REPORT ON MATRIMONIAL PROPERTY CONSEQUENCES
OF CERTAIN CIVIL LAW MARRIAGES
REPEAL OF NATIVE ADMINISTRATION PROCLAMATION, 1928
(NO. 15 OF 1928)
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Discussion Paper on the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology (ISBN 978-99945-0-075-8)

Hon. Sakeus E.T. Shangala, MP  
Minister of Justice  
Private Bag 13302  
Justitia Building  
Independence Avenue  
Windhoek  

23 November 2018

Dear Honourable Minister,

RE: STATUTORY SUBMISSION OF THE REPORT ON MATRIMONIAL PROPERTY CONSEQUENCES OF CERTAIN CIVIL LAW MARRIAGES

Pursuant to section 9(1) of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991, as amended), the Law Reform and Development Commission (LRDC) is obligated to report to the Minister of Justice for consideration in regard to any matter it examines.

It is my privilege, therefore, as Chairperson of the LRDC, to present to you this Report on Uniform Default Matrimonial Property Consequences of Certain Civil Law Marriages. In doing so, I would also like to thank the previous Commissioners of the LRDC as well as all our stakeholders and the staff involved in bringing the Report to fruition.

The LRDC will be available to assist the Minister in considering the contents of this Report.

Yours sincerely,

YVONNE DAUSAB (Ms.)
Chairperson

[Signature]

The Commission’s core mandate is to undertake research in connection with all branches of the law, and to make recommendations for its reform and development, where necessary.

In terms of section 3 of the said Act, Commissioners are appointed by the President. The current members of the Commission are as follows:

- Ms. Y Dausab, Chairperson
- Adv. J Walters, Ombudsman
- Adv. S Shakumu
- Adv. D Khama
- Adv. U Hengari
- Mrs. F !Owoses-/Goagoses
- Ms. L Usebiu, and
- Mrs. A van der Merwe.

The post of Secretary to the Commission, most recently held by Mr. JT Namiseb, Chief of the Directorate of Law Reform in the Ministry of Justice, fell vacant after his resignation.

The Directorate of Law Reform serves as the Commission Secretariat, assisting it in exercising its powers and performing its duties and functions under the Act. The Commission and Secretariat are both housed on Floor 2 and 4 of the Gutenberg Plaza 51-55 Werner List Street, Windhoek.

The project leader assigned to this project is Mrs. Chisom C. Obiudo, senior legal researcher in the Directorate of Law Reform, Ministry of Justice who was primarily supervised by the Chairperson and with assistance from the Project Commissioner, Mrs Van der Merwe of the LRDC.
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Introduction


The mandate of the LRDC is to undertake research in connection with existing legislation to examine all branches of the law of Namibia, and to make recommendations for its reform and development, where necessary.

Law reform involves an in-depth consultation process. It involves legal and social legal research that needs to reflect the views not only of relevant stakeholders, but also of the community at large. Thus, the LRDC plays a key role in the process of legal reform that contributes to social justice.

Since its establishment in 1992, the LRDC has given considerable attention to family law and customary law. These are particularly important, given that the family is the primary anchor of any society. During various consultative and initial research processes, matters that needed special attention were identified and specific projects were established for them. The first of many projects in this sphere of law reform entailed the enactment of the Married Persons Equality Act, 1996 (Act No. 1 of 1996), which principally led to the abolition of marital power.¹

However, family law issues that affect marriage, death and divorce remain a thorn in the flesh. In exercising its statutory mandate, the Commission decided to fast-track one of the family law issues currently under review by undertaking a project on marital property regimes, specifically targeting the repeal of section 17(6) of Native Administrative Proclamation, 1928 (Act No. 15 of 1928).

¹ (Act No. 1 of 1996). The object of which was to abolish the marital power; to amend the matrimonial property law of marriages in community of property; to provide for domicile of married women; to provide for domicile and guardianship of minor children; to further regulate the liability for household necessaries of spouses married out of community of property; to amend certain laws to give effect to the abolition of marital power; and to provide for matters incidental thereto.
The LRDC as part of its mandate decided to disintegrate the composite nature of the family law project, and to address each issue separately. This is how the matrimonial property regime project came about. The aim of the project is to bring Namibia’s matrimonial property law on par with that exercised in many parts of the world. In other words, the aim is to liberate Namibia from discriminatory colonial laws, and to propose a marital regime that provides scope for choice on the basis of equality and the type of marital property regime a couple wishes to subject themselves.

Historically, the LRDC has worked on a number of projects that are closely associated with family law in general and marital property regimes in particular. As a result, a number of reports with their associated Bills on the following issues in the years indicated below were produced.

- The matrimonial property consequences of common law marriages (2003)
- Divorce (2004),
- Marital property (2010); and
- Intestate succession (2012).

Significant work seems to have gone into the family law project from the various angles it was tackled. However, it is unclear from the records of the LRDC why the draft Matrimonial Property Regime Bill of 2003 was never enacted and the delay in finalising the project is unexplained. The LRDC subsequently resubmitted the above mentioned family law reports and Bills associated to the Minister of Justice and other relevant stakeholders, and arranged to conduct a Family Law Workshop from 23 to 27 July 2012 in Swakopmund, to revitalise consultations, in part to update the information given the lapse of time and probable policy, case law and practice developments that may had to be considered, on these important issues.

The said workshop participants included the Minister of Justice; the Minister of Gender Equality and Child Welfare; the Minister of Home Affairs and Immigration; the Chairperson of the Parliamentary Standing Committee on Security, Constitutional and Legal Affairs; various Deputy Ministers, Special Advisors, Permanent Secretaries and Traditional Leaders; and senior Government officials from the various Ministries involved.
It emerged from the workshop that some of the most pertinent issues discussed needed further consultation, particularly with Traditional Authorities, religious bodies, the media, and the public at large. Following the workshop, the LRDC produced a Working Paper on these issues for further action and consideration.²

Pursuant to the recommendations from this consultative process, the LRDC sought additional input from a broader range of interested and affected parties. As stated earlier, the cause of the delays in finalising the project after the 2012 workshop is unexplained and is not borne out by any documentary or other information. Despite this, from 12 February to 19 March 2015 the incumbent LRDC conducted further consultations across the country, visiting the areas of Eenhana, Gobabis, Katima Mulilo, Keetmanshoop, Ondangwa, Ongwediva, Opuwo, Outapi, Ondangwa, Otjiwarongo, Rehoboth, Rundu, Swakopmund and Windhoek.

During the consultations, it was discovered that the map that sets out the boundaries for the Red Line may not have included all communities that could potentially be affected by this demarcation. This necessitated a final round of discussions that took place in Gammie, Sesfontein and Tsumkwe from 26 to 27 February 2016 in order to establish whether these areas were situated outside the former so-called Police Zone,³ and to inform the communities living there about the proposed changes to the matrimonial property regime in their area. It was important that affected communities are fully informed of the consequences of this proposed legislation and that no one is left out from this important consultative process.

One of the issues addressed at the workshops was the elimination of the existing racially and geographically discriminatory dual default marital regimes determined by the 1928 Proclamation. This Report therefore highlights the most pertinent issues and resolutions garnered throughout the consultative process. In addition, the Report will introduce the proposed Uniform Matrimonial Property Regime Bill, which aims to address the current marriage regime anomalies and the remedies available to persons that were subject to the provisions of the 1928 Proclamation and its effects.

³ A description of the historical context of this area is explained, under “contextual framework”; see also Annexure E hereto.
Contextual framework

Twenty eight years after independence, the current Namibian law on matrimonial property is still marred by racial discrimination and geographic disparity. Legislative reforms are therefore needed to transform this archaic and discriminatory matrimonial property regime into a law that encapsulates the societal norms and values as enshrined in the Namibian Constitution.

This report will examine the propriety consequences of marriages in respect of civil marriages and discusses proposals for law reform, in light of the current legal position on matrimonial property and the recommendations of stakeholders consulted nationwide.

Marriage in pre-colonial Namibia

In the case of Mofuka v Mofuka, Maritz J stated the following:

The Western concept of a civil marriage and the legal consequences thereof were foreign to the indigenous peoples of Southern Africa during the pre-colonial era. Theirs was one of (potentially) polygynous customary unions concluded without formal officiation according to the traditions of each tribe and cemented by bride wealth agreements between the families of the partners in such unions. The arrival of European colonial powers in Southern Africa and their "mission to 'civilize' their colonies (had a far-reaching impact upon African customary legal systems). A choice was given to members of those indigenous groups to conclude civil marriages. The personal and proprietary consequences of those marriages were, however, not only foreign to the indigenous people but, if so contracted, had the potential to cause serious prejudice other parties in existing customary unions. Hence, uncoordinated attempts were made prior to 1928 to address those concerns by legislation.

Marriage laws in the colonial era

From 1 January 1929 the position was comprehensively regulated in South Africa by s.22 of the Native Administration Act, 1927. Being a mandated territory of the Republic of South Africa at the time, the legislative authorities in the then South West Africa soon followed suit with the

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promulgation of the Native Administration Proclamation, 1928. Section 17 dealt with “Marriage” in almost identical terms as s. 22 Act 38 of 1927 (RSA). However, whereas s. 22 became of force and effect in South Africa from the beginning of 1929, s. 17 of Proclamation 15 of 1928 did not. In terms of s.27 of the Proclamation, the Administrator had to fix the date on which it would commence by notice in the Gazette and he could exclude from application in such notice any specified part or provision of the Proclamation “which shall thereupon not apply until brought into operation by a further notice”.5 When the Administrator brought the Proclamation into operation with effect from 1 January 1930 by Government Notice 165 of 11 December 1929, he expressly excluded Chapter IV (which contains s.17). That chapter, with all the legislative intentions to protect customary unions, was never applied in Namibia. That is, except for ss.17(6) and 18(3) and (9), which was made applicable to only certain parts of the country, including present day regions of Oshana, Omusati, Oshikoto, Ohangwena, Kavango and Caprivi.6

The legal peculiarities of the Police Zone

The Encyclopaedia Britannica defines this area as comprising of the - 7

… southern two-thirds of former South West Africa in which the German and later South African colonial administrations were able to establish effective European-style police control beginning in the early 20th century. The name of the area and its original boundary were adopted in 1919 by the South Africans from a 1911 German map of the territory on which the area was marked Polizei-Zone.

Spanning from the north-central sector of what became the mandated territory of South West Africa, the Police Zone’s boundary (often called the Red Line because it was printed on maps in red ink) extended from the Atlantic Ocean to Botswana in a generalized northward-arcing semicircle. The boundary separated indigenous African groups to the north, including the numerically significant Ovambo, as well as other Bantu-speaking people from white settlement areas to the south. However, not all indigenous groups of South West Africa lived north of the Police Zone. The minority groups such as the Herero, together with groups of Khoekhoe and other groups of mixed origin, lived mostly within the Police Zone.

5 (ibid).
6 (ibid).
The Police Zone boundary was long inviolate. White people were prohibited from entering the north, and the indigenous groups of the north were generally prohibited from entering the Police Zone except when hired as a "labour unit" contracted for a prescribed period. A number of successive demarcation changes of the boundary between the 1920s and 1960s usually reflected the increasing white control of better farming areas. The name Police Zone was used less after the South African Odendaal Commission defined the geographic, economic, and political aspects of apartheid in South West Africa.

The Commission’s directive in 1964 led to the establishment of 10 reserves (homelands) in the 1970s for South West Africa’s African peoples and groups of mixed origin; the eastern, southern, or western boundaries of the 6 reserves for the indigenous African groups to the north of the Police Zone followed the Police Zone boundary with slight alterations.

The 1977 South African agreement to create an interim government in Namibia until independence led to the Rural Areas Proclamation (1977), which revoked the regulations previously used to control the movement of black Africans and permitted all ethnic groups to take employment and residence wherever they chose. By the time of independence in 1990, even the effects of a Police Zone had ceased.

