

CHAPTER 55

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT

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AN ACT TO MAKE NEW PROVISION IN PLACE OF THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT FOR THE ENFORCEMENT IN FIJI OF MAINTENANCE ORDERS MADE ABROAD AND VICE VERSA AND TO MAKE PROVISION WITH A VIEW TO THE ACCESSION BY FIJI TO THE UNITED NATIONS CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE DONE AT NEW YORK ON 20TH JUNE, 1956.

[*6th February, 1976]

*Except for section 20, not in force at the date of this revision (31st December, 1978).

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Maintenance Orders (Reciprocal Enforcement) Act.

Interpretation

2.—(1) 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;

“appropriate court” in relation to a person residing in Fiji means a court which has, or would have had if the proceedings had been commenced or had been heard in Fiji, jurisdiction and in the case of doubt such court as the Chief Registrar shall direct;

“appropriate form” means a form approved by the Minister for use in any particular case;

“appropriate officer” means the officer of the appropriate court (including a magistrate) to which a matter has been, will be or would be referred and in the case of doubt such officer as the Chief Registrar shall appoint or direct;

“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 person 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 appropriate officer to be a true copy;

“Chief Registrar” means the Chief Registrar of the Supreme Court;

“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 an 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 an 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;

“prescribed”, means prescribed by any written law or by the rules of court;

“prescribed officer” and “prescribed officer of the court” means any magistrate or any other officer prescribed by the rules of court or otherwise;

“provisional order” means (according to the context)—

(a) an order made by a court in Fiji 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 a court in Fiji having power under this Act to confirm it;

“reciprocating country” has (according to the context) either the meaning assigned to it by section 3 or means a convention country as defined in section 21;

“registered order” means a maintenance order which is for the time being registered in a court in Fiji;

“registering court”, in relation to a registered order, means the court in which that order is for the time being registered;

“the responsible authority”, in relation to a reciprocating country, means any person who in that a country has functions similar to those of the Minister under this Act.

(2) For the purposes of Part II, 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 sub-section (1) 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 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 FIJI OR RECIPROCATING COUNTRY

Designation of reciprocating countries

3.—(1) The Minister, if satisfied that, in the event of the benefits conferred by this Part being applied to, or to particular classes of, maintenance orders made by the courts of any country or territory outside Fiji, similar benefits will in that country or territory be applied to, or to those classes of, maintenance orders made by the courts of Fiji, may by order designate that country or territory as a reciprocating country for the purposes of this Part; and, subject to subsection (2), in this Part “reciprocating country” means a country or territory that is for the time being so designated.

(2) A country or territory may be designated under subsection (1) 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 order generally shall for the purposes of this Part be taken to be a reciprocating country only as regards maintenance orders of the class to which the designation extends.

Orders made by courts in Fiji

Transmission of maintenance orders made in Fiji for enforcement in reciprocating country

4.—(1) Subject to subsection (2), where the payer under a maintenance order made, whether before or after the commencement of this Part, by a court in Fiji 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) Subsection (1) shall not have effect in relation to a provisional order or to an order made by virtue of a provision of Part III.

(3) Every application under this section shall be made in the appropriate form or the prescribed manner to the prescribed officer of the court which made the maintenance order to which the application relates.

(4) If, on an application duly made under this section to the prescribed officer of a court in Fiji, that officer 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 prescribed officer certifying that the order is enforceable in Fiji;

(c) a certificate of arrears so signed;

(d) a statement giving such information as the prescribed officer possesses as to the whereabouts of the payer;

(e) a statement giving such information as the prescribed officer possesses for facilitating the identification of the payer;

(f) where available, a photograph of the payer.

shall be sent by the prescribed officer to the Minister with a view to their being transmitted by the Minister to the responsible authority in the reciprocating country if the Minister 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 Fiji with respect to a maintenance order to which this section applies, and any such order may be enforced, varied or revoked accordingly.

Power of courts to make provisional maintenance orders against person residing in reciprocating country

5.—(1) Where a complaint is made to a 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 enactment to make a maintenance order if—

(a) that person were residing in Fiji; 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 subsection (2), make a maintenance order on the complaint.

