



REPUBLIC OF NAMIBIA  
LAW REFORM AND DEVELOPMENT COMMISSION

ASPECTS OF FAMILY LAW: THE ABOLITION OF MARITAL POWER AND EQUALISATION OF  
RIGHT BETWEEN SPOUSES

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THE LAW REFORM  
AND  
DEVELOPMENT COMMISSION

REPORT NO 1

ASPECTS OF FAMILY LAW: THE ABOLITION OF MARITAL POWER  
AND EQUALISATION OF RIGHTS BETWEEN SPOUSES

*WINDHOEK NAMIBIA - OCTOBER 1994*

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(i)

To: **THE HONOURABLE MINISTER OF JUSTICE, DR EN TJIRJANGE**

I have the honour to submit to you this report in terms of section 9(1) of the Law Reform and Development Commission Act, 1991 (Act 29 of 1991). This is the first report on the project on the reform of family law in Namibia,

**Ms B Gawanas**  
**Acting Chairperson**

(ii)

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## INTRODUCTION

1. The Law Reform and Development Commission (hereinafter called the Commission) has as its primary objective the undertaking of research in connection with all branches of the law of Namibia with a view to making recommendations for the reform and development of the law.
2. Pursuant to the provisions of this Act the Commission identified, with the approval of the Minister of Justice,<sup>2</sup> a number of areas that required an urgent review of the existing laws that appear unsatisfactory. Among these areas was that of the status of women in law generally and provisions that discriminate against women contrary to the equality provision contained in Article 10 of the Namibian Constitution.
3. To assist in this area the Commission created a Women and Law Committee<sup>3</sup> which it charged with the responsibility of looking at a whole range of issues on how the inherited law affects women in Namibia and to recommend appropriate changes that need to be made.<sup>4</sup>

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1. Established by the Law Reform and Development Commission Act, 1991 (Act 29 of 1991).
  2. Section 7(1) requires the Commission to submit to the Minister, programmes, in their order of priority, which in its opinion require consideration.
  3. Section 10(1) empowers the Commission to create and work through committees when examining any issue.
  4. Article 140 of the Namibian Constitution continues in force all the laws that were applicable to Namibia at the date of Independence until amended or repealed or declared unconstitutional by a competent court.

4. This report constitutes the first in a series that would examine many other issues affecting women in law.

The report concentrates on inequalities contained in the common law and statutory law. It excludes some related and equally important areas like matrimonial property which would be subjects of separate reports.

## **OUTLINE OF REPORT**

5. This report does the following:-

It identifies the legislative framework, both in domestic as well as international law contexts, within which the inequality of women and all its off-shoots should be addressed;

It describes the common law inequalities of married women based on the concept of marital power of a husband over his wife;

It identifies statutory disabilities of women contained in a whole range of inherited statutes;

It summarises the major feature of the Commission's proposals for reform.

## **CONSULTATIONS**

The Commission, through its Women and Law Committee (WLC), prepared a discussion paper entitled "Women and Law: Scope and Perspectives of Tasks - A Working Paper." This paper became the basis for discussion at a consultative meeting on 8 March 1993 involving all Government agencies, private organisations and individuals, involved in one way or another in addressing women's

issues. The main task of the consultation was to strategise the reform process that would follow. The meeting resolved that law reform would be a precondition for mobilizing women into economic and political activity and for bringing about change to the status of women in law.

7. The WLC of the Commission undertook further research which resulted in the production of two reports which were merged into recommendations that formed the basis of a second consultative meeting exactly a year after the first one on 8 March 1994. This meeting concentrated more on soliciting the views of the professionals involved in the administration of the various laws that were under scrutiny. It therefore brought together representatives of the legal profession, banks, insurance companies, government agencies like the Deeds Registry etc. Out of this consultation emerged further recommendations which are summarised in this report.

## **THE PROBLEM**

8. The general law of Namibia, like that of most former colonies and occupied territories, remains that of the former colonial master. This is a practical necessity that few countries in a similar situation could avoid. Article 140 of the Namibian Constitution, as already indicated, provides for such continuation. As a result of this Namibian general law, both the common law and statutes as inherited from South Africa, perpetuate the inequality of women. The common law marital power of the husband over the property and person of his wife denies married women equal rights with their husbands during marriage and limits their capacity to participate in civil society. The marital power discriminates against women and is not compatible with the principle of equality which is entrenched in the Namibian Constitution and various international treaty obligations undertaken by Namibia.



In this regard it should also be pointed out that, unlike the case in other areas of the law, some statutory improvements made in the Republic of South Africa prior to Independence were not even made applicable to Namibia.

## CONCEYI' AND ORIGIN OF MARITAL POWER IN MARRIAGE

9. At present one of the following regimes, governs marriages in Namibia today:
- (a) marriage in community of property<sup>1</sup> which includes the marital power of a husband over his wife;
  - (b) marriage excluding community of property<sup>2</sup> and profit and loss, and excluding marital power; or
  - (c) marriage excluding community of property and profit and loss, but retaining marital power.
10. Investigation shows that in the Middle Ages in Western Europe the husband acquired, as a result of marriage, guardianship (munt) over his wife. From this Germanic institution of munt marital power over the wife developed. Marital power was received as part of Namibian law through common law. Namibian common law consist of (a) Roman Dutch Law received through custom and case -

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<sup>1</sup> Community of property means that the separate possessions of the parties are combined in one whole, which is called the common or joint estate. All property belonging to the spouses before marriage and that acquired by them after marriage automatically forms part of the common estate. Each spouse automatically becomes owner of an undivided half share of all the property in the joint estate. No delivery of movables, no registration of immovable property and no cession of rights are necessary. In practice it means that the spouses own an undivided share of each other's salaries, savings, cars or of whatever property they own, but the husband is the administrator of the joint estate.

<sup>2</sup> If the marital power has been excluded, the proprietary consequences of the marriage are as if the parties had not married. Each party retains his or her own separate estate as well as property acquired afterwards. The wife retains full contractual capacity and the husband has no control over his wife's property.

law, (b) development of local customs and (c) case law itself. Roman Dutch legal principles applied in Namibia consisted of old Dutch legislation and writings of old Dutch writers.

11. It has been observed that "Until 1953 these Common law marital powers did not undergo the slightest legislative intervention and were confirmed in various judgements of the courts"<sup>1</sup>
  
12. In 1953 the Matrimonial Affairs Act (Act 37 of 1953) was promulgated for South Africa. This Act is not applicable in Namibia. However a similar Act, the Matrimonial Affairs Ordinance, 1955 (Ordinance 25 of 1955), was promulgated for the then territory of South West Africa, and is still applicable in Namibia. Both these Acts curtail the marital power of the husband in certain important respects.

