and date of birth and contact details for yourself and the defendant)

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

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

For example, you can say that the defendant has a duty to maintain the child because he is the child's 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 child'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 child

If possible, you should bring along documents to support what you say – such as receipts for school fees, 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 defendant's financial position. If you are not sure about the defendant's income and assets, the maintenance officer or the maintenance investigator can help.

The maintenance officer has a duty to help you fill in the form if you are not sure what to say. You can also get anyone that you trust to help you fill in the form before you go to court.



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.

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.

## 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.

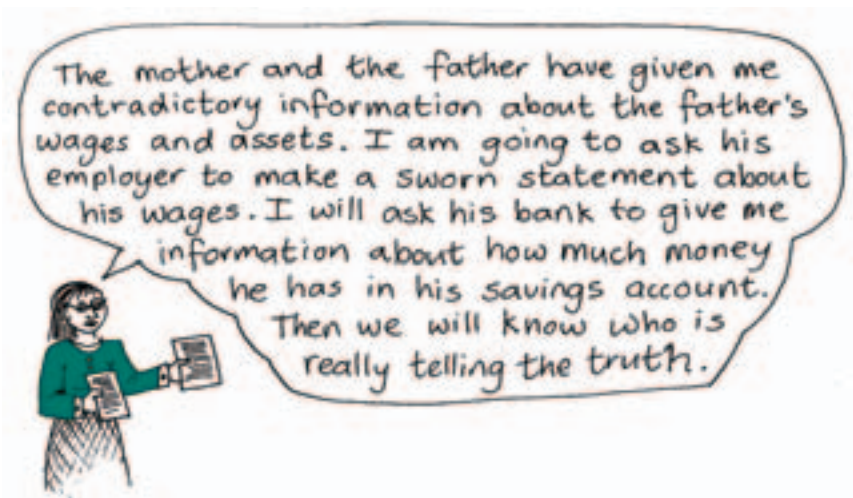
For example, the maintenance officer may have to find the defendant. The maintenance officer may need more details about your financial position and the defendant's financial position. The maintenance officer may ask you or the defendant or other persons to come to the court to give more information, 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.

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 check any information that might be relevant to your case. **The law says that the maintenance officer MUST investigate your complaint.**

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.



## 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 you to seek a maintenance order, so that you 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 your financial position and the defendant's financial position
  - ▶ 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 questioning by the magistrate can take place in private rather than in open court.

## 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

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.

## **GETTING INFORMATION FROM BANKS**

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

Banks can be ordered, by a court order, 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 whether to do so.

## **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\$4,000 or imprisonment for up to 12 months.

## **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.



## 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 (officially given to) the defendant, who will have 10 days to apply to the court to change or cancel the order. This 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. 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. This form is similar to the one filled in by you. 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.



## 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”.

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 you and the defendant what day to come to the court for this informal meeting. 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 child.

For example, the defendant might say that he is not 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 you and the defendant questions about your wages, assets and expenses.

You both may be asked to provide documentation of your income, such as pay slips.

The maintenance officer (or clerk) will then discuss the amount of the monthly maintenance payment with you 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 you or the defendant to agree to anything you are not really comfortable with.

If you 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.**



The mediation is often conducted by the clerk of the court instead of by the maintenance officer, because there is a shortage of maintenance officers.

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 see 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.

## **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 you, the defendant and the child.

A maintenance enquiry is NOT just a disagreement between you and the defendant. The point of the enquiry is to decide on the fairest way to provide for the needs of the child.

You and the defendant will be told 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. You will usually be given a copy of the summons so that you will also know when to come back to the court.

If there was a preliminary meeting with the clerk or the maintenance officer, you and the defendant will be told what date you **must** come back to court for the enquiry.

### THE PROCEDURE AT THE ENQUIRY

You and/or the defendant may get a lawyer to help you if you wish, but this is not necessary. The maintenance officer is there to help you. 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 child in mind.

The proceedings in the maintenance court are private. Only people 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.

The magistrate will consider the following information:

► what you say

You will be asked to swear that everything you say is true, and to produce documents to support your statement, such as pay slips, bills and receipts. The defendant will be able to ask you questions.

► 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. You (or the maintenance officer on your behalf) will be able to ask the defendant questions.

► what witnesses say

Both you and the defendant can both bring witnesses to support what you have to say. For example, if the child has a medical problem which needs special treatment, you 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, you 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 the enquiry.

The clerk of the court will pay small allowances to witnesses who attend an enquiry (other than you 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 accepting 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, the defendant's employer may send a statement about the wages he earns instead of coming to court in person to give this information.

Neither you nor the defendant can use this option. You both have to come to court in person.