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

(3) If the court hearing a complaint to which subsection (1) applies is satisfied—

(a) that there are grounds on which a maintenance order containing a provision requiring the making of payments for the maintenance of a child may be made on that complaint. but

(b) that it has no jurisdiction to make that order unless it also makes an order providing for the legal custody of that child.

then, for the purpose of enabling the court to make the maintenance order, the complainant shall be deemed to be the person to whom the legal custody of that child has been committed by an order of the court which is for the time being in force.

(4) Where a 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 appropriate form or in the prescribed manner, setting out or summarising the evidence given in the proceedings;

(c) a certificate signed by the prescribed officer of the court certifying that 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 prescribed officer possesses for facilitating the identification of the payer; and

(f) where available, a photograph of the payer.

shall be sent by the prescribed officer 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 the Minister is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify that being done.

(5) 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 court which made the order 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, any such order may be enforced, varied or revoked accordingly.

Variation and revocation of maintenance order made in Fiji

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 Fiji 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 had been duly served
on the other party,

the order varying the order shall be a provisional order.

(4) Where a court in Fiji makes a provisional order varying a maintenance order to which this section applies, the prescribed officer of the court shall send in the appropriate form or 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 appropriate form or 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 Fiji 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 subsection (5), 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 Fiji 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 Fiji 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 Fiji the maintenance order shall, as from the date on which the revoking order 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 court in Fiji which made the order, or that court, in compliance with a request made to it by a court in such a country, takes the evidence of a person residing in Fiji for the purpose of such proceedings, the court in Fiji which made the order 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 or in the appropriate form, 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.

Orders made by courts in reciprocating countries

Registration in Fiji court of maintenance orders made in reciprocating country

7.—(1) This section applies to a maintenance order made, whether before or after the commencement of this Part, 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 not 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, and it appears to the Minister that the payer under the order is residing in Fiji, he shall send the copy of the order to the appropriate court.

(3) Where the appropriate court receives from the Minister a certified copy of an order to which this section applies, the prescribed officer of the court shall, subject to subsection (4), register the order in the appropriate form or the prescribed manner in that court.

(4) Before registering an order under this section a prescribed officer of a court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, 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 Fiji court of provisional maintenance orders made in reciprocating country

8.—(1) This section applies to a maintenance order made, whether before or after the commencement of this Part, 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, and it appears to the Minister that the payer under the order is residing in Fiji, he shall send the copy of the order and documents which accompanied it to the appropriate court, and that 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, 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 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 prescribed officer of a court having power under this section to confirm a provisional order shall, if the court confirms the order, register the order in the prescribed manner, 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 prescribed officer by whom the certified copy of the order was received shall return that copy 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 maintenance order registered in Fiji court

9.—(1) A registered order may be enforced in Fiji as if it had been made by the registering 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 registering court, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding \$20.

(3) An order which by virtue of this section is enforceable by a court shall be enforceable as if it were a maintenance order made by that court; and the provisions of any written law with respect to the registration and 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 court by which an order is enforceable by virtue of this section, and the officers thereof, shall take all such steps for enforcing the order as may be taken personally by the payee or as may otherwise be prescribed or be appropriate.

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

(6) Subject to subsection (7), 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 court having power under section 8 to confirm a provisional order may, if it decides to confirm the 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 maintenance order registered in Fiji court

10.—(1) Subject to the provisions of this section, the registering court—

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- (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 registering 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 registering 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 Fiji; or
- (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 registering 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 Fiji.
- (4) On an application for the revocation of a registered order the registering court shall, unless both the payer and the payee under the registered order are for the time being residing in Fiji, apply the law applied by the reciprocating country in which the registered order was made; but where by virtue of this subsection the registering 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 registering court makes a provisional order varying or revoking a registered order the prescribed officer of the court shall send in the appropriate form or 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 appropriate form or 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 registering court, that court may confirm the order either without alteration or with such alterations as it thinks reasonable or refuse to confirm the order.
- (7) For the purpose of determining whether a provisional order should be confirmed under subsection (6) the 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 a court in Fiji 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 a court in Fiji or by a competent court in a reciprocating country, including a provisional order made by the first-mentioned 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 respects any arrears due under the registered order at that date.

