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# THE WOMEN'S LEGAL RIGHTS INITIATIVE

**THE LAW OF EQUALITY OF MARRIED COUNTERPARTS  
BROCHURE - LESOTHO**

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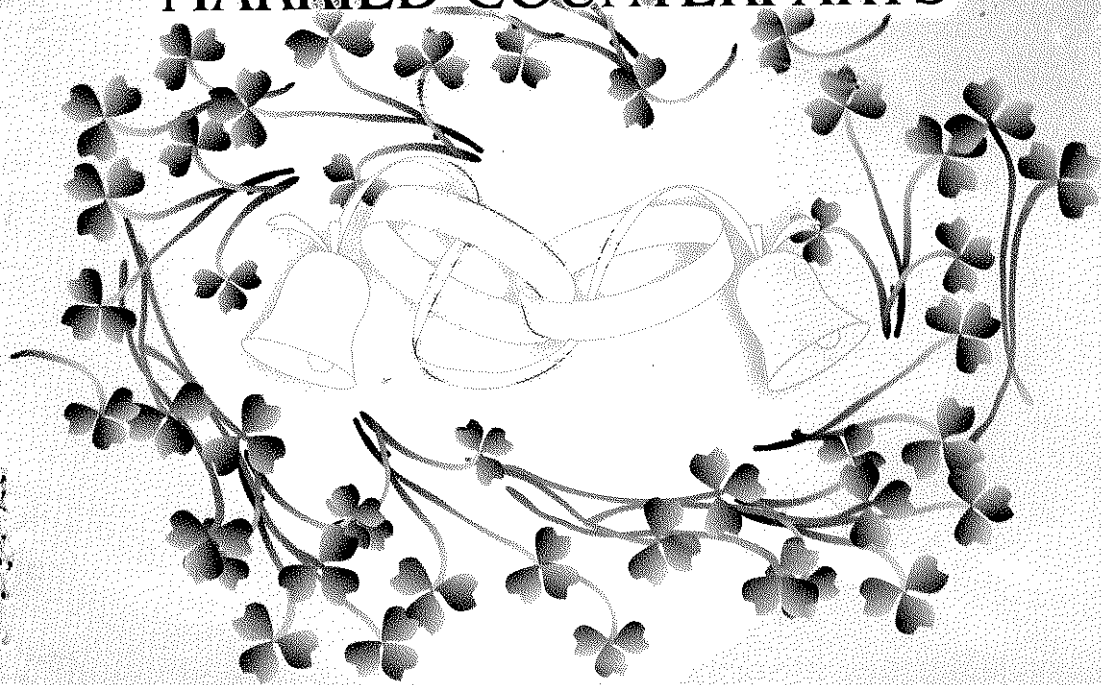
# **THE WOMEN'S LEGAL RIGHTS INITIATIVE**

A Task Order Under the Women in Development IQC

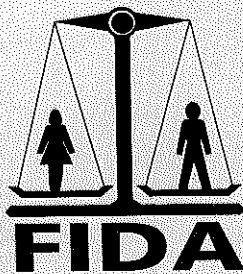
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# THE LAW OF EQUALITY OF MARRIED COUNTERPARTS



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**PREPARED BY ;**

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## **BACKGROUND**

Under the laws of Lesotho currently a male is the only person who has the powers and legal to make decision on behalf of the family. Legally such powers are referred to as marital powers.

## **ILLUSTRATION**

Mr Morena works at the mines in the Free State. He resides here and comes home after a year. He is married to one Mrs Malisebo Morena by customary rites. All he compelled will all legally regiment of the said marriage.

Now Morena has a daughter called Lisebo who is intelligent and she wants to study civil Engineering. After she graduated from high school, when Morena is home for Christmas, a family from around the village comes to his home to ask for Lisebo's hand in marriage. Indeed Lisebo and the son of Mochana are a couple but Lisebo only wants to get married after she has completed her studies. But Morena wants her to get married because he does not want spinsters in his home.

Morena is offended by Lisebo's decision because he wants the bridal price. He does not understand the issue Lisebo is facing over a petty issue like education. Therefore like the head of the family he is taking the decision of not taking Lisebo to school.

The current law gives him this power, and there is nowhere that the law protects the following rights:

1. Malisebo's right to challenge her husband's decision
2. Lisebo's right to challenge her father's decision

## **The results of empowering men in marriage**

- (a) To get a legal counsel

## ILLUSTRATION

Malisebo's brother, the uncle to Lisebo Ts'oeu, wants to help his sister by giving her a field to plough so that she can send Lisebo to school. Malisebo or Lisebo do not have a right to go to the chief or councillor to register the field as theirs because Morena is refusing to buy that field. In order for the wedding of Lisebo and the son of Mochana to succeed, the following precautions should be observed.

