Appendix A (page 336)
OUTLINE OF MAINTENANCE
FOCUS GROUP DISCUSSIONS

Appendix B (page 341)
QUESTIONNAIRE FOR CLERKS OF COURT

Appendix C (page 344)
QUESTIONNAIRE FOR MAINTENANCE OFFICERS

Appendix D (page 348)
QUESTIONNAIRE FOR MAGISTRATES

Appendix E (page 351)
MAINTENANCE ACT 9 OF 2003

Appendix F (page 382)
MAINTENANCE ACT 9 OF 2003 REGULATIONS
Appendix A

OUTLINE OF MAINTENANCE FOCUS GROUP DISCUSSIONS

Agenda

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.00-8.20</td>
<td>Welcome, introduction and fishbowl questions</td>
</tr>
<tr>
<td>8.20-8.40</td>
<td>Agree/disagree energizer</td>
</tr>
<tr>
<td>8.40-9.00</td>
<td>Brainstorming about maintenance</td>
</tr>
<tr>
<td>9.00-10.00</td>
<td>Open-ended discussion</td>
</tr>
<tr>
<td>10.00-11.00</td>
<td>Role-plays</td>
</tr>
<tr>
<td>11.00-11.15</td>
<td>Break</td>
</tr>
<tr>
<td>11.15-11.45</td>
<td>Listing of problems and discussion of solutions</td>
</tr>
<tr>
<td>11.45-12.00</td>
<td>Presentation about maintenance</td>
</tr>
<tr>
<td>12.00-12.15</td>
<td>Answering of fishbowl questions</td>
</tr>
<tr>
<td>13.00</td>
<td>Lunch</td>
</tr>
</tbody>
</table>

Introduction

Introduction of research

The LAC is doing a nationwide study of how the maintenance courts are working, whether people generally understand the maintenance laws and whether the courts are easily accessible to most people. We are just hoping to find out what are some of the problems with the maintenance law so that we can make recommendation to amend the law. Please give us your honest opinions about the problems you’ve seen and hopefully we can make a better system.

Introduction of the participants

Ask each participant to tell the group her name, where she’s from, and one thing about herself, e.g. “My name is Maria, I’m from Windhoek, and I like to sing.”

Fishbowl questions (part 1)

This activity has three purposes: Firstly, it is an energising activity which will allow the participants to get to know each other and feel more comfortable. Secondly, it is a tool to find out what parts of the maintenance law and court process the participants are confused about. Thirdly, part 2 of this activity will help to educate participants about the law on maintenance.

Ask the participants pair up into groups of two or three and ask each group to think of three questions about the maintenance law or application process for a maintenance order. Ask the participants to write the questions on scraps of paper and then put all questions into a bowl.
Tell the participants that at the end of the day the group will come back to the bowl. Hopefully by then the participants will be able to answer the questions.

**Energiser: Do you agree or disagree?**

Put up two signs in the room: Agree and Disagree. Read the questions below and ask the participants to walk to each sign depending on their opinion. This exercise is designed to get a basic idea of the general understandings, misunderstandings and opinions about the maintenance law and the court process.

- A father’s duty of maintenance towards his children ends when he leaves the mother of the children.
- Mothers and fathers share financial responsibility for their children regardless of who the children live with.
- Most fathers default on maintenance payments.
- The maintenance system is unfair because it expects fathers to pay maintenance even if they are unemployed.
- The maintenance officer can choose whether or not to investigate the mother’s claim.
- A step-father has a duty of maintenance towards his wife’s children.
- Many women abuse maintenance payments by using the money for things for themselves.
- If a man misses a maintenance payment, the woman goes running quickly to the maintenance courts so she can get him in trouble.
- Asking for maintenance is a form of begging.
- A woman can request maintenance for herself from her boyfriend.

**Brainstorming**

Write the following headings on the board and ask the participants to brainstorm ideas under each one. Do not try to prompt the participants; the ideas should come entirely from them. Write up every suggestion that is thrown out; underline or circle the suggestions that seem to have wide consensus.

- **WHAT IS MAINTENANCE?**
- **WHO CAN RECEIVE MAINTENANCE?**
- **HOW DO YOU GET MAINTENANCE?**
  Under this heading, split the board into another two topics:
  - CUSTOMARY WAYS OF GETTING MAINTENANCE
  - APPLICATIONS FOR MAINTENANCE THROUGH THE COURT
- **HOW CAN YOU PAY MAINTENANCE?**
  (Looking for knowledge about payment in kind, etc.)

**Open-ended discussion**

Read the story below to the participants. Ask the questions in bold, but only ask the non-bolded questions if the participants need a prompt for their discussion. The point of this exercise is not to suggest the problems, but to find out what the participants know or don’t know about the maintenance process, and what they immediately identify as problems.

Grace and Lucas have one child together. Lucas has not been paying maintenance. Yesterday, Grace went to the maintenance court to file an application.
1. **What happens next?**
   a) Who does Grace meet with?
   b) What questions do they ask Grace?

2. **What expenses should Grace ask for?**
   a) If her child is a newborn? *Do they know you that she can be asked for pregnancy and birth-related expenses?*
   b) If her child is 17 years old? *Do they know that she might be able to ask for university expenses?*
   c) If her child is disabled?

3. **What is the relationship between Grace and Lucas?**
   a) Boyfriend/girlfriend? Husband/wife?
   b) Ex-boyfriend/ ex-girlfriend? Ex-husband/ex-wife?
   c) Bitter? Friendly?

4. **Why hasn't Lucas paid maintenance?**
   a) They are not his children?
   b) He is worried Grace will misuse payments?
   c) He does not have any money?
   d) He takes care of the children in other ways?
   e) Grace has a new boyfriend who should provide for her and her child?

5. **If Lucas and Grace are married, does she ask for maintenance for herself?**

6. **Grace’s child is six years old. She has never been to the maintenance court before even though Lucas has never paid maintenance.**
   a) Why didn't she go before?
   b) Why does she go now?

7. **Did Grace first try to get maintenance in other ways? If so, how?**
   a) Did she approach him outside of court?
   b) Did she go to a traditional leader?
   c) Did she go through family members?

8. **What are some problems that Lucas encounters when he goes to the maintenance courts?**
   a) Unfriendly clerks / maintenance officers?
   b) Maintenance officers do not understand his financial situation?
   c) Complicated process?
   d) Biased maintenance officers / magistrates?

9. **If Lucas is confused by the process, what does he do?**
   a) Gets help from the maintenance officer / clerk?
   b) Brings a lawyer with him?

10. **What happens if Lucas denies paternity?**
    a) Who will pay for a paternity test?

11. **After the maintenance officer has spoken with Grace, what will the officer do?**

12. **What happens if the maintenance officer can’t find Lucas?**

13. **Do Lucas and Grace come to an agreement, or do they bring their case before the judge?**
    a) What happens if Lucas tries to delay the proceedings by not showing up for court?

14. **Does Grace get a maintenance order?**
    a) If not, why not? What does she do? Do they know that she can appeal?
    b) If so, does she get everything she asked for?
    c) Is the agreement fair to Lucas?
15. Does Lucas pay the maintenance order? If not, why not?
   a) He doesn’t want to pay?
   b) He doesn’t think the order is fair?
   c) He doesn’t have the funds?

16. If Lucas thinks the maintenance order is unfair, what does he do? Does he know he can appeal?

17. If Lucas doesn’t make maintenance payments in terms of the maintenance order, what does Grace do?
   a) Goes back to the court?
      i) Ask for an attachment of wages, pensions, etc?
      ii) Ask for a criminal charge to be made?
   b) Will Grace be able to force him to pay in the end?

18. Does Grace misuse the money?
   a) If so, what does Lucas do?

19. If Grace gets a maintenance order, how long does it last?

20. If Lucas loses his job and decides that he can no longer afford to pay maintenance, what can he do?

Role-plays

Ask the participants to pair up into groups of two or three. Give each group a role and a prompt to follow. Allow participants 10 minutes to prepare their role-plays. Ask them to prepare 3-5 minutes of content. After the performances, ask the group what they thought of the issues presented in the role-plays.

**Group 1 (2 people):** Lucas tells his friend John that he has been called to court for a maintenance hearing. John thinks that Lucas shouldn’t have to pay maintenance and tries to convince Lucas not to go to court.

**Group 2 (2 people):** Lucas tells his friend John that he has been called to court for a maintenance hearing. John thinks that Lucas should pay maintenance and tries to convince Lucas to go to court.

Which scenario is more realistic? In which scenario is Lucas more likely to go to court?

**Group 3 (2 people):** Lucas thinks the maintenance order is for too much money. His friend John tries to convince him not to pay.

**Group 4 (2 people):** Lucas thinks the maintenance order is for too much money. He meets with the maintenance officer who discusses Lucas’s options.

Which scenario is more realistic?

**Group 5 (3 people):** Grace and Lucas are in a negotiation with maintenance officer about how much maintenance Lucas should pay. The maintenance officer has not carried out his responsibilities well and supports Grace’s claim, even though she is asking for too much.

**Group 6 (3 people):** Grace and Lucas are in a negotiation with maintenance officer about how much maintenance Lucas should pay. The maintenance officer has not carried out his responsibilities well and supports Lucas’s side, even though Grace is asking for the proper amount.

Is either scenario realistic?
Group 7 (2 people): Grace meets with the maintenance officer. The maintenance officer asks her why she is applying for maintenance. Grace explains why Lucas should pay her maintenance.

Group 8 (2 people): Lucas meets with the maintenance officer and Grace. The maintenance officer tells Lucas that Grace is applying for maintenance. Lucas tries to explain why he should not have to pay maintenance.

After these two meetings, what should the maintenance officer’s next step be?

Debriefing

Using a flipchart ask the participants to compile a list of the top ten problems associated with claiming maintenance. Then, on a new sheet of paper, ask the participants to propose solutions for each of the problems.

Presentation on the maintenance law

Present the participants with a short explanation of the principles of the law, what maintenance is, who can apply for maintenance, how the maintenance application process works, etc.

Fishbowl questions (part 2) / closure

Read out the questions in the bowl that the participants had compiled earlier. Ask the participants to try to answer the questions. If the participants don’t know the answer (or are still answering incorrectly), provide the correct information. This activity should serve as a review of the day, and as an empowering exercise for the participants.

Some of the questions asked during focus group discussions:

1. What is maintenance money used for?
2. When should I claim maintenance? Should I claim even if we are living together?
3. If one parent who is living in the house is not supporting the child, can the other parent get a court order for maintenance from that parent?
4. Grandmothers are being turned away by the court. The court says that the mother must request maintenance. Is this correct?
5. Can a woman claim for pregnancy expenses?
6. Why isn’t maintenance equal?
7. What if the defendant is unemployed? Can the mother still make a maintenance complaint?
8. What can you do if you want a paternity test but you cannot afford the cost of the test?
9. What can I do in the case where I do not have the full information about the contact details of the father?
10. What can a woman do about delaying tactics by father such as not attending court, requesting a paternity test, etc?
11. What happens if the father does not attend court when he has been summoned?
12. What if there is a default order but the defendant still refuses to pay?
13. Is it fair to pay for maintenance for your child but as a father you are denied custody of your child?
Appendix B
QUESTIONNAIRE FOR CLERKS OF COURT

1. How long have you been a Clerk of the Court?

2. How long have you been based in X court?

3. What are the qualifications required to become a Clerk of Court?

4. Have you received any training regarding the new Maintenance Act?
   a) Was this training helpful?
   b) Regardless of whether or not you have had training, do you feel that your understanding of the Maintenance Act is adequate for your work?
   c) Do you think that, in general, magistrates, clerks of the courts, maintenance officers or lawyers have a good understanding of the process?
   d) Do you think that the general public has a good understanding of the process?

5. What are your duties and responsibilities in respect of maintenance?

6. Do you think that failure to support dependents is a problem in your community?
   a) If so do you think the maintenance system is adequate for dealing with this problem? Probe for details.

7. What are the most common reasons that drive people to seek maintenance orders?

8. Approximately how many applications for maintenance have you handled in the last year?

9. Are the current forms easy to work with? If not, probe for specific areas which need improvement.
   a) If the clerk has worked before 2003. How do the new forms compare to the old ones (are they easier/harder to work with?)
      i) What are, if any, the major issues with the new forms?
      ii) Have the new forms changed the system?
      iii) Is the new system more efficient than the old?
   b) Are you a Commissioner of Oaths? If not, who commissions the forms?

10. Are there any fees for making an application for a maintenance order?

11. When a person comes to the court seeking a maintenance order, what is the first thing that happens?
   a) When does the complainant fill out an application?

12. What happens if the complainant comes to the court seeking a maintenance order, but she doesn’t know where to find the defendant?
   a) Is a file opened?
   b) Is an application filled out?
13. Does the court have a register somewhere that lists the names of all of the maintenance files?
   a) If so, how does a case advance from the register to have its own file?
   b) Is it possible for a case to be on the register, but not have its own file? Why would this happen?

14. Is there a record of all the cases that were withdrawn?
   a) What does the paperwork look like for a case that had been withdrawn before an inquiry? (Is there an application present? etc)

15. What is the most common relationship involved in maintenance applications that you handle?
   (eg, mothers requesting maintenance for their children)
   a) Have you had any cases involving male complainants?
   b) Have you had any cases involving children as complainants?
   c) Have you handled any cases with the elderly or the disabled as beneficiaries?
   d) Have you had any cases where maintenance is being requested from grandparents, siblings or other blood relatives (as opposed to a parent)?
   e) Have you had any cases where maintenance is being requested by grandparents, siblings or other blood relatives (as opposed to a parent)?

16. If children are the beneficiaries, how old are they usually when the application for the maintenance order is made?
   a) Have you had any cases where women request contributions to pregnancy and childbirth expenses?

17. What problems have you encountered with maintenance order applications (probe for details here)?

18. What are the most common questions that you are asked?

19. Do the complainants require much help when filling in the forms?
   a) What is usually the most confusing part?
   b) Are you able to help them effectively?
   c) Is it time consuming for you to assist complainants with the forms?
   d) Who else assists (or could assist) complainants with the forms?