(10) The prescribed officer of the registering court shall register in the appropriate form or the prescribed manner any order varying a registered order other than a provisional order which is not confirmed.

Cancellation of registration

11.—(1) Where—

- (a) a registered order is revoked by an order made by the registering court; or
- (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 registering 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 registering court,

the prescribed officer of the registering court shall cancel the registration; but any arrears due under the registered order at the date when its registration is cancelled by virtue of this subsection shall continue to be recoverable as if the registration had not been cancelled.

(2) Where the prescribed officer of the registering court is of opinion that the payer under a registered order has ceased to reside within Fiji, he shall cancel the registration of the order and shall send the certified copy of the order and a note of its cancellation to the Minister.

(3) The prescribed officer of a court who is required by subsection (2) to send to the Minister the certified copy of an order and a note of its cancellation shall send with those documents—

- (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 Minister where payer under certain orders is not residing in Fiji

12.—(1) If it appears to the Minister that the payer under a maintenance order, a certified copy of which has been received by him from a reciprocating country, is not residing in Fiji or, in the case of an order which subsequently became a registered order, has ceased to reside therein, he shall send to the responsible authority in that country or, if having regard to all the circumstances he thinks it proper to do so, to the responsible authority in another reciprocating country—

- (a) the certified copy of the order in question and a certified copy of any order varying that order;

- (b) if the order has at any time been a registered order, a certificate of arrears signed by the prescribed officer;
 - (c) a statement giving such information as the Minister possesses as to the whereabouts of the payer; and
 - (d) any other relevant documents in his possession relating to the case.
- (2) Where the documents mentioned in subsection (1) are sent to the responsible authority in a reciprocating country other than that in which the order in question was made, the Minister shall inform the responsible authority in the reciprocating country in which that order was made of what he has done.

Appeals

Appeals

13.—(1) No appeal shall lie from a provisional order made in pursuance of any provision of this Part by a court in Fiji.

(2) Where in pursuance of any such provision any such court confirms or refuses to confirm a provisional order made by a court in a reciprocating country, whether a maintenance order or an order varying or revoking a maintenance order, the payer or payee under the maintenance order shall have the like right of appeal (if any) from the confirmation of, or refusal to confirm, the provisional order as he would have if that order were not a provisional order and the court which confirmed or refused to confirm it had made or, as the case may be, refused to make it.

(3) Where in pursuance of any such provision any such court makes, or refuses to make, an order varying or revoking a maintenance order made by a court in a reciprocating country, then, subject to subsection (1), the payer or payee under the maintenance order shall have the like right of appeal (if any) from that order or from the refusal to make it as he would have if the maintenance order had been made by the first-mentioned court.

(4) Nothing in this section (except subsection (1)) shall be construed as affecting any right of appeal conferred by any other written law.

Evidence

Admissibility of evidence given in reciprocating country

14.—(1) A statement contained in—

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a reciprocating country; or
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in Fiji under this Part, whether in response to a request made by such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country or to be a copy of a document so received,

shall in any proceedings in a court in Fiji relating to a maintenance order to which this Part applies be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in paragraph (a) of subsection (1), or taken as mentioned in paragraph

(b) of subsection (1), shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given, or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in paragraph (c) of subsection (1), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Obtaining of evidence needed for purpose of certain proceedings

15.—(1) Where for the purpose of any proceedings in a court in a reciprocating country relating to a maintenance order to which this Part applies a request is made by or on behalf of that court for the taking in Fiji of the evidence of a person residing in Fiji relating to matters specified in the request, a magistrate's court shall have power to take that evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it thinks fit, shall take the evidence in such manner as may be prescribed or be in the appropriate form.

Evidence taken in compliance with such a request shall be sent in the appropriate form by the prescribed officer of the court to the court in the reciprocating country by or on behalf of which the request was made.

