

Namibia

## Recognition of Certain Marriages Act, 1991

### Act 18 of 1991

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# Recognition of Certain Marriages Act, 1991

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Republic of Namibia  
**Annotated Statutes**

**Recognition of Certain Marriages Act, 1991**  
**Act 18 of 1991**

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**ACT**

**To provide for the recognition of marriages contracted in terms of the Swapo Family Act, 1977, and the adoption of children in terms of the said Act; and to provide for matters incidental thereto.**

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

**1. Definitions**

In this Act, unless the context otherwise indicates -

“**Family Act**” means the SWAPO Family Act, 1977, approved by the Central Committee of the South West Africa People’s Organization (SWAPO) of Namibia, as promulgated on 1 December 1977, and of which the provisions are set out in the Schedule;

“**magistrate**” includes an additional magistrate and an assistant magistrate.

**2. Recognition of certain marriages contracted outside Namibia**

(1) Subject to the provisions of this section, every marriage which was contracted outside Namibia by a competent authority as contemplated in the Family Act -

- (a) before 21 March 1990;
- (b) in accordance with the provisions of the Family Act,

shall be recognised, from the date it was contracted, as a marriage which has the status in law equal to that of a marriage contracted by a marriage officer as defined in the Marriage Act, 1961 (Act [25 of 1961](#)), as if it had been contracted in accordance with the provisions of that Act.

- (2) The provisions of subsection (1) shall not apply in respect of any such marriage -
  - (a) which was annulled in accordance with the provisions of the Family Act before the commencement of this Act;
  - (b) if, either of the parties to such marriage has during the subsistence of such marriage, but before the commencement of this Act, contracted another marriage, whether in terms of the Family Act or any other law.
- (3)
  - (a) Notwithstanding the provisions of any law or the common law, the rights and obligations relating to the matrimonial property of the spouses of a marriage recognised by subsection (1) or in the case of the dissolution of such marriage, shall be governed by the provisions of the Family Act.
  - (b) For the purposes of paragraph (a), any reference in the Family Act to the agency competent for matrimonial and family affairs shall be deemed to be a reference to the High Court of Namibia.
- (4) Save as is otherwise provided in this Act, any marriage recognised by subsection (1) shall, from the date of commencement of this Act, for all purposes, be governed by the laws relating to marriages in Namibia.

### **3. Marriage certificates and registration of recognised marriages**

- (1) Subject to the provisions of this section, a certificate of marriage issued or purporting to have been issued under the Family Act shall be prima facie proof of the contents thereof and that the marriage to which it relates is a marriage in respect of which the provisions of section 2(1) apply.
- (2) Notwithstanding anything to the contrary in any other law contained, any magistrate shall upon application in the prescribed form and upon submission to him or her of -
  - (a) a certificate of marriage referred to in subsection (1); and
  - (b) a statement under oath or affirmation by the parties to the marriage concerned stating that such marriage has not been annulled or dissolved by divorce under the Family Act and that neither one of the parties to such marriage has during the subsistence of such marriage contracted another marriage as contemplated in section 2(2)(b),record the registration of such marriage in the register kept by such magistrate in terms of the provisions of the Births, Marriages and Deaths Registration Act, 1963 ([Act 81 of 1963](#)), as if the magistrate had solemnized the said marriage at the date specified in the certificate of marriage.
- (3) The provisions of the Births, Marriages and Deaths Registration Act, 1963 ([Act 81 of 1963](#)), relating to the registration of marriages shall apply in respect of a marriage recorded in the register referred to in subsection (2), and any reference in section 40 of that Act -
  - (a) to at least two competent witnesses shall be deemed to be a reference to the magistrate who so registers the marriage concerned; and
  - (b) to the premises where the marriage took place shall be deemed to be a reference to the premises where the marriage is so registered.
- (4) When a magistrate registers a marriage in terms of subsection (2) he or she shall record on the register the fact that the marriage is registered in terms of this Act.
- (5) The fact that a marriage referred to in section 2(1) has not been registered as contemplated in subsection (2) of this section, shall not affect the validity of such marriage.