20. Do you ever assist defendants by answering questions about the process or helping them to fill in forms?
   a) Do you assist defendants who want to oppose default orders?
   b) Who else assists (or could assist) defendants with the process?

21. Who usually serves summonses in maintenance cases? Is this effective? (If not, probe for possible improvements.)

22. Do complainants often make a complaint and then withdraw it or abandon it before it goes to the maintenance officer?
   a) If so, why do you think this happens?
   b) Have you ever encountered a complainant who is being pressured or threatened to withdraw her maintenance application?
       i) If so, who is pressuring her? How is she being pressured?
       ii) What happens to the person who pressured her?

23. Do you assist defendants or complainants who want to appeal maintenance orders? If so, how?
   a) Do you think that the parties understand the procedure for appealing the orders?

24. Do complainants often try to substitute or withdraw a maintenance order? Defendants?
   a) Is the paperwork for requesting a substitution confusing?
   b) Do you assist with this process? If so, how?
25. Are the forms and other information about the case kept completely confidential? 
   a) Have you heard of any problems with this?

26. Do you experience any problems when maintenance files are transferred from one court to another? (probe for details.) 
   a) Is the paperwork for transferring a file difficult?

27. Have you experienced any situations where people try to misuse or abuse the maintenance order procedure? (Probe for details.)

28. Only ask in a court with a high volume of cases where there is a dedicated maintenance officer apart from the prosecutor. What is the usual role of the prosecutor in maintenance cases?

29. Do the maintenance officers communicate much with you or the magistrate/prosecutor about specific cases? 
   a) Is it common for the magistrate to order or suggest further attempts at reaching an agreement between the parties? 
   b) Do you feel in general that different maintenance court staff communicate to each other well?

30. Have you ever had a complaint that someone is abusing maintenance payments instead of using them for the beneficiary? 
   a) What is your role if someone comes to the court with such a complaint?

31. Do you think that the law on maintenance needs to be improved in any way? (Probe for details.)

32. How do you think the implementation of the law could be improved? (Probe for details.)

33. Has there been any movement to computerise the maintenance files? (Probe for whether this would be perceived as being useful or a burden.)

34. What is the one thing you would like to change about the system?

35. Do you have any other comments about maintenance?
Appendix C

QUESTIONNAIRE FOR MAINTENANCE OFFICERS

1. How long have you been a maintenance officer?

2. How long have you been based in X court?

3. What are the qualifications required to become a maintenance officer?

4. Have you received any training regarding the new Maintenance Act? If so, please describe the training. Probe to see if the LAC training video has been viewed.
   a) Was this training helpful?
   b) Regardless of whether or not you have had training, do you feel that your understanding of the Maintenance Act is adequate for your work?
   c) Do you think that, in general, magistrates, maintenance officers and lawyers have a good understanding of the process?
   d) Do you think that the general public has a good understanding of the process?

5. What are your main duties and responsibilities as a maintenance officer?

6. Do you think that failure to support dependents is a problem in your community?

7. What are the most common reasons that drive people to seek maintenance orders?

8. Approximately how many applications for maintenance orders have you handled in the last year?
   a) How many of these cases would you estimated have resulted in maintenance orders?

9. When a person comes to the court seeking a maintenance order, what is the first thing that happens?
   a) When does the complainant fill out an application?

10. What happens if the complainant comes to the court seeking a maintenance order, but she doesn't know where to find the DF?
    a) Is a file opened?
    b) Is an application filled out?

11. Does the court have a register somewhere that lists the names of all of the maintenance files?
    a) If so, how does a case advance from the register to have its own file?
    b) Is it possible for a case to be on the register, but not have its own file? Why would this happen?

12. Is there a record of all the cases that were withdrawn?
    a) What does the paperwork look like for a case that had been withdrawn before an inquiry? (Is there an application present? etc)
13. Do you find the forms clear or difficult to work with?
   a) If the maintenance officer has worked before 2003. How do the new forms compare to the old ones (are they easier/harder to work with?)
      i) What are, if any, the major issues with the new forms?
      ii) Have the new forms changed the system?
      iii) Is the new system more efficient than the old?
   b) Are you a Commissioner of Oaths? If not, who commissions the forms?

14. What is the most common relationship involved in maintenance applications that you handle? (eg, mothers requesting maintenance for their children)
   a) Have you had any cases involving male complainants?
   b) Have you had any cases involving children as complainants?
   c) Have you handled any cases with the elderly or the disabled as beneficiaries?
   d) Have you had any cases where maintenance is being requested from grandparents, siblings or other blood relatives (as opposed to a parent)?
   e) Have you had any cases where maintenance is being requested by grandparents, siblings or other blood relatives (as opposed to a parent)?

15. Have you handled many maintenance orders against people who live outside of Namibia?
   a) Are you able to enforce maintenance orders against people outside the country?

16. If children are the beneficiaries, how old are they usually when the application for the maintenance order is made?
   a) Have you had any cases where women request contributions to pregnancy and childbirth expenses? If so, are such requests usually successful? Probe for details.

17. Are there any fees for making an application for a maintenance order?

18. What problems have you encountered with maintenance order applications (probe for details here)?

19. What are the most common questions that you receive from complainants?

20. What are the most common questions that you receive from defendants?

21. Is the relationship between the complainant and the defendant usually hostile?

22. What percentage of complainants and defendants come to an agreement about maintenance instead of going before a magistrate for an enquiry?
   a) What are some factors that get taken into account when the two parties are trying to come to an agreement on how much maintenance will be paid?
   b) What is your role in the negotiation between a complainant and a defendant about maintenance?

23. Have you had any situations where the complainant has made the process difficult?
   a) By lying about child-rearing expenses?
   b) By not showing up on the scheduled date?
   c) By failing to provide supporting documentation?
   d) By lying about paternity?

24. Do you think that the complainant usually starts off asking for too much money?
   a) Have you ever seen a maintenance order which awarded more money than the complainant initially asked for?
   b) Have you ever seen a maintenance order which allows the defendant to pay in kind (with cattle, transportation, etc)?
25. What are the most common problems you have had with defendants?
   a) Not providing truthful information?
   b) Not showing up the scheduled date? If not, what do you do?
   c) Failing to provide supporting documentation?
   d) Demanding paternity tests as a dallying tactic?
   e) If a defendant is uncooperative, what steps do you take:
      i) if the defendant is lying about his assets/employment?
      ii) if the defendant tries to delay the proceedings?
      iii) if the defendant threatens the complainant?

26. What do you do if the defendant cannot be located?

27. Who usually serves summonses in maintenance cases? Is this effective? (If not, probe for possible improvements)

28. Do you experience any problems when maintenance files are transferred from one court to another? (probe for details).
   a) Is the paperwork for transferring a file difficult?

29. Do you usually investigate the defendant’s finances? The complainant’s finances?
   a) How do you investigate financial information?
   a) What other types of investigation do you do?
   b) Do you feel you have enough time to investigate thoroughly?
   c) What is usually the hardest part of any investigation?
   d) Would it be helpful to you if there were a maintenance investigator at your court? If so, what would the investigator do?

30. Do you experience any problems with paternity tests?
   a) Are paternity tests often requested?
   b) How much does a paternity test cost?
   c) Who usually pays?
   d) How long does it take to get the test results back?

31. Do complainants often make a complaint and then withdraw it or abandon it before there is a maintenance order?
   a) If so, why do you think this happens?
   b) Have you ever encountered a complainant who is being pressured or threatened to withdraw her maintenance application?
      i) If so, who is pressuring her? How is she being pressured?
      ii) What happens to the person who pressured her?

32. When there is an enquiry, do you accompany the complainant or defendant into the court?
   a) Do complainants or defendants often have lawyers to represent them?
   b) How does it affect the case outcome if one party has a lawyer and the other does not?

33. Do maintenance order hearings take place in closed court?
   a) If no, why not?
   b) Who else might be present?

34. Do you think that magistrates handle maintenance enquiries effectively? Why or why not?

35. Does the magistrate make default maintenance orders when the defendant does not show up for the enquiry?
   a) What do you think of the system of default orders?
   b) Do defendants usually oppose default orders?
36. Do defendants or complainants ever appeal final maintenance orders?
   a) Do you think that the parties understand the procedure for appealing the orders?
   b) What usually happens when parties appeal the orders?

37. Do defendants obey the maintenance orders in most cases?
   a) What is the most common reason that defendants disobey the order?
   b) Is the complainant usually the person that brings defendant’s non-compliance to your attention?
   c) If so, how long is usually after the defendant stops paying before the complainant makes a complaint to you?
   d) What does the court do if a defendant disobeys the order? (probe for details)
      i) Attachment of wages or property?
      ii) Criminal prosecution?
   e) Is it difficult to enforce maintenance orders effectively?
   f) What enforcement mechanism is most effective?
   g) Does the complainant usually get the arrear maintenance in the end?
   h) Do you think that defendants take a maintenance order more seriously if results from a court enquiry rather than a consent agreement?
   i) Do you ever arrange to put a photograph or a copy of the defendant’s ID in the file to facilitate enforcement?
   j) Do you have any problems with employers when there is an order for attachment of wages?

38. Do complainants often request substitution or cancellation of a maintenance order?
   a) What are the most common reasons for trying to change an award?
   b) What are the most common outcomes? (probe for details)

39. Do defendants often request substitution or cancellation of a maintenance order?
   a) What are the most common reasons for trying to change an award?
   b) What are the most common outcomes? (probe for details)

40. How soon after the complainant approaches you is a maintenance order normally made or denied?

41. Only ask in a court with a high volume of cases where there is a dedicated maintenance officer apart from the prosecutor. What is the usual role of the prosecutor in maintenance cases?

42. Do the maintenance officers communicate much with the magistrate/prosecutor about specific cases?
   a) Is it common for the magistrate to order or suggest further attempts at reaching an agreement between the parties?
   b) Do you feel in general that different maintenance court staff communicate to each other well?

43. Have you experienced any situations where people try to misuse or abuse the maintenance order procedure? (Probe for details.)

44. Have you ever had a complaint that someone is abusing maintenance payments instead of using them for the beneficiary? (If so, how was this dealt with? Was there in fact abuse?)

45. Do you think that the law on maintenance needs to be improved in any way? (Probe for details.)

46. How do you think the implementation of the law could be improved? (Probe for details)

47. Has there been any movement to computerise the maintenance files? (Probe for whether this would be perceived as being useful or a burden?)

48. What is the one thing you would like to change about the system?

49. Do you have any other comments about maintenance?
Appendix D

QUESTIONNAIRE FOR MAGISTRATES

1. How long have you been a magistrate?

2. How long have you been based in X court?

3. Do you have a law degree?

4. Have you received any training regarding the new Maintenance Act? If so, please describe the training. Probe to see if the LAC training video has been viewed.
   a) Was this training helpful?
   b) Regardless of whether or not you have had training, do you feel that your understanding of the Maintenance Act is adequate for your work?
   c) Do you think that, in general, magistrates, maintenance officers and lawyers have a good understanding of the process?
   d) Do you think that the general public has a good understanding of the process?

5. Approximately how many maintenance enquiries have you heard in the last year?

6. How many of these cases would you estimate have resulted in maintenance orders?

7. What is the most common relationship involved in maintenance applications that you handle? (e.g., mothers requesting maintenance for their children)
   a) Have you had any cases involving male complainants?
   b) Have you had any cases involving children as complainants?
   c) Have you handled any cases with the elderly or the disabled as beneficiaries?
   d) Have you had any cases where maintenance is being requested from grandparents, siblings or other blood relatives (as opposed to a parent)?
   e) Have you had any cases where maintenance is being requested by grandparents, siblings or other blood relatives (as opposed to a parent)?

8. Have you handled many maintenance orders against people who live outside of Namibia?
   a) Is it difficult to enforce maintenance orders against people outside the country?
   b) Does Namibia need agreements for reciprocal enforcement of maintenance with more countries? If so, any countries in particular?
   c) Do you experience any problems with the Reciprocal Enforcement of Maintenance Act?

9. Do lawyers usually represent the defendant in maintenance enquiries? the complainant?
   a) How does it affect the case when one or both parties have legal representation?
   b) Do you feel that the maintenance officers are effective in putting relevant information before the court?

10. Does it often happen that the defendant does not show up in court for the enquiry?
    a) What do you usually do in such a case?
    b) Do you often make use of default orders in these circumstances? Why or why not?
    c) Do you experience any problems with default orders?
11. Does it often happen that the complainant does not show up in court for the enquiry?
   a) What do you usually do in such a case?
   b) What do you do if you suspect that there might be intimidation of the complainant?

12. Have you ever encountered a complainant who is being pressured or threatened to withdraw her maintenance application?
   a) If so, who is pressuring her? How is she being pressured?
   b) What happened to the person pressuring her?

13. Are complainants and defendants usually cooperative in providing truthful and complete information?
   a) What are the most common problems you have had in this regard?
   b) Do the maintenance officers carry out adequate investigations of the parties' financial positions?
   c) If not, how could this be improved?

14. Do maintenance enquiries take place in closed court?
   a) If no, why not?
   b) Who else might be present?

15. What factors do you find most relevant in making a decision on an application for maintenance?
   (open ended question, but then probe for details).
   a) Respective financial situation of the two parties?
   b) Attitude of the two parties?
   c) Special circumstances/age/other needs of the child?
   d) Other financial obligations of the defendant?

16. Do you think that the complainant normally starts off asking for too much money?
   a) Have you ever given an order for more maintenance order than the complainant initially asked for?
   b) Have you ever given a maintenance order for the defendant to pay in kind (with cattle, transportation, etc)?

17. Do complainants or defendants ever appeal maintenance orders after an enquiry?
   a) Do you think that the parties understand the procedure for appealing the orders?
   b) What usually happens when parties do appeal the orders?

