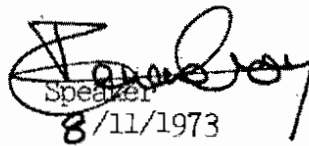


I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Maintenance Orders (Reciprocal Enforcement) Act, 1973 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.


Clerk of Parliament
8/11/1973

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENAS AROI, Speaker of Parliament, HEREBY CERTIFY that the Maintenance Orders (Reciprocal Enforcement) Act, 1973 a copy of which is attached has been passed by Parliament.


Speaker
8/11/1973

REPUBLIC OF NAURU

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT, 1973

ARRANGEMENT OF SECTIONS

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REPUBLIC OF NAURU

(No. 19 of 1973)

AN ACT

To make provision for facilitating the recovery of maintenance by and from persons in Nauru from or by persons in other countries and to extend the jurisdiction of the Family Court to hear complaints by or against persons outside Nauru, and for purposes connected with the matters aforesaid.

(Certified : 8/11/1973)

Enacted by the Parliament of Nauru as follows :

PART I - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act 1973. It shall come into force on a date to be notified by the Minister in the Gazette, and different dates may be so notified for different Parts or for different purposes.

INTERPRETATION

2. In this Act, unless the context otherwise requires -
- "affiliation order" means an order, however described, adjudging, finding or declaring a person to be the father of a child, whether or not it also provides for the maintenance of the child;
 - "certificate of arrears", in relation to a maintenance order, means a certificate certifying that the sum specified in the certificate is to the best of the information or belief of the officer giving the certificate the amount of the arrears due under the order at the date of the certificate or, as the case may be, that to the best of his information or belief there are no arrears due thereunder at that date;
 - "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;
 - "convention country" means a country declared by the Cabinet under section 20 to be a convention country;

"court" includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order;

"maintenance order" means an order, however described, of any of the following descriptions, that is to say -

(a) an order, including an affiliation order or order consequent upon an affiliation order, which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain; and

(b) an affiliation order or order consequent upon an affiliation order, being an order which provides for the payment by a person adjudged, found or declared to be a child's father of expenses incidental to the child's birth or, where the child has died, of his funeral expenses,

and, in the case of a maintenance order which has been varied, means that order as varied;

"payee", in relation to a maintenance order, means the person entitled to the payments for which the order provides;

"payer", in relation to a maintenance order, means the person liable to make payments under the order;

"provisional order" means, according to the context, -

(a) an order made by the Family Court which is provisional only and has no effect unless and until confirmed, with or without alteration, by a competent court in a reciprocating country; or

(b) an order made by a court in a reciprocating country which is provisional only and has no effect unless and until confirmed, with or without alteration, by the Family Court;

"reciprocating country" has the meaning assigned to it by section 3 of this Act;

"registered order" means a maintenance order which is for the time being registered in the Family Court under Part II of this Act;

"the Clerk" means the Clerk of the Family Court;

"the Family Court" means the Family Court established by the Family Court Act 1973;

"the Minister" means the Minister for External Affairs;
"the responsible authority", in relation to a reciprocating country, means any person who in that country has functions similar to those of the Minister for External Affairs under Part II of this Act.

(2) For the purposes of Part II of this Act an order shall be taken to be a maintenance order so far, but only so far, as it relates to the periodical payment of sums of money as mentioned in paragraph (a) of the definition of "maintenance order" in the preceding subsection or to the payment by a person adjudged, found or declared to be a child's father of any such expenses as are mentioned in paragraph (b) of that definition.

(3) Any reference in Part II of this Act to the payment of money for the maintenance of a child shall be construed as including a reference to the payment of money for the child's education.

PART II - RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS MADE IN NAURU OR A RECIPROCATING COUNTRY

DESIGNATION OF RECIPROCATING COUNTRIES

3. (1) The Cabinet, if satisfied that, in the event of the benefits conferred by this Part of this Act being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory other than Nauru similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the Courts of Nauru, may by notice in the Gazette designate that country or territory as a reciprocating country for the purposes of this Part of this Act; and, subject to the next following subsection, in this Part of this Act "reciprocating country" means a country or territory that is, for the time being so designated,

(2) A country or territory may be designated under the preceding subsection as a reciprocating country either as regards maintenance orders generally, or as regards maintenance orders other than those of any specified class, or as regards maintenance orders of one or more specified classes only; and a country or territory which is for the time being so designated otherwise than as regards maintenance orders generally shall for the purposes of this Part of this Act be taken to be a reciprocating country only as regards maintenance

orders of the class to which the designation extends.