## **MANIFESTATIONS OF MARITAL POWER**

13. The three main manifestations of marital power are:
  - (a) The husband's power as head of the family: he has a decisive say in all matters concerning the common life of spouses;
  
  - (b) The husband's power over the person of his wife. Hahlo observes that the only important consequence of the husband's power over his wife's person left in modern law is that he represents or assists her in a civil action";<sup>2</sup>

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1. H van Wyk, in the LL.D thesis The power to dispose of the assets of the universal matrimonial community of property 1976, p. 112.
2. Hahlo, The South African Law of Husband and Wife, 4Ed., p. 154

Joubert makes the same point when he asserts that "Whatever the position in old law may have been, in modern law the marital power does not give the husband control of his wife's personal life. He may not interfere in any way with his wife's privacy, personal conduct or physical integrity and may be found guilty of criminal injuria or assault if he does so".<sup>1</sup>

- (c) The husband's power over the wife's property: "(h)e administers his wife's property; and may without his wife's knowledge or consent, alienate or encumber property, movable or immovable, which forms part of the joint estate or her separate estate,".<sup>2</sup> The Matrimonial Affairs Ordinance, 1955 created certain exceptions to this rule. Certain classes of property are protected in favour of the wife against the husband. Although the law was altered to give the wife the management of some of her own property, and to require her consent to certain dispositions, the system is still based on the idea that the husband is the head of the community, with full powers of management and control.

14. The following are other incidents of marital power at common law:

- (i) the husband is deemed to be the natural guardian of the children of his marriage;
- (H) a wife subject to her husband's marital power lacks the capacity to enter into a contract without "assistance" of her husband;

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1. Joubert, Law of South Africa, vol. 16, para. 68

2. Hahlo, supra, p. 155

- (iii) in a marriage in community of property (the presumptive matrimonial property regime under the common law), the husband has the sole power of administration over the couple's joint estate; the husband alone has the power to sell or encumber the assets of the joint estate; he need not consult with his wife and he may enter into transactions without her knowledge and consent; the wife cannot act as a surety or otherwise bind the joint estate, except with respect to the purchase of household necessities. The common law also confers upon him the right to control his wife's separate assets;
- (iv) unlike in the case of guardianship, the husband who is the administrator of the estate need not act in the best interest of his wife in administering the estate;
- (v) wives who are married out of community of property in terms of Proclamation 15 of 1928, the Native Administration Proclamation, are still subject to their husband's marital power, which means that the husband controls the separate property of the wife;
- (vi) at common law, a woman automatically acquires the domicile of her husband upon marriage and retains this domicile of dependence during marriage. This designation of domicile has consequences, among others, with respect to determining the matrimonial property regime and upon divorce. In addition, at common law, a child of a married couple has the domicile of the father.

#### **LEGAL CAPACITY OF A WOMAN MARRIED SUBJECT TO MARITAL POWER**

15. A wife under marital power has no locus standi in iudicio (i.e. she cannot appear in court unassisted) and she cannot without her husband's consent bind herself or her husband by contract. The most important exception to this rule at common law is that the wife as administrator of the joint household has the

capacity to conclude binding contracts with regard to household necessities without the consent of her husband. Such a wife has limited legal capacity:

"There are similarities between the legal position of a minor and that of a married woman subject to marital power. But whereas the **guardianship** of a minor serves the interest of the minor, the marital power serves primarily the interest of the husband. Few of the safeguards, for minors under guardianship apply in the case of a married woman."<sup>1</sup>

## STATUTORY DISABILITIES OF WOMEN

16. As noted above the inequalities placed upon women under Namibian law do not end with the common law. Numerous provisions to that effect are still on the statute book. The Commission's investigation came up with the disabilities outlined below. These are the ones that the Commission come across for illustrative purposes. There are probably many more that one would uncover if one were to go through many statutes that still have force in Namibia, For ease of reference, reproduced the relevant sections in each statute are cited.

### DEEDS REGISTRY ACT, 1939 (ACT 37 OF 1939)

"17(1) All deeds executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of women, shall in each case disclose the full name and status of the women concerned, whether unmarried, married, widowed or divorced, as the case may be. If the woman is married the full name of her husband shall also be disclosed, and if the marriage is governed by the law in force in the Republic or any part thereof it shall be stated whether the marriage was contracted with or without community of property. If the marriage is governed by the law of any other country it shall be stated that the marriage is governed by the law of that country.

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1. Hablo, supra, p. 161

(2) A woman married out of community of property shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is on other grounds deemed by the registrar to be unnecessary.

(3) Immovable property, bonds or other real rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bonds or real rights are by law or by a condition of a request or donation excluded from the community or where such property, has been acquired under the provisions of the Agricultural Credit Act, 1966 (Act No. 28 of 1966).

(4) If immovable property not excluded from the community has at the commencement of this Act been registered in the name of a woman married in community of property which still subsists, her husband to whom she is so married may, unless she has been authorised by an order of court to deal therewith and subject to the provisions of section 1(1) of the Matrimonial Affairs Ordinance, 1955 (Ordinance No. 25 of 1955), alone deal with such property.

(5) If immovable property has been acquired by one or other of two spouses married in community of property in such a manner that the said property would on transfer or cession thereof become part of the joint estate, and the community has been dissolved by the death of one of the spouses before the property is transferred or ceded, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation thereof, and shall subject to the provisions of any disposition affecting the property, be deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse."

**B. REGISTRATION OF DEEDS IN REHOBOTH ACT, 1976 (ACT 93 OF 1976)**

18. Section 10, **Special Provisions Relating to Women**, provides:

"(1) (a) All deeds or other documents attested by the registrar or attested by a notary and required to be registered in the registry, made or on behalf of or in favour of women shall in each case state the full name and status of the women concerned, whether married, unmarried, widowed or divorced, as the case may be.

(b) (i) If the woman is married the full name of her husband shall also be stated, and if the marriage is governed by the law in force in the Republic or South West Africa, it shall be stated whether the marriage was contracted with or without community of property.

(ii) If the marriage is governed by the law of any other country, it shall be stated that the marriage is governed by the law of that country.

**(2) Any woman married out of community of property shall be assisted by her husband in signing any deed or other document required or permitted to be registered in the registry or required or permitted to be submitted in connection with any deed or document, unless the marital power has been excluded or assistance of the husband is for other reasons deemed by the registrar to be unnecessary.**

**(3) Any immovable property, bond or other real right shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, except where such property, bond or real right is by rule of law or in terms of any condition of a request or donation excluded from the community.**

**(4) If immovable property not excluded from the community has at the commencement of this Act been registered in the name of a woman married in community of property which still subsists, her husband to whom she is so**

married may, unless she has been authorised by an order of court to deal therewith, and subject to the provisions of section 1(1) of the Matrimonial Affairs Ordinance, 1955 (Ordinance, No. 25 of 1955), of South West Africa, alone deal with such property.