18. Do you often handle enquiries where complainants or defendants try to substitute or cancel a maintenance order?
   a) Do such requests usually come from complainants or defendants?
   b) What are the most common reasons for trying to change a maintenance order?
   c) What are the most common outcomes? (probe for details)

19. Have you heard any criminal cases for non-compliance with maintenance orders in the last year?
   a) Have you ever imposed jail time or a fine on a defendant who was in default?
      (i) If so, what was the sentence?
      (ii) Do you think the penalty was effective in getting the defendant to pay?
      (iii) Do you ever make use of weekend imprisonment on community service in such cases?
   b) Do complainants usually succeed in getting arrears if there is a default?
   c) Do they get interest on the arrears?
   d) Is it common for defendants to default on their maintenance payments?

20. Have you been involved with any other forms of enforcement such as warrants of execution or attachment of wages? Probe for details; these usually happen without magistrate's involvement, but magistrate might have handled challenges to such proceedings.

21. Do you feel that most complainants have valid reasons for seeking maintenance orders?
22. Have you experienced any situations where people try to misuse or abuse the maintenance system?
   a) Have you ever dealt with a case involving allegations that maintenance payments were being misused instead of being used for the beneficiary? If so, probe for details and outcomes.

23. What is the usual role of the prosecutor in maintenance cases? Only ask in a court with a high volume of cases where there is a dedicated maintenance officers apart from the prosecutor.

24. Do the maintenance officers communicate much with you/the prosecutor about specific cases?
   a) Is it common for the you to order or suggest further attempts at reaching an agreement between the parties?
   b) Do you feel in general that different maintenance court staff communicate to each other well?

25. What problems have you encountered with implementation of the new Maintenance Act? Probe for details here.

26. (If the magistrate has been around since before 2003): Has the Maintenance Act of 2003 made any difference to the way your court handles maintenance cases? Probe for details.
   a) Are there the same, more or fewer maintenance cases coming to the court now?
   b) In what ways has it made the handling maintenance cases harder or easier?
   c) Has the new law affected the outcome of cases in any way?
   d) Is there any trend towards the same, more or fewer cases being settled by consent as opposed to requiring an enquiry?
   e) What is your opinion of the new forms? Are they easy or difficult to work with in enquiries?

27. Do you think that the law on maintenance orders needs to be improved in any way? Probe for details.

28. What is the one thing you would like to change about the system?

29. Do you have any other comments about maintenance?

30. How long are maintenance orders usually made for? The law says that a maintenance order can be extended up to the age of 21 if the complainant requests this. How does this work in practice— for example are all orders made until 18 and then adjusted if needed? Do many people come to apply for an extension of an order to age 21?

31. Maintenance and access to children
   a) Does the same magistrate deal with cases under the Children’s Status Act and the Maintenance Act?
   b) Are these proceedings ever handled consecutively in the same court date for convenience?
   c) Do the maintenance clerks assist parents involved in maintenance claims who have problems with securing access to the child in question?

32. Children applying for maintenance orders
   We would like to ask the court whether they make any special provisions to assist minors who apply for maintenance? If so we would like to find out more so that we can give children the correct information.

33. What to do if the parent is not working?
   What do you usually order in this instance?

34. What to do if the father denies responsibility?
   What do you usually order in this instance?
Appendix E

MAINTENANCE ACT 9 OF 2003

GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

N$6.20 \hspace{1cm} WINDHOEK - 18 August 2003 \hspace{1cm} No.3043

CONTENTS

GOVERNMENT NOTICE

No. 184 Promulgation of Maintenance Act, 2003 (Act No. 9 of 2003), of the Parliament ................................................................. 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 184 2003

PROMULGATION OF ACT
OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

MAINTENANCE ACT, 2003

ACT

To provide for the payment of maintenance; to provide for the holding of maintenance enquiries and the enforcement of maintenance orders; to repeal the Maintenance Act, 1963; and to deal with incidental matters

(Signed by the President on 31 July 2003)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Definitions

PART II

DUTY TO MAINTAIN

2. Legal duty to maintain
3. Parental duty to maintain children
4. Principles to be applied in respect of maintenance
5. Conditions precedent to granting of maintenance order

PART III

ADMINISTRATION OF ACT

6. Maintenance courts
7. Maintenance officers
8. Maintenance investigators

PART IV

MAINTENANCE COMPLAINTS AND ENQUIRIES

9. Maintenance complaints
10. Powers of officers when investigating maintenance matters
11. Examination of persons by maintenance officer
12. Attendance of witnesses at maintenance enquiries
13. Maintenance enquiry
14. Production of written statements as evidence
15. Evidence from previous maintenance proceedings

PART V

MAINTENANCE AND ANCILLARY ORDERS

16. Factors to be considered when making maintenance orders
17. Maintenance orders
18. Consent maintenance orders
19. Default maintenance orders
20. Order as to costs
21. Orders for scientific tests

PART VI

FURTHER PROVISIONS RELATING TO MAINTENANCE ORDERS

22. Variation or setting aside of certain orders
23. Effect of substitution or discharge of maintenance orders
24. Transfer of maintenance orders
25. Effect of maintenance order
26. Termination of maintenance order

PART VII
ENFORCEMENT OF MAINTENANCE ORDERS

27. Registration of maintenance orders
28. Maintenance order enforceable by civil action
29. Warrants of execution
30. Attachment of emoluments
31. Notice of attachment of emoluments
32. Attachment of debts
33. Recovery of arrear maintenance
34. Conversion of criminal proceedings into maintenance enquiry

PART VIII
OFFENCES AND PENALTIES

35. Offences relating to examinations by maintenance officer
36. Offences relating to witnesses
37. Offences relating to false information
38. Offences relating to maintenance enquiries
39. Offences relating to maintenance order
40. Offences relating to misuse of maintenance money
41. Offences relating to intimidation
42. Offences relating to information in respect of children
43. Offences relating to disclosure
44. Offences relating to notices
45. Offences relating to change of address

PART IX
GENERAL AND SUPPLEMENTARY

46. Record of proceedings to be kept
47. Appeals
48. Photographs of persons
49. Regulations
50. Repeals and savings
51. Transitional arrangements
52. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

PART I
PRELIMINARY

Definitions

1. this Act, unless the context indicates otherwise -
   “beneficiary” means any person for whose benefit a maintenance order may, by law, be made or has been made;
   “complainant” means -
(a) a beneficiary;
(b) a parent or other legal custodian or primary caretaker of a beneficiary; or
(c) any other person who has an interest in the well-being of the beneficiary, including but not limited to a relative, social worker, health care provider, teacher, traditional leader, religious leader or an employer;

“custodian” means a parent or other person who has legal custody of a child;

“defendant” means any person against whom a maintenance order may, by law, be made or has been made;

“default maintenance order” means an order made under section 19;

“emoluments” includes any salary, wages, allowances, or any other form of remuneration or any other income which is paid periodically to any person, whether expressed in money or not;

“emoluments attachment notice” means a notice issued under section 31;

“financial institution” means any institution which carries on business as a bank or building society;

“maintenance court “ means the maintenance court contemplated in section 6 or any other court which is authorised by law to grant maintenance orders;

“maintenance enquiry” means an enquiry conducted under section 13;

“maintenance investigator” means an investigator appointed under section 8;

“maintenance officer” means any person appointed under section 7(1) or deemed to have been appointed under section 7(3);

“maintenance order” means a maintenance order made under section 17, a consent order made under section 18 and a default maintenance order made under section 19, or a maintenance order made by a maintenance court under any other law and includes any sentence suspended on condition that the convicted person makes payments of sums of money towards the maintenance of any other person;

“medical expenses” means expenses incurred in respect of medical, dental, psychiatric and psychological services rendered to any person and includes any pharmaceutical services given on prescription by a person authorised by law to make those prescriptions and “medical services” has a corresponding meaning;

“messenger of the court” means a messenger of the magistrate’s court;

“Minister” means the Minister responsible for Justice;

“prescribed” means prescribed by regulation made under this Act;

“primary caretaker” means -

(a) a person, other than a parent or other custodian of a child, whether or not related to the child, who; or

(b) any institution which;

takes primary responsibility for the daily care of a child with or without the express or implied permission of the child's parent or other custodian;
“register” and its derivatives, means register in the prescribed register as contemplated in section 27;

“this Act” includes the regulations.

“witness” for the purposes of this Act means any person summoned or requested to give evidence at a maintenance enquiry and includes the complainant and defendant.

PART II
DUTY TO MAINTAIN

Legal duty to maintain

2. This Act -

(a) applies where a person has a legal duty to maintain another person, regardless of the nature of the relationship which creates the duty to maintain; and

(b) must not be interpreted so as to derogate from the law relating to the duty of persons to maintain other persons.

Parental duty to maintain children

3. (1) Subject to section 26 and to the law relating to the duty of a parent to maintain a child who is unable to support himself or herself, both parents of a child are liable to maintain that child regardless of whether the -

(a) child in question is born inside or outside the marriage of the parents;

(b) child is born of a first, current or subsequent marriage; and

(c) parents are subject to any system of customary law which does not recognise both parents’ liability to maintain a child.

(2) For the purpose of determining whether or not a person who is subject to customary law is legally liable to maintain another person, a maintenance court must, notwithstanding anything to the contrary at customary law, have regard to the following principles -

(a) husbands and wives are primarily responsible for each other's maintenance;

(b) subject to subsection (1), the parents of a child are primarily and jointly responsible for the maintenance of that child;

(c) subject to section 4(2), the legal principle, which imposes a legal duty on children to maintain their parents must be applied to children and parents who are subject to customary law.

(3) The parental duty to maintain a child includes the rendering of support which the child reasonably requires for his or her proper living and upbringing and this includes provision of food, accommodation, clothing, medical care and education.

(4) From the date of coming into operation of this Act, any law which requires a parent to give priority to the maintenance of children of a first marriage becomes invalid.
Principles to be applied in respect of maintenance

4. (1) Where a beneficiary is a child, the maintenance court must, in determining the nature or amount of maintenance payable to that beneficiary, have regard to the following principles -

(a) both parents of the child are primarily responsible for the maintenance of that child;

(b) the parents must, in accordance with their respective means, fairly share the duty to maintain their child or children;

(c) the parental duty to maintain one particular child does not rank any higher than the duty to maintain any other child of that parent or any other person;

(d) where a parent has more than one child, all the children are entitled to a fair share of that parent's resources; and

(e) the duty of a parent to maintain a child has priority over all other commitments of the parent except those commitments which are necessary to enable the parent to support himself or herself or any other person in respect of whom the parent has a legal duty to maintain.

(2) Where a beneficiary is a parent, the maintenance court must, in determining the liability of a child to maintain a parent or the nature or amount of maintenance payable to the beneficiary, have regard to the following principles -

(a) the liability of the child arises where the parent is unable to maintain himself or herself due to circumstances beyond that parent's control;

(b) the child must, having regard to his or her own needs, be able to support the parent; and

(c) the right of a parent to be maintained arises only where that parent's spouse or other person who is legally liable to maintain that parent is unable to do so.

Conditions precedent to granting of maintenance order

5. A maintenance court must not make a maintenance order unless it is satisfied that the person against whom the order is sought -

(a) is legally liable to maintain the beneficiary;

(b) is able to contribute to the maintenance of the beneficiary; and

(c) fails or neglects to provide reasonable maintenance for the beneficiary.

PART III
ADMINISTRATION OF ACT

Maintenance courts

6. For the purposes of this Act every magistrate's court, other than a regional magistrates’ court, is, within its area of jurisdiction, a maintenance court.
7. (1) Subject to the Public Service Act, 1995, the Minister, or any staff member delegated in writing by the Minister, may, for every maintenance court, appoint a maintenance officer who must perform the functions and duties assigned to or exercise the powers conferred on maintenance officers by this Act.

(2) The Prosecutor-General may, under section 4 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), appoint a maintenance officer appointed under subsection (1), to conduct, on behalf of the State, any prosecution in criminal proceedings under or arising from this Act.

(3) Any person on whom the Prosecutor-General has delegated authority to conduct criminal proceedings in any magistrate’s court is deemed to have been appointed a maintenance officer for the relevant maintenance court.

8. (1) The Minister, or any staff member delegated by the Minister, may, for a maintenance court or maintenance courts, appoint a maintenance investigator who must, subject to subsection (2), perform the functions and duties assigned to or exercise the powers conferred on maintenance investigators by this Act.

(2) Without derogating from the generality of subsection (1), the functions and duties of a maintenance investigator include -

(a) locating the whereabouts of a person required to attend a maintenance enquiry under section 13 or of a person required to attend at a maintenance prosecution under this Act;

(b) serving of court process on the persons referred to in paragraph (a);

(c) tracing and evaluating of assets of responsible persons; and

(d) performance of other functions and duties which may be specified in his or her appointment.

(3) Where a maintenance investigator serves any court process which has been issued in connection with a maintenance enquiry or a maintenance prosecution under this Act, that service is as good service as service effected by a messenger of the court.

(4) The Minister must take all reasonable steps within the available resources of the Ministry of Justice to achieve the progressive realisation of the appointment of at least one maintenance investigator for each maintenance court.

(5) If a maintenance investigator has not been appointed for a maintenance court, the court may, where it considers it necessary having regard to the nature of the case and other surrounding circumstances, authorize that any maintenance court process be served by the messenger of that court.

PART IV
MAINTENANCE COMPLAINTS AND ENQUIRIES

9. (1) Subject to subsection (3), a person who wants to lodge a complaint under this Act must, in the prescribed form and manner, lodge the complaint with the maintenance officer of the maintenance court which has jurisdiction in the area where the complainant or beneficiary resides or, in the case where there is an existing maintenance order, with the maintenance officer of the maintenance court where the order is registered.
(2) The complaint referred to in subsection (1) must be made under oath or affirmation and must state that -

(a) the person against whom the complaint is made is legally liable to maintain the beneficiary of the claim but that he or she fails to maintain that other person; or

(b) sufficient cause exists for the suspension, substitution or discharge of an existing maintenance order,

(3) A complaint made under subsection (1) may be made by a complainant, beneficiary, defendant or any person who is affected by a maintenance order or any other order, directive or notice issued under this Act.