#### **4. Recognition of adoptions in terms of Family Act and registration thereof**

- (1) Any adoption of a child in terms of the provisions of the Family Act prior to 21 March 1990, shall, for all purposes, be recognised as an adoption which has the effect in law equal to the adoption of a child in terms of the laws governing adoptions in Namibia.
- (2) An adoption order issued or purporting to have been issued in terms of the Family Act in respect of an adoption referred to in subsection (1) may be registered with a commissioner of child welfare referred to in the Children's Act, 1960 (Act [33 of 1960](#)), as if the adoption concerned was effected by the order of a children's court of the district in which the adopted person resides at the date of such registration.
- (3) The fact that an adoption referred to in subsection (1) has not been registered as contemplated in subsection (2), shall not affect the validity of such adoption.

#### **5. Short title**

This Act shall be called the Recognition of Certain Marriages Act, 1991.

### **Schedule**

#### **THE SWAPO FAMILY ACT**

##### ***GENERAL PROVISIONS***

#### **Article 1**

Family relations of Namibians, to wit, marriage and matrimonial relations, relations between parents and children, adoption, guardianship of minors and establishment of family relations with foreigners as well as agencies and proceedings for contraction, settlement and termination of these relations shall be regulated by this Act.

#### **Article 2**

Marriage and family shall be the fundamental cells of our society which shall protect, support and promote them in a comprehensive manner.

#### **Article 3**

Fundamental principles governing marriage and family shall be as follows:

- (1) Equality of men and women.
- (2) Bar of any form of discrimination.
- (3) Equality of all children.

#### **Article 4**

The Namibian Revolution and the Namibian authorities shall consistently and under all circumstances enforce this act contributing thereby to the progressive development of Namibian family relations.

#### ***1. MARRIAGE***

## Article 5

Marriage shall be the community of lives of a man and woman regulated by statute.

## Article 6

Marriage shall be an institution of special social interest and shall be under special protection of our authorities.

## Article 7

Marriage shall be valid only if all essential requirements specified by this Act have been satisfied.

Essential requirements for the contraction of marriage shall be as follows:

- (1) that the statements of the intent to marry have been made freely and voluntarily;
- (2) that there are no statutory impediments to the contraction of marriage;
- (3) that the marriage has been contracted before the duly authorised office of marriage;
- (4) that the marriage has been contracted in form prescribed by this Act.

## Article 8

The marriage shall be valid when two parties of different sex state their agreement to marry before a body and/or person authorised by this Act to contract marriage in a manner prescribed by this Act.

## Article 9

The statement of an intent to marry shall be free and voluntary. The marriage shall be voidable if the agreement to marry was given under duress or threat, or in error.

## Article 10

The marriage may be contracted between a man over the age of 20 and a woman over the age of 18.

The office authorised for marriage contraction may permit the contraction of marriage to a party who has not attained the prescribed age but not younger than 16 at his request and if justified ground exists to this effect.

Prior to such decision the office of marriages shall consider all circumstances bearing on the case and hear the opinion of parents, or a guardian, of the person requesting the permission to marry.

## Article 11

The marriage may not be contracted while the previous marriage of either party desiring to marry is still in effect.

## Article 12

Persons suffering from mental disorder or person incapable of sound judgement shall not be marriageable.

## Article 13

Direct blood relatives, brothers and sisters of the full blood, brothers and sisters of the half blood, father's brother and the former's daughter, mother's brother and the former's daughter, brother's sister and the former's

son, mother's sister and the former's son, children of brothers and sisters of the full blood and children of brothers and sisters of the half blood shall not marry inter se.

In view of the social conditions and practices and in view of circumstances material to individual cases, the agency competent for matrimonial and family affairs may permit the contraction of marriage between children of brothers and sisters of the full blood or children of brothers and sisters of the half blood.

### **Article 14**

Relatives-in-law, to wit, father-in-law, son-in-law and mother-in-law, step-father and step-daughter, stepmother and step-son shall not marry inter se.

The agency competent for matrimonial and family affairs may permit the marriage between these relatives-in-law if justified ground exists to this effect.

### **Article 15**

An adoptive parent may not marry the adoptive child while the adoption relationship is still in effect.

### **Article 16**

A guardian may not marry his ward while the guardianship is still in effect.

## ***2. Contraction of Marriage***

### **Article 17**

Marriage shall be contracted on the basis of the free and voluntary decision of a man and woman to establish a lasting, harmonious and sound community of lives.

### **Article 18**

The marriage shall be valid if it has been contracted in the form and manner specified by this Act.

### **Article 19**

Persons intending to marry shall be bound to have known and advised each other of their state of health prior to the contraction of marriage so as to find a matrimonial union which shall fulfil its social function.