TRANSMISSION OF A MAINTENANCE ORDER MADE IN NAURU FOR ENFORCEMENT IN A RECIPROCATING COUNTRY

4. (1) Subject to the next following subsection, where the payer under a maintenance order made, whether before or after the commencement of this Part of this Act, by a Court in Nauru is residing in a reciprocating country, the payee under the order may apply for the order to be sent to that country for enforcement.

(2) The preceding subsection shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part III of this Act.

(3) Every application under this section shall be made in the prescribed manner to the Clerk of the Family Court and, if it relates to a maintenance order not enforceable by the Family Court, shall be accompanied by a copy of the maintenance order certified by the Registrar of the Supreme Court.

(4) If, on an application duly made under this section to the Clerk he is satisfied that the payer under the maintenance order to which the application relates is residing in a reciprocating country, the following documents, that is to say -

- (a) a certified copy of the maintenance order;
- (b) a certificate signed by the Clerk certifying that the order is enforceable in Nauru;
- (c) a certificate of arrears so signed;
- (d) a statement giving such information as he possesses as to the whereabouts of the payer;
- (e) a statement giving such information as he possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer;

shall be sent by the Clerk to the Minister with a view to their being transmitted by the Minister to the responsible authority in the reciprocating country if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) Nothing in this section shall be taken as affecting any jurisdiction of a Court in Nauru with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

MAINTENANCE ORDER AGAINST PERSON IN A RECIPROCATING COUNTRY

5. (1) Where a complaint is made to the Family Court against a person residing in a reciprocating country and the complaint is one on which the Court would have jurisdiction by virtue of any written law to make a maintenance order if -

- (a) that person were residing in Nauru; and
- (b) a summons to appear before the Court to answer to the complaint had been duly served on him,

the Court shall have jurisdiction to hear the complaint and may, subject to the next following subsection, make a maintenance order on the complaint.

(2) A maintenance order made by virtue of this section shall be a provisional order.

(3) Where the Court makes a maintenance order which is by virtue of this section a provisional order, the following documents, that is to say -

- (a) a certified copy of the maintenance order;
- (b) a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings;
- (c) a certificate signed by the Chairman of the Family Court certifying that the grounds stated in the certificate are the grounds on which the making of the order might have been opposed by the payer under the order;
- (d) a statement giving such information as was available to the Court as to the whereabouts of the payer;
- (e) a statement giving such information as the officer possesses for facilitating the identification of the payer; and
- (f) where available, a photograph of the payer;

shall be sent by the Clerk to the Minister with a view to their being transmitted by the Minister to the responsible authority in the reciprocating country in which the payer is residing if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(4) A maintenance order made by virtue of this section which has been confirmed by a competent court in a reciprocating country shall be treated for all purposes as if the Family Court had made it in the form in which it was confirmed and as if the order had never been a provisional order and, subject to section 6 of this Act, any such order may be enforced, varied or revoked accordingly.

VARIATION AND REVOCATION OF MAINTENANCE ORDERS MADE BY A COURT IN NAURU

6. (1) This section applies to a maintenance order a certified copy of which has been sent to a reciprocating country in pursuance of section 4 and to a maintenance order made by virtue of section 5 which has been confirmed by a competent court in such a country.

(2) A Court in Nauru having power to vary a maintenance order to which this section applies shall have power to vary that order by a provisional order.

(3) Where the Court hearing an application for the variation of a maintenance order to which this section applies proposes to vary it by increasing the rate of the payments under the order, then, unless either -

(a) both the payer and the payee under the order appear in the proceedings, or

(b) the applicant appears and the appropriate process has been duly served on the other party,

the order varying the order shall be a provisional order.

(4) Where a Court in Nauru makes a provisional order varying a maintenance order to which this section applies, the Registrar or Clerk of that Court shall send in the prescribed manner to the court in a reciprocating country having power to confirm the provisional order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.

(5) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying or revoking a maintenance order to which this section applies, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made is received by the Court in Nauru which made the maintenance order, that Court may confirm or refuse to confirm the provisional order and, if that order is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.

(6) For the purpose of determining whether a provisional order should be confirmed under the last preceding subsection, the Court shall proceed as if an application for the variation or revocation, as the case may be, of the maintenance order in question had been made to it.

(7) Where a maintenance order to which this section

applies has been varied by an order, including a provisional order which has been confirmed, made by a Court in Nauru or by a competent court in a reciprocating country, the maintenance order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.

