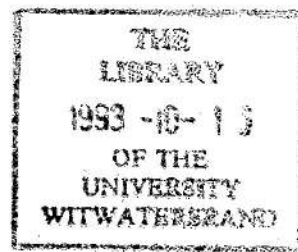
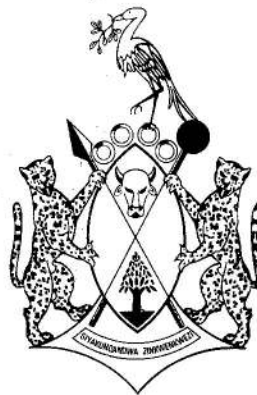


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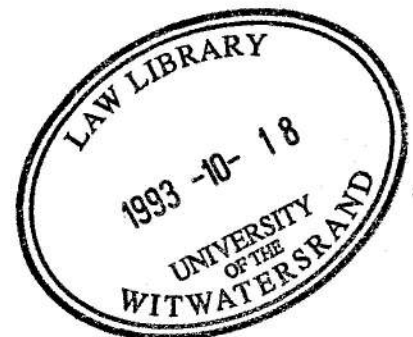
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**DEPARTMENT OF THE COUNCIL OF STATE**

**GOVERNMENT NOTICE No. 82 OF 1993**

It is hereby notified that the Deputy Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

**Maintenance Amendment Decree, 1993  
Decree No. 23 of 1993**



# COUNCIL OF STATE — REPUBLIC OF CISKEI

## MAINTENANCE AMENDMENT DECREE, 1993

### DECREE

To amend the Maintenance Act, 1963.

*[English text signed by the Deputy Chairman of the Council of State. Assented to on 15 September 1993.]*

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Amendment of section 1 of Act 23 of 1963, as amended by section 1 of Act 39 of 1970. - Section 1 of the Maintenance Act, 1963 (hereinafter referred to as the principal Act) is hereby amended -

- (a) by the deletion of the definitions of "Commissioner's Court" and "magistrate's court";
- (b) by the insertion before the definition of "maintenance order" of the following definition:  
" 'financial institution' means any institution which carries on the business of a bank or a building society;";
- (c) by the substitution for the definition of "maintenance order" of the following definition:  
" 'maintenance order' means any order for the periodical payment of sums of money towards the maintenance of any person made by any court (including the Supreme Court) and, except for the purposes of section 11 includes any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person;";
- (d) by the substitution for the definition of "Minister" of the following definition:  
" 'Minister' means the Minister of Justice;"; and
- (e) by the deletion of the definitions of "Republic" and "territory."

2. Amendment of section 5 of Act 23 of 1963, as amended by section 2 of Act 39 of 1970. - Section 5 of the principal Act is hereby amended -

- (a) by the substitution for subsection (4) of the following subsection:  
"(4) After consideration of the evidence adduced at the enquiry, the court may -
  - (a) in the case where no maintenance order is in force -
    - (i) make an order against any person proved to be legally liable to maintain any other person for the payment, during such period and at such times and to such person, officer, organization or institution or into such account at such financial institution and in such manner as may be specified in the order, of sums of money, so specified, towards the maintenance of such other person;
    - (ii) make an order against such person, if such other person is a child, for the payment to the mother of the child of such sum of money, together with any interest thereon, as that mother is in the opinion of the court entitled to recover from such person in respect of lying-in expenses incurred by her in connection with the birth of the child and of expenditure incurred by her in connection with the maintenance of the child from the date of birth to the date of the enquiry in question;
    - (iii) in addition to the maintenance order which the court makes under subparagraph (i) but with due regard thereto, make such order as the court may deem fit against such person relating to the payment of medical expenses in respect of such other person, including an order requiring such other person, if he qualifies therefor, to be registered as a dependant of such person at a medical scheme of which such person is a member.
  - (b) in the case where a maintenance order is in force -
    - (i) make an order contemplated in paragraph (a)(i) in substitution of such maintenance order;