### **Article 20**

Prospective spouses shall jointly state before the office of marriage their intent to contract the marriage and shall make their individual statements indicating that to their knowledge there is no hindrance to their marriage. These statements may be written or verbal, in which case a written record of them shall be made.

### **Article 21**

Disrespectful behaviour toward one's marriage shall be considered contrary to the interests of the society.

Marriage may not be contracted before the expiration of one month as of the day when the prospective spouses have made their statements to the office of marriages.

The office of marriages may permit the contraction of marriage immediately after the statements have been made or before the expiration of a one-month term when justified ground exists to this effect.

## Article 22

If the office of marriages establishes that statements on the non-existence of hindrance to marriage have been false, the marriage shall not be contracted.

## Article 23

Marriage ceremonies shall be officiated by institutions or persons duly constituted or appointed by the Secretary for Legal Affairs.

## Article 24

The marriage shall be officiated by only one of the authorities vested with the contraction of marriage powers which may perform best this function in view of given circumstances and conditions.

## Article 25

The marriage shall be celebrated before a person competent and/or authorised for the contraction of marriages.

The marriage ceremony shall also be attended by the registrar of family records and/or person who draws the document on the contracted marriage.

## Article 26

The marriage ceremony shall be attended by both prospective spouses, two witnesses and persons officiating at the marriage.

Any person of full legal age may act as a witness to marriage.

## Article 27

Prior to the contraction of marriage the person officiating at the marriage ceremony shall establish the identity of parties to the marriage to be corroborated by the statements of witnesses.

The person officiating at the marriage ceremony shall then proceed to read the provisions of this Act relative to the rights and duties of spouses.

He shall then ask the prospective spouses in turn whether they intend to marry.

On obtaining their affirmative answers the marriage shall be pronounced.

## Article 28

The stated consent to marry shall be entered into the register of marriages whereupon it shall be signed by spouses, witnesses, the person officiating at the marriage and the person making the entry in the register of marriages.

The spouses shall then be issued the marriage certificate without delay.

If the immediate entry in the register of marriages is not possible, the spouses shall be immediately or with the shortest possible delay issued the certificate of marriage in writing, duly signed by the person officiating at the marriage, witnesses thereto and the person who has written the certificate. At the explicit request of spouses, each of them shall be issued the certificate of marriage.

Subsequent entry in the register of marriages shall be effected on the basis of this certificate.



## Article 29

During the marriage ceremony, the spouses shall be bound to make a joint statement about their future surname which shall be entered in the register of marriages and the marriage certificate.

The spouses may declare that their common surname shall be the surname of the husband, that each shall retain the former surname, or that the wife shall add the surname of the husband to her maiden surname.

## Article 30

Only after the marriage has been contracted in accordance with this Act, may the spouses, if they so desire, undergo a wedding ceremony in some other form.

## 3. Nullity of Marriage

### Article 31

Marriage contracted in contravention of the marriage contraction requirements specified by this Act shall be void.

### Article 32

Contracted marriage shall not be annulled:

- (1) if the legally permissible age for marriage has been attained in the meantime;
- (2) if the previous marriage has been terminated in the meantime;
- (3) if the adoption has been terminated in the meantime; or
- (4) if the guardianship has been terminated in the meantime.

### Article 33

The annulment of marriage shall be decreed by the agency competent for matrimonial and family affairs.

### Article 34

In case of annulment the marriage shall cease to exist on the day of the annulment thereof.

However, if the marriage is annulled because:

- (a) it has not been contracted before the authorised office of marriages;
- (b) it has not been contracted in the manner prescribed by this Act;
- (c) it has been contracted between parties one of whom or both are under the age of 16, the validity of the marriage shall cease on the day of contraction thereof and it shall be considered as not having taken effect at all.

**[The provision above is reproduced as it appears in the Government Gazette. However, the text after the comma in paragraph (c) appears to apply to paragraphs (a)-(c) and if so should be formatted accordingly.]**

After the annulment of marriage, both spouses shall assume their surnames used before the marriage.

### **Article 35**

Children born of an annulled marriage shall be legitimate. Provisions to be enforced concerning the relations between parents and children in case of marriage annulment shall be the same as the ones enforceable to the divorce.

### **Article 36**

Property relations between spouses in an annulled marriage shall be settled in a manner applicable to the divorce and the spouse who at the time of marriage contraction knew of the cause of invalidity shall be treated in the same way as respondent in a divorce case.

### **Article 37**

A request for the marriage annulment shall not be invalidated by lapse of time.