(5) If immovable property has been acquired by one or other of two spouses married in community of property in such a manner that such property would on transfer or cession thereof become part of the joint estate, and the community has been dissolved by the death of one of the spouses before the property has been transferred, the property shall be transferred to the joint estate of the spouses until such estate has been liquidated, and shall subject to the provisions of any disposition relating to the property, be deemed to be the joint property of the surviving spouse and the estate of the deceased spouse."

### C. COMPANIES ACT, 1973 (ACT 61 OF 1973)

#### 19. Section 218, Disqualifications of Directors, provides:

"(1) Any of the following persons shall be disqualified from being appointed or acting as a director of a company:

- (a) a body corporate;
- (b) **a minor or any other person under legal disability, save a married woman subject to the marital power of her husband whose written consent to her appointment as a director has, on the form referred to in section 211(1)(a), been lodged with the company;**
- (c) any person who is the subject of any order under this Act or the repealed Act disqualifying him from being a director;
- (d) save under authority of the Court -



- (i) an unrehabilitated insolvent;
- (ii) any person removed from an office of trust on account of misconduct;
- (iii) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty or in connection with the promotion, formation or agreement of a company, and has been sentenced therefore to imprisonment without the option of a fine or to a fine exceeding one hundred rand.

(2) Any person disqualified from being appointed or acting as a director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company, shall be guilty of an offence."

**D. ADMINISTRATION OF ESTATES ACT 1965 (ACT 66 OF 1965)**

20. **Section 17, Grant of Letters of Executorship to Women, provides:**

"17. Letters of Executorship may be granted to a woman, but shall not, without the consent in writing of her husband, be granted to a married woman, unless the marital power of the husband has been excluded.

"85. Application of certain sections to tutors and curators. - Section seventeen, . . . shall *mutatis mutandis* apply with reference to tutors and curators: Provided that -

- (b) Notwithstanding the provisions of section 17 as so applied, Letters of Curatorship may be granted to a married woman and curatrix of her husband or his property, without his consent."

**E. HIGH COURT RULES**

**21. Section 17(4):**

**"Every summons shall set forth -**

- (a) the name (including where possible the first name and initials) by which the Defendant is known to the Plaintiff, his or her residence or place of business and, where known, his or her occupation and, if he or she is sued in any representative capacity, such capacity, and summons shall also state the Defendant's sex and if a female, her marital status;
- (b) the full names, sex and occupation and the residence or place of business of the Plaintiff, and where he or she sues in a representative capacity, such capacity and, and if the Plaintiff is female, the summons shall state her marital status; ... 11

**WHAT THE NAMIBIAN CONSTITUTION SAYS**

- 22. What remains to be done at this stage is to weigh the common law and statutory provisions outlined above the Namibian Constitution.
- 23. As noted above, Article 140 of the Constitution continues in force all the laws that were applicable to Namibia at Independence. The Commission's conclusion is that the common law and statutory disabilities of women recounted above are, beyond any reasonable doubt, in conflict with the Constitution. Here are specific provisions of the existing law that are in contradiction with the Constitution.
- 24. **"Article 10** Equality and Freedom from Discrimination
  - (1) All persons shall be equal before the law.

- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

25. "Article 14                      Family

- (1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution....."

26. "Article 16            **Property**

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all of immovable property individually or in association with others....."

27. "Article 66            **Customary and Common Law**

- (1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.
- (2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods."

**28. "Article 95 Promotion of the Welfare of the People**

The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

- (a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; ... ..".

**INTERNATIONAL LAW**

29. The Constitutional and other statutory provisions cited above only deal with domestic law. The undertakings by Namibia to promote the equality of women extend to the international arena.

30. The binding effect of international instruments has found expression in the Namibian Constitution as follows:

**"Article 144 International Law**

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."

Namibia has accordingly acceded to the following international instruments with the relevant provisions cited:

**31. Convention on the Elimination of all forms of Discrimination Against Women**

Namibia acceded to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on 25 September 1992. The CEDAW provides in relevant part:

**32. "Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."

**33. "Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

- (t) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interest of the children shall be paramount;".

**34. African Charter on Human and Peoples' Rights**

Namibia is a party to the African Charter of Peoples' and Human Rights by virtue of her accession to it on 16 September 1992.

- 35.** The African Charter provides, in relevant parts:

**Article 2**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

**Article 3**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral(sic).

2. The State shall have the duty to assist the family which is the custodian of the morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions ...

## WHAT SHOULD BE DONE

36. It is indisputable that the common law marital power and the above-mentioned statutory disabilities and inequalities are incompatible with the several articles of the Constitution and the treaty provisions set forth above. There was considerable discussion and debate during the Consultations as to whether the marital power was abolished upon Independence by virtue of Article 66 ("*... the common law of Namibia in force on the date of the independence shall remain valid to the extent to which ... common law does not conflict with this constitution ...*"). Another subject of debate was whether CEDAW, which was ratified by Parliament, creates domestic legal obligations in terms of Article 144 of the Constitution ("*... international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.*") in the absence of implementing legislation. The Commission decided that there is no practical necessity to resolve those issues in as much as it has decided that in the interests of certainty legislation should be enacted to abolish the marital power and to eliminate the common law and statutory disabilities which currently exist.
37. Although a few interested parties recommended that the marital power be abolished in stages, the Commission is strongly of the opinion that a "*clean break*" with the inequality of women embodied in the general law is required: the marital power and all of its manifestations must be abolished in toto. To this end, the Commission recommends the enactment of legislation to provide for equality of husband and wife during marriage. The proposed legislation would:
- Abolish the husband's common law marital power over the person and property of his wife;
  - Abolish the husband's common law head of household status and provide for joint decision making by husband and wife with respect to all important family matters;

- Abolish the husband's natural guardianship over the children and provide for joint guardianship and custody of the children during marriage unless a court directs otherwise (this must be harmonized with the proposed Child Care and Protection Act)<sup>1</sup>
  
- Empower women regardless of marital status to sue or be sued (Amend High Court Rules, supra, §17(4)(a) and (b));
  
- Empower women regardless of marital status to enter into contracts;
  
- 
  
- Empower women regardless of marital status to serve as directors of companies, administrators of estates, trustees of insolvent estates and tutors or curators (Repeal/amend Companies Act, supra §§211(1)(a), 216() and 218(1)(b), Administration of Estates Act, supra, §§17 and 85);
  
- Empower women, regardless of marital status, to serve as sureties;
  
- Empower women, regardless of marital status, to register property in their own names (Amend Deeds Registry Act and Registration of Deeds in Rehoboth Act, supra);
  
  
- Empower women married in community of property to exercise the same power of administration and the same rights with respect to the property of the joint estate as their husbands possessed prior to the abolition of the marital power, subject to certain limitations applicable to both husband and wife;
  
  
- (1) With respect to marriages in community of property, provide that the following transactions affecting the joint estate will require written consent of both spouses;

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1. At the time of writing this report the Child Care and Protection Bill was still being prepared.



