



REPUBLIC OF NAMIBIA

MINISTERIAL STATEMENT

BY

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MINISTER OF JUSTICE

ON ANTICIPATED CHANGES TO SUCCESSION ON NAMIBIA

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National Assembly
Tintenpalast, Windhoek

[To Be Checked Against Delivery]

**Honorable Speaker,
Honorable Members of this August House,**

1. The Ministry of Justice is in the process of reviewing all legislation relating to succession matters, which includes but is not limited to the Administration of Estates Act, 1965 (Act No. 66 of 1965), the Wills Act, 1953 (Act No. 7 of 1953), Estates and Succession Amendment Act, 2005 (Act No. 15 of 2005) and the rules of intestate succession such as the remaining sections of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), Schedule 2 of the Administration of Estates (Rehoboth *Gebiet*) Proclamation, 1941 (Proclamation No. 36 of 1941) and the Common Law.
2. The legislation is outdated and does not provide for the proper protection of inheritance rights in modern Namibia. As society and technology progress, our laws must be aligned to this progress.
3. Our existing inheritance laws are confusing and discriminating. Amendments to our inheritance laws have been made since Independence but failed to address the real challenges and discriminatory provisions.
4. The administration process of deceased estates provided for in the Administration of Estates Act, 1965 is costly and causes more hardship to beneficiaries. Houses must sometimes be sold from the deceased estate to pay for executor's fees and other administration costs.
5. The review process aims to include all inheritance matters under one law and will include a new legal framework, administration process, testate and intestate succession, Wills, Guardian's Fund and Curatorships.
6. Amendments have been made to certain parts of the Administration of Estates Act, 1965 but did not address issues relating to the administration of the Guardian's Fund, safe custody and record keeping of the Offices of the Master. These provisions are outdated and not in line with current best practices.
7. The Guardian's Fund is administered by the Master of the High Court in terms of the provisions of Chapter V of the Administration of Estates Act, 1965.
8. The Guardian's Fund is a fund created to administer funds which are paid to the Master on behalf of various persons known or unknown, such as minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a *usufructuary* (the right to enjoy the use and advantages of another's property short of the destruction or waste of its substance) or *fideicommissary*

(the owner of a property transfers this property to another person, subject to it being transferred from that person to yet another person at a later stage) nature.

9. The monies consist mainly of inheritances and death benefits that are due to a beneficiary from a deceased estate or pension fund.
10. The Guardian's Fund administers at present approximately N\$ 1.4 billion for more than 40 000 beneficiaries. Payments to the amount of N\$ 65 million have been made to beneficiaries during the 2017 - 2018 financial year.
11. There are several urgent issues that need to be addressed in particular to ensure effective governance.
12. There is no provision in the existing Administration of Estates Act, 1965 to determine the standard of bookkeeping.
13. The Administration of Estates Act, 1965 must be aligned to the newly developed integrated financial and case management system. Applications will be done electronically, and the Guardian's fund will operate 95% paperless. All the existing documents will be scanned and stored electronically. The storage of paper documents is too costly to sustain for an undetermined period.
14. Although the Guardian's Fund is audited currently by the Auditor-General, the Administration of Estates Act, 1965 does not provide for a compulsory annual audit.
15. The Administration of Estates Act, 1965 does not provide for the proper protection of monies due to minors or deceased estates.
16. The proceeds of policies which are due to a minor, are paid by the insurance companies to either the guardian or held in a fund administered by the insurance company. Many complaints are lodged with the Master by minors that never receive such monies from their guardians.
17. The administration and trustee fees payable on monies kept in trust by private institutions are not currently regulated.
18. Trusts administered by insurance and financial institutions in most cases charge an acceptance fee and an annual administration fee. An acceptance fee is a percentage of the capital amount that is immediately deducted upon receipt of the funds by the institution. For example, when a capital amount of N\$ 100 '000.00 (One Hundred Thousand Namibia Dollars) for a minor is paid to the institution, an acceptance fee of 1% (depending on the fee structure), which amounts to N\$ 1 '000.00 (One Thousand Namibia Dollars) is immediately deducted from the capital amount. The minor's

investment will therefore start with a negative (an amount less than the capital the minor received originally).

19. Section 28 of the Administration of Estates Act, 1965 provides that executors shall pay monies due to a deceased estate into a bank account opened in the name of the estate unless the Master directs otherwise.
20. There are several cases where executors (which includes admitted Legal Practitioners) transferred monies due to an estate late, from the estate late bank account into their own bank accounts for their own use. The Master will only detect the misuse of estate monies once the Liquidation & Distribution Account is lodged and examined. It is usually too late to recover the funds.
21. It further came to light that many Legal Practitioners do not pay interest earned on estate monies to the beneficiaries.
22. It is unfortunate to see an increase in these matters and these amendments are a measure necessary to safeguard estate monies. Funds need to be paid directly into the account of beneficiaries and creditors with interest earned thereon from the Guardian's Fund.
23. Numerous problems are experienced with deceased estates that are supervised by Magistrate's offices due to the lack of statutory control.
24. Rehoboth had their own Estates Office which was under the jurisdiction of the Rehoboth Magistrate. Many complaints are received daily regarding the poor administration of estates that were handled by the Rehoboth Estate office.
25. Properties in Rehoboth were either not transferred to the beneficiaries or transferred to other persons who were not entitled to these properties. Many beneficiaries do not have funds to take these matter to Court to seek relief.
26. Urgent intervention is necessary to provide proper protection over estates handled by Magistrates offices.
27. The Estates and Succession Amendment Act, 2005 brought only procedural changes. The Master supervises the administration of all deceased estates irrespective of racial grounds or geographical boundaries.
28. The Amendment Act does not provide for the harmonization of Customary law with the Administration of Estates Act, 1965. A customary law spouse is not recognized as

a spouse and can only be appointed as executor if the spouse provides a Bond of Security, which is difficult to obtain.

29. There is furthermore no provision to deal with property that falls usually under customary law. The result is that all assets must be distributed in terms of the Estates Act.
30. Lastly, the Administration of Estates Act, 1965 does not provide for clear and transparent investment process.
31. The proposed amendments do not adversely affect stakeholders as it is meant to strengthen the already existing protection provided for in the Administration of Estates Act, 1965 – they are as a result of complaints from stakeholders.
32. There are no financial implications in the process of the amendment, neither as a result of the amendment.

Honorable Speaker,

33. To conclude, the proposed amendments are to ensure a more transparent and effective governance of the operations of the Master of the High Court. The Auditor-General and external auditors have time and again pointed out in their findings the lack of transparency in the current investment decision-making process.

I thank you.

End.