(8) Where a maintenance order to which this section applies has been revoked by an order made by a Court in Nauru or by a competent court in a reciprocating country, including a provisional order made by the last-mentioned court which has been confirmed by a Court in Nauru, the maintenance order shall, as from the date on which the order revoking it was made, be deemed to have ceased to have effect except as respects any arrears due under the maintenance order at that date.

(9) Where before a maintenance order made by virtue of section 5 is confirmed a document, duly authenticated, setting out or summarising evidence taken in a reciprocating country for the purpose of proceedings relating to the confirmation of the order is received by the Family Court, or the Family Court, in compliance with a request made to it by a court in such a country, takes for the purpose of such proceedings the evidence of a person residing in Nauru, the Family Court shall consider that evidence and if, having done so, it appears to it that the order ought not to have been made -

- (a) it shall, in such manner as may be prescribed, give to the person on whose application the maintenance order was made an opportunity to consider that evidence, to make representations with respect to it and to adduce further evidence; and
- (b) after considering all the evidence and any representations made by that person, it may revoke the maintenance order.

REGISTRATION IN THE FAMILY COURT OF A MAINTENANCE ORDER MADE IN A RECIPROCATING COUNTRY

7. (1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, including such an order made by such a court which has been confirmed by a court in another reciprocating country but excluding a

provisional order which has been confirmed.

(2) Where a certified copy of an order to which this section applies is received by the Minister from the responsible authority in a reciprocating country, he shall send the copy of the order to the Clerk of the Family Court.

(3) Where the Clerk receives from the Minister a certified copy of an order to which this section applies, he shall, subject to the next following subsection, register the order in the prescribed manner in the Family Court.

(4) Before registering an order under this section the Clerk shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing in Nauru and, if after taking those steps he is satisfied that the payer is not so residing, he shall return the certified copy of the order to the Minister with a statement giving such information as he possesses as to the whereabouts of the payer.

CONFIRMATION BY THE FAMILY COURT OF A PROVISIONAL MAINTENANCE ORDER MADE IN A RECIPROCATING COUNTRY

8. (1) This section applies to a maintenance order made, whether before or after the commencement of this Part of this Act, by a court in a reciprocating country, being a provisional order.

(2) Where a certified copy of an order to which this section applies together with -

(a) a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the order was made; and

(b) a statement of the grounds on which the making of the order might have been opposed by the payer under the order,

is received by the Minister from the responsible authority in a reciprocating country, the Minister shall send the copy of the order and the documents which accompanied it to the Clerk of the Family Court, and the Family Court shall -

(i) if the payer under the order establishes any such defence as he might have raised in the proceedings in which the order was made, refuse to confirm the order; and

(ii) in any other case, if the Court is satisfied that the payer is residing in Nauru, confirm the order either without alteration or with such alterations as it thinks reasonable.

(3) In any proceedings for the confirmation under this section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have raised a defence on any of those grounds in the proceedings in which the order was made.

(4) For the purpose of determining whether a provisional order should be confirmed under this section the Family Court shall proceed as if an application for a maintenance order against the payer under the provisional order had been made to it.

(5) The Clerk shall, if the Family Court confirms the order, register the order in the prescribed manner in that Court, and shall, if the Court refuses to confirm the order, return the certified copy of the order and the documents which accompanied it to the Minister.

(6) If a summons to appear in the proceedings for the confirmation of the provisional order cannot be duly served on the payer under that order, the Clerk shall return the certified copy of the order and the documents which accompanied it to the Minister with a statement giving such information as he possesses as to the whereabouts of the payer.

ENFORCEMENT OF A FOREIGN MAINTENANCE ORDER REGISTERED IN THE FAMILY COURT

9. (1) A registered order may be enforced in Nauru as if it had been made by the Family Court and as if that Court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.

(2) Any person for the time being under an obligation to make payments in pursuance of a registered order shall give notice of any change of address to the Clerk of the Family Court, and any person failing without reasonable excuse to give such notice is guilty of an offence and is liable to a fine not exceeding fifty dollars.

(3) An order which by virtue of this section is enforceable by the Family Court shall be enforceable as if it were a maintenance order made by that Court under the Maintenance Ordinance 1959-1967; and the provisions of any written law with respect to the enforcement of maintenance orders, including any written law relating to the accrual of arrears and the remission of sums due shall apply accordingly.

(4) The Family Court and the Clerk shall take all such steps for enforcing a registered order as may be prescribed.