## MAINTENANCE AMENDMENT DECREE, 1993

- (ii) in addition to the maintenance order which the court makes under subparagraph (i) but with due regard thereto, make the order contemplated in paragraph (a)(iii) or make such order in substitution of an order relating to the payment of medical expenses made by any other court (including the Supreme Court);
  - (iii) discharge such maintenance order or an order relating to the payment of medical expenses referred to in subparagraph (ii); or
  - (c) make no order,
- and an order made under paragraph (a)(ii) shall have the effect of a civil judgment of that court and shall be executed in the prescribed manner.”;
- (b) by the substitution for subsection (5) of the following subsection:

“(5) Any maintenance court which has made an order under subsection (4)(a)(i) or (b)(i) may at the request of the maintenance officer -

    - (a) direct that two photographs be taken of the person against whom such order has been made, and the said photographs shall be destroyed if such order is set aside by the Supreme Court or if such order is discharged;
    - (b) without prior notice to any person, vary such order by designating as the person, officer, organization, institution or account to whom, to which or into which payment is to be made, any other person, officer, organization, institution or account at a financial institution and the maintenance officer shall in the prescribed manner inform the person required to make such payment of any variation of the order.”;
  - (c) by the substitution for subsection (6) of the following subsection:

“(6) For the purpose of determining whether any person associated in a customary union (also known as a customary marriage) is legally liable to maintain any other person, he shall be deemed to be the husband of the female partner of that union.”;
  - (d) by the insertion after subsection (7) of the following subsection:

“(7A)(a) In an enquiry a written statement made in the prescribed manner by any person, other than a person against whom an order may be made under this section, shall on the prescribed conditions be admissible as evidence to the same extent as oral evidence to the same effect by the said person.

    - (b) A copy of the statement, together with a copy of every document referred to in the statement as an exhibit, shall at least 14 days before the date on which the document is to be tendered in evidence, be served on the person against whom an order may be made under this section and such person may at least seven days before the commencement of the enquiry object to the statement being tendered in evidence under this subsection.
    - (c) When the documents mentioned in paragraph (b) are served on the person against whom an order may be made under this section, such documents shall be accompanied by the prescribed written notification.
    - (d) The person against whom an order may be made under this section may before or during the enquiry come to an arrangement with the maintenance officer that any statement referred to in paragraph (a), notwithstanding the fact that it was not served on him in terms of paragraph (b), be tendered in evidence at the enquiry, whereupon such statement may on its production at the enquiry be admitted as evidence in the enquiry.
    - (e) Any document referred to as an exhibit and identified in a written statement tendered in evidence under this subsection shall be treated as if it had been produced as an exhibit and identified in court by the person who made the statement.
    - (f) Any person who makes a statement which is admitted as evidence under this subsection and who in such statement wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury, shall be deemed to have committed the offence of perjury and shall, upon conviction, be liable to the penalty which may be imposed for the offence of perjury.”;

## MAINTENANCE AMENDMENT DECREE, 1993

- (e) by the insertion after subsection (8) of the following subsection:

"(8A) The provisions of section 236 of the Criminal Procedure Act, 1977 shall *mutatis mutandis* apply in respect of an enquiry."; and

- (f) by the substitution for paragraph (b) of subsection (11) of the following paragraph:

"(b) Any person who contravenes the provisions of paragraph (a) shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment."

### 3. Substitution of section 6 of Act 23 of 1963. - The following section is hereby substituted for section 6 of the principal Act:

"6. Notice of maintenance order and transfer thereof. - (1) Whenever a maintenance court makes an order under section 5 in substitution of or discharging a maintenance order, such maintenance order shall cease to be of force and effect and the maintenance officer shall forthwith give notice of the making of the order to the registrar or clerk of the court which made the said maintenance order or which imposed the sentence concerned, as the case may be, who shall deal with the relevant records or registers in the prescribed manner.

(2) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer may in writing direct the clerk of the court which made a maintenance order to transmit such maintenance order, together with the prescribed records, to the clerk of the maintenance court within the area of jurisdiction of which the person in whose favour such maintenance order was made, or the person in whose care the said person is, resides.