- (a) any transaction with respect to the joint estate requiring registration in terms of the Deeds Registry Act;
- (b) any contract for the alienation, mortgaging, burdening with a servitude or conferring any other real right in immovable property forming part of the joint estate;
- (c) consumer credit agreement;
- (d) agreement to act as a surety;
- (e) sale or pledge of jewellery, paintings or other similar valuables forming part of the joint estate which are held mainly as investments;
- (f) sale, cession or pledge of any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds or fixed deposits forming part of the joint estate, except
  - (1) the sale of listed securities on the stock exchange or pledge of listed securities in order to buy listed securities
  - (2) the alienation, cession or pledge of a deposit held in his or her name in a building society or banking institution or building society shares registered in his or her name;
- (g) litigation initiated by either spouse or defence of litigation against either spouse, except
  - (1) in relation to his or her separate property
  - (2) in relation to his or her trade, business or profession
  - (3) in relation to a claim for damages, except for patrimonial loss;

- (2) With the exception of (a) above, the transactions may be ratified in writing within a reasonable time.
  - (3) Transactions (b)-(f) shall be excepted from the consent requirement if carried out in the ordinary course of the business, profession or trade of either spouse;
  - (4) Furniture or household effects forming part of the joint estate shall not be sold or encumbered without the mutual consent of both spouses;
  - (5) Donations or alienation without value of an asset forming part of the joint estate shall not be made without the consent of the other spouse;
  - (6) Transactions entered into in violation of (2)(b) (c) and (d) shall be unenforceable against the joint estate. Note: This would place the burden on third parties to take steps to ensure their interests when entering into such transactions, such as requiring the signature of both spouses married in community of property.
  - (7) In the event of any other transaction entered into by one spouse in violation of Section 10, if it results in a loss to the joint estate, an adjustment shall be given to the other spouse upon the division of the joint estate;
  - (8) In the event that one spouse enters into transactions in violation of subsection (1)(f), at the option of the other spouse, the transaction shall be voidable upon application to the High Court. The debatable question is whether this provision should also apply to transactions referred to in subsections (4) and (5)?
- The Deeds Registry Act (and Registration of Deeds in Rehoboth Act) should be amended -

- (a) to remove the prohibition on registration of immovable property, etc. in the name of a woman married in community of property and to confer the same rights upon women with respect to the registration of deeds, etc; to eliminate the requirement that women married out of community of property but subject to the marital power must have the assistance of their husband in order to register a deed, etc.;
  - (b) to prohibit the sale, incumbrance etc., of all immovable property which forms part of the joint estate of a couple married in community of property without the consent of both spouses;
  - (c) to require that the future property purchased by the husband or wife married in community of property shall registered as joint property in both names; and that other transactions requiring registration in terms of the Deeds Registry Act shall be done in the names of both spouses;
  - (d) with respect to existing property which forms part of the joint estate and is currently registered in the name of the husband married in community of property, to entitle the wife to have deeds registered in her husband's name to be endorsed by the Registrar to note that the property is part of a joint estate of her husband and herself: to further require that any person who wishes to enter into a transaction in terms of the Deeds Registry Act in the future must prove his or her marital status and in the event that a person is married in community of property, to require a written consent of the other spouse with respect to the transaction;
  - (e) to require that all future deeds registered in the name of a natural person should reflect the marital status of the person as well as their matrimonial property regime;
- Provide for joint registration of agricultural land in the name of husband and wife (amend Subdivision of Agricultural Land Act (No. 70 of 1970));

- Require that banking institutions shall permit husband and wife to open joint bank accounts;
- Provide that a wife's domicile shall be independent of her husband's and shall be determined in accordance with the ordinary rules of domicile;
- Provide that the domicile of the marriage for the purposes of matrimonial property shall be either the domicile of the husband or wife at the time of marriage and shall be designated jointly by the spouses at the time of marriage;
- Provide that the domicile of the children of the marriage shall be determined by the location of the family home or if the child resides with only one parent then the location of that home.
- Provide for the right of either party to seek judicial relief in the event that the other spouse unreasonably withholds consent and provide for the right of either spouse to petition the court to partition the joint estate in the event that interests of the spouse in the joint estate are being prejudiced by the conduct of the other spouse, on such conditions as will not prejudice the rights of their parties.
- Repeal sections 1 and 2 of the Matrimonial Affairs Ordinance of 1955 (Ord. No. 25 of 1955);
- This Act shall apply to all future marriages and to all existing marriages where the wife is subject to her husband's marital power.

## **EXPLANATORY NOTE - MATRIMONIAL PROPERTY REGIMES**

38. The Commission considered whether it should recommend, along with the abolition of the marital power, immediate reform of the marriage and matrimonial property laws in Namibia. It notes that the Recognition of Certain Marriages Act (No. 18 of 1991) provides an important precedent in Namibian law by recognizing marriages in terms of the SWAPO Family Act, which provides for joint ownership of property. The Commission studied the matrimonial property laws of several other countries, including South Africa's Matrimonial Property Act (Act No. 88 of 1991). The South African legislation introduced the accrual system as the property regime for all marriages out of community of property unless specifically excluded by antenuptial agreement, and also provided a transitional period in which couples could change their matrimonial property regime. The Commission is of the opinion that the reform of the matrimonial property law requires additional research with respect to property relations under both general law and customary law and a closer look at the matrimonial property laws of other countries as well as extensive consultation within our society. For this reason the Commission recommends that the first legislation be limited to providing for equality of husband and wife during marriage and that the reform of matrimonial property law and related issues concerning divorce and inheritance form part of the longer-term reform programme of the Commission.

## **DRAFT LEGISLATION**

39. In order to assist in the speedy dismantling of the discriminatory laws described herein the Commission has prepared a draft bill, The Married Women Equality Bill, which forms part of this report as an annexure. The Bill is drafted along the lines of the recommendations contained in this report and is confined, as a first step to the removal of women's disabilities and inequalities. There is also attached to the Bill a list of consequential amendments to the existing laws that need to be made in order to give effect to the proposed law.