As an exception, the spouse who has married under duress or in error, may request the annulment of marriage within one year since the day when duress has ceased or error observed and the spouses have cohabited during that time.

### **Article 38**

Marriage annulment proceedings may be brought at the request of either spouse.

The agency competent for matrimonial and family affairs shall bring the marriage annulment proceedings upon learning the ground therefor.

## ***4. Rights and Duties of Spouses***

### **Article 39**

Husband and wife shall be equal in marriage.

### **Article 40**

Husband and wife shall discharge equal rights and duties in marriage. They shall be bound to cohabit, to be faithful to each other, help each other and create healthy family environment.

### **Article 41**

Each spouse may choose his/her work and occupation independently. Spouses shall jointly decide on their common domicile.

### **Article 42**

Rights and duties of spouses towards their children shall be equal and the spouses shall be bound to maintain and bring up their children jointly.

### **Article 43**

The spouses shall be bound to satisfy the requirements of the family created by marriage in accordance with their abilities, possibilities and property status.

Care of the children and matrimonial home shall be considered as a contribution towards the satisfaction of family requirements.

### Article 44

If either spouse fails in his/her obligations to contribute towards the satisfaction of family requirements, the  
[see below]

Nonetheless, if either spouse explicitly exonerates himself/herself from the liabilities assumed by the other spouse, the exoneration shall produce effect only if a third party has been informed about it.

agency competent for matrimonial and family affairs may decide that salary/wage and other income of that spouse shall be paid in whole, or in part, to the other spouse to cover the needs of their family.

[The text in the last paragraph above appears to be misplaced in the Government Gazette; it was probably intended to complete the incomplete first paragraph of Article 44.]

### Article 45

Spouses shall manage their family affairs jointly.

If the spouses fail to agree on essential matters, the decision shall be taken, at the proposal of either spouse, by the agency competent for matrimonial and family affairs.

### Article 46

Spouses shall be empowered to represent each other in current affairs and in particular to receive on each other's behalf current earnings from these affairs.

The liability of spouses for actions undertaken by either spouse in and in particular to receive on each other's behalf current earnings from these affairs.

### *Property Relations of Spouses*

[Unlike the other sub-part headings in this Schedule, this sub-part heading has no number. It should be numbered as "5".]

### Article 47

The property which has belonged to either spouse at the time of marriage shall remain his/her own and he/she shall retain the right to manage it and dispose of it independently.

### Article 48

The property acquired by the spouses through work in the course of marriage shall be their joint property.

The spouses shall be bound to co-operate in the management of their joint property.

Either spouse may manage their joint property independently, but for the conduct of affairs beyond the scope of everyday administration, the consent of the other spouse shall be required.

### Article 49

The property acquired by either spouse in the course of marriage by inheritance and/or gift shall be his/her own property.

### Article 50

The spouses may agree to include their own property in the joint property.

The agreement shall be done in writing. A verbal agreement shall be made in the presence of three adult witnesses not related to either spouse.

### Article 51

No spouse shall be held liable for obligations assumed by the other spouse before marriage or obligations assumed after their marriage.

However, obligations assumed for the family maintenance purpose shall be binding on the other spouse as well.

### Article 52

Either spouse without means of subsistence and incapable of work shall have the right to be maintained by the other spouse in so far as the latter is able to do so.

### Article 53

In case of dissolution of the marriage when the joint property is to be divided, the spouses shall do it on the basis of their mutual agreement in as much as this is possible.

If the spouses fail to reach an agreement or if it is impossible due to the death of either spouse, the decision shall be taken by the agency competent for matrimonial and family affairs.

### Article 54

When the joint property is divided and when the share of each spouse is to be determined, note shall be taken of the contribution each spouse has made towards the acquisition of the joint property.

When adjudicating the contribution note shall be taken of contribution in money, direct contribution in work for the maintenance and increment of the joint property, household work, contribution towards the upbringing and education of children, support extended by either spouse to the other in his/her work as well as of any other form of work and co-operation in the management, maintenance and increases of their joint property.

## 6. DISSOLUTION OF MARRIAGE

[This sub-part heading appears in upper case in the Government Gazette, unlike the other sub-part headings in the Schedule.]

### Article 55

Marriage may be dissolved by death of a spouse, by presumption of death of a spouse and/or by divorce.

### Article 56

If a spouse is presumed dead, the marriage shall be dissolved as of the day when the decree of presumption of death has been issued.