(5) In any proceedings for or with respect to the enforcement of an order which is for the time being registered in the Family Court under this Part of this Act a certificate of arrears sent to the Clerk shall be evidence of the facts stated therein.

(6) Subject to the next following subsection, sums of money payable under a registered order shall be payable in accordance with the order as from the date on which the order was made.

(7) The Family Court may, if it decides to confirm a provisional order, direct that the sums of money payable under it shall be deemed to have been payable in accordance with the order as from such date, being a date later than the date on which the order was made, as it may specify; and subject to any such direction, a maintenance order registered under section 8 shall be treated as if it had been made in the form in which it was confirmed and as if it had never been a provisional order.

VARIATION AND REVOCATION OF A MAINTENANCE ORDER REGISTERED IN THE FAMILY COURT

10. (1) Subject to the provisions of this section, the Family Court -

(a) shall have the like power, on an application made by the payer or payee under a registered order, to vary or revoke the order as if it had been made by the Family Court and as if that Court had had jurisdiction to make it; and

(b) shall have power to vary or revoke a registered order by a provisional order.

(2) The Family Court shall not vary a registered order otherwise than by a provisional order unless -

(a) both the payer and the payee under the registered order are for the time being residing in Nauru;

(b) the application is made by the payee under the registered order; or

(c) the variation consists of a reduction in the rate of the payments under the registered order and is made solely on the ground that there has been a change in the financial circumstances of the payer since the registered order was made or, in the case of an order registered under section

8, since the registered order was confirmed, and the courts in the reciprocating country in which the maintenance order in question was made do not have power, according to the law in force in that country, to confirm provisional orders varying maintenance orders.

(3) The Family Court shall not revoke a registered order otherwise than by a provisional order unless both the payer and the payee under the registered order are for the time being residing in Nauru.

(4) On an application for the revocation of a registered order the Family Court shall, unless both the payer and the payee under the registered order are for the time being residing in Nauru, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the Family Court is required to apply that law, that Court may make a provisional order if it has reason to believe that the ground on which the application is made is a ground on which the order could be revoked according to the law applied by the reciprocating country, notwithstanding that it has not been established that it is such a ground.

(5) Where the Family Court makes a provisional order varying or revoking a registered order the Clerk shall send in the prescribed manner to the court in the reciprocating country which made the registered order a certified copy of the provisional order together with a document, authenticated in the prescribed manner, setting out or summarising the evidence given in the proceedings.

(6) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying a registered order, together with a document, duly authenticated, setting out or summarising the evidence given in the proceedings in which the provisional order was made, is received by the Family Court, that Court may confirm the order either without alteration or with such alterations as it thinks reasonable or may refuse to confirm the order.

(7) For the purpose of determining whether a provisional order should be confirmed under the last preceding subsection the Family Court shall proceed as if an application for the variation of the registered order had been made to it.

(8) Where a registered order has been varied by an order, including a provisional order which has been confirmed,

made by the Family Court or by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, have effect as varied by that order and, where that order was a provisional order, as if that order had been made in the form in which it was confirmed and as if it had never been a provisional order.

(9) Where a registered order has been revoked by an order made by the Family Court or by a competent court in a reciprocating country, including a provisional order made by the Family Court which has been confirmed by a competent court in a reciprocating country, the registered order shall, as from the date on which the order was made, be deemed to have ceased to have effect except as respect any arrears due under the registered order at that date.

(10) The Clerk shall register in the prescribed manner any order varying a registered order other than a provisional order which is not confirmed.

CANCELLATION OF REGISTRATION OF FOREIGN MAINTENANCE ORDER

11. (1) Where -

(a) a registered order is revoked by an order made by the Family Court;

(b) a registered order is revoked by a provisional order made by that Court which has been confirmed by a court in a reciprocating country and notice of the confirmation is received by the Family Court; or

(c) a registered order is revoked by an order made by a court in such a country and notice of the revocation is received by the Family Court,

the Clerk shall cancel the registration.

(2) Where the Clerk is of opinion that the payer under a registered order has ceased to reside in Nauru, he shall cancel the registration of the order and shall send the certified copy of the order to the Minister together with -

(a) a certificate of arrears signed by him;

(b) a statement giving such information as he possesses as to the whereabouts of the payer; and

(c) any relevant documents in his possession relating to the case.

STEPS TO BE TAKEN BY THE MINISTER WHERE PAYER IS NOT RESIDING IN NAURU

12. (1) If it appears to the Minister that the payer