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# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 425. 15 March 1989

No. 425. 15 Maart 1989

It is hereby notified that the acting State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 6 of 1989: Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989.

No. 6 van 1989: Wet op Wederkerige Afdwinging van Onderhoudsbevele (Lande in Afrika), 1989.

# ACT

To provide for the reciprocal enforcement of maintenance orders made in the Republic and in designated countries in Africa, and for matters incidental thereto.

*(Afrikaans text signed by the acting State President.)  
(Assented to 1 March 1989.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context otherwise indicates—
  - (i) “certified copy”, in relation to an order of court, means a copy certified by an appropriate officer of a court to be a true copy; (iii) 5
  - (ii) “designated country” means a country in Africa in respect of which this Act applies in terms of section 2; (i)
  - (iii) “Director-General” means the Director-General: Justice; (ii)
  - (iv) “maintenance court” means a maintenance court referred to in section 2 of the Maintenance Act, 1963 (Act No. 23 of 1963); (vi) 10
  - (v) “maintenance order” means any order for the periodical payment by any person of sums of money towards the maintenance of any other person whom the first-mentioned person is liable to maintain in accordance with the law of the country in which the order is made; (v) 15
  - (vi) “Minister” means the Minister of Justice; (iv)
  - (vii) “prescribed” means prescribed by rules made under this Act; (vii)
  - (viii) “provisional maintenance order” means a maintenance order having no effect unless and until confirmed by a competent court in the country in which the person against whom it has been made, is resident. (viii) 20

## Application of Act

2. (1) This Act shall apply in respect of any country in Africa designated by the Minister by notice in the *Gazette*.
- (2) The Minister may by like notice withdraw any such notice.

## Transmission of maintenance orders

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3. When it appears to any court in the Republic that any person against whom it has, before or after the commencement of this Act, made, registered or confirmed a maintenance order, is resident in a designated country, that court shall, with a view to the registration of the maintenance order, transmit to the Director-General a certified copy of the order for transmission to the administrative head of the Department of Justice of such country. 30

## Registration of maintenance orders

4. When a certified copy of a maintenance order made before or after the commencement of this Act against any person resident in the Republic by any court in a designated country, is transmitted to the Director-General by the administrative 35

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head of the Department of Justice of such country, the Director-General shall transmit that copy of the order to a maintenance court in whose area of jurisdiction the person against whom the order was made, resides or is alleged to reside, and the order shall, on receipt thereof, be registered by that court in the prescribed manner.

**Provisional maintenance orders against persons resident in designated countries** 5

5. (1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under section 5 of the Maintenance Act, 1963 (Act No. 23 of 1963), in the absence of any person resident in a designated country who may be legally liable to maintain any person in the Republic, provided the evidence of all witnesses at the enquiry is read over to and signed by them. 10

(2) (a) Subject to the provisions of paragraph (c) the court holding the enquiry may only make a provisional maintenance order against the person so resident and shall, with a view to confirmation of the provisional maintenance order, forward to the Director-General, for transmission to the administrative head of the Department of Justice of the designated country, 15 a certified copy of the order together with the depositions of witnesses and such information as may be available for the identification and location of the person against whom the order has been made.

(b) If the person so resident has received sufficient notice of the proceedings at which the provisional maintenance order was made, to enable him to attend 20 such proceedings, proof of such notice shall accompany the said certified copy of the order.

(c) If the person so resident consents in writing to a maintenance order, and such consent is lodged by a maintenance officer at an enquiry under this section, the court may in accordance with such consent make a maintenance 25 order for the purposes of transmission under section 3.

(3) If the court in the designated country before which the provisional maintenance order has come for confirmation, remits the case for further evidence to the maintenance court which made the provisional order, such maintenance court shall proceed with the enquiry as if no provisional order had been made by it and may take 30 into consideration the contents of depositions of witnesses in the court of the designated country before which such order has come for confirmation.

**Confirmation of provisional maintenance orders**

6. (1) Upon receipt from the administrative head of the Department of Justice of a designated country of a certified copy of a provisional maintenance order against 35 any person resident in the Republic made by a court in a designated country, together with the depositions of witnesses, the Director-General shall transmit the documents concerned to the maintenance officer of the maintenance court in whose area of jurisdiction the person against whom the order was made resides or is alleged to reside, whereupon such maintenance officer shall institute an enquiry in such 40 maintenance court with a view to confirmation of such order and may for that purpose cause any person, including any person legally liable to maintain any other person, to be summoned to appear before such maintenance court and give evidence or produce any book, document or statement, including, in the case of a person so liable, a statement giving full particulars of his earnings and signed by his employer. 45

(2) If a maintenance court is satisfied that any person against whom a provisional maintenance order mentioned in subsection (1) was made, has received reasonable notice of the proceedings at which such order was made, that maintenance court shall limit its enquiry to the determination of the amount to be paid by the respondent 50 towards the maintenance of such other person or persons.