(4) On receipt of a complaint made under subsection (1), the maintenance officer must -

(a) where there is no existing maintenance order, investigate the complaint and institute a maintenance enquiry in the relevant maintenance court; or

(b) where there is an existing maintenance order, investigate the complaint for evidence of -

(i) the existence of new circumstances which developed since the date of the order; or

(ii) misuse, by any person, of any payment made in terms of a maintenance order;

and if evidence to prove those new circumstances or the misuse is found, institute an enquiry in the relevant maintenance court.

(5) For the purposes of this section "misuse" means failure, without a reasonable or lawful excuse, to use any maintenance payment for the benefit of a beneficiary.

Powers of officers when investigating maintenance matters

10. (1) When investigating any complaint relating to maintenance, a maintenance officer may -

(a) cause any person, including the defendant or complainant, to be directed to appear before that maintenance officer and to give information or produce any book, document, statement or other relevant information;

(b) obtain statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of that complaint;

(c) gather information concerning -

(i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;

(ii) the financial position of any person referred to in subparagraph (i); or

(iii) any other matter which may be relevant concerning the subject of that complaint;
(d) request a maintenance officer of any other maintenance court to obtain, within the area of jurisdiction of that maintenance officer, information which is relevant to the complaint; or

(e) require a maintenance investigator of the maintenance court concerned to perform functions which are necessary or expedient to achieve the objects of this Act.

(2) A maintenance investigator must, subject to the directions and control of a maintenance officer -

(a) locate the whereabouts of persons who are -
   (i) required to appear before a maintenance court;
   (ii) to be summoned or who have been summoned to appear at a maintenance enquiry;
   (iii) to be summoned or who have been summoned to appear in a criminal trial for contravening this Act; or
   (iv) accused of the failure to comply with this Act,

(b) serve or execute the process of any maintenance court;

(c) serve summons in respect of criminal proceedings instituted for the failure to comply with a maintenance order as if the maintenance investigator has been appointed as a person who is authorised to serve summons in criminal proceedings;

(d) take statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of any complaint relating to maintenance;

(e) gather information concerning -
   (i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;
   (ii) the financial position of any person referred to in subparagraph (i); or
   (iii) any other matter which may be relevant concerning the subject of that a complaint; or

(f) gather relevant information concerning a request referred to in subsection (1)(d).

Examination of persons by maintenance officer

11. (1) A magistrate may, before or during a maintenance enquiry and at the request of a maintenance officer, require the summoning and appearance before him or her or before another magistrate, for examination by the maintenance officer, of any person who is likely to give relevant information concerning -

(a) the identification or the place of residence or employment of any person who is legally liable to maintain any other person or who is allegedly so liable; or
(b) the financial position of the person referred to in paragraph (a).

(2) Sections 162, 163, 164(1), 165, 179 to 181, 187, 191 and 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), do, with the necessary changes, apply in respect of the examination of any person under this section.

(3) If the person who is required to appear before a magistrate furnishes the information in question to the satisfaction of the maintenance officer concerned before the day on which he or she is required so to appear, the maintenance officer may discharge him or her from the obligation so to appear.

(4) The examination of any person under this section may be conducted in private at a place designated by the magistrate.

Attendance of witnesses at maintenance enquiries

12. (1) A maintenance officer who has instituted a maintenance enquiry in a maintenance court must cause any person, including the complainant and defendant, to be summoned to appear before the maintenance court and give evidence or to produce any book, document or statement in his or her possession or under his or her control.

(a) any book, document or statement relating to the financial position of the defendant; and

(b) in the case where the person referred to in paragraph (a) is in the service of an employer, a statement which gives full particulars of that person’s earnings and which is signed by the employer.

(3) The summoning of any person to attend at a maintenance enquiry must be done, subject to paragraph (4), in the same manner that witnesses are summoned to appear before a magistrate’s court in a criminal trial.

(4) The Minister may prescribe the manner in which process of the maintenance court is to be prepared and served and the form of the summons to be used under this Act.

(5) Section 181 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not, subject to subsection (7), apply to a person against whom a maintenance order may be made under this Act.

(6) The clerk of the maintenance court must, in the prescribed manner and subject to subsection (7), pay the prescribed allowances to a person who attends a maintenance enquiry as a witness.

(7) The allowances payable under subsection (5) or (6) must not be paid to the defendant in the maintenance case unless the maintenance court has directed that the allowances be paid to the defendant.

Maintenance enquiry

13. (1) On the date specified in the summons issued under section 12 the maintenance court must enquire into the matter of the complaint.

(2) The enquiry referred to in subsection (1) must be held in the presence of the defendant, or if he or she is absent, on production of proof that the defendant was served with the summons referred to in section 12.
(3) The person presiding at the maintenance court must conduct the maintenance enquiry in a manner that is aimed at ensuring that substantial justice is achieved between the parties as well as the beneficiary of the maintenance claim.

(4) Subject to subsection (5), the Civil Proceedings Evidence Act, 1965 (Act No. 25 of 1965) in so far as it relates to the admissibility and sufficiency of evidence, the competency, compellability and privileges of witnesses, subject to necessary changes, applies to an enquiry conducted under this Act and any matter relating to the conduct of proceedings at an enquiry which is not provided for in that Act or this Act must be dealt with in accordance with the practice and procedure followed in civil proceedings in a magistrates court.

(5) Section 236 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) does, with necessary changes, apply to accounting records and documents of banks produced or to be produced under this Act.

(6) The maintenance court holding an enquiry may at any time during the enquiry cause any person to be summoned as a witness or examine any person who is present at the enquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined.

(7) Subject to subsection (4), the maintenance court must administer an oath to, or accept an affirmation from, any witness appearing before the maintenance court and must record the evidence of that witness.

(8) Any party to proceedings under this Act has the right to be represented by a legal practitioner.

(9) A person whose presence is not necessary must not be present at a maintenance enquiry, except where that person has been given permission to be present by the maintenance court.

(10) Where a maintenance court considers that it would be in the interests of justice or the interests of any persons who have an interest in the enquiry, it may direct that a maintenance enquiry be held in private at the maintenance court or at a place designated by the maintenance court.

Production of written statements as evidence

14. (1) Notwithstanding anything to the contrary in this Act or in any law, at a maintenance enquiry, a written statement made in the prescribed manner by any person, other than the defendant or complainant is, subject to subsection (2), admissible as evidence to the same extent as oral evidence by that person is admissible in a court.

(2) A party to a maintenance case who wants to produce the statement referred in subsection (1) as evidence must, in the prescribed manner and at least 14 days before the date on which the statement is to be produced, serve, on the other party, a copy of the statement, together with a copy of every document referred to in the statement.

(3) The statement referred to in subsection (2) must be accompanied by a prescribed notice which requests the other party to, if he or she so wishes, at least seven days before the commencement of the enquiry, object to the statement being produced as evidence at the enquiry.

(4) If a party to a maintenance case -

(a) objects to the production of a statement as contemplated in subsection (3) that statement must not be produced as evidence at the enquiry but that party may still call the person who made that statement to give oral evidence; or
(b) does not object to the production of the statement referred to in subsection (1) or has entered into an agreement contemplated in subsection (5), that statement may be produced and admitted as evidence at the enquiry.

(5) A party against whom a statement referred to in subsection (1) is to be produced may, before or during the enquiry, come to an agreement with the maintenance officer or the defendant that any statement referred to in subsection (1), even if the statement was not served as contemplated in subsection (2), be produced and admitted as evidence at an enquiry.

(4) Any document referred to or identified as an exhibit in the statement produced and admitted as evidence under this section must be regarded as an exhibit produced and identified by the person who made the statement.

Evidence from previous maintenance proceedings

15. (1) Subject to subsection (2), the maintenance court holding a maintenance enquiry may take into consideration evidence produced in any proceedings in respect of an existing maintenance order or, in the absence of evidence to the contrary, accept any finding of fact made in those proceedings as proof of any of those facts.

(2) For the purposes of subsection (1) -

(a) the record of any evidence or finding of fact in any proceedings in respect of the existing maintenance order; or

(b) any copy, transcription or extract certified as a true copy of the original by the registrar or clerk of the court or other officer having the custody of the records of the court where the order in question was issued,

is, on its production at the maintenance enquiry, admissible as evidence.

PART V
MAINTENANCE AND ANCILLARY ORDERS

Factors to be considered when making maintenance orders

16. (1) In this section a “relevant person” means -

(a) the defendant;

(b) the beneficiary; and

(c) any person, other than the defendant, who is liable to maintain the beneficiary.

(2) When making a maintenance order under this Act or exercising any of the powers conferred on it by this Act, a maintenance court must have regard to the evidence adduced at the maintenance enquiry, all the circumstances of the case, and in particular to -

(a) the lifestyle, income and earning capacity which each of the relevant persons has and is likely to have in the foreseeable future, including any increase in earning capacity, which the court considers a relevant person should reasonably take steps to acquire;

(b) the property and resources which each of the relevant persons has and is likely to have in the foreseeable future;
(c) the responsibilities and financial needs which each of the relevant persons has and is likely to have in the foreseeable future; and

(d) the fact that the defendant delayed the process since filing of the complaint or that he or she contributed partially to the delay.

(3) Where the beneficiary is a child, the court must also have particular regard to -

(a) the financial, educational and developmental needs of the beneficiary, including but not limited to housing, water, electricity, food, clothing, transport, toiletries, child care services, education (including pre-school education) and medical services;

(b) the age of the beneficiary;

(c) the manner in which the beneficiary is being, and in which his or her parents reasonably expect him or her to be, educated or trained;

(d) any special needs of the beneficiary, including but not limited to needs arising from a disability or other special condition;

(e) the direct and indirect costs incurred by the complainant in providing care for the beneficiary, including the income and earning capacity forgone by the complainant in providing that care; and

(f) the value of the labour expended by the complainant in the daily care of the child.

(4) Where the beneficiary has disabilities, the court must have particular regard to -

(a) the extent of the disability;

(b) the life expectancy of the beneficiary;

(c) the period that the beneficiary would in all likelihood require maintenance; and

(d) the costs of medical and other care incurred by the beneficiary as a result of the disability.

(5) When considering a complaint relating to the substitution or discharge of an existing maintenance order, the maintenance court must have regard to the evidence adduced at the enquiry, and all the circumstances of the case, and in particular to -

(a) whether there has been any change in the circumstances of the case since the date on which the existing maintenance order was made, including any change in the matters set out in subsections (2) and (3); and

(b) whether sufficient cause exists for the suspension, substitution or discharge of the existing maintenance order.

**Maintenance orders**

17. (1) At the conclusion of a maintenance enquiry and after consideration of the matters referred to in section 16, the maintenance court may, subject to Part II -
(a) in the case where no maintenance order is in force, make a maintenance order against the person who has been proved to be legally liable to maintain a beneficiary;

(b) in the case where a maintenance order is in force -
   (i) substitute that maintenance order by another maintenance order; or
   (ii) discharge such maintenance order; or
   (iii) suspend such maintenance order on such conditions which the maintenance court determines;

(c) make no maintenance order.

(2) An order made under subsection (1) -
   (a) must direct the defendant to contribute to the maintenance of the beneficiary from the date specified in the order;
   (b) must specify the period or periods and the time or times within which contributions must be made;
   (c) must specify the person to whom or organisation, financial institution or other institution to which the contributions may be made; and
   (d) must, subject to rules or regulations made under this Act, specify the manner in which the contributions may be made to the person or institution referred to in paragraph (c); or
   (e) may specify that all or part of contributions made under the order be made to a specific person or institution for a purpose specified in the order.

(3) If the beneficiary of a maintenance order is a child, the maintenance court may order that maintenance contributions be made to the mother of the child for expenses incurred by the mother in connection with the pregnancy and birth of the child, including but not limited to medical and hospital expenses, but a claim under this subsection must be made within 12 months from the date of birth of the child or within such other reasonable period as the court may allow on sufficient grounds shown by the mother.

(4) A maintenance order may direct that payment be made in kind by specified goods or livestock, for all or some portion of the settlement of amounts already owing or the future payment of instalments.

(5) If a defendant changes his or her place of residence or employment during the existence of the maintenance order, he or she must, within seven days after the day of such change and in the prescribed manner, give written notice to the maintenance officer of the court where the maintenance order is registered, and, if payment in terms of that order is to be made to any person, organisation or institution, then also to the person, organisation or institution to whom payment is to be made, and must state fully and clearly where his or her new place of residence or employment is situated.

Consent maintenance orders

18. (1) A defendant on whom a directive issued under section 10 or a summons issued under section 12 has been served may, on or before the date of the maintenance enquiry and in writing, consent to the granting of the maintenance order applied for and submit the written consent to the maintenance officer.
(2) On the date of the hearing the maintenance court may, without hearing or taking any evidence, make a maintenance order in accordance with the written consent referred to in subsection (1).

(3) A copy of the maintenance order referred to in subsection (2) must, in the prescribed manner, be served on the defendant by any maintenance officer, messenger of the court or maintenance investigator, and proof of service by that officer, messenger or investigator is sufficient evidence that the defendant was aware of the terms of the order in question.

**Default maintenance orders**

19. (1) If a defendant who, under section 12, has been properly summoned to appear at a maintenance enquiry fails so appear at the place and on the date specified in the summons, the maintenance court must, at the request of a maintenance officer for a default maintenance order, call on the complainant or any other person whose evidence might be relevant to, either in writing or orally, adduce evidence which would assist the court in making an order.

(2) At the conclusion of the enquiry contemplated in subsection (1) the maintenance court must consider the evidence adduced at that enquiry after which the maintenance court may, in default, make any of the orders contemplated in sections 17 and 20 or any other order which the court considers appropriate in the circumstances of the case.

(3) A copy of the default maintenance order referred to in subsection (2) must, in the prescribed manner, be served on the defendant by any maintenance officer, messenger of the court or maintenance investigator, and proof of service by that officer, messenger or investigator is sufficient evidence that the defendant was aware of the terms of the order in question.

(4) A person against whom a default maintenance order as contemplated in this section has been made may, in the prescribed form and manner and within 10 days of his or her becoming aware of the order, apply to the maintenance court for the substitution or setting aside of the default maintenance order.

