

**MARITAL PROPERTY REGIMES AND THE
NATIVE ADMINISTRATION PROCLAMATION**

Leigh-Anne Agnew & Dianne Hubbard, Legal Assistance Centre
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SUMMARY

This memorandum explains certain legal issues pertaining to marital property regimes, due to the fact that there appears to be some confusion regarding the marriages of black people married north of the "Police Zone" in Namibia.

The default property regime for most civil marriages in Namibia is 'in community of property'. However, the "Native Administration Proclamation" which remains in force provides that the default regime for black couples married north of the old "Police Zone" is "out of community of property". If such couples want to have "in community of property", they must sign a declaration in front of the marriage officer before the wedding takes place. Because there has been some confusion about this law, some marriage officers have not been directing couples to make this declaration, but have instead simply been making a notation on the marriage certificate. This procedure does not appear to be adequate to fulfil the requirements of the law.

As a result, some people may want to change their marital property regime after the marriage takes place, so that it reflects their actual intentions at the time of the marriage. There is a provision in the Deeds Registries Act which allows the registration of a postnuptial contract after the marriage takes place. But a couple who wants to do this must make application to the High Court, and must show good reasons for registering the contract after the marriage.

It is also possible in theory that a couple suffering from mistaken instructions by a marriage officer could bring a case in a magistrate's court or in the High Court citing principles of administrative law, and asking either that the marriage officer be ordered to rectify the mistake or that the marriage officer pay any damages resulting from the error. Neither of these remedies is well-suited to the problem at hand, and once again a court case would be required.

The Legal Assistance Centre therefore proposes the following:

- (1) **The Native Administration Proclamation, which is clearly unconstitutional and already being challenged in several court cases, should be repealed as quickly as possible.**
- (2) **All marriage officers in the north should be directed to require black couples who want their marriages to be in community of property to sign the declaration which is required by the Native Administration Proclamation so long as this discriminatory law remains in force.**
- (3) **Namibia should enact, as a matter of urgency, a legal provision which would give black couples affected by the discriminatory Native Administration Proclamation a simple procedure for changing their marital property regimes, at least for a given time period. This approach has been successfully used in South Africa.**
- (4) **Namibia should also adopt a provision which would provide all married couples with an opportunity to make a joint application to a court to change their marital property regime if they can show sound reasons for doing so.** This approach has also been successfully applied in South Africa. It would be useful in Namibia since many couples at the time of their marriage were not well-informed about the various marital property regimes and their implications.