## ANNEXURE

# BILL

To abolish the husband's marital power at common law; to provide for the wife's domicile of choice; to confer natural guardianship of children upon both parents; to provide for equal status of wife and husband during marriage; and to provide for matters connected with or incidental to the foregoing.

*(Introduced by the Minister of Justice)*

## ARRANGEMENT OF SECTIONS

### PART I

#### INTRODUCTORY PROVISIONS

1. Definitions.
2. Application of Act.

### PART II

#### ABOLITION OF HUSBAND'S MARITAL POWER

3. Abolition of marital power.
4. Effect of abolition of the husband's marital power.
5. Abolition of husband's head of household status

**PART III**

**ABOLITION OF OTHERS INCIDENTS  
OF THE WIFE'S INEQUALITY**

6. Wife's domicile of choice.
7. Joint natural guardianship of mother and father

**PART IV**

**MARRIAGES IN COMMUNITY OF PROPERTY**

8. Equality of spouses in regard to joint estate.
9. Spouse's juristic acts generally not subject to other spouse's consent.
10. Acts of spouse requiring other spouse's consent.
11. Power of court to dispense with spouse's consent.
12. Consequences of act performed without required consent.
13. Suspension of rights of spouse.
14. Recovery of debts from joint estate.

**PART V**

**GENERAL**

15. Repeal and amendment of laws.
16. Short title.

**SCHEDULE**

**LAWS REPEALED OR AMENDED**

**PREAMBLE**

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows: -

**PART I**

**INTRODUCTORY PROVISIONS**

Definitions.

1. In this Act, unless the context indicates otherwise -

"bank" means any person carrying on banking business as defined in the Banks Act, 1965 (Act 23 of 1965);

"building society" means any person carrying on business as a building society as defined in the Building Societies Act, 1986 (Act 2 of 1986);

"child" means any person under the age of eighteen years old;

"community of property" includes community of profit and loss;

"joint estate" means the estate of a husband and wife married in community of property;

"parents" shall include adoptive parents and "parental" shall have a corresponding meaning;

"property" means property of any description and includes liabilities attaching thereto;

"Savings Bank" means the Post Office Savings Bank controlled and managed by Namibia Post;

"separate property" means property of a husband or wife which does not form part of a joint estate.

Application of Act

2. (1) Parts II, III and V of this Act shall apply to all marriages registered in terms of the Marriage Act, 1961 (Act 25 of 1961) and all marriages recognized in terms of the Recognition of Certain Marriages



Act, 1991 (Act 18 .of 1991), irrespective of the date on which the marriage was entered into.

(2) Part IV of this Act shall apply to all marriages in community of property in terms of the Marriage Act, 1961 (Act 25 of 1961), irrespective of the date on which the marriage was entered into.

## **PART II**

### **ABOLITION OF HUSBAND'S MARITAL POWER**

Abolition of husband's marital power.

3. (1) The common law rule whereby a husband acquires a marital power over the person and property of his wife is hereby repealed.

(2) Any marital power which a husband had under the common law over the person and property of his wife immediately before the commencement of this Act is hereby abolished.

(3) The abolition of the husband's marital power in terms of subsection (1) shall not affect the legal consequences of any act or omission or fact existing before such abolition.

Effects of abolition of the husband's marital power.

4. The effect of the abolition of the husband's marital power shall be to abolish restrictions which the marital power places on the legal capacity of a wife, including but not limited to the capacity

- (a) to register immovable property in her name;
- (b) to contract and litigate in her own right;
- (c) to act as an executor of a deceased estate;

- (d) to act as a trustee of an insolvent estate;
- (e) to act as a director of a company;
- (f) to act as a surety.

5. (1) The position of the husband as head of household under the common law is hereby abolished.

Abolition of husband's  
head of household status

(2) Wife and husband shall henceforth have equal rights with respect to all major decisions affecting the family.

### **PART III**

#### **ABOLITON OF OTHER INCIDENTS OF INEQUALITY OF MARRIED WOMEN**

Wife's domicile  
of choice

6. (1) The domicile of a married woman shall, instead of being the same as her husband's by virtue only of the marriage, be ascertained by reference of the same factors as in the case of any other individual capable of choosing an independent domicile.

(2) The domicile of any child of a marriage shall be his or her parental home, if he or she resides with one or both of her parents, or otherwise, the place with which he or she is most closely connected;

7. The father's natural guardianship over the children of the marriage at common law is hereby modified to confer natural guardianship upon both parents jointly.

Joint natural  
guardianship of mother  
and father

### **PART IV**

EQUAL STATUS OF SPOUSES MARRIED

IN COMMUNITY OF PROPERTY

8. A wife and husband who are married in community of property shall have equal powers with regard to -

Equality of spouses in regard to joint estate.

- (a) the disposal of the assets of the joint estate; and
- (b) the contracting of debts for which the joint estate is liable;  
and
- (c) the administration of the joint estate;

Spouse's juristic acts generally not subject to other spouse's consent.

9. A spouse married in community of property may perform any juristic act in respect of the joint estate without the consent of the other spouse, subject to any restrictions imposed under this Part.

Acts of spouse requiring other spouse's consent.

10. (1) Subject to this section and sections 11 and 12, a spouse married in community of property shall not, without the consent of the other spouse -

- (a) alienate, donate, dispose of, purchase, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate ; or

- (b) enter into any contract for the alienation, donation, disposal, purchase, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate ; or
- (c) alienate, donate, cede, dispose of or pledge any shares, stocks, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or similar assets forming part of the joint estate; or
- (d) as a credit receiver, enter into a credit agreement as defined in the Credit Agreements Act, 1980 (Act 75 of 1980); or
- (e) enter into a contract for the purchase of movable property whereby the price is payable in instalments; or
- (t) bind herself or himself as a surety; or
- (g) alienate, donate, cede, dispose of or pledge any livestock, jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments; or
- (h) institute legal proceedings against another person, except .  
legal proceedings -
  - (1) in respect of her or his separate property; or
  - (2) for the recovery or damages, other than damages for patrimonial loss, by reason of the commission of a delict against her or him; or

(3) in respect of a matter relating to her or his profession, trade, business or occupation;  
or

(i) alienate, donate, dispose of, pledge or otherwise burden any furniture or other effects forming part of the common household.

(2) A spouse may, in the ordinary course of her or his business, trade or occupation perform any act referred to in paragraphs (c) to (e) of subsection (1) without the consent of the other spouse.