In other words, Namibia’s independence in the year 1990 brought about the end of institutionalised racial segregation and discrimination in the country, through the adoption of the Namibian Constitution as the supreme law of the land. The movement of black Namibians into the central and southern cities are no longer restricted and all ethnic groups are now able to move freely, reside and settle in any part of Namibia, as provided for in the Constitution.

Despite what many would consider a good catalogue of constitutional provisions that promote and provide for a healthy set of bill of rights, the last vestiges of the apartheid regime are still apparent today, such as marriages concluded north of Police Zone. These marriages are legitimised by the continued existence of archaic and discriminatory laws that support them. This report and the various consultations that took place are meant to address these concerns through legislative review and recommend reform.

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8 Ibid.
The current legal position

Under Roman-Dutch common law, the default matrimonial property regime applicable to most civil marriages in Namibia today is in community of property. However, spouses may enter into an antenuptial contract (ANC) to change the default position. An antenuptial contract is a special written agreement concluded before the marriage and registered at the office of the Registrar of Deeds. In Namibia, a couple that wishes to marry out of community of property are required to enter into a formal antenuptial contract in order to depart from the default position. The assistance of a lawyer is generally required for such contracts.

The antenuptial contract can also be used to apply what is commonly referred to as the accrual system. The accrual system requires a balancing of the spouses’ estates on divorce by having regard to the amounts by which each respective estate has grown during the marriage. Thus, although the spouses had separate property regimes during the marriage, an equitable division of the combined estates is effected on divorce.

In the case of Voigts v Voigts, Judge Damaseb, JP held that the accrual system is a concept that is foreign to Namibian law and would require expert evidence to be led. However, this system is considered internationally to be one of the fairest approaches to amassing property within marriage, and is most commonly applied and statutorily recognised in South Africa. The practice of the accrual system seems to have been imported into Namibia through the common law

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11 The Namibian Deeds Registries Act, 1937 (No. 47 of 1937) requires any antenuptial agreement executed in Namibia to be registered in the country within three months of the date of such execution.
12 LeBeau et al. (2004 :19).
14 2012 Case No I 1704/2009(unreported).
practice rather than a specific proclamation or statute, as was customary with many of the other laws that were applied after 1972 in Namibia. It is not commonly used though, probably because it's not widely known.

The choices of marriage out of community of property, preceded by an ANC and with the possibility of an accrual system was not a consideration for black persons that married in the north. This is so because marriages in the north were subject to the default position on marital property. The 1928 Proclamation, parts of which are still in force today, enforces a different rule for all civil marriages that took place on or after 1 August 1950 between "natives" (indigenous persons) outside of the former Police Zone. Such marriages are automatically out of community of property unless a declaration establishing another property regime was made before a marriage officer at least a month before the marriage was solemnised.

In this regard, section 17(6) of the 1928 Proclamation, which applies only to the area north of the so-called Red Line (i.e. outside the Police Zone), states the following:

_A marriage between Natives, contracted after the commencement of this Proclamation, shall not produce the legal consequences of marriage in community of property between the spouses: Provided that in the case of a marriage contracted otherwise than during the subsistence of a customary union between the husband and any woman other than the wife it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any magistrate, native commissioner or marriage officer (who is hereby authorized to attest such declaration) that it is their intention and desire that community of property and of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage._


\[17\] Also referred to as the Veterinary Cordon Fence, this is a pest-exclusion fence separating northern Namibia from the central and southern parts of the country. For a history of the Red Line, see Miescher, G. 2012. _Namibia's Red Line: The history of a veterinary and settlement border_, Annexure F New York: Palgrave Macmillan.
It is extremely unfortunate that, despite our current constitutional dispensation, different rules to marriage are applied based on race and geographical location. However, as offensive as it is, the 1928 Proclamation will remain in force unless it is repealed by Parliament or declared unconstitutional by the courts.\textsuperscript{18}

**Problems with the current law**

The most pertinent problem associated with the continued existence of the 1928 Proclamation is the fact that it continues to apply differential treatment to persons that marry north of the Police Zone and those within the Police Zone.

To that end, the 1928 Proclamation is clearly a violation of the Namibian Constitution’s prohibition on discrimination on the basis of race. However, in terms of Article 140(1) of the Constitution, -

\begin{quote}
... all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.
\end{quote}

As a consequence of the continued validity of this Proclamation, the word \textit{native}, as a legal term, still exists on Namibia’s statute books and defined in the 1928 Proclamation as follows -

\begin{quote}
... any person who is a member of any aboriginal race or tribe of Africa: Provided that any person residing in an area defined under paragraph (c) of section 1 of the proclamation, or set aside as a reserve under section 16 of the Native Administration Proclamation of 1922, or in any native location under the same conditions as a native, shall be regarded as a native for the purpose of the Proclamation.
\end{quote}

The 1928 Proclamation is discriminatory and anachronistic, as the provisions subject a marriage of indigenous persons to a now unconstitutional legislative regime that discriminates against them on the grounds of race. This contention is founded on Article 10 of the Namibian Constitution,

\footnote{\textsuperscript{18} See Article 140(1) of the Namibian Constitution.}
which was interpreted as follows by Strydom CJ in Muller v President of the Republic of Namibia & Another.\textsuperscript{19}

The grounds mentioned in Article 10(2), namely sex, race, colour, ethnic origin, religion, creed or social or economic status, are all grounds which, historically, were singled out for discriminatory practices exclusively based on stereotypical application of presumed group or personal characteristics. Once it is determined that a differentiation amounts to discrimination based on one of these grounds, a finding of unconstitutionality must follow.

The judgment continues as follows:\textsuperscript{20}

\textit{It seems to me that inherent in the meaning of the word discriminate is an element of unjust or unfair treatment. In South Africa, the Constitution clearly states so by targeting unfair discrimination, and thus makes it clear that it is that particular type of discrimination that may lead to unconstitutionality. Although the Namibian Constitution does not refer to unfair discrimination, I have no doubt that in the context of our Constitution that is also the meaning that should be given to it.}

In the case of Berendt & Another v Stuurman & Others which dealt with the race-based rules in the Native Administration Proclamation 15 of 1928 that govern inheritance, the court found that the legislative provisions drawing distinctions on the basis of race violated Article 10(2) of the Namibian Constitution, following the reasoning in an analogous South African case.\textsuperscript{21}

\textit{There can be no doubt that the section and the regulation both impose differentiation on the grounds of race, ethnic origin and colour, and as such constitute discrimination which is presumptively unfair… The Minister and the Master suggested that the administration of deceased estates by magistrates was often convenient and inexpensive. However, even if there are practical advantages for many people in the system, it is rooted in racial discrimination, which severely assails the dignity of those concerned and undermines attempts to establish a fair and equitable system of public administration. Any benefits need not be linked to this form of racial discrimination but could be made equally available to all people of limited means or to all those who live far from the urban centres where the offices of the Master are located. Given}

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\textsuperscript{19} 1999 NASC 2; 200 (6) BCLR 655 (NmS) (21 May 1999) at 664H.
\textsuperscript{20} At 200 (NR), 665F-G (BCLR).
\textsuperscript{21} 2003 NR 81 (HC).
\end{tabular}
\end{flushright}
our history of racial discrimination, I find that the indignity occasioned by treating people differently as “blacks” ... is not rendered fair by the factors identified by the Minister and the Master. 22

The court concluded that the impugned statutory provisions were unconstitutional violations of the prohibition on racial discrimination, and gave Parliament a time frame of almost two years to correct the defect.23

From the cases cited above, we are reminded that the most effective way to maintain and protect the rights of dignity and equality so long denied to the people of Namibia is through a system where the democratic government operates “under” a sovereign Constitution and a free and independent judiciary. One of the core values of the Constitution is its role as a check on majority rule to ensure that the dignity and equality of all persons remains inviolable.

The practical effects of the Proclamation manifests themselves in the lives of the men and women that live north of the Police Zone. For example, in the case of Mofuka v Mofuka,24 the High Court held that the agreement made and evidenced by the affidavit declared by the parties to the effect that they were or had intended to be married in community of property was valid between the parties, but that the parties remained married out of community with regard to third parties such as creditors.

The Supreme Court, on the other hand, ruled that the respondent had failed to prove the presence of such an agreement, and that the agreement between the parties had been made prior to the solemnisation of the marriage as required by the 1928 Proclamation. Since a change to the matrimonial property consequences of a marriage cannot be made after the solemnisation of such marriage, the Supreme Court found the affidavit invalid.25

22 At 84E- H, per Manyarara AJ, quoting Moseneke & Others v The Master & Another 2001 (2) SA 18 (CC) at paragraph 22.
23 Ibid.
24 2003 NR 1 (SC).
25 SA2/02 (2003] NASC 18 (20 November 2003) at 8. Strydom ACJ cited Honey v Honey 1992 (3) SA 609 (WLD) at 611 A-D and Union Government (Minister of Finance) v Larkan 1916 AD 212 at 224. In essence, the two cases provide that, in terms of common law, property once excluded cannot be introduced, and once introduced cannot be excluded.
Furthermore, it became clear during the LRDC’s consultations in northern Namibia that spouses are still being adversely affected by the administration of the 1928 Proclamation - as illustrated in *Mofuka*. Moreover, there is a disturbing trend among some marriage officers who, owing to a lack of proper training, do not follow the correct marriage procedures that apply in Namibia in general and those that applied North of the Police Zone in particular. For example, under section 17(6) of the said Proclamation, the declaration required to be signed by spouses as evidence of their intention to be married in community of property is no longer being printed, and marriage officers simply record the marriage on the marriage certificate as being in community of property.26

In *Nakashololo v Nakashololo*,27 the court held as follows:

> The substance of s. 17(6) is simply as follows: “Black " persons who marry by civil marriage north of the “Red Line” (which includes the Oshana Region, the Region in which the parties’ marriage was concluded), will be married out of community of property. The intending spouses may, however, at any time within one month prior to the solemnization of the marriage declare jointly to a marriage officer that they wish to be married in community of property. Thus, unless ‘black’ persons who marry north of the “Red Line” make such declaration, they will be married out of community of property, but not by antenuptial contract.

In an unreported judgement, the court in the case of *Johannes Shithigona v Selma Ndasilwohenda Shithigona* set out the following principle:28

> (It is not enough in terms of the clear words of s. 17 (6) of Proc. 15 of 1928 that the parties believed and agreed as between themselves that the consequences of their marriage shall be one in community of property: the intending spouses {1 desire and agreement must, in order to satisfy the requirements of s. 17 (6) of the Proc. 15, manifest themselves in a declaration made before a marriage officer

From the cases cited above, it is clear that the court is unlikely to accept the marriage officer’s notation on the marriage certificate as an equivalent of the joint declaration required by the 1928

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27 2007 (1) NR 27 (HC) at 29F-G.

Proclamation. This added notation has resulted in the current confusion about the applicable marital property regime in that parties had their marriage certificate endorsed with married in community of property whereas they had not completed a declaration as required by law.

As a consequence, due to the spouses’ ignorance of the law, they were under the impression that they are married in community of property, while in reality their marriage under the 1928 Proclamation is out of community. Unfortunately, the spouses typically only become aware of their predicament when their marriage is dissolved through divorce or death; this could lead to severe hardship and unfairness, especially for women.29

In a joint supplementary submission in 2008 to the Committee on the Elimination of Racial Discrimination, the Legal Assistance Centre in Namibia and the International Women’s Human Rights Clinic in the USA found the following to hold true in Namibia:30

> Out of community of property arrangements disproportionately affect women’s abilities to own, control, and access property, violating their equal rights and rendering them economically dependent. ... Women have historically kept the household and raised children, and still today participate less in the formal economy, their work is often not valued monetarily. The traditional undervaluing of women’s work, combined with the out of community marital property default, ensure that black women have neither equal power to control marital property nor a claim to any marital property upon divorce or death of their husbands. This cycle perpetuates the historic exclusion of black women from access to and control over property and curtails their enjoyment of civil, economic and social rights.

