

REPORT ON THE SUCCESS OF OPERATION ISONDLO

1. Background:

The Maintenance Act, Act 99 of 1998, came into operation on 26 November 1999. The 1998 Act amended the 1963 Maintenance Act and sought to address the ineffectiveness of the 1963 Maintenance Act. The preamble to the 1998 Act clearly states the intention of the Legislature behind the implementation and introduction of the Act. The preamble refers to our Constitution and the role it should play in establishing and ensuring that a fair and equitable maintenance system is established. Act 27 of the Convention on Rights of the Child signed by South Africa at New York on 20 November 1989 specifically requires State parties to take all appropriate measures in order to secure the recovery of maintenance for the child from the parent or other person having financial responsibility for the child. In introducing this legislation with its amendments the government of South Africa was reaffirming its commitment and determination to improve the enforcement of maintenance in South Africa.

Despite the existence of the Act and the innovative amendments that have been introduced, women continue to struggle to access maintenance due to inefficiencies in the system and lack of adequate resources and capacitation. The Department of Justice and Constitutional Development introduced Operation Isondlo as a strategy aimed at improving the Maintenance system.

2. Objectives of Operation Isondlo:

The strategic objective of Isondlo is:

- 2.1 Capacity Building in courts
- 2.2 Enforcement of the Maintenance Act in particular civil enforcement
- 2.3 Decrease in the backlog of Maintenance cases

2.4 Public Education and Awareness campaigns

3. DISCUSSION:

3.1 Capacity Building in courts:

With promulgation of various laws such as the Maintenance Act, which aimed to establish a fair and equitable Maintenance system, in line with the Convention on the Rights of the Child, a large percentage of South Africans approached our courts to claim Maintenance. But because when the Maintenance Act was passed, it was not costed for effective implementation. The necessary capacity to deal with the workload was not created. For the first time since 1994, through Operation Isondlo, the department created and filled the following positions at various courts throughout the country.

427 Maintenance Clerks

86 Maintenance Officers (Legally qualified)

140 Maintenance Investigators

100 Legal Interns

150 Administrative clerks' posts are in the process of being advertised

13 Acting additional magistrates were appointed

124 Children's court clerks

a. Maintenance Officers:

The appointment of legally trained Maintenance Officers has improved the quality of the service rendered and has enhanced the implementation of the provisions of the Maintenance Act. In the past unqualified personnel performed duties that entailed substantive law; this is no longer the case in courts where officers have been appointed permanently.

b. Maintenance Clerks:

The recruitment of permanent clerks reduced the number of temporary staff and volunteers at many Justice Service Points. It is hoped that in future will be in a position to appoint paralegals to render frontline services at Family Law sections of the courts.

c. Legal Intern:

The appointment of legal interns has provided the unemployed legally qualified with an opportunity to gain the necessary work experience and has created jobs for them.

100 Legal Interns were appointed at hot spots throughout the country to perform the following functions:

- Conduct an audit of all maintenance files in the system

Determine backlogs i.t.o:

- Long outstanding enquiries
- Outstanding section 31 matters
- Number of inactive files
- Files where monies have not been collected
- Identify a need for additional courts, staff and equipment
- Set down matters for hearing
- Draft a Sub-Project Plan and allocate resources
- Embark on a process of fast tracking all Maintenance Enquiries
- Fast track all long outstanding Sec 31 matters
- Facilitate Attachment of Emoluments Orders and Civil Executions
- Trace complainants in dormant files for purposes of re-opening the enquiries or closing the files and sending them to archives where respondents have died.

d. Maintenance Investigators:

In the past women were responsible for availing financial information and the whereabouts of the respondent to enable the Presiding Officer to make an order for Maintenance. This exercise proved to be very traumatic for women in that they were longer in contact with the respondent and did not have access to this information resulting in the victimization.

The appointment of Maintenance Investigators in line with the Act brought about a tremendous relief resulting in greater access to justice and an efficient and effective investigation process.