(3) Notwithstanding the restrictions contained in sub-section (1)(c) a spouse may, without the consent of the other spouse -

(a) sell listed securities on a stock exchange and cede or pledge-listed securities in order to buy other listed securities; or

(b) alienate, cede or pledge -

(i) a deposit held in her or his name at a building society or bank; or

(ii) building society shares registered in her or his name;

(4) (1) Deeds or other documents requiring registration in terms of the Deeds Registry Act, shall be executed by both spouses or shall be executed by one spouse with the written consent of the other spouse;

(2) Consent by a spouse to the other spouse's acting as a surety shall be in writing.

(3) Consent required of either spouse in all other cases shall be evidenced by

- (a) a writing; or
- (b) an oral agreement.

(5) Consent required for transactions referred to in paragraphs (b) to (e), (g) and (i) of sub-section (1) may be ratified within a reasonable time after the transaction or contract concerned.

Power of court to dispense with spouse's consent

11. If a spouse withholds consent required in terms of section 10, or if that consent cannot for any other reason be obtained, a court may give the other spouse leave to enter into and carry out the transaction or contract concerned without the required consent, if the court is satisfied, in the case where the consent is withheld, that such withholding is unreasonable or, in any other case, that there is good reason to dispense with the consent.

Consequences of act performed without required consent.

12. (1) If a spouse enters into a transaction or contract with another person without consent required in terms of section 10 or leave granted in terms of section 11, or in contravention of an order in terms of section 13, and -

- (a) that other person does not know and cannot reasonably know that the transaction or contract is being entered into without such consent or leave or in contravention of that order, as the case may be, the transaction or contract shall be deemed to have been entered into with the consent required in terms of section 10 or while the power of the spouse was not suspended in terms of section 13, as the case may be, subject to the rights of the non-consenting spouse in terms of subsection 3;
  
- (b) that spouse knows or ought reasonably to know that he will probably not obtain such consent or leave or that the power concerned has been suspended in terms of section 13, as they may be, and the joint estate suffers a loss as a result of that transaction or contract, an adjustment shall be effected in favour of the other spouse on the division of the joint estate.

(2) For the purposes of subsection (1), if it is proved that a spouse entered into a transaction or contract without consent required in terms of section 10, it shall be presumed unless the contrary is proved that she or he knew or ought reasonably to have known that she or he would probably not obtain the consent.

(3) If a spouse enters into a transaction or contract referred to in paragraphs (b), (c), (d), (e) (f) or (g) of subsection (1) of Section 10 without the consent required in terms of that section, subject to the rights of third parties at common law, such transactions shall be void if within 14 days of becoming aware of the transaction or contract the other spouse delivers a written notice of repudiation to that other person.

(4) A party to legal proceedings instituted by a spouse married in community of property may not challenge the validity of the proceedings on the ground of want of consent required in terms of paragraph (h) of subsection (1) of section 10.

(5) If a spouse married in community of property institutes legal proceedings without consent required in terms of paragraph (h) of subsection (1) of section 10 and costs in such proceedings are awarded against her or him, the court may, with due regard to the interest of the other spouse in the joint estate and the reason for the want of consent, order that those costs should be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they should be recovered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

Suspension of right of spouse.

13. If a court is satisfied that it is essential to do so for the protection of the interests of a spouse married in community of property,



the court may suspend for a definite or indefinite period all or any of the powers that the other spouse may exercise in terms of this Part, either in relation to all transactions and contracts or in relation to particular transactions or contracts, as the court may specify in its order.

Recovery of debts from joint estate.

14. Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor.

## **PART V GENERAL**

Repeal and amendment of laws.

15. The laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column of the said Schedule.

Short title.

16. This Act shall be called the Married Persons :Equality Act, 1994.

**LAWS REPEALED OR AMENDED**  
**(Section 21)**

Schedule 1	Schedule 2	Schedule 3
No. and year of law	Title of Law	Extent of repeal or amendment
Amendment of Act 24 of 1936.	The Insolvency Act, 1936 amended -	<p>(a) Amend section 3 by the insertion after subsection (2) of the following subsection</p> <p style="padding-left: 40px;">"(2a) A petition for the acceptance of the surrender of the joint estate of spouses married in community of property shall be made by both spouses jointly.*;</p> <p>(b) Amend section 9 by the insertion after subsection (1) of the following subsection</p> <p style="padding-left: 40px;">"(1a) A petition for the sequestration of the joint estate of spouses married in community of property shall be made against both spouses.".</p>
Amendment of Act 47 of 1937.	Deeds Registries Act, 1937.  Registration of immovable property in name of married persons.	<p>(a) The following section shall be substituted for section 17-</p> <p>"17. (1) Immovable property, real rights in immovable and notarial bonds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of a partner in that partnership.</p> <p>(2) Every deed or other document executed or attested by a registrar or a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, other than a person acting in a representative capacity, shall -</p> <p style="padding-left: 40px;">(a) state the full names and marital status (married or unmarried) of the</p>

person concerned; and where he or she so request, also any former or maiden name and description of unmarried status as spinster, bachelor, widow, widower or divorcee.

- (b) where the marriage concerned is governed by the law of Namibia, state whether the marriage is in or out of community of property;
- (c) where the person concerned is married in community of property, state the full name of both spouses.
- (d) where the marriage concerned is governed by the law of any other country, state that the marriage concerned is governed by the law of that country.

(3) Where a marriage in community of property has been dissolved by the death of one of the spouses before the transfer or cession to the spouses joint estate of any property (which includes a mortgage and notarial bond) which on transfer or cession thereof, would have formed part of the joint estate, that property shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof and, subject to the provisions of any disposition with regard to that property, shall be deemed to be the property in the joint estate of the surviving spouse and the deceased spouse.

(4) (a) If immovable property or any real rights forming part of a joint estate of spouses married in community of property is registered in a deeds registry in the name of either spouse, the registrar shall, on the written application of either spouse or a conveyancer on his or her behalf if he is satisfied as to the relevant facts, endorse on the personal registers and all or any title deed(s) of immovable property or real rights, lodged with the application, or if any title deed cannot for any reason be produced to him, only on the registry

duplicate thereof, the full names of the other spouse and the marital status.

(b) If any immovable property or any real right forming part of a joint estate of spouses married in community of property, which is registered in a deeds registry in the name of one spouse only, is transferred, ceded, burdened with any real or registerable right or if any real right is conferred therein, either one of the spouses, or a conveyancer on his or her or their behalf shall apply to the registrar for an endorsement in accordance with subsection (4)(a) above.

(c) A registrar shall record a change of marital status and any consequent change of name of a person in a deed or document filed in a deeds registry on application by such person, or a conveyancer on his behalf, accompanied by the relevant deed or document and proof to the registrar's satisfaction of such change of marital status. Subject to the provisions of section 45 *bis* (2).