Therefore, due to the devastating consequences that ensue, there is no justification why the default matrimonial property regime imposed by the 1928 Proclamation on marriages concluded

in the areas north of the so-called Police Zone should continue to apply. The issues illustrated above validate the need to reform Namibia's matrimonial regime laws.

Thus, in order to ensure that Namibia's laws fully reflect the customs and secular nature of the modern state, the LRDC hosted a workshop to offer all stakeholders the opportunity to engage critically on any family law issues that were anachronistic in that they did not reflect the values enshrined in the Namibian Constitution. In particular, the workshop focused on those issues highlighted in the second clause of the Preamble to the Constitution which states that "right of the individual to life, liberty and the pursuit of happiness" applies "regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status".31

These values and principles were further espoused in the case of Ex Parle Attorney General, Namibia: In re: Corporal Punishment by Organs of State, Berker CJ stated that: "The one major and basic consideration in arriving at a decision involves an enquiry into the generally held norms, approaches, moral standards, aspirations and a host of other established beliefs of the people of Namibia".32

O'Linn JA elaborated on this principle in the case of Frank and Another v Chairperson of the Immigration Selection Board and held that the significance of the wording of a constitutional provision must be "anchored in the provisions of the Namibian Constitution, the language of its provisions, and accompanied by a "value judgement" based on "the current values of the Namibian people".33

He further reiterated that this value judgement must be based on the Namibian Constitution itself, as well as on "Namibian institutions" which could include "the Namibian Parliament, political parties, news media, trade unions, established Namibian churches and other relevant community-based organizations" - further noting that "Parliament, being the chosen representatives of the

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32 Ex Parte Attorney-General, Namibia: in re Corporal Punishment by Organs of State 1991 NR 178 (SC) at 197H-J.
people of Namibia, is one of the most important institutions to express the current day values of the people”.

In light of the above, the LRDC argues that the repeal of section 17(6) of the Native Administration Proclamation and the introduction of a uniform matrimonial property regime would offer more protection to mostly vulnerable women in the marriage and that most people have an informed choice of the property regime when they enter into marriage. The intention, with the public consultations was to solicit and gauge the norms and values of the Namibian people on this issue. These views are set out in the proceeding parts of the report.

Stakeholder submissions

Workshop recommendations

The following principal recommendations were made with regard to existing matrimonial property regimes in Namibia during consultations with stakeholders at the Family Law Workshop held in Swakopmund from 23 to 27 July 2012:

1. The stakeholders unanimously agreed that the two default regimes practised above and below the Police Zone should be harmonised, and that a campaign should be launched to educate not only marriage officers, but also the public at large, on the different property regimes and the consequences each entail.

2. Some stakeholders suggested the law should either -

   (a) introduce a uniform default marital regime across the entire country, where the default position would be either in or out of community of property, with the option of an antenuptial contract for the latter, or

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34 Frank and Another v Chairperson of the Immigration Selection Board at 137H-J, quoting Namunjepo and Others v Commanding Officer, Windhoek Prison & Another, 1999 NR 271 (SC).

(b) eliminate the uniform default regime and replace it with various options. The following four basic property regimes were suggested:

(i) Simple community of property
(ii) Extended community of property
(iii) Out of community with profit-sharing (accrual), and
(iv) Strictly out of community of property.

The first recommendation for a uniform default regime and the choice between two options, i.e. in or out of community of property was made because much confusion already existed with regard to the property regimes in place as well as to their implications and, hence, it would be useful to keep the law as simple as possible.

The second recommendation suggests that the prevailing confusion had not stemmed from the existence of the property regimes per se, but from the different application of the regimes above and below the so-called Police Zone. Therefore, by making any changes to the standard regime clear and easily accessible to the public and by allowing these changes to be recorded by the marriage officers on the certificates, this would eliminate the need to consult a lawyer to conclude a formal antenuptial contract.

**Additional consultations**

As stated earlier, the LRDC held additional consultations with stakeholders in Gam, Sesfontein and Tsumkwe in order to establish whether these areas were also situated outside the so-called Police Zone, and to inform them of the proposed changes to the matrimonial property regime in their area. The following groups were targeted for consultation:

- Members of the public
- Traditional Authorities
- Regional Councillors
- Ministry of Home Affairs and Immigration officials
- Faith-based organisations, and
- Magistrates.
While there are some areas on the map where the so-called Police Zone and the Veterinary Cordon Fence (Red Line) form a single boundary, in other parts, the boundaries demarcate different areas. This means Gam, Sesfontein and Tsumkwe are problematic because they are erroneously excluded from the application of the 1928 Proclamation. Despite the fact that Sesfontein and Tsumkwe are within the area bounded by the Red Line, they are lying outside the so-called Police Zone; whereas Gam, on the other hand, is situated south of the Red Line but outside the so-called Police Zone.

Consultations with members of these communities revealed a striking lack of awareness of the laws governing civil marriages in Namibia. Moreover, the communities in Gam and Tsumkwe generally followed their own customary law regarding marriage, and requested that they be granted permission to issue their own marriage certificates. This aspect is subject to an investigation under the customary marriages project and falls outside the scope of this report.

The stakeholders also expressed concern that the proposed new law entailed issues of accessibility to courts and the affordability of legal services for concluding antenuptial contracts. Thus, it was proposed that the law do away with antenuptial contracts and provide a standard form for couples to indicate their option of marrying in or out of community of property. Some stakeholders also proposed that in respect of changing the marital regime, the Minister of Justice extend the grace period from five years to ten. This would allow communities to be fully informed about the new law on the matrimonial property regimes, and would help individuals to make informed decisions regarding whether or not to change their existing matrimonial regime.

**Comparative law: The South African position**

By virtue of its Administration of Justice Proclamation, 1919 (No. 21 of 1919), South Africa applied Roman-Dutch law to its then mandated territory, South West Africa.\(^\text{36}\) The overall impact of the 1919 Proclamation on the judicial and legal systems of South West Africa was that South African Supreme Court decisions and the Roman-Dutch law developed by the South African courts as the common law of South Africa were immediately binding on Namibian courts as well. This

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position was affirmed at Namibia's Independence in 1990 by Article 66(1) of the Namibian Constitution which came into effect and provides as follows - with an important caveat:  

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.

In the context of matrimonial property regimes, the regulation of civil marriages between black persons in South Africa was similar to that in Namibia until 1988. The position in South Africa was subsequently changed by the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act No. 3 of 1988), which came into operation on 2 December 1988. Prior to the amended law, the matrimonial regime for black couples in South Africa was deemed to be out of community of property, pursuant to section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927). The exception to the general rule was that both spouses were required to sign a declaration before a magistrate, commissioner or marriage officer within the one month prior to the marriage, indicating the intended spouses' wish to marry in community of property and of profit and loss.

When the 1988 Amendment Act came into force, it brought black civil marriages in line with all other civil marriages in South Africa. A civil marriage entered into between black couples after 2 December 1988 is, like all other civil marriages, governed by the Matrimonial Property Act which provides that the default system for all marriages is in community of property unless otherwise stipulated in an antenuptial/postnuptial contract.

This transition did not automatically change civil marriages entered into prior to 2 December 1988. Instead parties thereto were allowed to enter into and register a notarial contract to make the provisions of the Matrimonial Property Act applicable to their civil marriage failing which the marriage consequences remain governed by section 22(6) of the Black Administration Act 38 of 1927. The period provided for recording the change by way of a notarial deed ended on 2

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37 (ibid.).
December 1990. Therefore, any couple who would like to change their matrimonial regime could only do so by way of formal application to court.\footnote{Sinclair (1996:233-234).}

Under section 21(2) of the Matrimonial Property Act,\footnote{The current version of the law reads as follows in respect of section 21(1): "A husband and wife, whether married before or after the commencement of this Act, may jointly apply to a court for leave to change the matrimonial property system, including the marital power, which applies to their marriage, and the court may, if satisfied that -
(a) there are sound reasons for the proposed change;
(b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and
(c) no other person will be prejudiced by the proposed change,... it will order that such matrimonial property system shall no longer apply to their marriage and authorize them to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may think fit." Available at \url{http://www.saflii.org/za/legis/consol_act/mpa1984260/}; last accessed 3 July 2016.} any husband and wife, irrespective of when they were married, are entitled to apply jointly to a court for leave to change their matrimonial property regime. The couple has to lay down the proposed new system in a notarial contract to be approved by the court. The court will only approve this new contract if the couple can show sound reasons for requesting the change. All of the spouses’ creditors need to be notified of the change, as well as any other person who might be prejudiced in some way by the couple’s new matrimonial regime.

In \textit{Ex Parte Lourens}, the court was faced with an application under section 21(1) of the Matrimonial Property Act. While discussing sound reasons, Judge Marais J held that:

\begin{quote}
[s]ound reasons cannot be defined exhaustively and in advance. However, care must be taken to motivate fully the proposed change in the existing matrimonial property system.\footnote{1986 (2) SA 291 at 293H.}
\end{quote}

In deciding what constituted "sound reasons", the court considers the facts and surrounding circumstances in each case. In \textit{Ex Parte Engelbrecht}, for example, the court held that “sound reasons" meant facts that were convincing, valid and anchored in reality. The court also found
that evidence as to the parties’ intention and agreement concerning the matrimonial property regime reached before their marriage was relevant and admissible. According to the court, not admitting such evidence would amount to preventing a party from furnishing sound reasons to the court as to why the matrimonial property regime should be altered.\textsuperscript{44}

In \textit{Ex Parte Kros},\textsuperscript{45} the court found that the reasons advanced by the parties were sufficient to allow a change of the matrimonial property regime. In this case, it was argued that the applicants had been ignorant about the consequences of being married in community of property at the time of their marriage. It was only after the solemnisation of the marriage that the parties realised that marriage out of community of property would have better suited their needs.

The above case law illustrates that the court seems to grant changes to a matrimonial property regime quite easily. It is also significant to note that the “sound reasons” advanced for such changes in South African courts can even include a substantial change in the spouses’ financial position, as was the case in \textit{Kros}. Namibia on the other hand, having a similar discriminatory law on marital regimes in South Africa, is yet to bring black civil marriages North of the Police Zone in line with all other civil marriages in Namibia.

\textbf{A lesson for Namibia}

Since the 1928 Proclamation applicable in Namibia mirrors section 22 of South Africa’s 1927 Black Administration Act, it is recommended that Namibia follow South Africa’s example and make a similar amendment to enable couples whose marriages are governed by the 1928 Proclamation to benefit from a window period in which to change their marriage regimes if they wish to do so. Such a change is inevitable given our constitutional and legal dispensation. Moreover, the idea of providing a window period within which couples are expected to rectify the situation is fair. This is because many Namibian couples were not well informed about the various marital property regimes and their implications at the time of their marriage. Further, mechanisms to protect the interests of third parties, such as creditors, could be implemented to ensure that no couple tries to change their marital regimes as a way of circumventing the legal consequences of their transactional arrangements.

\begin{footnotes}
\item[44] 1986 (2) SA 158 (NC) at 160.
\item[45] 1986 (1) SA 642 (NC) at 643.
\end{footnotes}
The essence of this recommendation is that couples should not be trapped in a matrimonial property regime that they did not intend, or whose implications they did not fully understand at the time of their marriage.

The proposed legal reform

The LRDC's current proposal for a uniform default matrimonial regime has its origins in its first report in 2003 titled, "the Uniform Default Matrimonial Property Consequences of Common Law Marriages". However, no legislative action was taken between the period of 2003 and 2012 as it became apparent that further consultations with targeted stakeholders were required and that the problems with the current law, discussed in the 2003 report persisted despite the changes proposed. Following the 2012 Family Law Workshop held in Swakopmund, the LRDC subsequently re-introduced the "Uniform Default Marital Regimes Bill" as contained in the 2003 report which was discussed during the 2015 nationwide consultations held from 12 February 2015 to 19 March 2015 as mentioned above.