(5) If, after an application has been made to it, a court is satisfied that a person against whom a default maintenance order was made had reasonable grounds for failing to make an application for substitution or setting aside of the default maintenance order within the period contemplated in subsection (4), the court may extend that period for such a longer period which the court determines.

(6) The application referred to in subsection (4) must specify the date on which the application is to be heard and determined.

(7) After making an application under subsection (4) the defendant must, in the prescribed form and manner, give to the complainant notice of the application and that notice must be served on the complainant at least 14 days before the day on which the application is to be heard.

(8) On the date set for the hearing of the application, the maintenance court may call on -

(a) the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or

(b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.
(9) At the conclusion of the hearing contemplated in subsection (8), the maintenance court must consider the evidence adduced, after which the maintenance court may -

(a) make an order confirming the default maintenance order referred to in subsection (2); or

(b) vary the order referred to in subsection (2), if it appears to the court that good cause exists for the variation; or

(c) set aside the order referred to in subsection (2), if it appears to the court that good cause exists for the setting aside, and convert the proceedings into a maintenance enquiry.

(10) A complainant who has been served with the application referred to in subsection (4), may, before or at the hearing of the application, consent in writing to the variation or setting aside of the order and that consent must be submitted to the maintenance officer of the relevant maintenance court before or at the hearing of the application.

Orders as to costs

20. (1) The maintenance court holding a maintenance enquiry may, having regard to the conduct of the persons involved in the enquiry so far as it may be relevant, make such order as the court may consider just relating to the costs of the service of process and wasted costs due to a party’s failure without good cause to attend an enquiry.

(2) In making the order contemplated in subsection (1), the court must have regard to the conduct and means of the person against whom the order for costs is to be made.

(3) An order for payment of costs made under this section has the same effect as a civil judgment and it may be enforced by any of the methods specified in Part VII.

Orders for scientific tests

21. (1) If a maintenance officer reasonably believes that -

(a) the paternity of any child is in dispute;

(b) the mother of that child as well as the person who is alleged to be the father are prepared to submit themselves as well as that child to the taking of blood or tissue samples in order to carry out scientific tests regarding the paternity of that child; and

(c) the mother or the alleged father or both the mother and the alleged father are unable to pay the costs involved in the carrying out of the scientific tests,

the maintenance officer may at any time during a maintenance enquiry, but before the maintenance court makes any order, request the court to hold an enquiry referred to in subsection (2).

(2) On receipt of a request made under subsection (1), the maintenance court may enquire into the -

(a) means of the mother as well as that of the alleged father; and

(b) other circumstances which the maintenance court reasonably believes should be taken into consideration.
(3) At the conclusion of the enquiry referred to in subsection (2), the maintenance court may -

(a) make a provisional order that both the mother and alleged father or that either of them pay or pays part or all of the costs to be incurred in the scientific tests;

(b) make a provisional order directing the State to pay the whole or any part of the costs of the scientific tests; or

(c) make no order.

(4) When the maintenance court subsequently makes any maintenance order, it may -

(a) make an order confirming the provisional order referred to in subsection (3)(a) or (b); or

(b) set aside any provisional order or substitute therefore any order which the court considers just relating to the payment of the costs incurred in the carrying out of the scientific tests in question.

PART VI
FURTHER PROVISIONS RELATING TO MAINTENANCE ORDERS

Variation or setting aside of certain orders

22. A maintenance court that has made an order under section 17(1)(a) or (b) may, at the request of the maintenance officer -

(a) vary such order by designating as the person, officer, organisation, institution or account to whom, to which or into which payment is to be made, any other person, officer, organisation, institution or account at a financial institution or by determining any other manner in which payment is to be made; or

(b) if the maintenance court has made an order referred to in section 17(4), set aside that order,

and the maintenance officer must, in the prescribed manner, inform the defendant, the complainant or the person on whom a notice referred to in section 31(1) has been served of the variation or setting aside of the order in question.

Effect of substitution or discharge of maintenance orders

23. If a maintenance court has, under this Act or under any other law, suspended varied, rescinded, substituted or discharged a maintenance order or direction -

(a) the original maintenance order becomes ineffective; and

(b) the maintenance officer must give notice of the decision to the clerk of the court where the maintenance order is registered and that clerk of the court must accordingly amend the relevant register in the prescribed manner.

Transfer of maintenance orders

24. (1) Where a complainant in whose favour a maintenance order or any other order under this Act was made or given changes his or her place of residence he or she must, within the prescribed period and in the prescribed manner, notify the
maintenance officer of the maintenance court which has jurisdiction in the area where
the complainant now resides.

(2) On receipt of a notice made under subsection (1) the relevant maintenance
officer must request the clerk of the court of the maintenance court where the maintenance
order or other order is registered to forward the order to the clerk of the court of the
maintenance court which has jurisdiction in the area where the complainant now resides.

(3) On receipt of the order requested for under subsection (2), the clerk of the
court of the maintenance court where the complainant resides must register that order in
the prescribed manner after which he or she must, in the prescribed manner, notify the
defendant and any person who, in terms of a maintenance order or direction or a writ of
the court, is required to pay or deliver any money or other property to the complainant.

(4) Any maintenance order registered in terms of subsection (3) must for the
purposes of this Act be deemed to be a maintenance order made by the maintenance
court where the order has been so registered.

Effect of maintenance order

25. (1) Save as otherwise provided in this Act, any order or direction made
by a maintenance court under this Act has the effect of an order or direction of the said
court made in a civil action.

(2) An order made under section 17(3), 20 or 21(4) is independent of and may
be enforced separately from any other order made under this Act.

Termination of maintenance order

26. (1) A maintenance order made in favour of a child must, unless the order
otherwise provides, with respect to that child, cease if and when -

(a) the child dies or is adopted by another person;

(b) in respect of the marriage between the child’s parents, an order of divorce
or a decree of nullity, which includes an order for the maintenance of the
child is made;

(c) the child marries; or

(d) subject to subsection (2), the child attains the age of 18 years, but if the
child is attending an educational institution for the purpose of acquiring a
course which would enable him or her to maintain himself or herself, the
maintenance order does not terminate until the child attains the age of 21
years.

(2) Where a child in whose favour a maintenance order was made attains the
age of 18 years, the child or any person acting on the child’s behalf, may, in the prescribed
manner, apply to the maintenance court for an extension of the maintenance order beyond
the age of 18 years.

(3) On receipt of an application made under subsection (2), the maintenance
court must -

(a) in the prescribed manner, notify the person who is liable to maintain the
child to appear before the maintenance court on a date specified in the notice
and to show cause why the maintenance order should not be extended; and
Appendix E: Maintenance Act 9 of 2003 (Government Gazette No. 3043)

(b) on the date referred to in paragraph (a), inquire into the matter and -

(i) grant the application conditionally or unconditionally; or

(ii) refuse the application.

(4) A maintenance order made in favour of a spouse must, with respect to that spouse, cease if and when -

(a) that spouse dies or remarries; or

(b) subject to the law relating to divorce, an order of divorce or a decree of nullity is made in respect of the marriage.

(5) A maintenance order made in respect of a parent remains in force for as long as -

(a) the parent is unable to maintain himself or herself;

(b) no other person has become liable to maintain the parent; and

(c) the child is able to support the parent.

PART VII
ENFORCEMENT OF MAINTENANCE ORDERS

Registration of maintenance orders

27. (1) The clerk of the maintenance court must, in the prescribed manner, register all maintenance orders -

(a) made under this Act or made by any other maintenance court;

(b) transferred to the maintenance court under section 24; and

(c) emanating from foreign courts and which, in terms of any law, are required to be enforced in Namibia.

(2) An order registered under subsection (1) may, subject to anything to the contrary in that order, be dealt with or enforced as if it were an order made by the maintenance court where it is registered.

(3) An order registered under subsection (1)(b) or (c) may, subject to anything to the contrary in that order, be dealt with or enforced as if it were an order made by the maintenance court where it is registered.

Maintenance order enforceable by civil action

28. (1) Where a defendant against whom a maintenance order or an order under section 17(3), 20 or 21(4) has been made fails, within 10 days from the date on which payment becomes due, to comply with the order, the complainant may apply to the maintenance court where the order is registered for enforcement of the order.

(2) An application made under subsection (1) must be in the prescribed manner and must be accompanied by -

(a) a copy of the maintenance order in question; and
(b) a statement under oath or affirmation setting forth the amount which the defendant has failed to pay; and

(c) a statement indicating the manner in which the order is sought to be enforced; and

(d) any other information or document which may be prescribed.

(3) On receipt of an application made under subsection (1), the maintenance court may authorise enforcement of the order in order to recover the amount due together with any prescribed interest which has accrued on the amount and the only means by which the order may be enforced are -

(a) by execution against property as contemplated in section 29;

(b) by the attachment of emoluments as contemplated in section 30; or

(c) by attachment of any debt as contemplated in section 32.

(4) A maintenance court must not, in the circumstances contemplated in section 47(5), authorize the issue of a warrant of execution or make any order for the attachment of emoluments or any debt in order to satisfy a maintenance order until the appeal has been finalised.

(5) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit is liable to be attached or subjected to execution under a warrant of execution or an order issued or made under this Part in order to satisfy a maintenance order.

Warrants of execution

29. (1) On receipt of an application made under section 28 the maintenance court may authorise the issue of a warrant of execution against the movable property of the defendant and, if the movable property is insufficient to satisfy the amount outstanding, then, subject to subsection (2), against the immovable property of the defendant to the amount necessary to cover the amount outstanding, together with any interest thereon and the costs of execution.

(2) Where the warrant of execution contemplated in subsection (1) is issued against the immovable property of a defendant who is married in community of property to another person, that warrant of execution is valid and may be executed only in respect of the share of the property which the defendant is entitled to in terms of the marriage in community of property.

(3) The -

(a) complainant must prepare;

(b) clerk of the maintenance court must issue; and

(c) the messenger of the court must execute,

the warrant of execution authorised under this section in the prescribed manner.

(4) The maintenance investigator, or in his or her absence, the maintenance officer of the maintenance court where a maintenance order is to be enforced must assist the complainant in preparing the warrant of execution and in taking the prescribed steps to facilitate the execution of the warrant.
(5) A defendant against whom a warrant of execution has been issued may, within 10 days of becoming aware of the existence of the warrant of execution and in the prescribed manner, apply to the maintenance court where the warrant was issued to set aside the warrant of execution.

(6) An application made under subsection (5) must -

(a) state the grounds on which the warrant of execution should be set aside; and

(b) be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard.

(7) On the date set for the hearing of an application made under subsection (5) the court, must, subject to subsection (12), consider the matter and, if it is satisfied that the defendant has complied with the maintenance order, it may set aside the warrant of execution in question.

(8) A defendant against whom a warrant of execution was issued under this section may at any time, in the prescribed manner, apply to the maintenance court for substitution or suspension of the warrant of execution.

(9) An application made under subsection (8) must -

(a) state the grounds on which the warrant is sought to be substituted or suspended; and

(b) be served by the defendant on the complainant at least 14 days before the date on which the application is to be heard.

(10) On the date set for the hearing of an application made under subsection (8) the court may, subject to subsection (11) and (12), in a summary manner enquire into the matter, suspend the warrant of execution and substitute the warrant with an order -

(a) for the attachment of emoluments referred to in section 30(1); or

(b) for the attachment of any debt referred to in section 32(1).

(11) In making an enquiry under subsection (10) the maintenance court must take into consideration -

(a) the existing and prospective means of the defendant;

(b) the financial needs and obligations of, or in respect of other persons maintained by the defendant;

(c) the conduct of the defendant in so far as it may be relevant concerning his or her failure to satisfy the maintenance or other order in question; and

(d) any other circumstances which should, in the opinion of the court, be taken into consideration.

(12) Before determining an application made under subsection (5) or (8), the maintenance court may call on -

(a) the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or

(b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.
Attachment of emoluments

30. (1) A maintenance court may -

(a) on receipt of an application made under section 28; or

(b) when the court suspends the warrant of execution under section 29(10),

make an order for the attachment of any emoluments at present or in future owing or accruing to the defendant to the amount needed to cover the amount which the defendant has failed to pay, together with any interest thereon, as well as the prescribed costs of the attachment or execution, which order authorises any employer of the defendant or any person who, in terms of a contract is obliged to make periodical payments to the defendant, notwithstanding section 37(g)(i) of the Labour Act, 1992 (Act No. 6 of 1992), to deduct from the defendant’s emoluments and to make on his or her behalf such payments as specified in the order until such amount, interest and costs have been paid in full.

(2) The maintenance court may, on application by the defendant or his or her employer or the person who is obliged to make periodical payments to the defendant and on good cause shown, suspend, amend or rescind an order made under this section.

(3) A person who wishes to make an application for the suspension, amendment or rescission of an order as contemplated in subsection (2) must submit the application to the clerk of the maintenance court and that person must, in the prescribed manner, give notice of his or her intention to make the application to the complainant, which notice must be served at least 14 days before the day on which the application is to be heard.

(4) On the date set for the hearing of the matter the maintenance court may, before suspending, amending or rescinding an order as contemplated in subsection (2), call on -

(a) the defendant or the defendant’s employer or the person who is obliged to make periodical payments to the defendant to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or

(b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

Notice of attachment of emoluments

31. (1) After an order for the attachment of emoluments has been made under section 30(1), the maintenance officer must, within seven days after the date on which the order was made, in the prescribed manner cause a notice, together with a copy of such order, to be served on the employer concerned or the person who is obliged to make periodical payments to the defendant directing that employer or person to make the payments specified in the notice at the times and in the manner so specified.

(2) If -

(a) the defendant leaves the service of the employer on whom a notice has been served under subsection (1); or

(b) the person against whom a notice has been served under subsection (1) is discharged from the liability to make periodical payments to the defendant,

that employer or person must, within seven days after the day on which the defendant leaves the service or that person is discharged from the obligation, give notice thereof in the prescribed manner to the maintenance officer of the court where the order is registered.
(3) A person on whom a notice has been served under subsection (1), must give priority to the payments specified in that notice over any order of court requiring payments to be made from the emoluments due to the defendant.