- (a) Parents from both families should agree
- (b) Agreement of a boy and girl
- (c) Agreement about the bridal price
- (d) Paying part of the bridal price

It goes without saying that for the wedding to be carried out, Lisebo and her mother have to concur, But Malisebo is refusing, she wants her daughter to finish school and be educated.

Since there is no guarantee that she will go to school when she is married, Lisebo is also not for the idea of marriage especially because Mochana's son mentioned that she should forget about school if she wants to get married.

Even though Malisebo is not for the idea, it is worthless because according to the law the decision has to be taken by her husband. Therefore the husband will do as he pleases and his desire is to see Lisebo getting married.

According to customary rules, Lisebo has a right to refuse, because the law says she will only get married if she agrees. Thus, Lisebo is now exercising her right.

## ILLUSTRATION

Malisebo cannot sell the fields or the flock that they have so that she can send Lisebo to school because Morena refused with the money to pay for Lisebo's fees.

**(d) To authorise the property of the deceased**

**ILLUSTRATION**

Malisebo was the eldest child before she got married, unfortunately her parents died at the same time when their house caught fire. Malisebo has a younger brother, named Ts'oeu, after the parents' burial everything was given to Ts'oeu. Today, when Ts'oeu sees his sister's afflictions he remembers very well that it was their parents' desire to give the fields to Malisebo.

Malisebo has always known this, but she did not have any legal right over the property of the deceased even though she was older than Ts'oeu.

**(f) To be a director of a company**

A white Canadian came to 'Malisebo's Village saying that in Canada, they were looking for wool from Basotho's sheep. The company in Canada also wants to work with a group of Basotho women who are registered with the company only.

In the absence of Morena, 'Malisebo joined this task force, and because of her intelligence, trustworthiness and possession of animals, the task force nominated her as the director of a company they were on the process of registering. They went to meet a lawyer in Maseru to assist them in the registering of their company. The lawyer told 'Malisebo that she needs her husband's consent to be a director of a company.

She went to the Free-State to ask for her husband's consent. The husband anticipated that if she sees a lot of money she will get out of control, he therefore refused. His refusal caused his family to lose out on the \$1,000.000.00 from Canada that would empower Basotho women and their families.

When drought and famine crept in, they did not favour Morena's family because the wife was hopeless. They affected everyone with mercy. Morena is also faced with retrenchment from the mines, but, he refused to take a lot of money trying to fix his wife.

'Malisebo still desires that her daughter should be educated, and there is no promise that it will happen when she is married. Lisebo is also refusing to get married because the boyfriend told her that she should forget about school if she wants to be married to him. Even though, 'Malisebo is refusing it is worthless because lawfully, the decision is her husband's. Thus Morena will do as he pleases, and his desire is that Lisebo should get married. According to customary rules, Lisebo has a right to refuse because the law states that she will only get married if she agrees. Therefore, Lisebo is exercising her right, which highly offends Morena because all he wants is the bridal prize.

**g) Performing all acts that were hindered by any Law before because of a man's power in marriage before this Law was in operation.**

It is obvious that woman were powerless under the constitution and the laws that rule marriage. However, under this amended new constitution of equality of married counterparts, under the verse 3 (1) (a) and (b) all laws that point out a man is the only one who had power in marriage and community of property are done away with. Therefore, under the new constitution, a married woman will have power to perform the above without the approval of her husband. This will help a lot in marriage, not only the woman but also the husband and their children.

**ILLUSTRATION**

- a) 'Malisebo can get in an agreement of buying and selling fields for the welfare of her household in the absence of her husband who comes home after a year.



- b) A woman has a right to sue where she has been ill-treated without waiting for her husband. Therefore, 'Malisebo can sue her neighbour who has owed her for a year. It can also help her to fulfil the hindered plans of getting money for her family and children in Morena's absence.
- c) 'Malisebo will not be bound to wait for Christmas or go to the Orange Free State when she wants her rights to land in Morena's absence. Thus, Morena's family cannot forfeit certain opportunities just because he has gone to work and he cannot benefit from them.

## **ANTICIPATED CHANGES**

According to this new Law, married people will have to agree on the following:

- i) Any of the parties can sell or trade with any of the family's property.

## **ILLUSTRATION**

Peter wants to get into partnership with Malerato. Simon's wife knows that Peter is notorious of taking people's fields.

Malerato and Simon have to meet and plan about the partnership and if they do not reach consensus, none of them has to pursue his opinions without considering his counterpart's view on the matter.

- ii) Anyone who purchases furniture or car on loan is indirectly involving the other.

If one of the people who are married gets into an agreement without his partner's approval the courts do not consider it, and if there is a payment that has to be made with regard to the agreement, it will have to come from the partner who got into the agreement.