In particular, the Bill proposed that the marital regime of in community of property be applied as the new default system across Namibia. While enabling spouses the liberty to be married in community of property (i.e. the default position), the Bill will also provide them with the option to enter into an antenuptial contract, which would change the default marital regime to out of community of property.

The Bill further proposed that -

... married persons whose marriage was solemnized under the Native Administration Proclamation, 1928, and whose marriage certificates -

(a) are lost or cannot for any legitimate reason be replaced;
(b) are inscribed with irrelevant, confusing, contradictory and incorrect comments or information by marriage officers;
(c) varied without court sanctioned order; and

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47 Section 4(2), Uniform Default Marital Regimes Bill.
(d) cannot from a reading of it, be determined as to the marital regime applicable to the marriage; shall have the right to alter, correct, rectify or otherwise amend such marriage certificates in accordance with the provisions of this Act.

In addition, a grace period was proposed for persons married under the 1928 Proclamation who would like to change their matrimonial property regime. More specifically, such persons would be entitled to do so within the time frame prescribed by the Minister of Home Affairs and Immigration.

The above provisions highlighted under the 2003 Bill reiterate the fact that Namibia’s matrimonial property regime law requires urgent reform. Namibia has yet to emulate the South African position by addressing the negative effects of the prevailing discriminatory marital law. In view of the necessity to reform this law, the LRDC has endeavoured to fast-track the repeal of section 17(6) of the 1928 Proclamation to enable those affected by its application to enjoy the same full rights and freedoms shared by other married couples in Namibia.

Final recommendations

With regard to future marriages, the LRDC proposes that there must not be a default matrimonial property regime but that every intending couple must choose a regime they desire to apply to their marriage. This position will be applicable for all future marriages solemnised in Namibia.

Parties can either choose to be married in community of property or out of community of property. For a marriage out of community of property, the couple can either adopt the standard provisions for a marriage out of community of property as contained in Schedule 1 to the Act or to enter into an ante-nuptial contract, executed before a Notary Public and registered as prescribed in the Deeds Registries Act. This has been the requirement in the southern and central parts of the country since 1921.

To cater for the many misunderstandings that have already arisen regarding the matrimonial property regimes applicable to existing and past marriages solemnised in the North, an or “amnesty” / “grace” period will be afforded to affected couple during which amendments can be made by spouses. During this period, a couple may jointly approach a magistrate to issue a new marriage certificate in substitution of any existing marriage certificate emanating from the North, effectively changing their matrimonial property regime.
One spouse may also approach the magistrate for such an order, provided that the other spouse is served with the relevant documentation.

The dates of the grace period will be published by the Minister responsible for Home Affairs and Immigration in the Government Gazette. When the period has lapsed, no person will be able to have their marital property regime or marriage certificates amended in terms of this Act. Also, any given couple may utilize the opportunity to make changes only once during the grace period since its aim is to rectify the effect of a discriminatory law and not to allow for other changes.

If the matrimonial property regime is voluntarily changed to out of community-of-property, the spouses will not be required to undergo the expense of entering into a post-nuptial contract with the effect of a new ante-nuptial contract before a Notary Public. The standard provisions have been provided in a Schedule to the Act which will apply to the marriage as if these had been agreed upon in a Notarial deed.

In addition, the LRDC proposes that the jurisdiction to hear these matters be conferred on the Regional Court Magistrates. Referring such cases to the High Court would be an alternative possibility.

In conclusion, the LRDC recommends the enactment of the Uniform Matrimonial Property Regime Bill of 2018.

**Affected laws**

The proposed new legislation would repeal the final substantive provision of the 1928 Proclamation that remains in force, i.e. section 17(6). Although the only other remaining substantive provisions, i.e. those contained in section 18, were repealed by the Estates and Succession Amendment Act, 2005 (Act No. 15 of 2005), section 1(2) of the Act states that -

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48 There is currently a draft Bill and proposal from the Magistrate’s Court Commission to confer civil jurisdiction on matrimonial matters in the Magistrates’ courts.

49 Estates and Succession Amendment Act, 2005 (Act No. 15 of 2005).
[d]espite the repeal of the provisions referred to in subsection (1), the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed.

The other remaining provisions have no independent effect, meaning that 1928 Proclamation can be repealed in its entirety.

**Conclusion**

As stated earlier, the LRDC Project on Marital Property Regimes in Namibia aims to bring Namibian marital property law in line with that practised in many parts of the world. As a relatively young, independent nation, we need to make a concerted effort to identify and review laws that are not consistent with the expectations and provisions of our Constitution which is supreme and the validity of any statutory or common law, is subject to it.

Namibia’s legal system, which has largely depended on the Roman-Dutch Common Law and the South African body of statutes is still relatively young and needs a jurisprudential awakening that will ensure that the body of law practiced and applied in Namibia supports the ideals and tenets set out in the constitution. These ideals are underscored by principles of justice, freedom, equality, human dignity and the pursuit of happiness for all Namibians. It is therefore our duty as a democratic state not to tolerate the treatment of any social group in a prejudicial manner and to have a law on our catalogue of statutes that does exactly that. This should not be tolerated any longer than is necessary.

The Harambee Prosperity Plan under the tutelage of the current President, His Excellency Dr Hage Geingob, the President of the Republic of Namibia, is a step in the right direction.\(^5\)

inclusive Namibian House, built on a solid foundation of peace and stability. We are unified by our national identity and stand united in Cause, to usher Namibia into the epoch of Prosperity.

The HPP resonates with the LRDC’s work in that it takes on aspects of driving social justice in Namibia. Therefore, by repealing the discriminatory 1928 Proclamation and creating a uniform marital regime for all civil marriages in Namibia, both men and women can be assured equal rights to marital property in the event of their marriage dissolving on their divorce or their spouse’s death, as they will no longer be penalised by an unfair law that uses race and geographical location to determine whether or not a person is married in or out of community of property.

It must always remain at the core of our activities to engender a balance between safeguarding human dignity, justice and rights, while being cognisant of the diverse customs and values that embody the Namibian society. For this reason, it is important that we actively seek to reform any laws, such as the 1928 Proclamation. This will ensure a socially just society that is guided by a responsive policy, legislative and institutional framework that is consistent with the constitutional imperatives.
ANNEXURE A

BILL

To provide for a uniform matrimonial property regime for all civil marriages, to allow a determination and change of property regimes applicable to certain civil marriages contracted outside the police zone determined in terms of the Native Administration Proclamation 15 of 1928, the issuing of substituting marriage certificates, to allow for donations between spouses and to provide for incidental matters.

(Introduced by the Minister of Home Affairs and Immigration)

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Uniform matrimonial property regime
3. Right to choose a matrimonial property regime
4. Application by spouses affected by the Native Administration Proclamation
5. Application by one spouse
6. Enquiry
7. Orders by a designated magistrate
8. Consequences in respect of an order of out of community of property
9. Finality of changes
10. Amnesty period
11. Abolition of the prohibition against donations between spouses
12. Offences
13. Regulations
14. Repeal of laws
15. Short title and commencement

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:
Definitions

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

"ante-nuptial contract" means a formal written agreement executed before a notary public prior to the solemnization of the marriage with the purpose of regulating the proprietary consequences of the marriage and registered in accordance with Section 87 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"marriage" means a marriage solemnised in terms of the Marriage Act, 1961 (Act No. 25 of 1961);

"designated magistrate” means a magistrate, referred to in section 1 of the Magistrate’s Act, 2003 (Act No. 3 of 2003), who on the recommendation Magistrate’s Commission established under that Act is designated by the Minister for the purposes of this Act;

"in community of property" means the common law matrimonial property regime in which spouses jointly own and share in the profit and loss thereof, have the same powers with regard to the management of the joint estate, and the contracting and incurring of debts which lie against the joint estate, subject to certain limitations contained in the Married Persons Equality Act, 1996 (Act No. 1 of 1996);

"Native Administration Proclamation" means the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928);

"Marriage Register" means the National Population Register;

"Minister” means Minister responsible for civil registration;

"Ministry” means Ministry responsible for civil registration;
"out of community of property" means a matrimonial property regime which does not have the consequence of a marriage in community of property;

"prescribed" means prescribed by regulations made under this Act;

"registrar of deeds" means the registrar responsible for the deeds registry referred to in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the registrar responsible for the deeds registry referred to in the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976); and

"this Act" includes regulations made in terms of this Act.

**Uniform matrimonial property regime**

2. All marriages solemnised in the Republic of Namibia after the date of commencement of this Act are governed by the common law matrimonial property regime of in community of property and of profit and loss or a regime out of community of property chosen by the intending spouses to be applicable to their marriage.

**Right to choose a matrimonial property regime**

3. (1) Parties to an intended marriage shall choose a matrimonial property regime-

(a) out of community of property by adopting the standard rules contained in the Schedule to this Act; or

(b) in community of property and of profit and loss; or

(c) as set out in subsections (1) or (2) with additional provisions in an ante-nuptial contract as defined in section 1 of this Act.
The ante-nuptial contract referred to in subsection (1)(b) may exclude community of property and may specify other conditions to the matrimonial property or matrimonial regime applicable to the marriage, which do not conflict with any applicable law.

Application by spouses affected by the Native Administration Proclamation

4. (1) Spouses to an existing marriage entered into before the commencement of this Act and to whom section 17(6) of the Native Administration Proclamation applied at the date of their marriage -

(a) whose marriage has not produced the legal or proprietary consequences intended by them, whether such marriage has been regarded as having the consequences of a marriage in community of property or out of community of property;

(b) whose marriage certificates or records in the Marriage Register are lost or reflect irrelevant, confusing, contradictory or incorrect particulars affecting the matrimonial property regime;

(c) from whose marriage certificates the matrimonial property regime cannot conclusively be determined; or

(d) whose marriage certificates have been varied without court sanctioned order,

may jointly apply, in the prescribed manner, to a designated magistrate for an order in terms of section 8 of this Act.

(2) The application referred to in subsection (1) must be in the prescribed manner.

(3) The Registrar of Marriages or his or her delegate may issue a substituting marriage certificate which corrects or alters the particulars or amends the proprietary consequences of the marriage in accordance with the provisions of this Act.
Application by one spouse

5. (1) Where one spouse to a marriage solemnised under the Native Administration Proclamation, applies to a designated Magistrate for an order under Section 8 of this Act, full particulars of the application must be served on the other spouse and on the Registrar of Deeds, as prescribed.

(2) No order may be made by a designated magistrate if an application is opposed.

(3) If the application is not opposed, the Magistrate may consider evidence presented or submitted to him or her if he or she so requires and make an order as to the matrimonial property regime which applies to the marriage.

Enquiry

6. (1) If the application under section 4(1) or 5(1) is made, the designated magistrate may hear the application in chambers and may call for further evidence to be presented or submitted to him or her, provided that such designated magistrate is not the marriage officer who solemnised the marriage.

(2) If the parties do not agree as to the regime that should be applicable to their marriage, the designated magistrate must refer the application to the High Court.

Orders by a designated magistrate

7. (1) Upon conclusion of an enquiry under section 6 of this Act, the designated magistrate may make the following orders-

(a) that no evidence could be found that a marriage was legally contracted between the parties; or
(b) in respect of any lost records, issue an order that the marriage record be reconstructed by the Registrar of Marriages as prescribed; or

(c) in respect of any incorrect records, issue an order that the incorrect marriage record be corrected by the Registrar of Marriages as prescribed.

(2) The designated magistrate may in respect of an existing marriage, issue an order as to the matrimonial property regime which applies to the marriage namely:

(a) that the marriage in question has the legal consequences of marriage in community of property and of profit and loss, or

(b) that the marriage in question has the legal consequences of a marriage out of community of property, in accordance with the standard provisions of the Schedule to this Act.