(4) The defendant's employer, or the person who, under this section, is required to make periodic payments on behalf of the defendant, may for each payment that is made on behalf of the defendant, deduct such amount which the court has, under section 30(1) determined to the prescribed costs of attachment.

Attachment of debts

32. (1) A maintenance court may -

(a) on receipt of an application made under section 28; or

(b) when the court suspends the warrant of execution under section 29(10),

make an order for the attachment of any debt at present or in future owing or accruing to the defendant to the amount needed to cover the amount which the defendant has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order directs the person who has incurred the obligation to pay the debt to make such payment as may be specified in that order within the time and in the manner so specified.

(2) The maintenance court may, on application by the defendant or the person against whom a debt attachment order has been made under this section and on good cause shown, suspend, amend or rescind an order made under this section.

(3) A person who wishes to make an application for the suspension, amendment or rescission of an order as contemplated in subsection (2) must submit the application to the clerk of the maintenance court and that person must, in the prescribed manner, give notice of his or her intention to make the application to the complainant, which notice must be served at least 14 days before the day on which the application is to be heard.

(8) On the date set for the hearing of the matter, the maintenance court may, before suspending, amending or rescinding an order as contemplated in subsection (2), call on -

(a) the defendant or the person against whom an order was made to adduce such evidence, either in writing or orally, in support of his or her application as the court may consider necessary; or

(b) the complainant to adduce such evidence, either in writing or orally, in rebuttal of the application as the court may consider necessary.

(9) An order made under subsection (1) may be enforced by the complainant in the same manner that a civil judgment of the magistrates’ court is enforced.

Recovery of arrear maintenance

33. (1) Where a magistrate’s court has convicted a defendant of an offence under section 39(1) the court may, on the application of the public prosecutor, in addition to the penalty which the court may impose in respect of that offence, grant an order for the recovery from the defendant of any amount he or she has failed to pay in accordance with the maintenance order, together with any interest thereon, and the order so granted has the effect of a civil judgment of that court and that order may, subject to subsection (2), be executed in the same way as a maintenance order made under this Act may be executed.
(2) In considering the granting of an order under subsection (1) the court may -

(a) in a summary manner enquire into the circumstances mentioned in subsection (3); and

(b) if the court so decides, authorise the issue of a warrant of execution against the movable or immovable property of the defendant in order to satisfy such order.

(3) In making an enquiry under subsection (2)(a) the court must take into consideration -

(a) the existing and prospective means of the defendant;

(b) the financial needs and obligations of, or in respect of, the beneficiary;

(c) the conduct of the defendant in so far as it may be relevant concerning his or her failure to pay in accordance with the maintenance order; and

(d) any other circumstance which should, in the opinion of the court, be taken into consideration.

(4) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit is liable to be attached or subjected to execution under an order granted under this section.

Conversion of criminal proceedings into maintenance enquiry

34. If during the course of criminal proceedings in a magistrate’s court in respect of -

(a) an offence referred to in section 39(1); or

(b) the enforcement of a sentence suspended on condition that the convicted defendant make periodical payments of sums of money towards the maintenance of the beneficiary,

it appears to the court that it is desirable that a maintenance enquiry be held, or when the public prosecutor so requests, the court must convert the proceedings into such enquiry.

PART VIII
OFFENCES AND PENALTIES

Offences relating to examinations by maintenance officer

35. At an examination conducted under section 11 any person who -

(a) after having been sworn or admonished to tell the truth by the magistrate or after having taken an affirmation, intentionally makes a false statement at the proceedings;

(b) is summoned to attend the examination but who, without reasonable excuse, fails to attend or to remain in attendance at the examination;

(c) is warned by the magistrate to remain in attendance at the examination but fails to remain in attendance;
Act No. 9, 2003  MAINTENANCE ACT, 2003

(d) is summoned or warned to appear but who, without reasonable excuse, fails to appear at a place and on a date and time to which the examination was postponed to or fails to remain in attendance at the postponed examination;

(e) is required to give evidence at the examination but refuses to be sworn or to take affirmation as a witness, or after having been sworn or having taken affirmation, refuses or fails, without lawful excuse, to answer any question put to him or her or to produce any evidence to be produced by him or her;

commits an offence, and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed 12 months.

Offences relating to witnesses

36. (1) Subject to subsection (2), any person who -

(a) after having been sworn or admonished to tell the truth by the presiding officer or after having taken an affirmation, at a maintenance enquiry held under section 13, intentionally makes a false statement at the proceedings;

(b) is, under section 12, summoned to attend at a maintenance enquiry but who, without reasonable excuse, fails to attend or to remain in attendance at the enquiry;

(c) is warned by the court to remain in attendance at a maintenance enquiry held under section 13 but fails to remain in attendance;

(d) is summoned or warned to appear but who, without reasonable excuse, fails to appear at a place and on a date and time to which the maintenance enquiry was postponed to or fails to remain in attendance at the postponed enquiry; or

(e) is required to give evidence at the maintenance enquiry but refuses to be sworn or take affirmation, as a witness or after having been sworn, or having taken affirmation, refuses or fails, without lawful excuse, to answer any question put to him or her or to produce any evidence to be produced by him or her

commits an offence and is liable, to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed 12 months.

(2) Subsection (1)(b) does not apply to a complainant or defendant who has been summoned to attend a maintenance enquiry.

Offences relating to false information

37. (1) Any person who, in a statement which is admitted as evidence under section 14, intentionally makes a false statement commits an offence and liable to a fine which does not exceed N$4 000 or to a period of imprisonment which does not exceed 12 months.

(2) Any person who is requested by a maintenance investigator or a maintenance officer to furnish information in the performance of the maintenance investigator’s or maintenance officer’s functions under this Act, and who intentionally furnishes information which he or she knows to be false or does not know or believe to be true, commits an offence and is liable a fine which does not exceed N$4 000 or to a period of imprisonment which does not exceed 12 months.
Offences relating to maintenance enquiries

38. A person who intentionally -

(a) insults or obstructs the person presiding at a maintenance enquiry, the clerk of the maintenance court, a maintenance investigator or maintenance officer in the course of his or her duties during a maintenance enquiry;

(b) interrupts the proceedings at a maintenance enquiry or otherwise misbehaves himself or herself at the place where the maintenance enquiry is held;

commits an offence and is liable to a fine which does not exceed N$4 000 or to be imprisoned for a period which does not exceed 12 months.

Offences relating to maintenance orders

39. (1) Subject to subsection (2), any person who disobeys a court order by failing to make a particular payment in accordance with a maintenance order commits an offence and is liable to a fine which does not exceed N$4 000, to be imprisoned for a period which does not exceed 12 months or to periodical imprisonment in accordance with section 285 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was due to lack of means on the part of the person charged, he or she is not, merely on the grounds of such defence entitled to an acquittal if it is proved that the failure was due to his or her unwillingness to work or to his or her misconduct.

(3) If the name of a person stated in a maintenance order as the person against whom the maintenance order has been made corresponds substantially with the name of the particular person prosecuted for an offence under this section, any copy of the maintenance order certified as a true copy by a person who purports to be the registrar or clerk of the court or other officer having the custody of the records of the court where the maintenance order was made, is, on its production, evidence which in the absence of evidence to the contrary, will prove that the maintenance order was made against the person so prosecuted.

(4) If a person has been convicted of an offence under this section, the maintenance officer may, notwithstanding anything to the contrary contained in any law, furnish that person’s personal particulars to any business which has as its object the granting of credit or is involved in the credit rating of persons.

Offences relating to misuse of maintenance money

40. Any person who receives payment of money or payment in kind on behalf of a beneficiary in terms of a maintenance order and misuses the said payment by failing to use it for the benefit of the beneficiary, commits an offence and is liable to a fine which does not exceed N$4 000 or imprisonment for a period which does not exceed 12 months.

Offences relating to intimidation

41. Any person who with intent to compel or induce a complainant not to file a complaint at the maintenance court or not to lay a criminal charge against a defendant for his or her failure to support a specific person, in any manner threatens by whatever means, including the use of witchcraft, to kill, assault, injure the complainant or any other person or to cause damage to that complainant or any other person, or that complainant’s property or another person’s property, commits an offence and is liable to a fine which does not exceed N$20 000 or to imprisonment for a period which does not exceed five years.
Offences relating to publication of information in respect of children

42. (1) Save as otherwise provided for in subsection (3), a person must not publish in any manner whatsoever the name or address of any person under the age of 18 years who is or was involved in any proceedings at a maintenance enquiry or the name of that person’s school or any other information likely to reveal the identity of that person.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine which does not exceed N$8 000 or to imprisonment for a period which does not exceed two years.

(3) Notwithstanding subsection (1), if the magistrate presiding at the maintenance enquiry or the Minister reasonably believes that the publication of information in respect of a particular person under the age of 18 years would be just and in his or her interest, the magistrate or the Minister, as the case maybe, may in writing authorise the publication of information specified in the authorisation.

Offences relating to disclosure

43. (1) A person must not disclose to another person any information acquired by that person in the performance of that person’s functions under this Act, unless the disclosure is made for the purpose of performing functions under this Act or is authorised by a court of law or by any law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine which does not exceed N$4 000 or to imprisonment for a period which does not exceed 12 months.

Offences relating to notices

44. Any person who, without sufficient cause, refuses or fails to -

(a) make any payment in accordance with an order made under section 30(1) or 32(1); or

(b) give notice to a maintenance officer as required by section 31(2),

commits an offence and is liable to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months.

Offences relating to notice of change of address

45. Any person who refuses or fails to give notice of any change of his or her place of residence or employment as required by section 17(5) commits an offence and is liable to a fine not exceeding N$2 000 or to imprisonment for a period not exceeding six months.

PART IX
GENERAL AND SUPPLEMENTARY

Record of proceedings to be kept

46. (1) The presiding officer must keep a record of the proceedings at maintenance enquiries and those records must be accessible to people on conditions and payment of fees as prescribed.

(2) Any fees payable under this section must be prescribed by the Minister in consultation with the Minister responsible for Finance.
Appeals

47. (1) A person who is aggrieved by any order made by a maintenance court under this Act may, within the prescribed period and in the prescribed manner, appeal against that order to the High Court.

(2) If the aggrieved person is a child, or the custodian or primary caretaker of a child, and that aggrieved person so requests -

(a) the maintenance officer must prepare and submit the notice of appeal on behalf of the aggrieved person; and

(b) the Prosecutor-General, or a person designated by the Prosecutor-General, must, in the High Court, act on behalf of the aggrieved person.

(3) If an appeal is noted against a person who is a child, or the custodian or primary caretaker of a child, and if that person so requests, the Prosecutor-General, or a person designated by the Prosecutor-General, must, in the High Court, act on behalf of that person.

(4) In determining an appeal made under subsection (1), the High Court may, subject to section 19 of the High Court Act, 1977 (Act No. 16 of 1990), make any order which is appropriate in the matter.

(5) Notwithstanding anything to the contrary contained in any law, an appeal under this section does not suspend the payment of maintenance in accordance with the order in question, unless the appeal is noted against a finding that the appellant is legally liable to maintain the complainant.

(6) For the purposes of subsection (1) “order” -

(a) does not include a consent maintenance order referred to in section 18, a default maintenance order referred to in section 19(2) or a provisional order referred to in section 21(3);

(b) includes a discharge, confirmation, setting aside, substitution or variation of a maintenance order or of any of the orders referred to in paragraph (a); and

(c) includes any refusal to make a maintenance order as well as a refusal -

(i) to make a provisional order; or

(ii) to make a default maintenance order.

Photographs of persons

48. (1) After making a maintenance order under this Act, the maintenance court must, at the request of the maintenance officer, direct that photographs of the defendant be taken and handed to the maintenance officer, or that a certified copy of the defendant’s identity document be handed to the maintenance officer.

(2) The photographs referred to in subsection (1) must be taken in the prescribed manner and the maintenance officer must deal with them or the copy of the identity document in the prescribed manner.

Regulations

49. (1) The Minister may make regulations relating to -
(a) the powers, duties and functions of the maintenance officer, the maintenance investigator or the clerk of the maintenance court;

(b) the procedure to be followed at or in connection with a maintenance enquiry;

(c) the guidelines or the factors to be taken into account by a maintenance court when making a maintenance order;

(d) the enforcement of maintenance or other orders of a maintenance court;

(e) any matter required or permitted to be prescribed by regulation under this Act;

(f) any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N$4 000 or imprisonment for a period of 12 months.

(3) Any regulation made under this section which may result in financial expenditure for the State must be made in consultation with the Minister responsible for Finance.

Repeals, amendments and savings

50. (1) The following laws are repealed -

(a) the Support of Dependants (Natives) Proclamation, 1936 (Proclamation No. 9 of 1936);

(b) the Maintenance Act, 1963 (Act No. 23 of 1963),

(c) the Maintenance Amendment Act, 1967 (Act No. 19 of 1967); and

(d) the Maintenance Amendment Act, 1970 (Act No. 39 of 1970).