(2) Where any person, not being the payer or the payee under the maintenance order to which the proceedings in question relate, is required by virtue of this section to give evidence before a court in Fiji, the court may order that there shall be paid out of the vote for witnesses expenses or other the appropriate vote or funds such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(3) Part VIII of the Magistrates' Courts Act (which provides for summoning and for compelling the attendance of witnesses, etc.) shall apply in relation to a magistrate's court having power under this section to take the evidence of any person as if the proceedings in the court in a reciprocating country for the purpose of which a request for the taking of the evidence has been made were proceedings in and had been begun in the magistrate's court. (Cap. 14)

(4) A court in Fiji may, for the purpose of any proceedings in that court under this Part relating to a maintenance order to which this Part applies, request a court in a reciprocating country to take or provide evidence relating to such matters as may be specified in the request and may remit the case to that court for that purpose.

Orders, etc. made abroad need not be proved

16. for the purposes of this Part, unless the contrary is shown—

- (a) any order made by a court in a reciprocating country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person;
- (b) the person by whom the order was signed shall be deemed without further proof to have been a judge, magistrate or officer, as the case may be, of that court when he signed it and, in the case of an officer, to have been authorised to sign it; and
- (c) a document purporting to be a certified copy of an order made by a court in a reciprocating country shall be deemed without further proof to be such a copy.

Supplemental

Payment of sums under orders made abroad: conversion of currency

17.—(1) Payment of sums due under a registered order shall, while the order is registered in a court in Fiji, be made in such manner and to such person as may be ordered or prescribed.

(2) Where the sums required to be paid under a registered order are expressed in a currency other than the currency of Fiji, then, as from the relevant date, the order shall be treated as if it were an order requiring the payment of such sums in the currency of Fiji as, on the basis of the rate of exchange prevailing at that date, are equivalent to the sums so required to be paid.

(3) Where the sums specified in any statement, being a statement of the amount of any arrears due under a maintenance order made by a court in a reciprocating country, is expressed in a currency other than the currency of Fiji, that sum shall be deemed to be such sum in the currency of Fiji as, on the basis of the rate of exchange prevailing at the relevant date, is equivalent to the sum so specified.

(4) For the purposes of this section a written certificate purporting to be signed by an officer of the Central Monetary Authority of Fiji certifying that a specified rate of exchange prevailed between currencies at a specified date and that at such rate a specified sum in the currency of Fiji is equivalent to a specified sum in another specified currency shall be evidence of the rate of exchange so prevailing on that date and of the equivalent sums in terms of the respective currencies.

(5) In this section "the relevant date" means—

- (a) in relation to a registered order or to a statement of arrears due under a maintenance order made by a court in a reciprocating country, the date on which the order first becomes a registered order or (if earlier) the date on which it is confirmed by a court in Fiji;
- (b) in relation to a registered order which has been varied, the date on which the last order varying that order is registered in a court in Fiji or (if earlier) the date on which the last order varying that order is confirmed by such a court.

Court rules

18.—(1) Without prejudice to the generality of the power to make rules under any written law, provision may be made by such rules with respect to any of the following matters, namely—

- (a) the orders made, or other things done, by a magistrate or by an officer of any court, under this Part, or by a court in a reciprocating country, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given;
 - (b) the cases and manner in which courts in reciprocating countries are to be informed of orders made, or other things done, by a court under this Part;
 - (c) the cases and manner in which evidence needed for the purpose of proceedings in a court in a reciprocating country relating to a maintenance order to which this Part applies may be taken;
 - (d) the circumstances and manner in which cases may be remitted by courts in Fiji to courts in reciprocating countries;
 - (e) the circumstances and manner in which courts may for the purposes of this Part communicate with courts in reciprocating countries;
 - (f) generally for the better carrying into effect of the provisions, objects and intentions of this Part.
- (2) Without prejudice to the generality of the powers contained in subsection (1) and whether in duplication of any rules made under or in accordance with that subsection or not, the Chief Justice shall have power to make such separate rules in respect to any of the matters set out in subsection (1) as he may deem to be necessary.