If it is established subsequently that the spouse presumed dead is alive, the dissolved marriage shall not be renewed if the other spouse has contracted a new marriage in the meantime.

### Article 57

Marriage shall be dissolved by divorce only in socially justifiable cases and on statutory grounds.

### Article 58

Either spouse may seek the divorce if the marital relations have deteriorated to the extent making their matrimonial union completely and lastingly intolerable and if there are irreconcilable differences.

In divorce proceedings, causes of the breakdown of marriage shall be established and stated in the decree of divorce.

### Article 59

Either spouse may seek the divorce on the grounds of adultery committed by the other spouse.

Rights to seek the divorce shall expire in this case one year after the adultery has been discovered.

### Article 60

A spouse whose life has been endangered by the other spouse may seek the divorce.

Divorce may be sought even when the other spouse has only been aware that a third party has been endangering the life of his/her spouse and has omitted to protect or inform the latter.

[The word “omitted” is misspelt in the Government Gazette, as reproduced above.]

### Article 61

Either spouse may seek the divorce if the other spouse has been convicted of a crime against the Namibian People's Revolution or some other dishonourable act.

### Article 62

Either spouse deserted by the other spouse without justified grounds may seek the divorce one year after the desertion thereby.

The spouse deserting the other spouse may also seek the divorce three years after the desertion thereof or if he/she has established a factual matrimonial union with another person, or if he/she intends to marry.

### Article 63

Spouses may seek divorce by mutual consent. A spouse whose behaviour has given ground for divorce may not seek the divorce except in the case of desertion under conditions specified by this Act.

### Article 64

The agency competent for matrimonial and family affairs shall conduct the divorce proceedings in camera.

[The term “in camera” appears in bold in the Government Gazette; italics would be more usual.]

The decree of divorce of marriage shall specify which spouse has been responsible for the marriage break-down unless the spouses propose jointly not to establish the individual guilt for the divorce.

### **Article 65**

The wife who has changed surname on marriage shall take up her former surname.

The wife may retain the surname taken on marriage if the marriage is not being divorced by her fault and if she has born children of that marriage.

### **Article 66**

The rights of succession recognised to spouses shall cease by divorce. The divorced spouse shall also lose the right to request benefit bequeathed to him/her by testamentary or any other disposition in case of death made by the former spouse before the divorce.

### **Article 67**

Gifts made by one spouse to the other before or in the course of marriage shall not be returned.

### **Article 68**

Joint property acquired by the spouses during wedlock shall be divided in keeping with the provisions of this Act relative to the property relations of the spouses.

### **Article 69**

Decree of divorce shall contain stipulations relative to the custody, upbringing and maintenance of children born of them both.

An agreement between former spouses shall be accepted unless contrary to the interests of the child.

If the spouses fail to agree or if their agreement fails to satisfy the interests of children, the agency competent for matrimonial and family affairs shall examine all the circumstances and decree whether all children shall be entrusted for custody and upbringing to one of their parents or whether some shall stay with their mother and some with their father.

Custody and upbringing of children may be entrusted also to the respondent party in the divorce suit if the children's interests so require.

The spouse who has not been entrusted with the custody and upbringing of the child shall be entitled to maintain personal relations with the child.

### **Article 70**

Divorced spouses shall be bound to contribute towards the maintenance of their children in accordance with their possibilities.

The decree of divorce shall specify the contribution to be made by each of the divorced spouses and in particular the contribution payable by the spouse who has not been entrusted with the custody and upbringing of the child.

Either divorced spouse may request the adjustment of the established level of contribution for the maintenance of children in accordance with his/her current property and financial status and circumstances.

## **Article 71**

A divorced spouse without means of subsistence and incapable of work and who is not guilty for the divorce shall be entitled to a certain maintenance allowance from the former spouse in accordance with the latter's possibilities.

The decree of divorce shall fix the maintenance amount and mode of payment.

The fixed amount may be changed in accordance with the property status of divorced spouses.

The right of a divorced spouse to maintenance shall cease if the maintained spouse remarries, if it is established that the maintained spouse is unworthy of it, or if grounds for the maintenance are no longer valid.

## **II. PARENTS AND CHILDREN**

### **1. Origin of Children**

## **Article 72**

A child may be born in, or out of, wedlock. All children shall be equal before the society and their parents.

## **Article 73**

A child shall be considered born in wedlock if he/she was born to a married couple, or within three hundred days since the dissolution or annulment of marriage.