(3) The designated magistrate may in respect of a marriage of which one spouse has died, make an order as to which matrimonial property regime had applied to the marriage.

Consequences in respect of an order of out of community of property

8. (1) Where a designated magistrate has in terms of this Act made an order that an existing marriage is out of community of property, the standard provisions set out in the Schedule to this Act applies to the marriage.

(2) Unless the court orders otherwise, spouses who are issued with a substituting marriage certificate by the Registrar of Marriages remain jointly and severally liable for debts contracted by them before the order was made under section 8 of this Act.

Finality of changes

9. (1) On the issuance of an order under section 7, a person may not again apply for an order under this Act.
(2) An interested party may appeal to the High Court against an order made by a magistrate under section 7 of this Act.

Amnesty period

10. Spouses applying in terms of this Act may only do so within the period determined in the Gazette by the Minister, unless the Minister extends the period.

Abolition of the prohibition against donations between spouses

11. Subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), no transaction between spouses will be void or voidable, irrespective of the date of such transaction, merely because it amounts to a donation between spouses.

Offences

12. Any person who
   (a) contravenes or fails to comply with any provisions of this Act;
   (b) gives a false statement or makes false representation in connection with anything done in terms of this Act;
   (c) receives a reward for acting in terms of this Act;
   (d) impersonates another person for purposes of this Act;

   shall be guilty of an offence and on conviction be liable to a fine not exceeding N$10,000.00 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

Regulations

13. (1) The Minister may make regulations, not inconsistent with the provisions of this Act, relating to any matter that may be prescribed under this Act and to any matter that is reasonably necessary or expedient to be prescribed to achieve the objects of this Act.
Repeal of laws

13. The Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928) is repealed.

Short title and commencement

14. This Act is called The Uniform Matrimonial Property Act, 2018 and comes into operation on a date determined by the Minister by notice in the Gazette.
SCHEDULE

STANDARD PROVISIONS FOR A MARRIAGE OUT OF COMMUNITY OF PROPERTY IN TERMS OF SECTION 8 OF THIS ACT

(a) There is no community of property between the spouses.

(b) A spouse retains and possesses all of his or her estate and effects, movable and immovable which he or she possesses or expects, or to which he or she has or may have any contingent or eventual right or title, as fully and effectually as he or she might or could as an unmarried person.

(c) Neither spouse is answerable for the debts and engagements of the other spouse contracted after the order.

(d) All inheritances, legacies, gifts, or bequests, to a spouse are his or her sole and exclusive property.

(e) Each of the spouses may freely dispose of his or her property and effects by will, codicil or other testamentary disposition.

(f) There is no community of profit and loss between the spouses.

(g) Each spouse respectively retains the profits made by or accruing to him or her, and separately and solely bears and sustains the losses incurring to him or her.

(h) Each spouse possesses and enjoys the sole and exclusive and uncontrolled administration and alienation of all the property and effects he or she has without interference, control or assistance of the other spouse.
EXPLANATORY MEMORANDUM

TO THE UNIFORM MATRIMONIAL PROPERTY BILL

1. OVERVIEW

The purpose of the proposed bill is to accomplish the complete elimination of the offensive and overtly racist "Native Administration Proclamation 15 of 1928". The remaining section of this Proclamation which provides for different marital property regimes for marriages between "natives" outside the Police Zone is a remnant of Namibia’s colonial past, but it continues to have a practical effect on many Namibian couples. The proposed law would repeal the remainder of this colonial law, and provide measures of redress for those who have been unfairly affected by its discriminatory provisions on marital property regimes.

2. BACKGROUND

By virtue of section 17(6) of the Native Administration Proclamation No. 15 of 1928, the default matrimonial property regime for marriages between "Natives" north of the "Police Zone" also known as the "Red Line" is out of community of property - while the default regime for all other marriages in Namibia is "in community of property". Historical evidence suggests that the rationale for the distinction was a concern that "native" men who entered into civil marriages in these areas were likely to be parties to a customary union at the same time.

With time, the position regarding marriages solemnised in the North deteriorated for inter alia the following reasons:

- The marriage officers (magistrates and church officials) or the parties were not correctly informed as to the applicable laws.
- There was a lack of clarity on the form of the declaration required when parties wish to be married in community of property. The standard printed declaration form was often unavailable or unknown, and the standard printed Marriage Certificate does not refer to the

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1 The proposed bill would repeal the last remaining substantive provision of this Proclamation which is in force, section 17(6). The only other remaining substantive provisions, contained in section 18, were repealed by the Estates and Succession Amendment Act 15 of 2005. However, section 1(2) of this Act confusingly states that “Despite the repeal of the provisions referred to in subsection (1), the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed.” The other remaining provisions have no independent effect, meaning that the entire Proclamation could now be repealed.
differing default positions or the declaration required to change the default position north of the Red Line.

• Some marriage officers attempted to change the default regime applicable to such marriages by means of a notation on the marriage certificate, which is not legally authorised. Differing interpretations of the matrimonial property regime applicable to such marriages have sometimes been applied in different contexts: when immoveable properties were registered, in the divorce courts, in the administration of deceased estates, in commerce and in respect of the requirements for granting credit and the rights of spouses to deal with the matrimonial assets.

The confusion has resulted in some spouses covered by the Native Administration Proclamation finding out at a later stage that their marriage did not have the property consequences they intended, or that the property regime applicable to their marriage is unclear.

Even more importantly, the offensively-named Native Administration Proclamation embodies one of the last vestiges of overt racism in the Namibian legal system, and there are increasing public calls to abolish it and to introduce a uniform default system for the whole of Namibia.

3. SUMMARY OF PROPOSED LAW

With regard to future marriages, the law proposes that there must not be a default matrimonial property regime but that every intending couple must choose a regime they desire to apply to their marriage. This position will be applicable for all future marriages solemnised in Namibia.

Parties can either choose to be married in community of property or out of community of property. For a marriage out of community of property, the couple can either to adopt the standard provisions for a marriage out of community of property as contained in Schedule 1 to the Act or to enter into an antenuptial contract, executed before a Notary Public and registered as prescribed in the Deeds Registries Act. This has been the requirement in the southern and central parts of the country since 1921.

To cater for the many misunderstandings that have already arisen regarding the matrimonial property regimes applicable to existing and past marriages solemnised in the North, an or "amnesty" or "grace" period will be afforded to affected couple during which amendments can be made by spouses. During this period, couple may jointly approach a magistrate to issue a new marriage certificate in substitution of any existing marriage certificate emanating from the North.
effectively changing their matrimonial property regime. One spouse may also approach the magistrate for such an order, provided that the other spouse is served with the relevant documentation.

The dates of the grace period will be published by the Minister responsible for Home Affairs in the Government Gazette. When the period has lapsed, no person will be able to have to have their marital property regime or marriage certificates amended in terms of this Act. Also, any given couple may utilize the opportunity to make changes only once during the grace period since its aim is to rectify the effect of a discriminatory law and not to allow for other changes.

If the matrimonial property regime is voluntarily changed to out of community-of-property, the spouses will not be required to undergo the expense of entering into a post-nuptial contract with the effect of a new ante-nuptial contract before a Notary Public. The standard provisions have been provided in a Schedule to the Act which will apply to the marriage as if these had been agreed upon in a Notarial deed.

The Bill provides that jurisdiction to hear these matters be conferred on the Regional Court Magistrates.\(^2\) Such magistrates will be designated for purposes of the Bill. Referring such cases to the High Court would be an alternative possibility.

In conclusion, the Bill as currently drafted below, provides only for changes whereby the affected marriage still subsists when the law comes into force.

4. **THE PROVISIONS OF THE BILL CAN BE SUMMARISED AS follows:**

   **Clause 1 Definitions**

   This clause contains various definitions such as "ante-nuptial contract", "civil marriage", "magistrate", "in community of property", "minister", "Native Administration proclamation", "out of community of property", "prescribed", "registrar of deeds" and "this Act"

   **Clause 2 Uniform matrimonial property regime**

   This clause provides that the matrimonial property regime of "in community of property" and of profit and loss OR of out of community of property, as chosen by the intending spouses themselves, will be applied for all future marriages solemnised in Namibia.

---

\(^2\) There is currently a draft Bill and proposal from the Magistrate ’ s Court Commission to confer divorce jurisdiction on Magistrates' courts.
Clause 3  Right to choose a matrimonial property regime

This clause provides for the regimes that intending spouses may choose to be applicable to their marriage.

For a marriage out of community of property, a couple can adopt the standard matrimonial property provision as set out in Schedule to the Act or enter into a special ante-nuptial contract specifying further conditions to the matrimonial property or matrimonial regime applicable to the marriage, which must be executed before a Notary Public and registered as prescribed in the Deeds Registries Act. A couple can also choose special conditions to be specified in an ante-nuptial contract.

Clause 4  Application by spouses affected by the Native Administration Proclamation

This clause deals with spouses whose marriages are still governed by the existing section 17(6) of the Native Administration Proclamation 15 of 1928. This clause provides for specific grounds under which the spouses may jointly apply to a designated magistrate to change their matrimonial regime either to in or out of community of property. The designated magistrate will consider either of the following grounds:

a) The intention of the parties at the time of their marriage. For example, if the parties at the time of their marriage intended to be married in community of property, but were not properly informed by the marriage officers as to the applicable law (section 17(6) of the Native Administration Proclamation 15 of 1928), their marriage will automatically be out of community of property.

b) If the particulars on the marriage certificate or records in the marriage register were not stated in clear terms in order to determine the matrimonial property regime.

c) Whether the matrimonial regime was changed by means of an unauthorized notation on the marriage certificate.
The magistrate, upon satisfaction of the above evidence presented, will give an order authorising the issuance of a new marriage certificate in substitution of any existing marriage certificate emanating from the north, effectively changing their matrimonial property regime.

If the matrimonial property regime is changed to out of community-of-property, the spouses will not be required to undergo the expense of entering a post-nuptial contract with the effect of a new ante-nuptial contract before a Notary Public. Standard provisions have been provided in a Schedule to the Act which will apply to the marriage as if these had been agreed upon in a Notarial deed. The standard provisions protect existing creditors of the two spouses, as both spouses will remain jointly liable for all debts which have arisen prior to the change of their matrimonial property regime, unless the court orders otherwise (on good reasons shown).

**Clause 5 Application by one spouse**

This clause provides that one spouse may apply to the designated magistrate for an order to change in his or her matrimonial property regime, provided that the other spouse is served with full particulars of the application.

**Clause 6 Enquiry**

This clause provides that the application by spouses affected by the Native Administration Proclamation will be held in the designated magistrate's chambers who may call for further evidence to be presented to him or her.

This clause further provides for the circumstances under which the magistrate will not make an order or when the matter will be referred to the high court, for example if any of the interested parties oppose the application.

**Clause 7 Orders by a designated magistrate**

This clause provides for the orders the designated magistrate may make during the enquiry period mentioned above in clause 6.
Clause 8  Consequences in respect of an order out of community of property

This clause provides that the provisions set in the Schedule to the Act will apply to the spouses, only in the case where the magistrate makes order that the marriage is out of community of property.

Clause 9  Finality of Changes

This clause provides that once the magistrate issues an order under clause 8, no person will be allowed to make another application to change their matrimonial property regime or to substitute their marriage certificate, however the party may appeal to the High Court against an order made by a magistrate.

Clause 10  Amnesty period

This clause provides that spouses may only apply for an order to substitute their marriage certificate only within the period set by the Minister of Home Affairs and Immigration. It also makes room for the Minister to extend such period.

Clause 11  Abolition of the prohibition against donations between spouses

This clause provides that, subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), the current law prohibiting donations between spouses will be abolished.

Clause 12 Offences

This clause creates offences which may be committed under the law and provides maximum penalties that are applicable upon conviction.
Clause 13 Regulations

This clause deals with regulations which the Minister responsible for Home Affairs and Immigration may make.