Application of Part II to certain orders and proceedings under Cap. 54

19.—(1) Where the Minister proposes by order under section 3 to designate as a reciprocating country a country or territory to which at the commencement of that section, the Maintenance Orders (Facilities for Enforcement) Act, hereinafter referred to as “the repealed Act”, extended, such order may contain such provisions as the Minister considers expedient for the purpose of securing—

- (a) that the provisions of this Part apply, subject to such modifications as may be specified in the order, to maintenance orders, or to maintenance orders of a specified class—
 - (i) made by a court in Fiji against a person residing in that country or territory; or
 - (ii) made by a court in that country or territory against a person residing in Fiji,being orders to which immediately before the commencement of the order the repealed Act applied;
- (b) that any maintenance order, or maintenance order of a specified class, made by a court in the country or territory to which an order relates, which has been confirmed by a court in Fiji under the repealed Act and is in force immediately before that date, shall be registered or be treated as having been registered under section 8;
- (c) that any proceedings brought under or by virtue of a provision of the repealed Act in a court in Fiji, which are pending at the date of the coming into operation of the order, in the country or territory to which the order relates, shall be continued as if they had been brought under or by virtue of the corresponding provisions of this Part.

Repeal of Cap. 54 subject to reservations

20.—(1) Subject to section 19, the repealed Act shall continue to remain in full force and effect in its application to all maintenance orders made in Fiji or any country or territory outside Fiji which had been confirmed under the repealed Act prior to the commencement of this Part:

Provided that this subsection shall no longer apply to any such orders confirmed in Fiji under the provisions of the repealed Act if the country or territory in which those orders were made no longer continues to enforce such orders (if any) made in Fiji under reciprocal legislation.

(2) Subject to subsection (1), the Maintenance Orders (Facilities for Enforcement) Act is hereby repealed.

PART III—RECIPROCAL ENFORCEMENT BETWEEN FIJI AND CON-
VENTION COUNTRIES OF CLAIMS FOR THE RECOVERY OF
MAINTENANCE

*Convention countries and application, etc.**Convention countries*

21.—(1) The Minister may by order declare that any country or territory specified in the order, being a country or territory outside Fiji to which the Maintenance Convention extends, is a convention country for the purposes of this Part.

(2) In this section “the Maintenance Convention” means the United Nations Convention on the Recovery Abroad of Maintenance done at New York on 20th June, 1956.

Application by person in Fiji for recovery, etc., of maintenance in convention country

22.—(1) Where a person in Fiji hereinafter referred to as the applicant, claims to be entitled to recover in a convention country maintenance from another person, and that other person is for the time being subject to the jurisdiction of that convention country, the applicant may apply to the Minister, in accordance with the provisions of this section, to have his claim for the recovery of maintenance from that other person transmitted to that convention country.

(2) Where the applicant seeks to vary any provision made in a convention country for the payment by any other person of maintenance to the applicant, and that other person is for the time being subject to the jurisdiction of that convention country, the applicant may apply to the Minister, in accordance with the provisions of this section, to have his application for the variation of that provision transmitted to that convention country.

(3) An application to the Minister under subsections (1) or (2) shall be made through the appropriate officer, and that officer shall assist the applicant in completing an application which will comply with the requirements of the law applied by the convention country and shall send the application to the Minister, together with such other documents, if any, as are required by that law.

(4) On receiving an application from the appropriate officer the Minister shall transmit it, together with any accompanying documents, to the appropriate authority in the convention country, unless he is satisfied that the application is not made in good faith or that it does not comply with the requirements of the law applied by that convention country.

(5) The Minister may request the appropriate officer to obtain from the court of which he is an officer or any other court such information relating to the applicant or the application as may be specified in the request, and it shall, subject to any other written law, be the duty of the court to furnish the Minister with the information he requires.

General provisions relating to application for recovery of maintenance in Fiji

23.—(1) Where the Minister receives from the appropriate authority in a convention country an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Fiji, he shall send the application, together with any accompanying documents, to the appropriate officer; and the application shall be treated for the purposes of any enactment as if it were a complaint and references in this section and in sections 24 and 25 to the complaint, the complainant and the defendant shall be construed accordingly.