(5) If any deed or document required, or permitted to be executed or registered in any deeds registry, or any deed or document produced in connection with any such deed or document, is executed by a person married in community of property, such person:

- (a) shall be joined and assisted by his or her spouse in such execution or production, or
- (b) shall produce the consent of his or her spouse to such execution, registration or production and the deed or document so executed shall make reference to the spouse's consent.

unless the assistance or consent of the spouse is in terms of this Act or on any other grounds deemed by the registrar to be unnecessary.

(6) (a) Immovable property, real rights in immovable property and notarial bonds may be transferred, cession or registration vest in the name of any person married in terms of a marriage of which the legal consequences are governed by the law of any other country.

(b) A person married in terms of a marriage of which the legal consequences governed by the law of any other country, shall

- (a) be joined and assisted by his or her spouse in executing any deed or document required or permitted to be registered in any deeds registry; or any deed or document produced in connection with any such deed or document;
- (b) shall produce the consent of his or her spouse to such execution, registration or production,

unless the assistance or consent of the spouse is in terms of this Act or on any other grounds deemed by the registrar to be unnecessary.";

- (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of the surviving spouse or deceased spouse of two spouses who were married in community of property or in the name of the joint estate of such spouses, or in the name of both such spouses, and the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by the surviving spouse save where the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the surviving spouse is entitled to deal with such property, lease or bond, and thereupon he shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property, lease or bond. Provided that the title deed, lease or bond shall first be endorsed in compliance with section 17(4) where it is registered in the name of one spouse only.

(b) The following section shall be substituted for section 45(1):

- "(c) the said bond has been passed by the survivor alone or by both

spouses who were married in community of property, and a written consent (which shall be in duplicate, in the prescribed form and signed by the survivor and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the registrar together with the bond."

by the substitution for section 45(4) of the following section -

"(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the survivor shall become sole debtor in respect thereof in the same manner *as* if he had passed the bond at that date and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the survivor."

(b) -by the substitution for section 45(2)(c) of the following section -

by the substitution for section 45(1) of the following section -

"45. (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who -

(a) were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered or, where such property, lease or bond is registered in the name of both spouses, one of them has lawfully acquired the share of her or his former spouse in the property, lease or bond; or

- (b) are or were married in community of property, and a court has made an order, in terms of which the property, lease or bond is; awarded to the person in whose name it is registered or, where the property, lease or bond is registered in the name of both spouses, to one of them;

the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into her or his name of the share of the former spouse or her or his spouse, as the case may be, in the property, lease or bond.

*bis* (2) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of both spouses who -

Endorsement of deeds on divorce or division of joint estate.

- (a) were married in community of property but have been divorced, and such property, lease or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate;

- (b) are married in community of property and a court has made an order of division of goods, in terms of which the property, lease or bond is awarded to both spouses in undivided shares;

the registrar may on written application by any of the spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property, or on the lease or bond, or if such deed, lease or bond cannot be produced by such spouse, on the registry duplicate thereof, that such spouses are entitled to deal with such property, lease or bond, and thereupon such spouses shall be entitled to deal therewith as if they had taken formal transfer or cession into their names of their respective shares in such property, lease or bond.";

- (c) by the deletion of section 94.

Act 32 of 1944      Magistrates Court Act, 1944

The amendment of section 5 by the substitution for subsection (2) of the following subsection:

"(2) The court may in any case, in the interests of good order or public morals, direct that a civil trial shall be held with closed doors, or that (with such exceptions as the court may direct) minors or the public generally shall not be permitted to be present thereat."

Ordinance 25 of Matrimonial Affairs Ordinance,  
1955                              1955

1.                      The repeal of section 1;
2.                      The amendment of section 2:
  - (a)                    by the repeal of subsections 1 and 2
  - (b)                    by the repeal of paragraph (a) of subsection (3);
  - (c)                    by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(3)(b) No property in respect of which an order obtained by a spouse under subsection (4) is in operation, shall be attached or sold in execution for any liability of the joint estate except for any liability incurred in respect of necessities for the joint household or for any order of costs awarded against such spouse in any legal proceedings instituted by such spouse.";

- (d)                    by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(4)(a) A spouse shall, on prima facie proof that the other spouse has deserted the first-mentioned spouse and is not residing with the first-mentioned spouse has at any time during the period of the desertion acquired or become entitled to any movable property, be entitled to an order of a judge or magistrate of a court within whose area of jurisdiction the



first- mentioned spouse resides, declaring the property (which shall be described in the order in such manner as to be identifiable) to be free from the control of the other spouse, and prohibiting the other spouse from dealing in any manner with such property.“;

- (e) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

w(c) **A** spouse shall for the purposes of this subsection be deemed to have been deserted by the other spouse if the first mentioned spouse is living apart from the other spouse because -

- (i) of the other spouse's refusal to reside with the first-mentioned spouse; or
- (ii) of the other spouse's repeated assaults or other acts of cruelty inflicted on the first-mentioned spouse; or
- (iii) the other spouse is an habitual drunkard; or
- (iv) of the other spouse's refusal or neglect without sufficient cause to supply the first-mentioned spouse or the children from the marriage

with necessa-  
ries; or

(v) of the other  
spouse's de-  
tention in any  
prison, jail,  
or ~~other~~  
institution.";

(f) by the deletion from subsection  
5 of paragraph (a);

(g) by the deletion from subsection  
(5) of paragraph (b).

3. By the deletion from section 3 of the  
proviso.

4. The amendment of section 4 -

(a) by the deletion from subsection  
(3) of paragraph (b);

(b) by the substitution for subsection  
(4) of the following subsection:

"(4) Both parents of a minor  
shall consent to the marriage of  
the minor, unless one of the  
parents has been granted sole  
guardianship of the minor.";

(c) by the substitution for subsection  
(5) of the following subsection:

"(5) The court or a judge  
may, where a parent who is a  
sole guardian has appointed a  
guardian or custodian as provi-  
ded in paragraph (a) of  
subsection (3), upon the  
application of the other parent or  
of the guardian, as the case may  
be, made after the death of the  
testator, make such order in  
regard to the guardianship or  
custody of the minor as the court  
or judge may deem in the inte-  
rests of the minor.;

(d) by the repeal of subsection (7).

5. The amendment of the Ordinance by the  
insertion after section 4 of the following  
section:

"4A. During the duration of a marriage, both parents of a minor born from the marriage shall be entitled to joint guardianship and joint custody of the minor, unless the court directs otherwise in the interest of the minor."