In areas where Maintenance Investigators have been appointed, there has been an estimated 65% improvement in the reduction of the cycle times in the hearing of maintenance matters. There are cases that have been dragging for many years due to the unavailability of maintenance investigators where sheriffs could not assist due to their limited role which is restricted to serving of court processes.

The estimated cycle times have been reduced from six (6) months to three (3) months in cases where there were major backlogs; and from four (4) months to (2) two months in courts where capacity was build by the appointment of maximum administrative support of maintenance officers, maintenance clerks and dedicated magistrates and maintenance prosecutors.

ACCESS TO TRANSUNION ITC INFORMATION SUPPORT SERVICE

In 2004 an Information Support Service to the Maintenance Investigators was established within the Chief Directorate: Promotion of the Rights of Vulnerable Groups in Court Services, Pretoria.

The TransUnion Information Support Service provides an extra tool towards the effective and efficient tracing of maintenance defaulters. This information support

service provides information on property ownership and value of that property, deeds search, credit profile, Home Affairs particulars about individuals, company directorship of certain individuals who might be liable for maintenance, vehicle ownership, financial status and physical location of respondent to determine their ability to meet the obligation to pay maintenance.

The department is in the process of decentralizing the ITC information support service to all the Maintenance Investigators in the courts to enhance accessibility and reduce the turnaround time for investigation. In the past numerous lengthy remands were required to enable the complainant to physically visit the defaulters place of employment, banks, Deed Offices etc to get the necessary documentary evidence required to finalise their matters.

The following is a list of examples of cases that were successfully investigated.

MAINTENANCE INVESTIGATORS' SUCCESS STORIES

REFERENCE	ISSUE ADDRESSED	ACTION BY INVESTIGATOR
00104MAI 001166 TC Zingitwa vs LGQ Zingitwa	Arrear Maintenance: R159 000-00	He blocked the payment of the Respondent's pension. R159 000 was attached iro arrears and R114 000 for future maintenance for the children
00102MAI008474 Mokgohlwa vs Talakgale	Arrear Maintenance: R35 000-00	Thorough investigation revealed that the defaulter had been awarded a tender in Limpopo. The amount of R35 000 has since been paid and an order for monthly maintenance payments has also been made.
J.B Johnson vs I.R Johnson	Arrear Maintenance: R95 400-00	Pension money to an amount of R226 000-00 was paid into the defaulter's account in March 2006. The money was subsequently frozen until the investigator obtained an order for the attachment of R95 400-00 was made towards the arrear.

A Pretoria Maintenance matter.	Application for R1000.00 pm for maintenance, respondent offered to pay R100-00 per month	The Investigator obtained a Sec. 205 of Act 51/77 to investigate his financial status. He discovered that the respondent had R34 185 170-97 as on 03 September 2004, at the ABSA Bank, Bellville Branch, Cape Town. An appropriate order was made.
B.S Masubele matter – Pretoria Magistrate's Office	Responded denied possession of property that could be attached for the maintenance of his child who had been diagnosed to be HIV positive.	The Investigator discovered an amount of R85 000-00 in his ABSA account held at Silverton. He further found that there were sums of money ranging from R2 000-00 to R7 000-00 that were deposited into his banking account on a monthly basis. An appropriate order of court was made.

3.2 Decrease in backlog of Maintenance Cases:

Through audits that were conducted it transpired that a large number of Maintenance beneficiaries had not collected their monies over a period exceeding six months.

Monies were not paid out for the following reasons:

- Death of the beneficiaries
- Relocation from the district or province where the application was lodged
- Delay in finalising matters occasioned by numerous remands at the instance of the respondents and their attorneys
- Others were tired of visiting the court only to be told that their monies had not been paid in
- In many instances, companies pay the money in but they omit to forward a schedule indicating the names and amounts to be paid in respect of every beneficiary, this makes it difficult for the officials to pay out of the amount received by the court.

