



# **LAWS OF SARAWAK**

**REPRINT**

## **Chapter 55**

### **NATIVE CUSTOMARY MARRIAGES (MAINTENANCE) ORDINANCE, 2003**

*Incorporating all amendments up to 31st May, 2007*

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**NATIVE CUSTOMARY MARRIAGES  
(MAINTENANCE) ORDINANCE, 2003**

Date Passed by Dewan Undangan Negeri ... ..	2nd May, 2003
Date of Assent ... ..	12th May, 2003
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**LAWS OF SARAWAK**

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**ARRANGEMENT OF SECTIONS**

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*Section*

1. Short title, commencement and application
2. Interpretation
3. Payment of maintenance
4. Procedure for application and enforcement of order, *etc.*
5. Power to make interim maintenance order
6. Power for court to order security for maintenance
7. Compounding of maintenance
8. Duration of orders for maintenance
9. Right to maintenance to cease on remarriage
10. Power for court to vary orders for maintenance
11. Power for court to vary agreements for maintenance
12. Maintenance payable under order of court to be inalienable
13. Recovery of arrears of maintenance
14. Transfer of cases
15. Ordinance to be supplementary to other laws

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**NATIVE CUSTOMARY MARRIAGES  
(MAINTENANCE) ORDINANCE, 2003**

*An Ordinance to make better provisions for the payment of maintenance where parties are married according to native customs in the State of Sarawak and for incidental matters.*

*[\*1st September, 2003]*

*\*(Swk. L.N. 84/2003)*

Enacted by the Legislature of Sarawak—

**Short title, commencement and application**

1.—(1) This Ordinance may be cited as the Native Customary Marriages (Maintenance) Ordinance, 2003, and shall come into force on such date as the Chief Minister may, by notification in the *\*Gazette*, appoint.

(2) This Ordinance shall apply only to parties who are married in accordance with the native system of personal law or any customary law declared or recognized under the former Native Customary Laws Ordinance [*Cap. 51 (1958 Ed.)*] (now repealed) or the Native Customs (Declaration) Ordinance, 1996 [*Cap. 22*].

(3) Notwithstanding subsection (2), this Ordinance shall not apply to any native professing the religion of Islam or to any marriage solemnized or registered under the Law Reform (Marriage and Divorce) Act 1976 [*Act 164*].

**Interpretation**

2. In this Ordinance—

“child of the marriage” means a child of both parties to a native customary marriage in question or a child of one party to such marriage accepted as one of the family by the other party, or a child adopted by either of the parties to the marriage in pursuance of an adoption registered, or an adoption order made, under any written law relating to adoption;

“court” means a court of a Magistrate of the First Class;

“husband” means the male party to a native customary marriage, and includes a former husband of the wife;

“minor” means a person who is under the age of twenty-one;

“native” means any person who belongs to any of the indigenous races included in the Schedule to the Interpretation Ordinance, 2005 [*Cap. 61*], or in Clause (6) of Article 161A of the Federal Constitution, but does not include any person who is deemed a native for the purposes of section 9(1)(d) of the Land Code [*Cap. 81 (1958 Ed.)*];

“native customary marriage” means any marriage registered or solemnized in the State according to any native system of personal law;

“native system of personal law” shall have the same meaning assigned to that expression in the Native Courts Ordinance, 1992 [*Ord. No. 9/92*];

“wife” means the female party to a native customary marriage, and includes a former wife of the husband.

### **Payment of maintenance**

3.—(1) Where—

(a) a native customary marriage has been dissolved or terminated by a Native Court or in accordance with any native system of personal law; or

(b) the wife has been deserted by the husband during the subsistence of such marriage; or

(c) the husband has failed, refused or neglected to provide maintenance or support:

(i) for the wife; or

(ii) for any child of the marriage who is still a minor or who is physically or mentally disabled and is incapable of supporting himself,

the court may order the husband to make periodical payment of sums of money or to make a lump sum payment, for the maintenance of the wife and any child of the marriage.