## **Article 74**

A child born out of wedlock shall be considered born in wedlock when its parents marry inter se.

If the parents of a child born out of wedlock had an intent to marry and were prevented from doing so by death of one of them, the agency competent for matrimonial and family affairs may, at the request of the other parent or the child, initiate the required proceedings for the legitimation thereof and pronounce the child legitimate, i.e. born in wedlock.

## **Article 75**

A child of an unmarried mother or of a mother who does not marry the child's father after its birth shall be the child born out of wedlock.

The father of a child born out of wedlock shall be the person who recognises it as his own or whose paternity is lawfully ascertained by the competent authority.

## **Article 76**

The father and the mother may declare by mutual consent that the child born out of wedlock is their joint child.

The father may acknowledge as his the child born out of wedlock by a statement made before the agency competent for matrimonial and family affairs or by will.

This acknowledgement shall be valid and entered in the register of births only if the child's mother agrees therewith. If the mother disagrees with the acknowledgement or fails to pronounce herself on the matter within three months since the notification thereof, the person acknowledging the child shall request from the agency competent for matrimonial and family affairs to establish through the appropriate procedure the justification of his recognition of paternity and to take a decision thereon.

### **Article 77**

The paternity shall be established by the agency competent for matrimonial and family affairs at the request of the child's mother.

The man who has had carnal knowledge of the child's mother within two hundred and eighty to three hundred days before the child's birth, shall be considered his father except when his paternity is excluded by important circumstances.

The fact that the mother has had sexual intercourse with another man in the same period may serve as the ground for the invalidation of presumption of paternity only if this fact indicates that it is more probably that the other man is the child's father.

### **Article 78**

A husband may contest the paternity of a child born of his wife in the course of marriage or before the expiration of three hundred days since the dissolution of their marriage if he thinks that he is not the child's father.

A mother may contest that her child's father is the person considered as his father by virtue of the Act.

Action of contest shall be brought by the husband within one year since his learning about the child's birth and by the mother within one year since the child's birth.

## ***2. Parental Rights and Duties***

### **Article 79**

Parents shall have the right and the duty to advance the personality, rights and interests of their children.

The rights and duties of parents with regard to their children born in and out of wedlock shall be the same.

### **Article 80**

Parents shall have equal rights and duties towards the children born to them both.

If either of the child's parents is not alive, or is not fully able to work, these rights and duties shall be exercised by the other parent.

### **Article 81**

Parents shall be bound to care for the life and health of their children. They shall be bound to raise their children to become useful members of the society, to be loyal to their people, to love and respect work.

Parents shall be bound to secure, within their power, the education and vocational training of their children taking note of their abilities, aptitudes and wishes.

### **Article 82**

Parents shall be bound to provide harmonious life in the matrimonial union creating thereby favourable conditions for the psychological, physical and moral development of the child.

They shall be bound to set personal example for the proper upbringing of their children.

### **Article 83**

Parents shall be bound to maintain their children until they become capable of supporting themselves.



Both parents shall contribute to the maintenance of their children in accordance with their abilities and possibilities.

If parents of a minor do not cohabit, the agency competent for matrimonial and family affairs shall determine their maintenance allowance for the child or shall sanction their agreement on the maintenance amount.

The same procedure shall be applicable if the parents cohabit, but either of them does not discharge voluntarily his duties concerning the maintenance of the minor.

When determining the amount of the obligatory maintenance allowance of each parent, personal care of the child shall also be taken note of.

### **Article 84**

The child should live with its parents. If the parents of the child do not cohabit, they shall agree with which of them the child shall live.

If they fail to agree, the decision shall be taken by the agency competent for matrimonial and family affairs in consideration of the child's interest and/or if the child is over the age of ten, its wishes shall also be taken note of.

### **Article 85**

Parents shall care for the property of their minor children. A minor may have property acquired by inheritance, gift or in any other manner specified by statute.

### **Article 86**

Parents shall be bound to administer their children's property with due care.

The income from their child's property, the parents shall primarily use for the child's maintenance, upbringing and education as well as for the sufficient means of subsistence of their own.

The parents may, if the agency competent for matrimonial and family affairs agrees to it, alienate or pledge the property of their child for the purpose of maintenance, upbringing and education of the child, or if so required, by other justified interest of the child.

### **Article 87**

Parents shall represent their minor children in all legal proceedings. Either parent may act independently as the lawful representative of the child.

If parents do not cohabit, the child shall be represented by the parent with whom it lives.