(3) On receipt of a maintenance order referred to in subsection (2) the clerk of the maintenance court shall register such maintenance order in the prescribed manner.

(4) Any maintenance order registered under subsection (3) shall for the purposes of this Act be deemed to be a maintenance order made under section 5(4) by the maintenance court where such order has been so registered."

### 4. Amendment of section 7 of Act 23 of 1963, as amended by section 3 of Act 39 of 1970. - Section 7 of the principal Act is hereby amended -

- (a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) Any person aggrieved by an order made under subsection (4) of section 5 may, within such period and in such manner as may be prescribed, appeal against such order to the general division of the Supreme Court.

(2) On appeal such division may make such order as it may deem fit";

- (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) any refusal to make a provisional maintenance order under section 5 in terms of any other law."; and

- (c) by the addition of the following subsection:

"(4) Notwithstanding anything to the contrary in any other law contained, an appeal under this section shall not suspend the payment of maintenance in accordance with the relevant maintenance order, unless the appeal is noted against the finding that the appellant is legally liable to maintain the person in whose favour such maintenance order was made."

### 5. Insertion of section 7A in Act 23 of 1963. - The following section is hereby inserted in the principal Act after section 7:

## MAINTENANCE AMENDMENT DECREE, 1993

“(7A) Interrogation of persons by maintenance officer. - (1) A magistrate may at the request of a maintenance officer require the appearance before him or any other magistrate, for interrogation by the maintenance officer, of any person who is likely to give material or relevant information as to the identification, location or earnings of any person who is legally liable to maintain any other person or who is allegedly so liable: Provided that, if the person who is required to appear before the relevant magistrate furnishes the information in question to the satisfaction of the maintenance officer concerned in advance of the day on which he is required so to appear, he shall be discharged from the obligation so to appear.

(2) The provisions of sections 162 to 165, 179 to 181, 187 to 189, 191 and 204 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply in respect of the proceedings under subsection (1).

(3) The interrogation of any person under subsection (1) may be conducted in private at a place designated by the magistrate.”

6. Amendment of section 9 of Act 23 of 1963, as amended by section 1 of Act 19 of 1967. - Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The provisions of sections 188 and 189 of the Criminal Procedure Act, 1977 shall *mutatis mutandis* apply in relation to a person summoned under section 4 of this Act to appear at an enquiry in a maintenance court or who is present at an enquiry in a maintenance court and the maintenance court holding that enquiry may exercise in respect of such person all the powers conferred by section 170(2) of the said Act and the said section 189 on the court referred to therein.”

7. Substitution of section 10 of Act 23 of 1963. - The following section is hereby substituted for section 10 of the principal Act:

“10. Offences relating to enquiry. - Any person who wilfully interrupts the proceedings at an enquiry under this Act or who wilfully hinders or obstructs the court in the performance of its functions at any such enquiry shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”

8. Substitution of section 11 of Act 23 of 1963, as amended by section 2 of Act 19 of 1967. - The following section is hereby substituted for section 11 of the principal Act:

“11. Penalties for failure to comply with maintenance order. - (1) Subject to the provisions of subsection (3) any person, who fails to make any particular payment in accordance with a maintenance order, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine.

(2)(a) Any court with civil jurisdiction may, in addition to or in lieu of any penalty, on the application of the public prosecutor grant an order for the recovery from the convicted person of any amount he failed to pay in accordance with the first-mentioned order, together with any interest thereon, whereupon the order so granted shall have the effect of a civil judgment of that court and shall, subject to paragraph (b), be executed in the prescribed manner.

(b) A court granting an order against a convicted person under paragraph (a) may in a summary manner enquire into the circumstances mentioned in paragraph (c) and, as it may deem fit, authorize the issue of a warrant of execution against the movable or immovable property of the convicted person in order to satisfy such order.