(3) Any person to be summoned as a witness shall be summoned in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial.

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- (4) The maintenance court shall hold the enquiry in such manner as may be prescribed and may—
- (a) make an order confirming the provisional maintenance order without modification or with such modification as may seem just to it;
  - (b) remit the case for further evidence to the court which made the provisional order; 5
  - (c) refuse to make an order;
  - (d) at any time, on good cause shown, make an order varying or discharging an order made by it under this section.
- (5) (a) Any person who is aggrieved by an order made under this section may, 10 within such period and in such manner as may be prescribed, appeal against such order to the provincial or local division of the Supreme Court of South Africa having jurisdiction.
- (b) On appeal such division may make such order in the matter as it may deem fit. 15
- (6) The provisions of sections 8, 9 and 10 of the Maintenance Act, 1963, shall apply *mutatis mutandis* in respect of any enquiry held under this section.

**Certain maintenance orders deemed for certain purposes to have been made under Maintenance Act, 1963**

7. Any maintenance order registered under section 4 or confirmed under section 20 6 shall for the purposes of sections 11, 12 and 14 of the Maintenance Act, 1963, be deemed to be a maintenance order made under section 5(4) of the said Act by the maintenance court where such order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section 11 in respect of an order registered under section 4 of this Act, the provisions of section 13 of the said Act 25 shall not apply.

**Transmission to designated country of emoluments attachment order made in the Republic**

8. When it appears to any court in the Republic that any person in respect of whom it has, before or after the commencement of this Act, made an order under section 30 12 (1) of the Maintenance Act, 1963, is resident in the Republic but is employed or is in receipt of a salary, wage or any other form of remuneration or allowance in a designated country, that court may transmit a certified copy of the record of the proceedings in which the order was made to the Director-General for transmission to the administrative head of the Department of Justice of such designated country. 35

**Registration of emoluments attachment order made in designated country**

9. (1) When a certified copy of the record of proceedings of a court in a designated country containing an order authorizing any employer of a person mentioned in such order to make on behalf of such person any payments required to be made in terms of a maintenance order, from the salary, wage or any other form of 40 remuneration or allowance of such person, is received by the Director-General from the administrative head of the Department of Justice of a designated country, such order shall be transmitted to a maintenance court in whose area of jurisdiction such person is in employment or where the head office of his employer is situated, which court shall on receipt thereof register such order in the prescribed manner. 45

(2) When an order has been registered under subsection (1), the maintenance officer of the maintenance court which effected the registration shall in the prescribed manner cause a notice to be served on any such employer requiring him to make any such payments at such time and place and in such manner as may be specified in the notice. 50

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(3) Any order registered under subsection (1) and any notice issued under subsection (2), shall for the purposes of subsections (2) and (3) of section 12 of the Maintenance Act, 1963, be deemed to be an order made or a notice issued under section 12 (1) of that Act.

**Certain maintenance moneys payable to clerk of the court**

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10. Any sum of money payable in terms of a maintenance order registered under section 4 or confirmed under section 6 or an order registered under section 9 shall be payable to the clerk of the maintenance court where such order has been so registered or confirmed.

**Procedure and rules of evidence**

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11. (1) Subject to the provisions of this Act and any rules made thereunder, the procedure and rules of evidence, including the competency, compellability, examination or cross-examination of witnesses, to be followed at or in connection with an enquiry under the Maintenance Act, 1963, shall, in so far as they can be applied, apply *mutatis mutandis* to enquiries under section 6 (4). 15

(2) Any certified copy of a provisional maintenance order or of the depositions of witnesses referred to in section 6 (1) shall on its mere production by the maintenance officer at an enquiry under section 6 (4) be admissible as evidence.

**Rules**

12. The Minister may by notice in the *Gazette* make rules as to any matter which 20 may be prescribed in terms of this Act.

**Transitional provisions**

13. Any order registered or confirmed or anything done under any provision of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), before the date on which a country has been designated under section 2, shall be 25 deemed to have been registered or confirmed or done under this Act in respect of that country.

**Short title and commencement**

14. This Act shall be called the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989, and shall come into operation on a date fixed by the 30 State President by proclamation in the *Gazette*.