### **Article 88**

Parents shall exercise their rights and duties towards children born of them by mutual consent.

If the parents fail to agree, the decision shall be taken by the agency competent for matrimonial and family affairs.

If either parent is prevented from discharging his/her parental rights and duties, the other parent shall discharge them during that time alone.

## ***3. Rights and Duties of Children***

### **Article 89**

A child attaining the age of 16 shall have the right to choose his/her work and education. He/she may sign a labour contract and dispose of his/her earnings and shall be bound to contribute towards his/her education and upbringing and towards the maintenance of the family household.

### **Article 90**

A minor shall become major by contraction of marriage acquiring thereby full work capacity. A minor shall be free to choose his/her spouse.

### **Article 91**

Minors shall be bound to obey their parents. Children shall be bound to respect and help their parents, especially in case of illness, inability to work or advanced age.

Children shall be bound to maintain their parents when the latter are unable to work or do not have sufficient means of subsistence.

If necessary, the decision on maintenance shall be decreed by the agency competent for matrimonial and family affairs.

## ***4. Cessation and Loss of Parental Rights***

### **Article 92**

Parental rights shall cease with the majority of the child or when the child marries before attaining majority.

### **Article 93**

The agency competent for matrimonial and family affairs may deprive both or one of parents of their parental rights.

Parents may be deprived of their parental rights if the interests of the child are endangered by the unconscientious exercise thereof, if the parental rights are abused or if parental duties towards their children are grossly neglected.

Parental rights may be restored upon the removal of the cause of their deprivation thereof.

## ***III. ADOPTION***

### **Article 94**

Adoption shall establish between two parties the relationship which exists between parents and children.

An adoption order shall be made by the agency competent for matrimonial and family affairs.

### **Article 95**

Only a person whose way of life offers a guarantee that the adoption shall be for the child's benefit and for the benefit of the society may become an adoptive parent.

### **Article 96**

A person may be jointly adopted by both spouses or by one spouse only in which case the consent of the other spouse shall be required.

The consent shall not be required if the non-adopting spouse is unable to work or has been deprived of parental rights.

### **Article 97**

Only a minor may be adopted. It may be adopted only if the adoption shall serve its best interests.

### **Article 98**

An appropriate difference in age shall be required between the adoptive parent and the child to be adopted.

### **Article 99**

The consent of both natural parents of the child placed for adoption, or that of its guardian shall be required for the adoption.

The consent of a parent unable to work or deprived of parental rights shall not be required.

The consent of a minor over the age of ten shall also be required for his/her adoption.

A person without legal capacity or a person deprived of parental rights may not adopt.

A guardian may not adopt his ward unless he is relieved of his guardianship.

### **Article 100**

Application for adoption shall be submitted by the prospective adoptive parent.

The agency competent for matrimonial and family affairs shall examine whether all legal requirements for the adoption have been satisfied and whether the adoption shall be beneficial for the child.

### **Article 101**

The adoption procedure shall be conducted by the agency competent for matrimonial and family affairs and shall be attended by the adoptive parent, his spouse, the natural parents or the guardian of the child placed for adoption and the child to be adopted if it is over the age of ten.

Some of these parties may make their statements earlier before the same or another agency competent for matrimonial and family affairs.

Statements of parties present shall be entered in the records whereupon the parties shall sign them, statements made earlier by parties absent shall be enclosed therewith.

### **Article 102**

On the basis of statements made earlier and after establishing that all legal requirements have been satisfied, the agency competent for matrimonial and family affairs shall issue the order of adoption.

The order of adoption shall be served on all parties concerned and entered in the register of births.

### Article 103

The provisions of this Act relative to the rights and duties of parents and children shall also be applicable to relations between an adoptive parent and the adoptive child.

Former parental rights, and/or guardianship with respect to the adoptive child shall be extinguished by adoption.

### Article 104

The adoptive child shall acquire by adoption the surname of its adoptive parent unless it is decided in the course of adoption proceedings that it shall retain its surname or that the adoptive parent's surname shall be added to its own.

### Article 105

If the adoptive parent is also the natural parent of other children, the inheritance rights of the adoptive child may be restricted or that child may be completely exempted from succession.

### Article 106

Adoption may be dissolved by a decree issuable by the agency competent for matrimonial and family affairs if it establishes that the dissolution thereof is necessitated by justified grounds or that it is in the interests of the adoptive child.