(2) The Pension Fund Act, 1956 (Act No. 24 of 1956) is amended in section 37A by the substitution in subsection (1) for the phrase “Maintenance Act, 1963 (Act No. 23 of 1963)” of the phrase “Maintenance Act, 2003 (Act No. 9 of 2003);

(3) The Reciprocal Enforcement of Maintenance Orders Act, 1995 (Act No. 3 of 1995) is amended -

(a) in section 1 -

(i) by the substitution for the definition of “Maintenance Act” of:

“Maintenance Act” means the Maintenance Act, 2003 (Act No. 9 of 2003)”;

(ii) by the substitution for the definition of “maintenance court” of:

“maintenance court” means a maintenance court referred to in section 6 of the Maintenance Act;”;

(b) in subsection (1) of section 5 by the substitution for the words “section 5 of the Maintenance Act” of the words “section 13 of the Maintenance Act”;

Appendix E: Maintenance Act 9 of 2003 (Government Gazette No. 3043) 379
Act No. 9, 2003

MAINTENANCE ACT, 2003

(c) in subsection (6) of section 6 by the substitution for the phrase “sections 8, 9 and 10” of the phrase “sections 12, 13, 14, 15, 36 and 38”;

(d) by the substitution for section 7 of the following section:

“7. Any maintenance order registered in terms of section 4 or confirmed under section 6 shall, for the purposes of sections [11, 12 and 14] 17(5), 28, 29, 30, 31, 32, 33, 39 and 45 of the Maintenance Act, be deemed to be a maintenance order made under section [5(4)] 17 of the said Act by the Maintenance court where such order has been so registered or confirmed, as the case may be: Provided that the provisions of section [13] 34 of the said Act shall not apply to any proceedings in respect of a contravention of [subsection (1) of the said section 11] section 39 of the said Act in so far as such proceedings relate to a maintenance order registered in terms of section 4 of this Act.”;

(e) in section 8 by the substitution for the phrase “section 12(1)” of the phrase “section 30”;

(f) in section 9 by the substitution for subsection (3) of the following subsection:

“(3) Any order registered in terms of subsection (1) and any notice served in terms of subsection (2) shall, for the purposes of [section 12(2) and (3)] sections 31(3) and 44 of the Maintenance Act, be deemed to be an order made or a notice served under [section 12(1)] section 30(1) or 31(1) of the said Act.”.

(3) The Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended in section 195 by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) any contravention of any provision of [section 11(1)] Part VIII of the Maintenance Act, [1963 (Act No. 23 of 1963)] 2003, or of such provision as applied by any other law;”.

(4) Notwithstanding the repeal of any law by subsection (1), anything done under any such law and which could be done under this Act, is deemed to have been done under this Act.

(5) Notwithstanding the repeal of the Maintenance Act, 1963 (Act No. 23 of 1963) by subsection (1) the rules which were made under that Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act, continue in force until repealed, withdrawn or amended by regulations made under section 49.

Transitional arrangements

51. Until such time as regulations relating to the enforcement of maintenance or other orders of maintenance courts made under section 49 come into operation, the -

(a) Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) in so far as it relates to the enforcement of any judgment or order of a magistrate’s court; or

(b) rules made under section 25 of the Magistrates’ Courts Act in respect thereof, must, in so far as it or they are not inconsistent with this Act or are not otherwise clearly inappropriate, apply in respect of the enforcement of maintenance or other orders of maintenance courts as if the Act or the rules were regulations made under section 49, and any enforcement of any maintenance or other order of a maintenance court commenced
under the Act or rules immediately before the coming into operation of regulations made under section 49 must continue and be disposed of under the Act or rules.

Short title and commencement

52. (1) This Act is called the Maintenance Act, 2003 and it will come into operation on a date fixed by the Minister by notice in the Gazette.

(2) For the purposes of subsection (1), different dates may be fixed for the coming into operation of different parts or sections of this Act.
GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

N$13.40
WINDHOEK - 17 November 2003
No. 3093

CONTENTS

GOVERNMENT NOTICES

No. 232 Commencement of the Maintenance Act, 2003 (Act No. 9 of 2003) ........................................... 1
No. 233 Maintenance Act, 2003: Regulations relating to Maintenance ......................................................... 1

Government Notices

MINISTRY OF JUSTICE

No. 232 2003


In terms of section 52 of the Maintenance Act, 2003 (Act No. 9 of 2003), I hereby determine that the said Act will come into operation on the 17th November 2003.

A. KAWANA
MINISTER OF JUSTICE
Windhoek, 7 November 2003

MINISTRY OF JUSTICE

No. 233 2003

MAINTENANCE ACT, 2003:
REGULATIONS RELATING TO MAINTENANCE

The Minister of Justice has, under section 49 of the Maintenance Act, 2003 (Act No. 9 of 2003), -

a) made the regulations set out in the Schedule;

b) repealed Government Notices Nos. R97 and R99 published in the Government Gazette of the Republic of South Africa on 22 January 1965 and Government...
SCHEDULE

ARRANGEMENT OF REGULATIONS

CHAPTER 1
DEFINITIONS

1. Definitions

CHAPTER 2
COMPLAINTS AND INVESTIGATIONS

2. Complaints
3. Investigation by maintenance officer
4. Summons
5. Subsistence and travel allowances
6. Statements by witnesses
7. Notification to admit statements by witnesses

CHAPTER 3
MAINTENANCE AND OTHER ORDERS

8. Maintenance and ancillary orders
9. Notices
10. Orders by consent
11. Default maintenance order
12. Variation or setting aside of orders
13. Substitution or discharge of maintenance orders
14. Transfer of maintenance orders
15. Notice of change of address by defendant
16. Registration of maintenance orders
17. Appeals against orders

CHAPTER 4
CIVIL EXECUTION

18. Application for enforcement of maintenance or other orders
19. Warrant of execution
20. Persons authorised to execute a warrant of execution
21. Application for the setting aside of a warrant of execution
22. Attachment of emoluments
23. Attachments of debts

CHAPTER 5
OFFENCES AND ORDERS RELATING TO PROSECUTIONS

24. Complaints of failure to comply with orders
25. Recovery of arrear maintenance

CHAPTER 6
GENERAL AND SUPPLEMENTARY PROVISIONS

26. Record of proceedings
27. Photographs of persons subject to maintenance orders
28. Service of documents
29. Access to records and fees
30. Misuse of maintenance money

CHAPTER 1
DEFINITIONS

Definitions

1. In these regulations any word or expression to which a meaning has been given in the Act bears that meaning and, unless the context otherwise indicates -

"the Act" means the Maintenance Act, 2003 (Act No. 9 of 2003).

CHAPTER 2
COMPLAINTS AND INVESTIGATIONS

Complaints

2. A person who lodges a complaint as contemplated in section 9(1) of the Act must -

(a) in the case of a new complaint, lodge the complaint on a form corresponding substantially to Form A of the Annexure; or

(b) in a case where there is an existing maintenance order, lodge the complaint on a form corresponding substantially to Form B of the Annexure.

Investigation by maintenance officer

3. (1) The directive which a maintenance officer may issue under section 10(1) of the Act must be in a form corresponding substantially to Form C 1A of the Annexure.

(2) A maintenance officer must keep a record of all directives issued under section 10 of the Act.

(3) Any person who fails to comply with a direction contemplated in subregulation (1) commits an offence and liable on conviction to a fine not exceeding N$2000 or to imprisonment for a period not exceeding six months.

Summons

4. (1) The summons, contemplated in section 11 or 12 of the Act must -

(a) in the case of the complainant and the defendant, be in a form corresponding substantially to Part A of Form C1 of the Annexure; and

(b) in the case of other witnesses, be in a form corresponding substantially to Part A of Form C11 of the Annexure.

(2) The defendant must complete Part B of Form C1 of the Annexure.

(3) The service of a summons referred to in sub-regulation (1) must be done in accordance with regulation 28(1).

(4) A return of service must, in the case of a summons referred to in -

(a) subregulation (1)(a), be in a form corresponding substantially to Part C of Form C1 of the Annexure; and
(b) subregulation 1(b), be in a form corresponding substantially to Part B of Form C11 of the Annexure.

(5) A summons to the defendant must be accompanied by a document in a form corresponding substantially to Form G of the Annexure.

Subsistence and travelling allowances

5. Any person who, under section 12(6) of the Act, is entitled to receive an allowance for attending an enquiry as a witness must be paid the allowances which are payable under section 191 of the Criminal Procedure Act, No. 51 of 1977, to a person attending criminal proceedings as a witness for the State.

Statements by witnesses

6. (1) The written statement contemplated in section 14(1) of the Act, must -

(a) be signed by the person who made it, and

(b) contain a declaration by such a person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that he or she commits an offence if he or she intentionally includes anything therein which he or she knows to be false or did not know or believe to be true.

(2) If the person who makes a statement in terms of subregulation (1) cannot read the statement, that statement must -

(a) be read to him or her by the person taking down the statement before the statement is signed by the person making the statement; and

(b) be endorsed by the person who so read the statement to the effect that it was read.

Notification to admit statements by witnesses

7. A notification, contemplated in section 14(3) of the Act, requiring any party to consent to the admission of a statement as evidence, must be in a form corresponding substantially to Form D of the Annexure.

CHAPTER 3
MAINTENANCE AND OTHER ORDERS

Maintenance and ancillary orders

8. An order of the maintenance court contemplated in section 17 of the Act, must be in a form corresponding substantially to Form E of the Annexure.

Notices

9. (1) The directive, contemplated in section 32(1) of the Act, to any person who is indebted to the defendant, must be in a form corresponding substantially to Part A of Form F of the Annexure.

(2) The service of a notice referred to in subregulation (1) must be done in accordance with regulation 28(1) or (5), as the case may be.

(3) The return of service on a notice referred to subregulation (1) must be in a form corresponding substantially to Part B of Form F of the Annexure.
Where the person indebted to the defendant is discharged from the liability, he or she must give notice to the maintenance in a form corresponding substantially to Part C of Form F of the Annexure.

Orders by consent

10. (1) The consent of a defendant contemplated in section 18 of the Act must be in a form corresponding substantially to Part A of Form G of the Annexure.

(2) An order made in accordance with the consent referred to in subregulation (1) must be in a form corresponding substantially to Part B of Form G of the Annexure.

(3) The return of service of a maintenance officer, messenger of the court or maintenance investigator showing that a copy of an order by consent referred to in subregulation (2) was delivered or tendered to the defendant must be in a form corresponding substantially to Part C of Form G of the Annexure.

Default maintenance order

11. (1) A default maintenance order, contemplated in section 19(1) of the Act, must be in a form corresponding substantially to Part A of Form H of the Annexure.

(2) A notice to the defendant against whom a default order, has been made, must be in a form corresponding substantially to Part B of Form H of the Annexure.

(3) The return of service of a maintenance officer, messenger of the court or maintenance investigator showing that a copy of a default maintenance referred to in subregulation (1) was delivered or tendered to the defendant must be in a form corresponding substantially to Part C of Form H of the Annexure.

(4) An application for the substitution or setting aside of a default order, contemplated in section 19(4) of the Act, must be in a form corresponding substantially to Part A of Form I of the Annexure.

(5) The notice to be given by the defendant to the complainant as, contemplated in section 19(7) of the Act, must be in a form corresponding substantially to Part B of Form I of the Annexure.

(6) Any notice under subregulation (5) must be served on the complainant in any manner which is convenient to the defendant but the defendant must keep proof of service of the notice.

Variation or setting aside of orders

12. (1) The notice of variation or the setting aside of an order as contemplated in section 22 of the Act must, in the manner which is reasonable and appropriate in the circumstances, inform -

(a) the defendant;

(b) the complainant; and

(c) the person referred to in section 31(1) or 32(1) of the Act,

of the variation or the setting aside of the order and that notice which must be in a form corresponding substantially to Form J of the Annexure.

(2) The maintenance officer must keep record of all notices issued under this regulation.
Substitution or discharge of maintenance orders

13. On receipt of a notice of the substitution or discharge of a maintenance order, as contemplated in section 23 of the Act, the clerk of the court must -

(a) file the notice with the original documents applicable to the case;
(b) in the case of an order substituting a maintenance order, record the particulars of the new order on the order which is being substituted; and
(c) in the case of an order discharging the maintenance order, endorse the original order to that effect.

Transfer of maintenance orders

14. (1) Where a complainant in whose favour a maintenance order or any other order under the Act was made or given changes his or her place of residence he or she must, within 30 days of such change of place of residence notify the maintenance officer of the maintenance court which has jurisdiction in the area where the complainant now resides.

(2) A notice contemplated in subregulation must be in a form substantially corresponding to Part A of Form R of the Annexure.

(3) On receipt of a request made under subregulation (1), the clerk of the court where the maintenance order is registered must -

(a) retain certified copies of all orders or judgments, including previous amended orders, and documents with regard to the record of payment which are applicable to the particular case; and
(b) send by hand or registered post all the original documents on the file to the clerk of the maintenance court which requested the transfer.

(4) On receipt of the maintenance order referred to in subregulation (1), the clerk of the maintenance court where the complainant now resides must register the order by numbering it with the following consecutive number for maintenance cases for the year during which it was received.

(5) The clerk of the court referred to in subregulation (4) must give notice to the defendant and any person who is required under the Act to deliver money or property of such transfer on a form corresponding substantially to Part B of Form R of the Annexure.

Notice of change of address by defendant

15. Where the defendant has changed his or her place of residence or employment as contemplated in section 17(5) of the Act he or she must give notice in a form corresponding substantially to Form S of the Annexure.

Registration of maintenance order:

16. The clerk of the maintenance court must maintain the register of maintenance orders referred to in section 27 of the Act by -

(a) retaining certified copies of all orders or judgments, including previous amended orders, and documents with regard to the record of payment which are applicable to the particular case; and
(b) on receipt of a maintenance order as contemplated in section 27 of the Act, registering that order by numbering it with the following consecutive number for maintenance cases for the year during the year which it was received.
Appeal against orders

17. (1) An appeal in terms of section 47 of the Act must be noted within 21 days of the granting of the order appealed against and any cross-appeal must be noted within seven days of the noting of the appeal.

(2) An appeal or cross-appeal must be noted by delivery, within the period prescribed in subregulation (1), to the clerk of the maintenance court concerned and to the other party, of a notice stating -

(a) whether the whole or part only of the order is appealed against and, if part only, which part; and

(b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(3) The judicial officer who presided at the enquiry must -

(a) within 14 days of the noting of an appeal; or

(b) if the proceedings at the enquiry were recorded by mechanical means, within 14 days after the transcription of the mechanical record of the proceedings has been placed before him or her by the clerk of the maintenance court, transmit to the clerk of the maintenance court a statement in writing setting out -

(i) the facts he or she found to be proved;

(ii) his or her reasons for any finding of fact specified in the notice of appeal; and

(iii) his or her reasons for any ruling on a question of law or for the admission or rejection of any evidence specified in the notice of appeal.