Act 44 of 1957	Defence Act, 1957	The Amendment of section 78 of the Military Discipline Code set out in the First Schedule to the Act by the substitution of subsection (3) of the following subsection:
		<p>"(3) Whenever it appears to a convening authority or a court martial that, in the interest of good order or public morals or the administration of justice or reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his counsel and the necessary court officials or that juveniles or other classes of persons, shall not be permitted to be present at the trial. •</p>
Act 25 of 1961	Marriages Act, 1961.	Amend section 26(1) as follows:
		<p>"(1) No boy or girl under the age of eighteen years shall be capable to contracting a valid marriage..."</p>
Act 81 of 1963	Births, Marriages and Death Registration Act	The amendment of section 10 by the substitution for subsection (1) of the following subsection:
		<p>"(1) In the case of any child born alive it shall be the duty of the mother and of the father of the child and, in the case of the death or absence or other inability of the mother and father, then of-</p> <ul style="list-style-type: none"> <li>(a) any person present at the birth; or</li> <li>(b) the occupier of the dwelling in which the child is born; or</li> <li>(c) the person having charge of the child; or</li> </ul> <p>within fourteen days after the birth, to give the prescribed notice or information thereof either to the registrar or assistant registrar concerned, or (if the child was born outside an urban area), to any justice of the peace or police officer:</p>

Provided that if the mother or father is resident in an area other than that in which the birth occurred, that mother or father may give the prescribed notice to the registrar in whose area her or his residential address is."

- |                |                                     |   |
|----------------|-------------------------------------|---|
| Act 23 of 1965 | Banks Act, 1965                     | <p>(a) By the substitution of section 23 of the following section:</p> <p>"23. A minor over the age of sixteen years may be a depositor with a banking institution and may without assistance execute all necessary acquittance and cede, pledge and borrow against and generally deal with her or his deposit as she or he thinks fit and shall enjoy all the privileges and be liable to all the obligations attaching to depositors. .;</p> <p>(b) by the insertion after section 23 of the following section:</p> <p>Joint Accounts.</p> <p>"23A. A banking institution/commercial bank shall not, upon application, refuse to open a joint account in the name of two applicants, regardless of their marital status."</p> |
| Act 66 of 1965 | Administration of Estates Act, 1965 | <p>(a) The repeal of section 17; and</p> <p>(b) the amendment of section 72 by the substitution for subparagraph (i) of paragraph (a) of the following subparagraph:</p> <p>"(i) by the parent of a legitimate minor, who has not been deprived, as a result of an order under subsection (1) of the said section 5 or subsection (1) of the said section 4, of the guardianship of such minor, or under section 60 of the Children's Act, 1960 (Act 33 of 1960), or section 58 of the Children's Ordinance, 1961, of his parental powers over him; or";</p> <p>(c) The deletion from section 85 of -</p> <p>(i) "<u>seventeen</u>"; and</p> <p>(ii) paragraph (b).</p>   |

Act 68 of 1969	Prescription Act, 1969	The amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph:
		<p>"(a) the person against whom the prescription is running is a minor or is insane or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or".</p>
Act 70 of 1970	Subdivision of Agricultural Land Act, 1970	<p>The amendment of section 3</p> <p>The amendment of section 3-</p> <p>(a) by the insertion after paragraph (b) of the following proviso:</p> <p>Provided that an undivided share in agricultural land may vest jointly in spouses married in community of property. Further provided that such share may only be transferred (a) by the spouses or from their estates jointly, or (b) by one spouse or his estate to the other spouse or his estate when the joint estate has been divided.</p> <p>(b) by the insertion after paragraph (c) of the following proviso:</p> <p>"Provided that a part of an undivided share in agricultural land may vest jointly in spouses married in community of property. Further provided that such part of an undivided share may only be transferred (a) by the spouses from their estates jointly, or (b) by one spouse or his/her estate to the other spouse or his or her estate when the joint estate has been divided"</p>
Act 61 of 1973	Companies Act, 1973	<p>The amendment of section 218 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>"(b) a minor or any other person under legal disability;"</p>
Amendment of Act 93 of 1976.	The Registration of Deeds in Rehoboth Act, 1976.	22. The Registration of Deeds in Rehoboth Act, 1976, is amended -

**AMENDMENTS SHALL CORRESPOND TO  
THE CHANGES DEEDS REGISTRY ACT**

Registration of immovable  
property in name of married  
persons

Ordinance 13 of Rents Ordinance, 1977  
1977

The amendment of section 1 by the substitution for  
the definition of 'Lessee' of the following  
definition:

"Lessee" includes -

(a) in respect of business premises, the  
widow or widower of a lessee who  
rented the premises in his or her  
personal capacity, if such spouse was  
living with the deceased spouse at the  
time of the spouse's death, and is  
desirous of a continued occupation of the  
premises unless the lease agreement  
expressly or by necessary implication  
prohibits sublease, cession or assignment  
by the lessee;

(b) in respect of a dwelling -

(i) the widow or widower of a  
lessee if such spouse was living  
with the deceased spouse in the  
dwelling at the time of the other  
spouse's death;

(ii) the deserted spouse of a lessee if  
such spouse was living with the  
other spouse at the time of the  
desertion by the other spouse;

and is desirous of a continued  
occupation of the dwelling;".

**OR**

(b) in respect of a dwelling a sublessee or  
the widow or widower or deserted  
spouse of a lessee or sublessee who was  
living with the lessee at the time of the  
lessee's death or desertion. •.

Act 11 of 1980      Boxing and Wrestling Control  
Act, 1980

The repeal of section 13

Act 21 of 1980      Combating of Immoral Practices  
Act, 1980

The amendment of section 2 by the deletion from  
subsection (2) of paragraph (g).

Government Notice Regulations made under the AG  
 No. 28, 1981 Public Service Act (Act 206,  
 1980)

1. Definition of "family quarters" shall be revised as follows:  

"resides with him or her"
2. Definition of "Household" by substitution for section (a) of "the spouse of an officer or employee; and/or"  

And the repeal of section (b).
3. Repeal A14.
4. Amend K1 definition of "dependent" as follows:  

(a) the spouse or any necessarily non-self supporting..."
5. Repeal K3.4(b).
6. Repeal K4.3.

Act 2 of 1986 Building Societies Act, 1986

The amendment of section 62 -

- (a) by the substitution for subsection (1) of the following subsection-  

"(1) Unless otherwise provided by the rules of a society, a minor over the age of sixteen years may be a member of or a depositor with any society and may without the consent or assistance of his guardian execute all necessary documents, give all necessary acquittance and cede, pledge, borrow against and generally deal with her or his share or deposit as she or he thinks fit, and shall enjoy all the privileges (except shall not hold office) and be liable to all the obligations attaching to members or depositors.";
- (b) by the deletion of subsection (2).

Notes:

A series of horizontal dashed lines for writing notes.