The request and/or the proposal for the dissolution of adoption may be submitted by:

- (a) adoptive parent and adoptive child jointly;
- (b) adoptive parent;
- (c) adoptive child;
- (d) any person or organization concerned; and
- (e) public prosecutor.

When the request is submitted jointly by the adoptive parent and the adoptive child and the child has attained majority, the decree on the dissolution of adoption shall be issued without examining whether the dissolution serves properly the interests of the adopted person.

### Article 107

The agency competent for matrimonial and family affairs may stipulate in the decree on the dissolution of adoption of the obligation of maintenance when justified ground exists to this effect: taking note of the property status of the adoptive parent and the adoptive child.

When the obligation to maintain rests with the adoptive parent, it shall remain in effect until the adoptive child attains majority.

The obligation to maintain the amount of the allowance shall depend on the changes of the property status.

### **Article 108**

The decree on the dissolution of adoption may stipulate, at the request of the adoptive parent or the adoptive child and when justified ground exists to this effect, that the adoptive child shall resume the surname it had before the adoption.

Otherwise, after the dissolution of adoption, the adoptive child shall be entitled to the surname it had while adopted.

## ***IV. GUARDIANSHIP OF MINORS***

### **Article 109**

If both natural parents or adoptive parents of a minor are dead, or have disappeared, or if their absence has been long and uncertain, or if they have been deprived of parental rights, or if their ability to work is limited, the agency competent for matrimonial and family affairs shall appoint a guardian to bring up the child and represent its interest. The duty of a guardian shall be honorary.

### **Article 110**

The guardian shall be appointed primarily from among the relatives of the minor, whose way of life shall guarantee that he/she shall discharge the duty in the best interests of the child and the society.

If the child does not have such next-of-kin, this duty may be entrusted to another person who is appraised as capable of discharging this duty in a responsible manner and to the benefit of the child.

### **Article 111**

The agency competent for matrimonial and family affairs shall specify the rights and duties of a guardian when appointing him, taking note of grounds for guardianship and the need to protect fully the personality and interests of the minor.

### **Article 112**

If the child has no property or means of subsistence, the agency competent for matrimonial and family affairs shall undertake all necessary measures to secure them.

### **Article 113**

The guardian shall be responsible for the proper discharge of his/her duties to the body which has appointed him/her and shall be supervised by it.

### **Article 114**

The provisions of this Act relative to the rights and duties of parents and children shall also be applicable to the guardian and the minor ward.

### **Article 115**

The agency competent for matrimonial and family affairs may relieve the guardian of his/her duty on justified grounds.

## ***V. MARRIAGE AND FAMILY RELATIONS WITH FOREIGNERS***

### **Article 116**

Namibians may establish matrimonial and family relations with foreigners under conditions spelled out by this Act.

### **Article 117**

The contraction of marriage between a Namibian and a foreign citizen shall require a permit to be issued by the Secretary for Legal Affairs.

### **Article 118**

This Act and the legislation of the country whose citizenship is enjoyed by the relevant foreigner shall be cumulatively enforceable to the contraction of marriage between a Namibian and foreign citizen.

The same shall apply to matrimonial relations and the dissolution of marriage.

### **Article 119**

This Act and the legislation of the country whose citizenship is enjoyed by the relevant foreigner shall be applicable to adoption proceedings between a Namibian and a foreign citizen.

### **Article 120**

Foreign legislation shall not be applicable if its application is in contravention of principles embodied in this Act.

## ***VI. TRANSITIONAL AND FINAL PROVISIONS***

### **Article 121**

The provisions of this Act shall be applicable to matrimonial and family relations of Namibians without regard as to the place where such relationship has been established or is being settled.

### **Article 122**

The provisions of this Act shall be applicable to the regulations of lawfully contracted marriages, relations between parents and children and adoption which have been established in a statutory manner before this Act entered into effect.

They shall also be applicable if, after this Act enters into effect, a marriage or adoption are contracted in contempt of this Act.

[The verb “are” should be “is” to be grammatically correct.]

### **Article 123**

All previously contracted marriages and adoptions may be registered with agencies duly authorised in accordance with this Act.

### **Article 124**

Until the establishment of administrative and judicial power, the agencies competent for matrimonial and family affairs in accordance with this Act shall be constituted by the Secretary for Legal Affairs as may be required.

**Article 125**

A party concerned may apply to any agency competent for matrimonial and family affairs which in view of circumstances and given situation shall be best suited to act upon his/her request.