(4) Where an appeal has been noted under this regulation, the clerk of the relevant maintenance court must, notwithstanding regulation 26, if the proceedings at an enquiry were recorded by mechanical means, forthwith cause the mechanical record of the proceedings to be transcribed.

(5) The person who has noted an appeal bears the cost of the transcription contemplated in subregulation (4), but, if the magistrate of the relevant maintenance court is satisfied that such person is unable to pay the costs, the costs must be paid by the State.

(6) After an appeal has been noted in terms of sub-regulation (1), the appeal must be prosecuted as if it were an appeal against the decision of a magistrates' court in a civil case and the rules regulating the conduct of the proceedings of the High Court in so far as they relate to civil appeals from the magistrates' courts do, with the necessary changes, apply to such an appeal.

(7) The clerk of the maintenance court must, within seven days of the receipt by that clerk of court of a notice that an appeal has been set down for hearing, transmit to the Registrar of the High Court, the record of the proceedings at the enquiry, certified by the presiding judicial officer as a true record of the proceedings and a transcription of that part of the proceedings mechanically recorded, certified as provided for in regulation 26.

(8) If the complainant notes an appeal or cross-appeal, as the case may be, and he or she cannot afford a legal practitioner, the complainant must notify the clerk of the maintenance court accordingly.
Appendix F: Maintenance Act 9 of 2003 Regulations (Government Gazette No. 3093)

(9) The clerk of the court must -

(a) on receipt of the notice referred to in subregulation (8), immediately inform the Prosecutor-General of the appeal or cross-appeal and that the complainant cannot afford a legal practitioner;

(b) on receipt of the statement of the presiding judicial officer referred to in subregulation (3), furnish the Prosecutor-General with copies of all relevant documentation; and

(c) within seven days of the receipt by him or her of a notice that the appeal has been set down for hearing submit the original record as prescribed in subregulation (7) and a copy of the record to the Prosecutor-General.

CHAPTER 4

CIVIL EXECUTION

Application for enforcement of maintenance or other orders

18. The application for -

(a) the authorisation of the issue of a warrant of execution;

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

(c) an order for the attachment of any debt,

contemplated in section 28 of the Act, must be in a form corresponding substantially to Form K of the Annexure.

Warrant of execution

19. (1) A warrant of execution, contemplated in section 29 of the Act, must be -

(a) in a form corresponding substantially to Form L of the Annexure; and

(b) prepared in triplicate.

(2) The complainant must complete Part A of Form L of the annexure and thereafter lodge that form with the clerk of the maintenance court concerned.

(3) On receipt of the partly completed form referred to in subregulation (2) the clerk of the maintenance court must issue the warrant of execution by completing Part B of Form L of the Annexure if he or she is satisfied that -

(a) authorisation for the issuing of a warrant of execution was granted; and

(b) the warrant of execution has been properly prepared.

(4) The clerk of the maintenance court must, after the warrant of execution has been issued -

(a) return the original warrant of execution and one copy thereof to the complainant; and

(b) file the second copy of the warrant of execution on the relevant maintenance file.

(5) Any alteration on the warrant of execution must be initialled by the clerk of the maintenance court.
(6) The messenger of the court executing the warrant of execution must complete Part C and, if applicable, Part D of Form L of the Annexure and return the form to the clerk of the maintenance court.

(7) The messenger of the court must pay the proceeds of the execution directly to the complainant who is the execution creditor in the case.

Persons authorised to execute a warrant of execution

20. The messenger of the court for the district in which the property subject to execution is found is authorised to execute a warrant of execution against that property.

Application for the setting aside of a warrant of execution

21. (1) An application for the setting aside of a warrant of execution by a person against whom such a warrant has been issued, as contemplated in section 29(5) of the Act, must be in a form corresponding substantially to Part A of Form M of the Annexure.

(2) An application for the substitution or suspension of a warrant of execution, contemplated in section 29(8) of the Act, must be in a form corresponding substantially to Part B of Form M of the Annexure.

(3) A notice of application for the substitution or suspension of a warrant of execution contemplated in section 29(9)b) of the Act must be in a form corresponding substantially to Part C of Form M of the Annexure.

(4) A defendant who makes an application under this regulation must serve the notice referred to in subregulation (3) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.

Attachment of emoluments

22. (1) An application for the suspension, amendment or rescission of an order for the attachment of emoluments, contemplated in section 30(2) of the Act, must be in a form corresponding substantially to Part A of Form N of the Annexure.

(2) A notice of an application for the suspension, amendment or rescission of an order for the attachment of emoluments, contemplated in section 30(3) of the Act, must be in a form corresponding substantially to Part B of Form N of the Annexure.

(3) A person who makes an application under this regulation must serve the notice referred to in subregulation (2) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.

(4) A notice to an employer or the person contemplated in section 31(1) of the Act, must be in a form corresponding substantially to Part A of Form O of the Annexure.

(5) The service of a notice referred to in subregulation (4) must be done in accordance with regulation 28(1) or (5), as the case may be.

(6) The return of service of a notice referred to in subregulation (4), must be in a form corresponding substantially to Part B of Form O of the Annexure.

(7) A notice by the employer or the person contemplated in section 31(2) of the Act that the defendant has left his or her service or that the person has been discharged from liability, must be in a form corresponding substantially to Part C of Form O of the Annexure.

(8) The notice referred to in subregulation (7) must be submitted to the maintenance officer of the court where the order was made in any manner convenient to the employer or person, and that employer or person must keep a record of the notice.
Attachment of debts

23. (1) An application for the suspension, amendment or rescission of an order for the attachment of debts, contemplated in section 32(2) of the Act, must be in a form substantially to Part A of Form P of the Annexure.

(2) A notice of an application for the suspension, amendment or rescission of an order for the attachment of debts, contemplated in section 32(3) of the Act, must be in a form corresponding substantially to Part B of Form P of the Annexure.

(3) A person who makes an application under this regulation must serve the notice referred to in subregulation (2) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.

CHAPTER 5
OFFENCES AND ORDERS RELATING TO PROSECUTIONS

Complaints of failure to comply with orders

24. Where the public prosecutor makes the application contemplated in section 33(1) of the Act, that application must be accompanied by a complaint by the complainant which complaint must be in a form corresponding substantially to Form Q of the Annexure.

Recovery of arrear maintenance

25. (1) The clerk of the court which has convicted a person must submit a certified copy of an order made by the court in terms of section 33(1) of the Act to the clerk of the civil court for registration of such order, as contemplated in section 27(1) of the Act.

(2) The clerk of the civil court must -

(a) register the order referred to in sub-regulation (1) by numbering it with the following consecutive case number for the year during which it is registered; and

(b) inform the maintenance officer of the maintenance court where the order was made and the complainant of the registration and the number of the case.

CHAPTER 6
GENERAL AND SUPPLEMENTARY PROVISIONS

Record of proceedings

26. (1) The proceedings at an enquiry must be recorded by keeping minutes of -

(a) the proceedings generally;

(b) any evidence given at the enquiry and of any objection to any evidence given or tendered at the enquiry and of any ruling by the court;

(c) any variation of a maintenance order; and

(d) any maintenance order, including any provisional maintenance order as defined in the Reciprocal Enforcement of Maintenance Orders Act, 1995 (Act No. 3 of 1995), made at any enquiry, and of any refusal to make such a maintenance order.
(2) The maintenance court must mark each document admitted as evidence and note such mark on the record.

(3) The statement by judicial officer presiding at an enquiry referred to in regulation 17(3) becomes part of the record.

(4) The judicial officer presiding at an enquiry must record the proceedings of the enquiry or appoint or designate any person, either generally or specially for the purpose of a particular enquiry, to record the proceedings by mechanical means.

(5) A mechanical record of the proceedings must not be transcribed unless a judicial officer designated to preside in the court concerned has so directed or an appeal has been noted in terms of regulation 17.

(6) The person making a transcription of a mechanical record of the proceedings at an enquiry must certify it as a true transcription of such record and any such transcription becomes part of the record of the proceedings.

Photographs of persons subject to maintenance orders

27. (1) On receipt of photographs or a copy of the identity document of a defendant against whom the maintenance court has made a maintenance order, the maintenance officer must -

(a) endorse on the back of each photograph or copy of identity document the personal particulars of the defendant;

(b) file one photograph or copy of the identity document in the relevant maintenance file; and

(c) attach the second photograph or copy of identity document to the relevant register of payments.

(2) The maintenance officer may make a photograph or copy of the identity document of the defendant available to any person executing a court order or serving a document on the defendant in terms of the Act.

Service of documents

28. (1) A document, which under the Act or these regulations is required to be served by the maintenance investigator or the messenger of court must, together with any copy, be handed over to the maintenance investigator or messenger of the court who must, subject this regulation, forthwith serve it on the person referred to in that document by delivering a copy of the document in one of the following ways -

(a) to that person personally;

(b) at that person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there;

(c) at that person's place of employment to a person apparently not less than 16 years of age and apparently in authority over that person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at that person's place of employment; and

(d) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned, to a director or a responsible employee of the juristic person.

(2) For the purpose of subregulation (1)(b), "residence" means, where the building is occupied by more than one person or family, that portion of the building occupied by the person on whom service is to be effected.
(3) A messenger of the court or maintenance investigator must, if requested by the person on whom a document is or is to be served, show him or her the original of the document.

(4) Where the person on whom a document is to be or may be served keeps his or her residence, place of business or place of employment closed and thereby prevents the messenger of the court or maintenance investigator from serving the document, it is sufficient service to affix a copy of the document to the outer or principal door or security gate of such residence, place of business or place of employment, or to place a copy of such document in the mailbox at such residence, place of business or employment.

(5) A notice referred to in regulation 9(2) or 22(5) may be served by the maintenance investigator or messenger of court on the person referred to in that notice by -

(a) handing a copy of that notice to that person personally and endorsing the original notice to that effect; or

(b) sending the notice by facsimile to that person, in which case proof thereof must be kept, and by sending a copy of the notice by registered post to that person.

Access to records and fees

29. (1) For the purposes of section 46(1) of the Act the record of proceedings is only accessible to -

(a) the defendant or his or her legal practitioner;

(b) the complainant or his or her legal practitioner;

(c) a judicial officer, maintenance officer, maintenance investigator or clerk of court; or

(c) any person who has been permitted to have access by the maintenance court.

(2) The fees payable in terms of section 46(2) of the Act must be the same as those prescribed in Rule 34 of the Magistrates Court Rules of Court promulgated by Government Notice No.R1108 of 21 June 1968.

Misuse of maintenance money

30. (1) Any person who is aware of the fact that a recipient of maintenance money on behalf and for the benefit of another person is misusing such money by failing to use it for the benefit of the beneficiary, may lodge a complaint at the court at which the maintenance order was issued.

(2) A person who lodges a complaint as contemplated in subregulation (1) must lodge the complaint on a form corresponding substantially to Form T of the Annexure.
## ANNEXURE INDEX

**FORMS**

<p>| FORM A | COMPLAINT IN TERMS OF SECTION 9(1) OF THE ACT (NEW COMPLAINT) |
| FORM B | COMPLAINT IN TERMS OF SECTION 9(1) OF THE ACT (CHANGES TO EXISTING MAINTENANCE ORDER) |
| FORM C1 | SUMMONS IN TERMS OF SECTION 11(1) OR 12(1) OF THE ACT (COMPLAINANT OR DEFENDANT) |
| FORM C1A | DIRECTIVE IN TERMS OF SECTION 10(1)(a) OF THE ACT |
| FORM C11 | SUMMONS IN TERMS OF SECTION 11 OR 12 OF THE ACT (WITNESSES) |
| FORM D | NOTICE IN TERMS OF SECTION 14(3) OF THE ACT (NOTICE TO ADMIT STATEMENT AS EVIDENCE) |
| FORM E | ORDER IN TERMS OF SECTION 17 OF THE ACT |
| FORM F | NOTICE IN TERMS OF SECTION 32 OF THE ACT |
| FORM G | CONSENT IN TERMS OF SECTION 18 OF THE ACT |
| FORM H | DEFAULT MAINTENANCE ORDER IN TERMS OF SECTION 19 READ WITH SECTION 17 OF THE ACT |
| FORM I | APPLICATION FOR VARIATION/SETTING ASIDE OF A DEFAULT MAINTENANCE ORDER IN TERMS OF SECTION 19 OF THE ACT |
| FORM J | NOTICE OF VARIATION OR SETTING ASIDE OF CERTAIN ORDERS (SECTION 22 OF THE ACT) |
| FORM K | APPLICATION FOR ENFORCEMENT OF MAINTENANCE ORDER OR OTHER ORDER IN TERMS OF SECTION 28 OF THE ACT |
| FORM L | WARRANT OF EXECUTION AGAINST PROPERTY IN TERMS OF SECTION 29 OF THE ACT |
| FORM M | APPLICATION FOR SETTING ASIDE OF A WARRANT OF EXECUTION IN TERMS OF SECTION 29(5) OF THE ACT |
| FORM N | APPLICATION FOR SUSPENSION, AMENDMENT OR RESCISSION OF AN ORDER FOR THE ATTACHMENT OF EMOLUMENTS IN TERMS OF SECTION 30(2) OF THE ACT |
| FORM O | NOTICE TO AND BY EMPLOYER IN TERMS OF SECTION 31 OF THE ACT |
| FORM P | APPLICATION FOR SUSPENSION, AMENDMENT OR RESCISSION OF AN ORDER FOR THE ATTACHMENT OF DEBTS IN TERMS OF SECTION 32(2) OF THE ACT |
| FORM Q | COMPLAINT FOR THE PURPOSES OF SECTION 33 OF THE ACT |
| FORM R | NOTICE IN TERMS OF SECTION 24 OF THE ACT |</p>
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<th>Description</th>
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<tr>
<td>S</td>
<td>NOTICE IN TERMS OF SECTION 17(5) OF THE ACT</td>
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<td>T</td>
<td>COMPLAINT OF MISUSE OF MAINTENANCE FOR THE PURPOSES OF SECTION 40 OF THE ACT</td>
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The forms are available at the maintenance court.