Through Operation Isondlo the department has been able to trace and pay out to some of the beneficiaries. The process is not that easy because some of the

beneficiaries have since relocated from their original addresses. The department is in the process of outsourcing the tracing of defaulters and beneficiaries for unclaimed monies to help speed up the process. More days were extended for payment of Maintenance monies. Saturday courts were established to deal with backlog.

3.3 Public education and awareness

The Department developed rights education material on how to access Maintenance, translated in all official languages and distributed to all the regions. Public awareness raising campaigns in the regions, targeting the rural and urban communities, involving relevant stakeholders, highlighting Maintenance, took place in the form of seminars, workshops, imbizos and maintenance blits. As well as celebrating those fathers who were consistent paying. These materials were distributed at these campaigns and in court.

3.4 Human Resource Development

3.4.1 Training and development

The act has introduced progressive provisions which enable civil enforcement, orders by default and various remedies. Whilst Justice College do provide training, it is mainly on the substantive law and does not really cover practical and administrative aspects of the implementation of the Act, such as the calculation of the cost of the child, calculation of the interest, the practicalities of civil enforcement and the necessary forms required.

The Chief Directorate: Vulnerable Groups, has embarked on a training programme focusing on the substantive law as well as the practical and administrative aspects by experts. 325 Clerks and 86 legally qualified Maintenance Officers were trained. 145 Maintenance Investigators were trained

on basic investigation techniques. 100 Interns were trained on Maintenance and completion of forms.

3.4.2 Frontline service training and wellness programme

Maintenance matters are highly emotive as it involves the feelings of two people who are now alienated and this impact on the officials dealing with Maintenance issues. As a result, the Human Resource Chief Directorate is busy with developing a wellness programme for the staff. The Chief Directorate has finalised the frontline service training which includes customer service, which will help to provide the necessary skill to deal with the public and difficult customers. A training programme for mentors and assessors was developed.

3.4.3 Family Law learnership

The majority of the staff working with family law services, including maintenance, does not have the necessary qualification. The Chief Directorate: Vulnerable Groups initiated a process of developing a learnership programme for Family Law, in conjunction with SASSETA, by experts. The certificate and curriculum has recently been approved by SASSETA and registered by South African Qualifications Authority (SAQA). The learnership will afford family law staff the opportunity to have a certificate in family law as well as other interested unemployed members of the public. The learnership provides integrated training in all family law matters concerning maintenance, domestic violence, children and divorce.

3.4.4 Guidelines/ User-friendly forms

Because of the different interpretations and application of the provisions of the Maintenance Act, it is imperative to develop guidelines for greater efficiency and effectiveness. The Chief Directorate: Vulnerable Groups is in the process of finalising guidelines.

There have been complaints from civil society that the forms are not user-friendly, the Chief Directorate: Vulnerable Groups is busy reviewing the forms in conjunction with the Legislation Chief Directorate.

3.5 Information system

Chief Directorate: Vulnerable Groups in conjunction with ISM and Gender Directorate is busy developing a family law automated case management system which includes Domestic Violence, Maintenance, Children's Court and Divorce for standardization of workflows. Payment of maintenance monies into the recipient's bank account through the electronic transfer is taking place in 6 courts in the country: Bizana, Elliotdale, Umbumbulu, Ngeleni, Cullinan and Grahamstown. The Director General has instructed that it be rolled out to all the courts where JDAS is not operational until EFT functionality is built into JDAS. The benefits of electronic fund transfer are that maintenance recipient does not have to wait in long queues. An SMS will be sent to the recipient's selected cell phone number advising them that their maintenance monies has been deposited into their bank accounts. No additional bank charges will be incurred when withdrawing all the maintenance monies from the account in one lump sum. The Justice Deposit account is a financial system utilised to administer bail, fines and maintenance monies and is operational in 18 courts in the country. The system replaces the manual card system and one is able to get the total amount available and owed to the beneficiary at the click of the button. The aging analysis functionality enables access to case history regarding suspended sentences, variation orders, areas and current order reducing the number of postponement to populate this information manually.

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