Clause 14 Repeal of laws

This clause provides that the Uniform Matrimonial Property Regime Act will repeal the Native Administration Proclamation 15 of 1928.

Clause 14 Short title and commencement

This clause contains the short title and commencement date of the Act.

5. CONSULTATION

5.1. The Bill was initially with the Ministry of Justice which prepared the initial Draft. The Draft was subsequently handed to the Ministry of Home Affairs and Immigration as the administering Ministry. Both the LRDC and the Ministry consulted widely. The Bill has enjoyed wide discussions with previous and current leadership of the Ministry of Home Affairs and Immigration.

5.2. The following external institutions and individuals were also consulted:

The LRDC led-process

a) Meeting in Swakopmund in July 2012:
   - Minister of Justice, Minister of Gender Equality and Child Welfare, Minister of Home Affairs and Immigration, Chairperson of the Parliamentary Standing Committee on Security, Constitutional and Legal Affairs
   - Various Deputy Ministers, Special Advisors, Permanent Secretaries and
   - Traditional Leaders;
   - Senior Government officials from the Ministries involved.

b) 12 February - 19 March 2015, the LRDC conducted further consultations across the country
   - visited the areas of Eenhana, Gobabis, Katima Mulilo, Keetmanshoop, Ondangwa, Ongwediva, Opuwo, Outapi, Ondangwa, Otjiwarongo, Rehoboth, Rundu, Swakopmund and Windhoek)

c) Round of discussions took place in Gam, Sesfontein and Tsumkwe from 26 to 27 February 2016
The Ministry-led processes

e) Stakeholder's workshop: 20 - 21 September 2017 (chaired by erstwhile Minister of Home Affairs and Immigration)

- Office of the Attorney-General (led by erstwhile Attorney General)
- Ministry of Justice (led by Deputy Minister)
- Office of the Judiciary (led by Permanent Secretary)
- Law Reform and Development Commission (led by the Chairperson of the Commission)
- Magistrates Commission of Namibia (led by Chairman of the Commission)
- Legal Assistance Center
- Religious-leaders from both "traditional" and "new" churches (Catholic Church, ELCIN, ELCRN, Anglican, The Alliance of Churches and Ministries, Association of Charismatic and Pentecostal Churches of Namibia)
- Ministry of Home Affairs and Immigration

6. FINANCIAL IMPLICATIONS FOR STATE

No financial implications are foreseen at this stage.
GOVERNMENT NOTICE

MINISTRY OF HOME AFFAIRS AND IMMIGRATION

No. 2018

REGULATIONS UNDER THE UNIFORM MATRIMONIAL PROPERTY ACT OF 2018

Under section 13 of the Uniform Matrimonial Property Act, 2018 (Act No. X of 2018), I have made the regulations set out in the Schedule.

Frans Kapofi, MP
Minister of Home Affairs and Immigration Windhoek 2018

SCHEDULE ARRANGEMENT OF REGULATIONS

Definitions
2. Application by spouses affected by the Native Administration Proclamation
3. Hearing
4. Substituting marriage certificate
5. Assignment and use of marriage license number
6. Submission of records to the Registrar of Marriages

ANNEXURES
Form 1
Form 2
Definitions

1. (1) In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

"the Act" means the Uniform Matrimonial Property Act, 2018 (Act No. X of 2018);

"affected area" means any of the areas affected by Section 17(6) of the Native Administration Proclamation of 1928 (Proclamation No. 15 of 1928) indicated on the map of Namibia, annexed to these Regulations;

"property regime" means a matrimonial property regime governing the marriage of "in community of property" or "out of community of property"

Application by spouses affected by the Native Administration Proclamation

2. (1) Spouses who intend to apply to a designated magistrate in terms of section 4 or 5 of the Act must-

   (a) complete the application Form I under oath and submit it to the designated magistrate for a date on which the application can be heard by the designated magistrate;

   (b) obtain a report from the Registrar of Marriages, stating whether records of the marriage exist in the marriage register, which report must be attached to Form I; and

   (c) pay an application fee of N$100.00 to the clerk of court.

(2) The designated magistrate must within 14 days set the matter down for a hearing on a date no further than 90 days after the application is submitted and provide the applicants with a completed notice in Form 2;

(3) The applicant(s), in addition to Regulation 2(1), must publish the notice in Form 2 in two daily newspapers circulating nationally at least 2 weeks before
the date of the hearing of the application and enquiry by the designated magistrate.

(4)(a) Interested persons may submit objections in affidavit form to the designated magistrate, and may present themselves at the hearing to make objection in person under oath;

(b) Objections under regulation 4(a) may be withdrawn.

(c) If objections to the application are not withdrawn, the designated magistrate may not proceed with the hearing and the provisions of section 6(2) of the Act will apply.

Hearing

3. (1) On the date of the hearing of the application-

(a) the applicant(s) must provide proof of the marriage by submitting the original or a copy of the marriage certificate or other evidence of the marriage accepted by the designated magistrate.

(b) the applicant must submit proof of publication of the notice(s) or announcements as prescribed under regulation 2 above;

(c) the document or evidence presented in sub-regulation (1) (a) has to prove that the marriage was officiated in an affected area.

(2) The designated magistrate must explain to the applicants the legal effects of the property regimes and the Schedule to the Act and must make use of an interpreter if necessary to ensure that the parties understand it.

(3) The designated magistrate must enquire from the applicants by statement under oath their reason for the application and determine what property regime they have agreed to apply to their marriage.
(4) If the designated magistrate is satisfied that the applicants agree which property regime should apply to their marriage, the designated magistrate should issue an order in terms of section 7 (2) (a) or 7 (2) (b) of the Act.

(4) If the designated magistrate finds that the current marriage certificate does not clearly and correctly reflect the property regime in accordance with the order under section 7 (2) (a) or 7 (2) (b) of the Act, he or she must cancel the current marriage certificate and direct the Registrar of Marriages to issue a substituting marriage certificate reflecting the correct information.

(5) If the designated magistrate is informed by the Registrar of Marriages that there is no record in the Marriage Register pertaining to a marriage in respect of which an application has been lodged, and the designated magistrate is satisfied that such marriage was indeed solemnised as alleged, the designated marriage officer should, in addition to making an order in terms of section 7(2)(a) or section 7(2)(b), direct the Registrar of Marriages to reconstruct the marriage record.

(6) The designated magistrate must refuse the application if he or she finds that the applicants under section 4 do not agree or that any interested party objects to an application under section 4 or 5(3) of the Act.

**Substituting marriage certificate**

4.  (1) The particulars on the substituting marriage certificate must reflect the property regime as-

   (a) In community of property, or
   (b) In community of property (with ante-nuptial contract)
   (c) Out of community of property (with standard schedule)
   (d) Out of community of property (with ante-nuptial contract)

(2) Where the intending couple chooses a regime in terms of sub-regulation (c) and enters into an antenuptial contract, the substituting marriage certificate must accordingly indicate this fact.
Assignment and use of marriage license number

A designated magistrate must be issued with a marriage license number by the Registrar of Marriages within 7 days of his or her designation for the purposes of the Act, which number must be reflected in all orders issued under the Act and all for all future marriages solemnized by him or her.

Submission of records to the Registrar of Marriages

(1) A designated magistrate must forward a copy of an order under section 7 of the Act to the Registrar of Marriages in Windhoek within 7 days from such order and attach a letter of confirmation stating that the requirements of regulation 2 and 3 have been complied with.

(2) If an original marriage certificate exists in respect of a marriage and such marriage certificate is substituted that marriage certificate must be defaced and attached to the order under regulation 2 above.

(3) The Registrar of Marriages must within 7 days confirm receipt thereof and record the change/s into the relevant marriage register and issue a substituting marriage certificate.

(4) The designated magistrate must forward a monthly report to the Registrar of Marriages listing all marriages dealt with in terms of this Act.

ANNEXURES

1. Form 1: Application
2. Form 2: Notice
3. Form 3: Marriage Certificate
4. Map of affected areas in the police zone
### Marriage Certificate

**Republic of Namibia**

**Ministry of Home Affairs and Immigration**

**Marriage Certificate**

<table>
<thead>
<tr>
<th>Surname:</th>
<th>Surname:</th>
</tr>
</thead>
<tbody>
<tr>
<td>First name(s):</td>
<td>First name(s):</td>
</tr>
<tr>
<td>Identity/passport number:</td>
<td>Identity/passport number:</td>
</tr>
<tr>
<td>Date of birth:</td>
<td>Date of birth:</td>
</tr>
<tr>
<td>Place of birth:</td>
<td>Place of birth:</td>
</tr>
<tr>
<td>Nationality:</td>
<td>Nationality:</td>
</tr>
<tr>
<td>Date of Marriage:</td>
<td>Date of Marriage:</td>
</tr>
<tr>
<td>Married solemnized at:</td>
<td>Married solemnized at:</td>
</tr>
</tbody>
</table>

- [ ] Married in community property
- Or
- [ ] Married out of community of property (a) Schedule 1 of Act ....of 2016
- [ ] (b) with Ante Nuptial Contract

Full name of Marriage Officer

Marriage Officer number: [ ] Place

Date: [ ] Marriage officer/issuing officer: [ ]

Signature
REPUBLIC OF NAMIBIA
MINISTRY OF HOME AFFAIRS AND IMMIGRATION
SUBSTITUTING MARRIAGE CERTIFICATE
Issued under section 4(3) of the Uniform Matrimonial Property Regime Act ...of 2016

MISBEAND
Surname: 
First names: 
Identity/passport number: 
Date of birth: 
Place of birth: 
Nationality: 
Date of Marriage: 
Marriage solemnized at: 

Married in community property

or

Married out of community of property (a) Schedule 1 and 2 of Act ...of 2016

Full name of Marriage Officer

Marriage Officer number: Place

Date: Marriage officer/issuing officer:

Signature
FORM 1
APPLICATION IN TERMS OF SECTION 4 OF THE UNIFORM MATRIMONIAL PROPERTY ACT, 2018 (ACT NO. X OF 2018)

Complete the form in black ink and in block / capital letters

IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF __________________________

HELD AT __________________________

First Applicant

and

Second Applicant

1. Status of applicant/s: (tick the appropriate box)

<table>
<thead>
<tr>
<th>Husband</th>
<th>Wife</th>
<th>Executor in estate of deceased husband / wife</th>
</tr>
</thead>
</table>

First Applicant

Full names: ...........................................................................................................

Identity Document (ID) Number: ............................................................................

Address: ..............................................................................................................

Postal Address: ...................................................................................................

Telephone Number: .............................................................................................

Email address: ....................................................................................................

Second Applicant

Full names: ............................................................................................................

Identity Document (ID) Number: ............................................................................

Address: ..............................................................................................................

Postal Address: ...................................................................................................

Telephone Number: .............................................................................................

Email address: .....................................................................................................
2. **Particulars of the marriage:**

<table>
<thead>
<tr>
<th>Date</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Place</td>
<td></td>
</tr>
<tr>
<td>Name of marriage officer (pastor / magistrate), if known</td>
<td></td>
</tr>
</tbody>
</table>
| Witnesses to the marriage | a) .................................................................  
| | b) ................................................................. |

3. I / we intend to apply to the designated magistrate’s court, for an order in the following terms:

(Tick applicable box)

| | That the marriage is / was a marriage which in community of property (the husband and wife share / d all assets in a joint estate) OR  
| | That the marriage is / was out of community of property (husband and wife hold / held assets in separate estates |

4. I / We apply for a marriage certificate which reflects the matrimonial property regime correctly, and to substitute any marriage certificate previously issued.