- information and evidence from previous maintenance proceedings

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

### **PROCEDURES FOR USING WRITTEN STATEMENTS AT THE ENQUIRY**

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

The person who wants to use the written statement must give the other person 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 you at the same time as the statement, so that you have all the information you need 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. You may prefer that the wife come to court in person so that you 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 person 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 from the defendant's employer, saying how much he earns. If there is no real dispute about his wages, you will probably have no objection.

I see that the defendant wants to give the magistrate a statement from his boss explaining how he can put the children on his medical Aid scheme. I have no objection to that. It will be helpful to our discussion. If the medical expenses were covered by medical aid, I would not need to request so much maintenance.



## 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 your 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 rule is designed to make sure that defendants do not benefit from ignoring notices



saying that they must come to court. They cannot use this tactic to delay the outcome of a maintenance case.

### **WHAT HAPPENS IF YOU DO NOT COME TO THE ENQUIRY?**

If you do not show up, the case will probably be cancelled by the maintenance officer and the magistrate, because they will assume that you are 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 you does not come to the enquiry** without a good reason, the magistrate has the right to make the person who did not come to court pay for the wasted costs. **For example, this might include the extra witness allowances or lawyer's fees (if either of you have a lawyer).**

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.



## 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\$4,000 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\$8,000 or imprisonment for up to 2 years.

There is one exception. A magistrate can say the information may be published if it is in the best interests of the child.



## 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\$4,000 or imprisonment for up to 12 months.

## STEP 6: THE MAGISTRATE MAKES A DECISION

### BASIC REQUIREMENTS

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

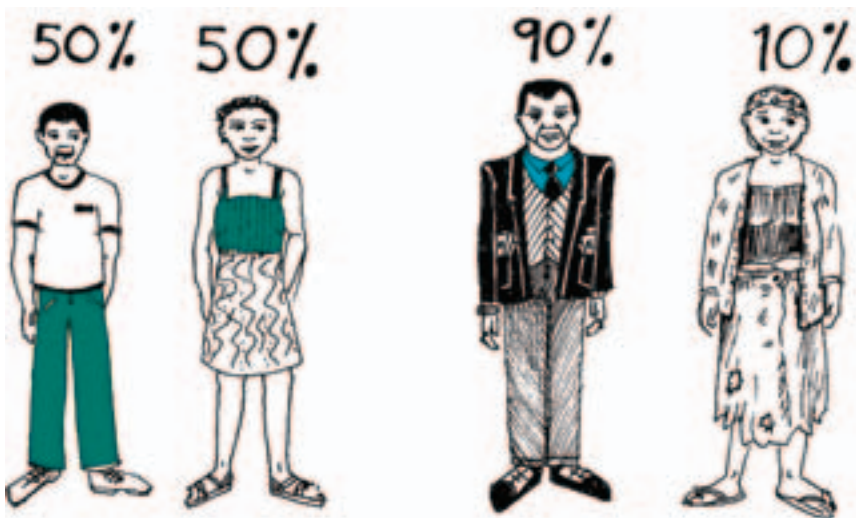
- a) The defendant is **legally liable** to maintain the beneficiary of the maintenance order.
- b) The defendant is **able to contribute** towards maintenance.
- c) The defendant is **failing to provide reasonable maintenance for the beneficiary voluntarily**.

## 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, 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 you and the child's father both earn the same wage and have no other property. It might be reasonable to expect you to contribute equally to the upbringing of the children. But if one of you earns more than the other, you must contribute in proportion to your 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. This will not now be possible. For example, if the man has caused unnecessary delay, the maintenance order can be dated from the date of the first complaint or the first court appearance – so that he does not benefit financially from the delay.

### **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 he is on a training programme and will get a promotion and a significant increase in pay very soon. Or suppose that a relative of yours has died, and you will inherit a house soon. 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 cost appears to be unreasonable.

► **The magistrate will also consider the particular circumstances of those involved in the case.**

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 you have 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.

### **HOW THE COURT DECIDES WHAT IS FAIR: AN EXAMPLE**

A Namibian case explains how the magistrate should go about making a decision in a maintenance enquiry. This case involved maintenance for a 5-year-old child.

The **starting point was to see what monthly amount was 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 was 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 found 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”.

The court calculated the mother would be paying 12% of her monthly income and the father would be paying 11% of his monthly income towards the child’s needs. This would clearly be fair.

## 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  
If the defendant has caused unnecessary delay, this might be taken into account.
- ▶ 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 child's school for hostel fees.

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

## 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 you with a house to live in instead of contributing towards 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 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.



## PHOTOGRAPHS OF THE DEFENDANT

The maintenance court has the power 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. Copies can be given to anyone who is serving an official court document on the defendant in the maintenance case.

This is 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.