## **Residence and Responsibilities /Growing children.**

Under the new law, a woman does not have to reside anywhere she is bound by marriage. Other factors outside the marriage can influence her choice.

### **Children**

Children can stay with any of their parents whether it is the mother or the father.

### **ILLUSTRATION.**

If 'Malisebo leaves her home and goes to her place of birth, and Morena does not collect her, their children can get help from the chief where 'Malisebo is and the letter that shows the place of her residence.

### **Growing children's Care**

Both parents will care for the growing children together.

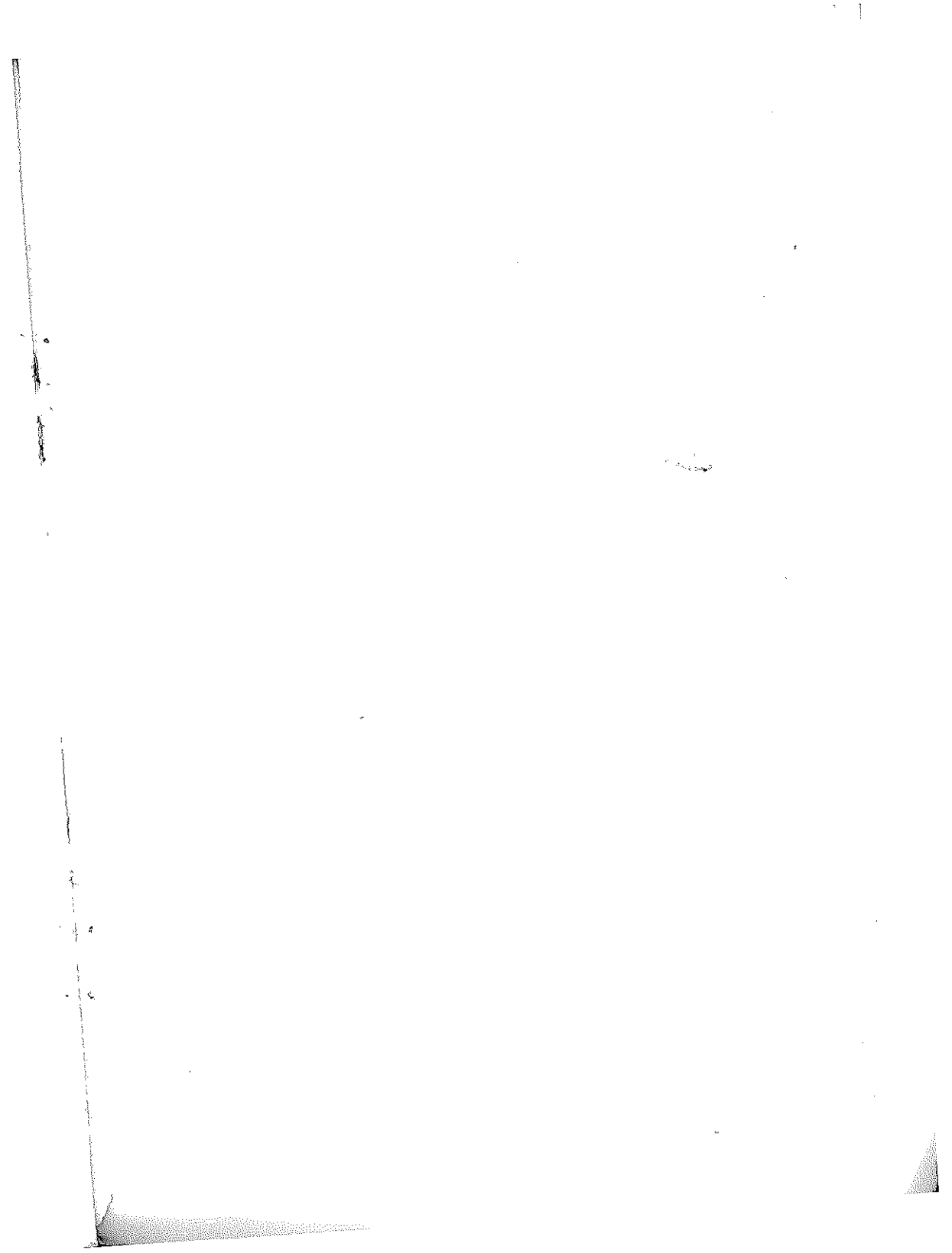
### **Illustration**

Lisebo needs to take a school trip to Durban. 'Malisebo has abandoned her home and gone to her place of birth. Morena is refusing to help them get a passport in order to hurt 'Malisebo. However this hurts Lisebo more than the mother.

Under the constitution, 'Malisebo can get Lisebo a passport because it considers her as a parent completely.

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