(2) Where the complaint is for an affiliation order, the appropriate court in Fiji shall have jurisdiction to hear the complaint.

(3) If a summons to appear before a court in Fiji having jurisdiction to hear the complaint cannot be duly served on the defendant, the prescribed officer shall return the complaint and the accompanying documents to the Minister with a statement giving such information as he possesses as to the whereabouts of the defendant, and if the Minister is satisfied that the defendant is not residing in Fiji he shall return the application to the appropriate authority in the convention country.

(4) When hearing the complaint a court shall proceed as if the complainant were before the court.

(5) If a court makes an order on the complaint, the prescribed officer shall register the order in the prescribed manner or in the appropriate form in that court.

(6) Payment of sums due under a registered order shall, while the order is registered in a court, be made in such manner and to such person as may be prescribed or be appropriate.

(7) Without prejudice to the generality of the powers to make rules under section 30 of the Maintenance and Affiliation Act (hereinafter referred to as the Act of 1971) or any other written law, the said powers shall include powers to prescribe the order to be made or other things to be done by a court, or an officer of such a court, under this Part, notice of which is to be given to such persons as the rules may provide and the manner in which such notice shall be given.

(Cap. 52)

Complaint by married woman or by or on behalf of a child in convention country for recovery of maintenance in Fiji

24.—(1) Where a complaint or application is a complaint or an application by a married woman residing in a convention country against her husband or a complaint or an application by or on behalf of any child residing in a convention country against its father or mother, all the provisions of the Act of 1971 shall apply, provided that the only provisions which the court hearing the complaint of a married woman may include in any order under section 4 of the Act of 1971 shall be the provisions mentioned in paragraphs (c) and (d) of that section.

(2) Without prejudice to the generality of the provisions of subsection (1) and for the avoidance of doubt, it is hereby declared that the powers of a magistrate under section 8 of the Act of 1971 to alter, vary, or discharge any order and the

powers to act and to proceed in respect of deserted wives or children set out and contained in sections 10 and 11 of the Act of 1971 shall apply *mutatis mutandis* in considering any complaint or application made by or on behalf of any person residing in a convention country under the provisions of this Part.

Affiliation

25. The provisions of Part III of the Act of 1971 shall *mutatis mutandis* apply to affiliation proceedings against a man in Fiji alleged to be the father of a child in considering any complaint or application made by a single woman, as defined by the Act of 1971, residing in a convention country.

Enforcement of orders

26. Without prejudice to the general applicability of any of the other provisions of the Act of 1971 to the procedures and powers contained in this Part, the reference to orders contained in section 27 of the Act of 1971 shall be deemed to refer to registered orders registered in accordance with subsection (5) of section 23 and all the procedures and powers prescribed and granted by, and contained in, section 27 of the Act of 1971 shall *mutatis mutandis* apply and relate to, and be followed in, the enforcement of such registered orders.

Supplemental

Admissibility of evidence given in convention country

27.—(1) A statement contained in—

- (a) any document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a convention country; or
- (b) any document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in a court in Fiji under this Part, whether in response to a request made on behalf of such a court or otherwise; or
- (c) any document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country, or to be a copy of a document so received,

shall, in any proceedings in a court arising out of an application received by the Minister as mentioned in subsection (1) of section 23 or out of an application made by any person for the variation or revocation of a registered order or in proceedings on appeal from any such proceedings, be admissible as evidence of any fact stated therein to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) Any document purporting to set out or summarise evidence given as mentioned in paragraph (a) of subsection (1) or taken as mentioned in paragraph (b) of subsection (1), shall be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by the judge, magistrate or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document containing or recording, or, as the case may be, summarising, that evidence or a true copy of that document.

(3) Any document purporting to have been received in evidence as mentioned in paragraph (c) of subsection (1) or to be a copy of a document so received, shall

be deemed to be duly authenticated for the purposes of that subsection if the document purports to be certified by a judge, magistrate or officer of the court in question to have been, or to be a true copy of a document which has been, so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person appearing to have given such a certificate.