(c) At an enquiry referred to in paragraph (b) the court shall take into consideration -



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- (i) the existing and prospective means of the convicted person;
  - (ii) the financial needs and obligations in respect of the person maintained by the convicted person;
  - (iii) the conduct of the convicted person in so far as it may be relevant to his failure to pay in accordance with the maintenance order; and
  - (iv) any other circumstances which should in its opinion be taken into consideration.
- (d) Notwithstanding anything to the contrary in any law contained, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under an order granted under paragraph (a).
- (3) Proof that any failure which is the subject of a charge under subsection (1) was due to lack of means and that such lack of means was not due to unwillingness to work or misconduct on the part of the person charged shall be a good defence to any such charge.
- (4) A magistrate's court shall have jurisdiction to impose summarily the full penalty for any offence under subsection (1).
- (5) A copy of a maintenance order purporting to have been certified by the maintenance officer or by the registrar or clerk of the court or by any other officer having the custody of the records of the court which made the maintenance order shall, if the name mentioned therein of the person against whom the maintenance order has been made corresponds substantially to that of the person charged with an offence under subsection (1), on its mere production be *prima facie* proof of the fact that such maintenance order has been made against the last-mentioned person.
- (6) If a person was convicted of an offence under subsection (1), the maintenance officer may, notwithstanding anything to the contrary in any law contained, furnish the personal particulars of such person to any business which has as its object the granting of credit or is involved in the credit rating of persons."

9. Amendment of section 12 of Act 23 of 1963. - Section 12 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Any person who fails to comply with any such notice shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months."

10. Substitution of section 14 of Act 23 of 1963. - The following section is hereby substituted for section 14 of the principal Act:

"14. Notice of change of address. - (1) If any person against whom a maintenance order has been made changes the place of his residence or employment during the currency of the order, he shall forthwith give notice thereof in writing -

(a) if payment in terms of the order is to be made to any person, officer, organization or institution, to such person, officer, organization or institution, or

(b) if payment in terms of the order is to be made into any account at any financial institution, to the maintenance officer of the court which made the order, and shall state fully and clearly where the new place of his residence or employment is situated.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

(3) Whenever in criminal proceedings in respect of any offence under subsection (2) the question arises whether or not any person bearing a particular name -

(a) was resident at a particular place of residence during a particular period, or

(b) was working at a particular place of employment during a particular period,

a document purporting to be an affidavit made by a person who in that affidavit alleges -

## MAINTENANCE AMENDMENT DECREE, 1993

- (i) that he was resident at the particular place of residence during the particular period or that the particular place of residence was in his possession or under his control during the particular period or that he was during the particular period in control of the allocation of or the arrangements for accommodation at the particular place of residence and that no person bearing the name in question was resident at such place of residence during such period; or
- (ii) that the particular place of employment was in his possession or under his control during the particular period or that he was during the particular period in control of the appointment or remuneration of employees at the particular place of employment and that no person bearing the name in question was working at such place of employment during such period,

as the case may be, shall on its production at such proceedings be *prima facie* proof of the facts stated therein."

11. Insertion of sections 14A, 14B and 14C in Act 23 of 1963. - The following sections are hereby inserted in the principal Act after section 14:

"14A. Presumption in respect of failure to comply with maintenance order. - If it is alleged at proceedings under this Act that a person against whom a maintenance order was made has failed to make any particular payment to the person, officer, organization or institution or into the account at the financial institution specified in the order, it shall be presumed until the contrary is proved that he has failed to make such payment.

14B. Costs. - (1) Any court holding an enquiry under section 5 may, having regard to the conduct of the persons concerned in such enquiry in so far as it may be relevant, make such order as it considers just in relation to the costs of the service of process.

(2)(a) If the maintenance officer is of the opinion -

- (i) that the paternity of any child is placed in issue,
- (ii) that the mother of such child as well as the person who is allegedly the father of such child are prepared to submit themselves as well as such child, if the mother has parental authority over the child, to the taking of blood samples in order to carry out scientific tests relating to the paternity of such child, and
- (iii) that such mother or such person or both such mother and such person are unable to pay the costs involved in the carrying out of such scientific tests,

he may at any time during an enquiry under section 5 request the maintenance court to hold an enquiry referred to in paragraph (b).