## 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 which shows that the notice was really delivered.

The magistrate will listen to your 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.

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 give a good reason to the magistrate – such as being in hospital or being out of town to attend a funeral. 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. **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 you of the new court date. He must give you copies of any information that he will use to support his application, so that you 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 you. Part B of this Form is a notice telling you about the date of the application.

## **THE COMPLAINANT'S OPTIONS**

### **1. AGREEING WITH THE DEFENDANT'S REQUEST**

When you receive the defendant's application to have the default maintenance order changed or cancelled, you may accept his reasons. For example, perhaps you did

not know when you made your maintenance application that that the defendant had lost his job or fathered another child. **If you agree with the defendant**, you can write to the maintenance officer to consent to the change or the cancellation that the defendant is requesting. In this case, you will not have to come to court again.

## 2. NOT AGREEING WITH THE DEFENDANT'S REQUEST

You do not have to agree. You may think that the defendant is not telling the truth, or not offering a fair amount of money. **If you do NOT agree with the defendant**, then you must come to court on the date of the application and explain your response.

If the matter is not settled by agreement between you and the defendant, then both of you 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. You will have a chance to give your opinion. Both of you can bring documents (such as pay slips, bills and receipts) to support your 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.



## 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.



## 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. 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.

# PATERNITY TESTS

**What happens if a man who is asked to pay maintenance for a child says he is not 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.

**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



**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.**

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

# CHANGING OR CANCELLING A MAINTENANCE ORDER

## BIG CHANGES

You or the defendant may want to change a maintenance order after it is in force. This can happen at any time. The changes may be –

- ▶ a request to **increase** the amount paid  
For example, you may want to increase the amount when the child starts going to secondary school because 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 you, the defendant and any other relevant people (such as a grandmother taking care of a child who gets maintenance payments).

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.

**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.**



It is possible for the you 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 the other way round.

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

## 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, if the child who benefits from the maintenance is going to live with the grandmother, you 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, if you have just opened a post office savings account for the first time, you might request that the money be paid into your account so that you no longer have to travel to the court to collect it.

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

For example, if 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.**



## **CHANGE OF ADDRESS BY COMPLAINANT**

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

## **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 you and the maintenance officer 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.

**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

# 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. Now, 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. That should mean 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.

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.

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

- 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.

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.



## 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.

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

The defendant can ask 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 you 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 you 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 how it is enforced.**

### 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\$2 000 or imprisonment for up to 6 months. ►

**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.

**You 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 '**warrant of execution**'. This document gives the messenger of the court the right 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.

You 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, must 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

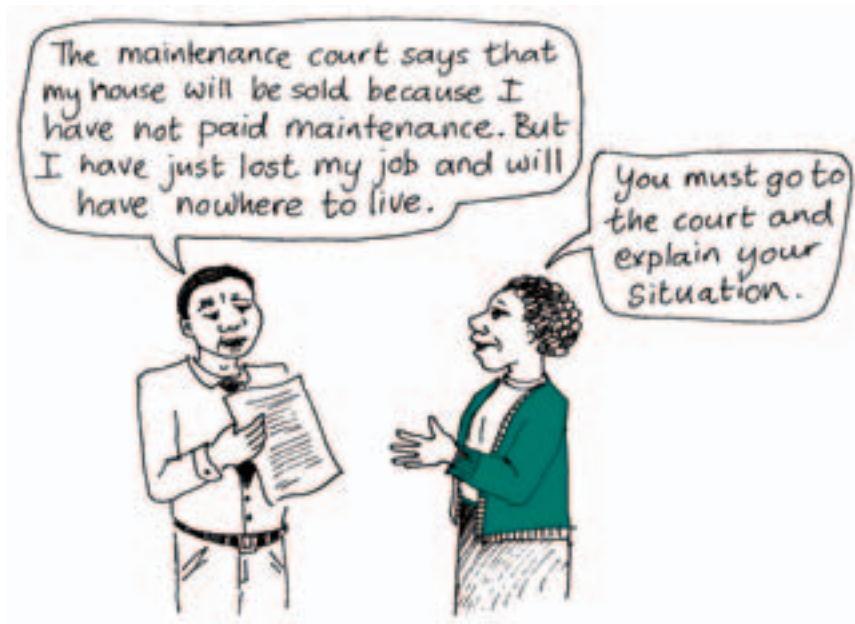
to be sold to cover the arrears. This means that the messenger identifies the property to be sold, and makes an official list of the property and its estimated value. The defendant can point out which property should be sold to cover the amount of money owed. If the defendant does not do this, then the 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. If you are worried about this possibility you 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 you 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 you and the defendant.