(5) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

Obtaining of evidence for purpose of proceedings in Fiji

28.—(1) A court of Fiji may for the purpose of any proceedings in that court under this Part arising out of an application received by the Minister from a convention country or otherwise request the Minister to make to the appropriate authority or court in the convention country a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.

(2) A request made by a court under this section shall—

(a) give details of the application in question;

(b) state the name and address of the person whose evidence is to be taken; and

(c) specify the matters relating to which the evidence of that person is required.

(3) If the Minister is satisfied that a request made to him under this section contains sufficient information to enable the evidence of the person named in the request relating to the matters specified therein to be taken by a court or person in the convention country, he shall transmit the request to the appropriate authority or court in that country.

Taking of evidence at request of court in convention country

29.—(1) Where a request is made to the Minister by or on behalf of a court in a convention country to obtain the evidence of a person residing in Fiji relating to matters connected with an application to which section 22 applies, the Minister shall request such court, or such officer of a court, as the Chief Registrar may determine to take the evidence of that person relating to such matters connected with that application as may be specified in the request.

(2) The court by which or officer by whom a request under subsection (1) is received from the Minister shall have power to take the evidence and, after giving notice of the time and place at which the evidence is to be taken to such persons and in such manner as it or he thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein in such manner as may be prescribed or be appropriate; and the evidence so taken shall be sent in the prescribed manner or the appropriate form by the prescribed officer of the court in the convention country by or on behalf of which the request referred to in subsection (1) was made.

(3) Where any person, not being the person by whom the application mentioned in subsection (1) was made, is required by virtue of this section to give evidence before a court in Fiji, the court may order that there shall be paid out of the vote for witnesses' expenses or other the appropriate vote or funds such sums as appear to the court reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in or incidental to his attendance.

(4) The relevant provisions for compelling the attendance of witnesses, etc. shall apply in relation to a court to which a request under subsection (1) is made as if the application to which the request relates were a complaint to be heard by that court.

PART IV—MISCELLANEOUS AND SUPPLEMENTAL

Further provisions relating to enforcement of maintenance orders and to applications for recovery of maintenance

Power to apply Act to maintenance orders and applications for recovery of maintenance made in certain countries

30. Where the Minister is satisfied—

- (a) that arrangements have been or will be made in a country or territory outside Fiji to ensure that maintenance orders made by courts in Fiji against persons in that country or territory can be enforced in that country or territory or that applications by persons in Fiji for the recovery of maintenance from persons in that country or territory can be entertained by courts in that country or territory; and
- (b) that in the interest of reciprocity it is desirable to ensure that maintenance orders made by courts in that country or territory against persons in Fiji can be enforced in Fiji or, as the case may be, that applications by persons in that country or territory for the recovery of maintenance from persons in Fiji can be entertained by courts in Fiji,

the Minister may by order make provision for applying the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the order, to such orders or applications as are referred to in paragraphs (a) and (b) and to maintenance and other orders made in connection with such applications by courts in Fiji or in that country or territory.

General provisions with respect to certain court orders, etc.

Complaint for variation, etc., of certain orders by or against persons outside Fiji

31. The jurisdiction to revoke, discharge, revive or vary any order for the periodical payment of money to any spouse or to, or in respect of any child for his, her or their maintenance conferred on a court in Fiji by any written law, shall be exercisable notwithstanding that the proceedings for the revocation, revival or variation, as the case may be, of the order are brought by or against a person residing outside Fiji.

Order for maintenance of party to marriage made by court to cease to have effect on remarriage of party

32.—(1) Where a court has, by virtue of section 5 or any other provision of this Act, made a provisional maintenance order consisting of, or including a provision for payment of weekly sums by a husband or a wife and the order has been confirmed by a competent court in any reciprocating country or any other order, then, if after the making of that order the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, the order or, as the case may be, that provision thereof shall

cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under it on the date of such remarriage, and shall not be capable of being revived.

(2) For the avoidance of doubt it is hereby declared that references in this section to remarriage include references to a marriage which is by law void or voidable.

Controlled by the Minister of the Attorney-General