5. I / We also apply for the marriage registers and the National Population Register held at the Ministry of Home Affairs to be corrected according to the directions of the designated magistrate:

6. I / We shall give notice to the persons who have an interest in this application.

7. We shall publicly announce our intention to bring this application by (tick the applicable box):

| Publishing in two (2) newspapers or in two (2) issues of a newspaper circulating nationally  
| Announcing or causing to the announced, in the congregation where our marriage was solemnised  
| that any person intending to oppose this application or who wishes to make representations, can do so in writing directed to the Clerk of the Court and or that any person may appear on the date of the hearing to oppose my / our application.
8. I/we annex the certified copies of the following: (tick all the appropriate boxes)

<table>
<thead>
<tr>
<th>Document Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage Certificate</td>
</tr>
<tr>
<td>Identity Document of first applicant</td>
</tr>
<tr>
<td>Identity Document of the second applicant</td>
</tr>
<tr>
<td>Declaration made in terms of Section 17 (6) of Proclamation 15 of 1928 prior to marriage that marriage should be in community of property*</td>
</tr>
<tr>
<td>Affidavit by first applicant *</td>
</tr>
<tr>
<td>Affidavit by second applicant *</td>
</tr>
<tr>
<td>Letters of executorship / authority</td>
</tr>
<tr>
<td>Last will and testament</td>
</tr>
<tr>
<td>Death Certificate</td>
</tr>
<tr>
<td>Affidavit of next of kin of a deceased person*</td>
</tr>
<tr>
<td>Other document (specify)</td>
</tr>
<tr>
<td>…………………………………………………………………………………………………</td>
</tr>
<tr>
<td>…………………………………………………………………………………………………</td>
</tr>
<tr>
<td>…………………………………………………………………………………………………</td>
</tr>
</tbody>
</table>

* must be original documents

Kindly place the matter on the roll accordingly and issue the Notice in Form 2 to be served and published and for the application to be heard within 90 days.

Signed at ....................... (place) on this the ........ day of ..................... 20.... in the presence of the following witnesses:

Witness 1: Full Names: ..........................................................
            Signature: ..........................................................

Witness 2: Full Names: ..........................................................
            Signature: ..........................................................

TO: THE CLERK OF THE COURT
FOR THE DISTRICT OF .....................
FORM 2
NOTICE FOR PUBLICATION AND SERVICE

NOTICE IN TERMS OF SECTION XX OF THE UNIFORM MARTIMONIAL PROPERTY

ACT......... /2018

Complete the form in black ink and in block / capital letters

IN THE MAGISTRATE’S COURT FOR THE DISTRICT OF ______________________
HELD AT ______________________

Application will be made in the Magistrate’s Court at .................................

On ..................................by ...........................................................................

Of .........................................................................................................................
(address)

For an order that the Matrimonial Property Regime of the spouses
............................................................ and ............................................................
Who were married at ..........................................................(place) on
...................................................... (date):
(tick the appropriate box below)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>is / was a regime of in community of property</td>
<td><em>(the Husband and Wife have / had a joint estate wherein assets are/were owned jointly.)</em></td>
</tr>
<tr>
<td>is / was a regime of out of community of property</td>
<td><em>(the Husband and Wife own / own their assets in separate estates.)</em></td>
</tr>
</tbody>
</table>

And for a new marriage certificate reflecting the correct position which will substitute the existing marriage certificate.

Any interested person may object to the application by appearing in person at the Court or submit an objection by Affidavit to the Clerk of Court at P/Bag ........................................... or e-mail ........................................................................................................................................ prior to the court date.

STAMP

DESIGNATED MAGISTRATE
This Notice must be published or announced in the following manner:

1. (a) Published twice (x2) in a newspaper and prove must be provided to the court, or
   (b) Announced twice(x2) in the church congregation where the marriage had been
       solemnised and a letter of confirmation by the pastor or minister of religion in the
       congregation must be provided to the court, or
   (c) It must be publicly announced twice (x2) on a national radio station or on a
       television broadcast. The executive head of the broadcast programme must
       certify that such broadcasts have been made.

2. The notice must be served on/ delivered to the following persons and a return of service
   or acknowledgment of delivery must be provided to the court.

RETURN OF SERVICE/ DELIVERY

Notice of Application by ................................................................. and
........................................ at ........................................ Court on .................................. has
been received on ................ at ................................., the residence or normal place of
employment of ....................................................... on his / her behalf

.................................. Signature

Name: .................................................................
TeI: .................................................................
P.O.Box .................................................................
Relationship .................................................................
APPENDIX

Brief Chronology of the Police Zone Border, Key Dates, and Proclamations

1896/97, establishment of a cord on to prevent the incursion of rinderpest into central Namibia and the emergence of the concept of a colonial veterinary border.

1905, German Reichstag demands a resolution confirming that police protection in the colony will be limited to economically useful regions, marking the emergence of the concept of a colonial veterinary border.

1907, a Police Zone boundary for the entire colony is cartographically defined for the first time with a blue line. Proclamation of three game reserves.

1916 (Martial Law Regulation No 57), the northern section of the German Police Zone border is adopted, effectively closing the entire northern part of the colony to "Europeans."

1919, the Prohibited Areas Proclamation (Martial Law Proclamation No 15) confirms the closure of the Police Zone border of 1916.

1924, the northern districts are reopened for livestock export (Government Notice No 94 of 1924), and the Police Zone border becomes a combined veterinary and settlement border.

1925, the Police Zone border is indicated on detail maps (1:500,000) with a thickly drawn red line for the first time.

1926, the entire Police Zone border is identified as the Red Line on the survey map of 1926 (1:800,000).

1928, the Prohibited Areas Proclamation (Proclamation No. 26 of 1928) provides the first precise written definition of the Police Zone border. The location of the border is determined by the farm borders on-site.

1930 (Government Notice 178 of 1930), first law on the creation of a stock-free zone (applicable to cattle and dogs) between the Police Zone and Kaoko.

1931 (Government Notice 151 of 1931) establishes the legal basis for a stock-free zone (for cattle) outside the Police Zone, extending to the border of Bechuanaland in the east.
1933  (Government Notice 105 of 1933), enlarges the Police Zone in the western Omaruru district.

1935  (Government Notice 37 and 143 of 1935), extends the stock-free zone (applicable to all domesticated animals) in the north, northeast, and north west.

1938  (Government Notice No 83 of 1938), the extension of the Epukiro reserve of 1934 is incorporated into the Police Zone.

1938  (Government Notice No. 126 of 1938), the extension of the Otjituo reserve of 1936 is incorporated into the Police Zone.

1941  (Government Notice 84 of 1941), establishes the legal basis for a buffer zone to ward off animal diseases, extending along the entire Police Zone border from the west to the east.

1947  (Government Notice 375 of 1947), comprehensive redefinition of the Police Zone border on the basis of the recommendations of the Lardner-Burke Commission, which are adopted in part (the recommendations include a major shift of the border in the northwest, a decrease in the size of Game Reserves 1 and 2, and the abolition of Game Reserve 4).

(1947)  (Government Notice 376 of 1947) declaration of a comprehensive Stock-free Zone with the Police Zone border forming its southern border.

1948  (Government Notice 155 of 1948), minor adjustment in the Stock-Free Zone to relocate the Otjituo water hole in southern Kaoko outside the zone.

1949  minor adjustment in the Red Line in the Grootfontein district to correct an error made in the reformulation of 1947 (Secretary to Administrator, May 14; NAN-SWAA-A3/61 vi). Additional minor adjustments at the Gagarus farm 289 (Outjo), resulting from the decrease in size of Game Reserve 2 to accommodate additional farmland.

1950  (Government Notice 216 of 1950), minor adjustment resulting from enlargement of the Okombahe reserve.

1950  (Government Notice 255 of 1950), minor adjustment in the Grootfontein district, formally incorporating regions with existing farms on the other side of the Omuramba Owambo into the Police Zone.

1953  (Government Notice 2 of 1953), affecting the Kamanjab region (in which approximately 80 new farms are created to the northwest and north; the existing Kaross and Grootberg farms are incorporated into the Police Zone) as well as Otjituo (a minor adjustment shifting the Police Zone border to the actual farm border)

1954  (Government Notice 198 of 1954), expansion in southern Kaokoveld (southwest of Grootberg; approximately 25 farms, including Palmwag, are incorporated into the Police Zone)

1956  (Government Notice 14 of 1956) shift of Police Zone border to the Ugab. permitting access to Brandberg (and to the mine at Uis).

1957  (Government Notice 21 of 1957) redefinition of Police Zone. includes a shift of the Police Zone border in the Tsumeb district, which also moves the Police Zone border away from the Omuramba Owambo.

1958  (Ordinance No 14 of 1958), the Police Zone border becomes equivalent to a national border, with respect to animal diseases [see also §4(5)].
1958 (Ordinance No 18 of 1958), defines the "Game Parks." In accordance with §2, Game Reserve 2 becomes the Etosha Game Park, apart from the regions that lie within a Native Reserve. The Etosha Game Park assumes roughly the present-day dimensions of the Etosha National Park.

1958 (Government Notice 130 of 1958), redefinition of the Stock-Free Zone of 1947 to reflect current location of the Police Zone border and the southern border of the Kaokoveld reserve. The redefinition is the outcome of a threatened outbreak of foot-and-mouth disease.

1958 (Government Notice 192 of 1958), reverses some former, outdated redefinitions of the Stock-Free Zone.

1958 (Government Notice 247 of 1958), redefinition of Game Reserve 2, to now comprise Etosha Game Park, the Kaoko Native reserve, and the area outside the Police Zone to the Ugab (but not including the strip of land extending near Sesfontein).

1959 (Ordinance No. 34 of 1959), new ordinance on animal diseases, also replacing Ordinance No. 14 of 1958, effectively serving as a legislative decree, with broad powers in response to the threat of foot- and-mouth disease. The ordinance also includes a provision for the building of fences where deemed necessary and confirms the Police Zone border's legal equivalency with an international border.

1959 (Government Notice No. 38 of 1959), enlargement of the Police Zone east of Grootfontein to include 22 farms.

1961 (Government Notice 3 of 1961), minor adjustment in the Police Zone border.

1961 (Government Notice 222 of 1961), additional enlargement in southern Kaoko (Farm No. 741, Outjo District). The Police Zone border is shifted away from the Etosha Pan, and now extends along the border of the settler farms and the Etosha Game Park. The Police Zone is also enlarged in the northeastern Grootfontein district (Horabe block, also called the Nuragas block, 10 include approximately 50 additional farms); minor adjustments at the Oorblut farm (No. 310) and in the Gobabis District (Rietfontein block, to incorporate approximate 100 farms in the Police Zone).

1961/62 in the wake of the foot-and-mouth outbreak, thousands of kilometers of game- and stock-proof fences are built, including along much of the Police Zone border.

1962 (Government Notice issued on July 31, 1962), minor border adjustments in southeastern Outjo District (Mikberg farm 274 incorporated in to the Police Zone).

1962-1964 additional suggestions for further adjustments to the Police Zone border are shelved pending the outcome of the Odendaal Commission.

1964, permission granted for the construction of a fence to extend from the Police Zone border in the west to the coast: the fence is to be located directly north of Torra Bay- Welwitscha (Khorixas) road.