(b) If the maintenance officer puts such request to the maintenance court, the maintenance court may in a summary manner enquire into -

- (i) the means of the mother of the child as well as of the person who is allegedly the father of the child, and
- (ii) the other circumstances which should in its opinion be taken into consideration,

and the maintenance court may -

(aa) make such provisional order as it may deem fit relating to the payment of the costs involved in the carrying out of the aforementioned tests, including a provisional order directing the State to pay the whole or any part of such costs; or

(bb) make no order.

(c) When a maintenance court has made an order under section 5, the court may, after the result of the tests has become known -

- (i) make an order confirming the provisional order referred to in paragraph (b)(aa); or

## MAINTENANCE AMENDMENT DECREE, 1993

(ii) set aside such provisional order or substitute therefor any other order relating to the payment of the costs involved in the carrying out of the scientific tests which it considers just.

(3)(a) An order made under subsection (1) or under subsection (2)(c) shall have the effect of a civil judgment of that maintenance court and shall be executed in the prescribed manner.

(b) The provisions of section 7(1), (2) and (3)(a) shall *mutatis mutandis* apply in respect of an order made under subsection (1) or under subsection (2)(c).

14C. Effect of orders of maintenance court. - Save as is otherwise provided in this Act, any order or direction made by a maintenance court under this Act shall have the effect of an order or direction of that court made in a civil action."

12. Repeal of section 16A of Act 23 of 1963, as inserted by section 4 of Act 39 of 1970. - Section 16A of the principal Act is hereby repealed.

13. Substitution of long title of Act 23 of 1963. - The following long title is hereby substituted for the long title of the principal Act:

"To consolidate and amend certain laws relating to maintenance."

14. Short title and commencement. - This Decree shall be called the Maintenance Amendment Decree, 1993 and shall come into operation on a date to be fixed by the Head of State by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Decree.



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# DEPARTMENT OF JUSTICE

## GOVERNMENT NOTICE No. 83 OF 1993

### LIQUOR ACT, 1983

#### NOTICE OF ANNUAL BOARD MEETING

Notice is hereby given in terms of section 8 of the Liquor Act, 1983 (Act 13 of 1983) that the annual meeting of the Ciskeian Liquor Board will on the direction of the Minister of Justice, be held on Wednesday, 10 November 1993, at 09h00 in the conference room of the Department of Justice, Bisho for the consideration of -

(a) the following applications under section 22 of the Act for the grant of new licences -

<i>APPLICANT</i>	<i>SITUATION OF PREMISES</i>	<i>CLASS OF LICENCE</i>
B.F. Dlakadla	Site 54 Mbombo Administrative Area, Zwelitsha District	Mealtime wine and malt liquor licence.
E.N. Khambi	Site 3 Tentergate, Ntabethemba District	Bottle Store.
M.W. Matiso	Site 258 Ngxondoreni Administrative Area, Keiskammahoek District	Bottle Store.
M.W. Mabinda	Site 261 Nyaniso Administrative Area, Peddie District	Bottle Store.
B.N. Ncanywa	Erf 384 Wesley Township, Peddie District	Tavern.

(b) the following matters held over from the previous meeting -

<i>APPLICANT</i>	<i>SITUATION OF PREMISES</i>	<i>CLASS OF LICENCE</i>
G.G. Gwarube	Residential Allotment No. 1 Joseph William's Administrative Area, Zwelitsha District	Tavern.
F.D. Madubela	Site 2 Bodium Administrative Area, Peddie District	Tavern.
V.D. Nikani	Site 148 Phakamisa, Zwelitsha District	Tavern.

(c) matters referred to the meeting in terms of section 10(1)(c) of the Act by the Minister.

A.S. NKUHLU

DIRECTOR-GENERAL: JUSTICE

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