The magistrate will consider these factors:

- ▶ the defendant’s current and future financial position
  - ▶ the needs of other people who are being maintained by the defendant
  - ▶ the defendant’s past conduct in paying maintenance
- For example, if the defendant frequently 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 how to enforce 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 his wife 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 wife'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 you. 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 you the unpaid maintenance, the magistrate may decide to stop the sale of property.

### **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.

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 easier. You do not have to pay any of the costs of the enforcement procedures.



## 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.



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.**

**Society demands that parents must take care of the children's well-being... 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

# 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.

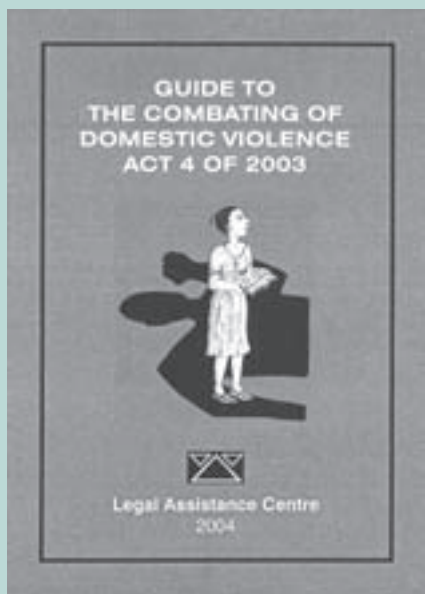
For example, suppose that your ex-boyfriend hears that you are planning to try to get maintenance from him for your child. He tells you that if you go to the court, he will take your child far away so that you will never see the child again. This is a serious crime.



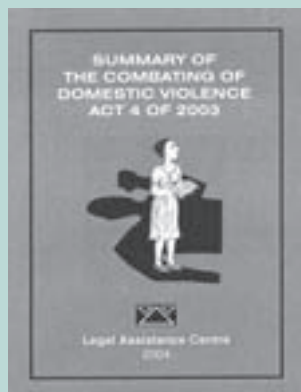
## DOMESTIC VIOLENCE

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 someone is hurt 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.



# 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\$4 000 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.



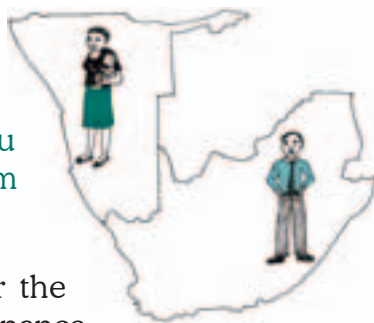
**It has become common for most men to place priority on having "the biggest house or car" in town, rather than providing for their offspring's basic needs.**

**Hon. Amukugo,**  
Parliamentary debate on the Maintenance Act

# GETTING MAINTENANCE FROM SOMEONE IN ANOTHER COUNTRY

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 notice of the enquiry which was held in Namibia – whether or not he attended the enquiry — then the court in the designated country can just consider 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 that country to enforce the order.

Methods of enforcement similar to the ones used in Namibia will be used by the courts in that 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 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.

**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

# 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.

## 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

*tel no:* 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. 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 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.

**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

# 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

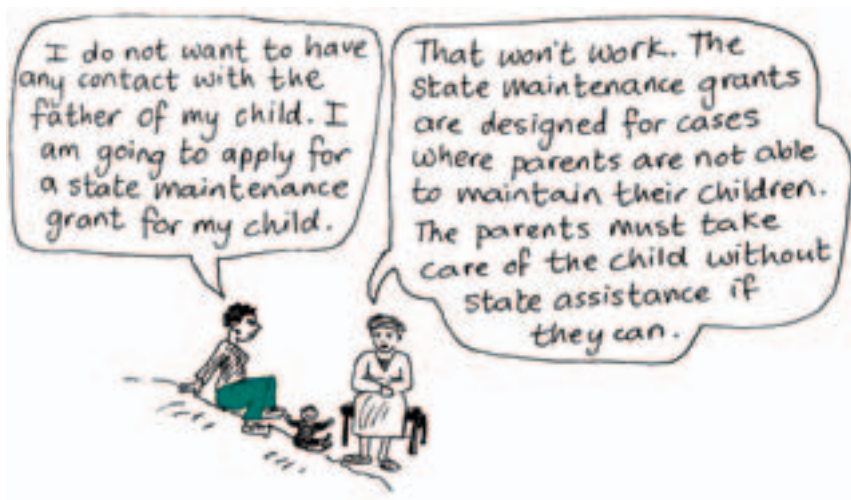
child. There is no charge for this. If this document is unavailable or incomplete, then you can use a certified copy of the child's baptism certificate. If this is also unavailable, then you can get a sworn statement about the child from the police, from a traditional leader in your area or from some 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.



## 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.

## **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.

**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

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 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