1965, recommendation of the Commission of Enquiry into Stock Disease Control Measures in Regard 10 Border Areas in South West Mica regarding a coordinated effort to build game- and stock-proof fences

1966, issuance of the final "farm map" (overview map of "South West Africa") depicting the Red Line: the Red Line is absent from the 1972 "farm map."
Huweliksregister / Marriage Register

1. Voltooi die deel in drukskrif / N.B. Print Clearly

H 13233

1. Voornoem:
2. Surname:
3. Voel van naam:
4. Geslote:
5. Land van gebore:
   (a) Geboorteplaas:
   (b) Land:
6. Huwelikstal:
   (a) Huwelik:
   (b) Land:
7. Huweliksdatum:
   (a) Geboorte:
   (b) Land:
8. Huweliksdatum:
   (a) Huwelik:
   (b) Land:
9. Huweliksdatum:
   (a) Geboorte:
   (b) Land:
10. Huweliksdatum:
    (a) Huwelik:
    (b) Land:
11. Huweliksdatum:
    (a) Geboorte:
    (b) Land:
12. Huweliksdatum:
    (a) Huwelik:
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13. Huweliksdatum:
    (a) Geboorte:
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14. Huweliksdatum:
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    (b) Land:
18. Huweliksdatum:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (b) Land:
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    (a) Huwelik:
    (b) Land:
59. Huweliksdatum:
    (a) Geboorte:
<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
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<tbody>
<tr>
<td>A. BEZONDERHEDEN VAN MAN / PARTICULARS OF HUSBAND</td>
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<td>1. Voorname</td>
<td>[Redacted]</td>
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<tr>
<td>2. Surname</td>
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<tr>
<td>3. Volle naam</td>
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<tr>
<td>4. Geb. datum</td>
<td>08 Maart 1918</td>
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<td>5. Land van geboorte</td>
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<tr>
<td>7. Huweliksstatus</td>
<td>Widow</td>
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<tr>
<td>B. BEZONDERHEDEN VAN VROUW / PARTICULARS OF WIFE</td>
<td></td>
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<tr>
<td>2. Surname</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>3. Volle naam</td>
<td>[Redacted]</td>
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<td>4. Geb. datum</td>
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<td>5. Land van geboorte</td>
<td>NAMIBIA</td>
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<tr>
<td>6. Huweliksdatum</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>C. BEZONDERHEDEN VAN HUWELIJK / PARTICULARS OF MARRIAGE</td>
<td></td>
</tr>
<tr>
<td>1. Datum van huwelijk</td>
<td>22 Januar 1944</td>
</tr>
<tr>
<td>2. Huweliksbevestiger</td>
<td>Omutundungu Owambu</td>
</tr>
<tr>
<td>3. Handtekening</td>
<td>[Signature]</td>
</tr>
<tr>
<td>4. Huweliksbevestigingsofficier</td>
<td>[Signature]</td>
</tr>
</tbody>
</table>

D. VERKLARING DEUR EGAAR / DECLARATION BY MARRIED COUPLE |

1. Handtekening (Man) / Signature (Husband):

2. Handtekening (Vrouw) / Signature (Wife):

E. EIENDOMSREGTE VAN PARTYE KRAGTENS ARTIKEL 17 (8) VAN PROKLAMASIE 15 VAN 1928 / PROPERTY RIGHTS OF PARTIES IN TERMS OF SECTION 17 (8) OF PROCLAMATION 15 OF 1928 |

F. HUWELIJKSBEVESTIGINGSZERTIFICAAT / CERTIFICATE BY MARRIAGE OFFICER |

[Signature]
MARRIAGE IN COMMUNITY OF PROPERTY
DECLARATION IN TERMS OF SECTION 17 (8) OF PROCLAMATION 15 OF 1928

We (forenames and surname of Groom)
and forenames and surname of Bride)
do/does/suck oaths sol-minvly declare that the marriage in community of property and subsequent hereditary rights have been explained
in us by Rev. Matias Ampaveya Ampaveya

We hereby notify that it is our intention and desire that community of property and profit and loss shall result from our marriage

Signed on the 15th day of December, 2010

Bride

Groom

1. Do you know and understand the contents of this declaration?
Answer: Groom: Yes Bride: Yes

2. Do you have any objection to taking the prescribed oath?
Answer: Groom: No Bride: No

Do you consider the prescribed oath to be binding on your conscience?
Answer: Groom: Yes Bride: Yes

Forenames and surname: Matias Ampaveya Ampaveya
Business address: Box 16016 Oshiwambo
Date 15/12/2010

Area Omusati Region

Justice of the Peace/Commissioner of Oath

Marriage Office

Designation (Rank)
SOUTH WEST AFRICA
DEPARTMENT OF CIVIC AFFAIRS AND MANPOWER

DECLARATION FOR THE PURPOSE OF A MARRIAGE IN TERMS OF SECTION 17 OF PROCLAMATION 15 OF 1928

I, the male person as described in section 17(1), hereby declare under oath/solemnly that:

1. There is no customary union existing between me and any woman other than the one I intend to marry.

SIGNATURE OF DEPONENT

DATE: 30/12/2010

I certify that before administering the prescribed oath/affirmation, I asked the following questions and wrote down the answers in his presence:

(1) Do you know and understand the contents of this declaration?

(2) Do you have any objection to taking the prescribed oath?

(3) Do you consider the prescribed oath to be binding on your conscience?

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to/affirmed before me and that the deponent’s signature/thumbprint/mark was placed thereon in my presence at:

Signed:

Commissioner of Oaths

Marriage Officer

Designation (Rank)

Area:

For paraphes and summens

DEPARTMENT OF CIVIC AFFAIRS AND MANPOWER
G.P.S.15.68—1973.4—250.000 (M-S)

DEPARTEMENT VAN BANTOE-ADMINISTRASIE EN ONTWIKKELING
DEPARTMENT OF BANTU ADMINISTRATION AND DEVELOPMENT

DUPIKAAT-OORSPRONKLIKE/DUPLICATE ORIGINAL

HUWELIKSREGISTER/MARRIAGE REGISTER No.

BESONDERHEDEN VAN MAN/PARTICULARS OF HUSBAND

1. Van
2. Surname
Reference book/Passport Number

3. Voornaam
4. First names

5. Geboortedatum
Date of birth

6. Huwelikstaat
Marital status

7. Woonadres
Residential address

BESONDERHEDEN VAN VROU/PARTICULARS OF WIFE

8. Nooiename
Maiden name

9. Surname
Reference book/Passport/Identity Number

10. Huwelikstaat
Marital status

11. Huwelikstaat
Marital status

12. Voornaam

13. Geboortedatum
Date of birth

14. Huwelikstaat
Marital status

15. Woonadres
Residential address

BESONDERHEDEN VAN HUWELIK/PARTICULARS OF MARRIAGE

16. Datum van huwelik
Date of marriage

17. Bevestig te

18. Distrik
District

19. Provincie
Province

20. In gemeenskap van goeders (ja of nee)
In community of property (yes or no)

21. Toestemming tot die huwelik verleen deur (vol in slegs in geval van minderjariges)
Consent to the marriage given by (complete in the case of minors only)

22. Oorsprong
Notes

23. Handtekening (man)/Signature (male)
Handtekening (vrouw)/Signature (female)

24. Getuies
Witnesses

25. Handtekening (man)/Signature (male)
Handtekening (vrouw)/Signature (female)

VEKLARING DEUR EENPAAR/DECLARATION BY MARRIED COUPLE

26. Hierdie huwelik is tussen ons voltrok en die teenwoordigheid van ondergetekende getuies:

This marriage was contracted in the presence of the undersigned witnesses:

27. (a) Kerkgenootskap
Denomination
(b) Blankerskloostermag/Best handels is

28. Adres van almal die huwelikbevestiger
Address of all marriage officer

29. (a) Kerkgenootskap
Denomination
(b) Blankerskloostermag/Best handels is

30. (a) Kerkgenootskap
Denomination
(b) Blankerskloostermag/Best handels is
SUIDWES-AFRIKA / SOUTH WEST AFRICA
DEPARTEMENT VAN BURGERSAAMENWONING / DEPARTMENT OF CIVIC AFFAIRS AND MANPOWER
HUWELIKSREGISTER / MARRIAGE REGISTER

(Artikel 40 van Wet 81 van 1953 / Section 40 of Act 81 of 1953)

L.W.: VOLTOOI DUIDELIJK IN Drukwerk/ N.B.: PRINT CLEARLY

A. BESONDERHEDE VAN MAN / PARTICULARS OF HUSBAND

1. Van Surname: [Redacted]
2. Identifikasienummer: [Redacted]
3. Volle voornaam: [Redacted]
4. Geb. datum: 01 Maart 1947
5. Land van geboorte: Namibia
6. Huweliksaatar: 01 Maart 1947

B. BESONDERHEDE VAN VROU / PARTICULARS OF WIFE

7. Van Surname: [Redacted]
8. Identifikasienummer: [Redacted]
9. Huidige wettige van: [Redacted]
10. Volle voornaam: [Redacted]
11. Geb. datum: 01 Maart 1947
12. Land van geboorte: Namibia

C. BESONDERHEDE VAN HUWELIK / PARTICULARS OF MARRIAGE

13. Datum van huwelik / Date of marriage: 01 Maart 1947
14. Huwelik bevestig deur: [Redacted]
15. Toeswysing tot die huwelik verleen deur: [Redacted]

D. VERKLARING DEUR ECGAAR / DECLARATION BY MARRIED COUPLE

16. Huwelik saamyssenswaardes: [Redacted]
17. Omtrent middelgelande: [Redacted]
18. Omskrywing: [Redacted]

E. EIENDOMSREKTE VAN PARTEY KRAGTENS ARTIKEL 17 (6) VAN PROKLAMASIE 15 VAN 1928

(Most of the text is not legible due to redaction)

F. HUWELIKSBEVESTIGERSCERTIFICAAT / CERTIFICATE BY MARRIAGE OFFICER

(Origineel 25 van 1961) (Section 5 of Act 25 of 1961)

Alle huweliksbevestigers moet hierdie verslag ondersken / All marriage officers must sign this certificate

Hiermee verklar ek as huweliksbevestiger van die huwelik tussen [Redacted] en [Redacted] dat dit in die pres deens van die huwelik, 1947, as verkoop in die verslag boorkry om hierdie huwelik te bevestig.

Handtekening: [Redacted]
WITH DECLARATION

SUIDWES-AFRIKA / SOUTH WEST AFRICA
DEPARTEMENT VAN BURGERSKA EEN MANNEKRAG / DEPARTMENT OF CIVIC AFFAIRS AND MANPOWER
HUWELIKSREGISTER / MARRIAGE REGISTER
(Artikel 45 van Wet 81 van 1920 / Section 45 of Act 81 of 1920)

L.W. VOLTOOI DUDELIK IN DRIJKS Krif / N.B. PRINT CLEARLY

H 06314

A. BESONDERHEDE VAN MAN / PARTICULARS OF HUSBAND

1. Van Surname
2. Mother identity No.
3. Volle voornamens
4. Ged. datum
5. Huweland staats

B. BESONDERHEDE VAN VROUW / PARTICULARS OF WIFE

6. Van Surname
7. Mother identity No.
8. Huidige wese staats
9. Volle voornamens
10. Ged. datum
11. Huweland staats

C. BESONDERHEDE VAN HUWELIK / PARTICULARS OF MARRIAGE

12. Datum van huwelik
13. Huwelik wese staats
14. Huwelik afgeënd in
15. Toestemming tot die huwelik verleen deur (a) ingeval eniggene deur (b) ingeval

D) VERKLARING DEUR EGPAAAR / DECLARATION BY MARRIED COUPLE

16. Hendige huwelik is tussen ons voltooi in die aanwezigheid van die ondertekenende party:

Handtekening (Man) / Signature (Husband)
Handtekening (Vrou) / Signature (Wife)

D) VERKLARING DEUR HUWELIKSBEVESTIGER / DECLARATION BY MARRIAGE OFFICER

17. Hendige huwelik is daarin my bevestig op hierdie

Handtekening / Signature
Kantoordatumstempel

E) EIENDOMSREGTE VAN PARTYE KRAPTEGRIS ARTIKEL 17 (G) VAN PROKLAMASIE 15 VAN 1928 / PROPERY RIGHTS OF PARTIES IN TERMS OF SECTION 17 (G) OF PROCLAMATION 15 OF 1928

F) HUWELIKSBEVESTIGERSIKISFAAT / CERTIFICATE BY MARRIAGE OFFICER

Handtekening / Signature

PUBLIC RECORDS EXCLUDED

Witweddomerse 1-1910

65
Certificate of Marriage

This is to certify that CONTRAIRE
and 
according to the "Suoero Resolventy Power" No. 05477

Signed by: [Signature]

Witnessed by: [Signature]

Witnessed: 26, 11, 1948

Phone: [Number]