(2) In determining the amount of any maintenance to be paid by the husband to his wife, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband but may have regard to the degree of responsibility which each party bears for the breakdown of the marriage if such evidence is available before the court.

**Procedure for application and enforcement of order, etc.**

4.—(1) An application to the court for maintenance shall be made by originating application in accordance with the rules governing the making of such application in the Subordinate Courts Rules 1980 [*P.U. (A) 328/80*].

(2) Any order or judgment made by the court shall be enforced or executed or carried out in accordance with the rules governing the enforcement or execution or satisfaction of orders and judgment provided in the Subordinate Courts Rules 1980 [*P.U. (A) 328/80*].

### **Power to make interim maintenance order**

5.—(1) Where an originating application has been filed, the court, on an *ex parte* application of the wife, may, if satisfied that the application is *bona fide*, make an order for interim periodical payment of maintenance to the wife and any child of the marriage who is a minor or who is physically or mentally disabled, pending the final disposal of the originating application.

(2) The court may vary or discharge any interim order made under subsection (1) on its own motion or upon application by the husband.

(3) Any interim order made under subsection (1) may be secured in accordance with the provisions of section 6.

### **Power for court to order security for maintenance**

6. The court may in its discretion when awarding maintenance, order the person liable to pay such maintenance, to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property and, subject thereto, in trust for the settlor.

### **Compounding of maintenance**

7. An agreement for the payment, in money or other property, of a capital sum in settlement of all future claims to maintenance, shall not be effective until it has been approved, or approved subject to conditions, by the court, but when so approved, shall be a good defence to any claim for maintenance.

### **Duration of orders for maintenance**

8. Except where an order for maintenance is expressed to be for any shorter period or where any such order has been rescinded, and subject to section 9, an order for maintenance shall expire—



(a) if the maintenance was unsecured, on the death of the husband or of the wife, whichever is the earlier;

(b) if the maintenance was secured, on the death of the wife in whose favour it was made.

**Right to maintenance to cease on remarriage**

9.—(1) The right of any wife to receive maintenance from her former husband under any order of court shall cease on her marriage to or living in adultery with any other person.

(2) The right of any wife to receive maintenance from her former husband under an agreement shall cease on her marriage to or living in adultery with any other person unless the agreement otherwise provides.

**Power for court to vary orders for maintenance**

10. The court may at any time and from time to time vary, or rescind, any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom, the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

**Power for court to vary agreements for maintenance**

11. Subject to section 6, the court may at any time and from time to time vary the terms of any agreement as to maintenance made between a husband and a wife, whether made before or after the date of coming into force of this Ordinance, where it is satisfied that there has been any material change in the circumstances and notwithstanding any provisions to the contrary in any such agreement.

**Maintenance payable under order of court to be inalienable**

12. Maintenance payable to any person under any order of court shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

**Recovery of arrears of maintenance**

13.—(1) Subject to subsection (3), arrears of unsecured maintenance, whether payable by agreement or under an order of court, shall be recoverable as a debt from the defaulter and, where they accrued due before the making of a receiving order against the defaulter, shall be provable in his bankruptcy and, where they accrued due before his death, shall be a debt due from his estate.

(2) Subject to subsection (3), arrears of unsecured maintenance which accrued due before the death of the person entitled thereto shall be recoverable as a debt by the legal personal representatives of such person.

(3) No amount owing as maintenance shall be recoverable in any suit if it accrued due more than three years before the institution of the suit.

**Transfer of cases**

14.—(1) Where the amount of maintenance claimed in any originating application exceeds twenty-five thousand ringgit per month or is for a lump sum payment exceeding twenty-five thousand ringgit, the court shall transfer the application to a Sessions Court to be heard by a Judge of that court.

(2) A Judge of the Sessions Court hearing such an application shall have all the powers conferred by this Ordinance on the court presided by a Magistrate of the First Class.

**Ordinance to be supplementary to other laws**

15. This Ordinance shall be in addition to and is not in derogation of the provisions of other laws relating to maintenance of wives and children and native customary marriages.

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**Chapter 55**

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LIST OF AMENDMENTS

Amending Law	Short Title	In force from
	-NIL-	

