



CHALLENGING ENTRENCHED MARITAL POWER IN SOUTH AFRICA

Nisha Arekapudi and Natália Mazoni Silva Martins

When Agnes Sithole's marriage began to fall apart in 2019, she was scared. She had spent nearly 50 years raising her four children, supporting her husband's business, and running her own. Now, her husband was threatening to sell their home without her consent, leaving her destitute. Though she believed this was not possible, to her dismay, the marriage was not under a community of property regime. Legally, this gave her husband the power to administer their joint assets against her wishes. Determined to secure her future, Mrs. Sithole went to court. The result was the latest victory in a decades long fight to increase gender equality and remove the vestiges of marital power – the husband's ability to have his will prevail – that have long lingered in South Africa.¹

Though the women's movement in South Africa dates back to the 1950s, the country's transition to a multi-racial democracy brought new life to the fight for equal rights. According to *Women, Business and the Law*, which measures progress toward gender equality in 190 economies, South Africa made few reforms to women's rights until this time. In 1970, it received a score of 25.6 out of a maximum 100; by 1990, this had risen to just 38.8. This not only put South Africa in the bottom quartile of economies in Sub-Saharan Africa, but also made it the lowest scorer among the similarly developed Brazil, China, India, and Russian Federation.

However, after years of systematic oppression, the dismantling of Apartheid and adoption of a new constitution presented a chance to advocate for meaningful equality in all areas of the law (see Box 1). As such, women from across the political, economic, racial, religious, and cultural spectrum came together to demand change.² Over the next 30 years, they would achieve some of the most comprehensive guarantees of women's rights on the African continent.³ Indeed, South Africa introduced nearly 20 reforms⁴ increasing women's economic inclusion between 1990 and 2020 (see Figure 1). These changes, which affected seven of the eight *Women, Business and the Law* indicators, included removing restrictions on women's work, increasing paid maternity leave, and protecting women from domestic violence and sexual harassment. As a result, South Africa's *Women, Business and the Law* score rose to 88.1, making it a top 10 global reformer over the last 50 years. Such change toward gender equality in the law is associated with better development outcomes, a smaller gender wage gap, and higher female labor force participation.

About *Women, Business and the Law*

Women, Business and the Law is a series of annual studies that measure the laws and regulations affecting women's economic opportunity in 190 economies. The project presents eight indicators structured around women's interactions with the law as they move through their careers: Mobility, Workplace, Pay, Marriage, Parenthood, Entrepreneurship, Assets, and Pension. By examining the economic decisions women make throughout their working lives, as well as the pace of reform over the past 50 years, *Women, Business and the Law* makes an important contribution to research and policy discussions about the state of women's economic empowerment. The indicators build evidence of the critical relationship between legal gender equality and women's employment and entrepreneurship.

BOX 1. APARTHEID AND WOMEN'S RIGHTS

While racial and ethnic segregation had long been commonplace in South Africa, they were not formally institutionalized as Apartheid ("apartness") until 1948. This system of division emphasized the distinct "racial destinies" of different groups, disenfranchising Black people and people of color by preventing them from voting and subjecting them to cruel labor and resettlement policies, among other things. Apartheid was also a "gendered project": while its immediate goal was to control Black men by "turning them from political threats into compliant workers," this could not be achieved without the subjugation of Black women. Indeed, officials saw Black women as "central to creating properly ethnicized and racialized subjects, who would fill their prescribed niches in an economy and polity controlled by white men." If married, they were further subject to the will of Black men and considered minors under their guardianship.

Black women challenged these injustices throughout Apartheid's tenure, with women's movements ultimately becoming a driving force behind its downfall. Moving to urban centers out of economic necessity, they collectively organized and came to play influential roles in the anti-Apartheid movement. They also challenged the subordination of gender and family law issues in the political arena, understanding that they were inextricably tied to their ability to earn an income and succeed outside the home. When Apartheid was finally abolished in 1994, it was a major victory for women living with multiple discrimination based on race and sex. Still, gender inequities persisted, and became the next frontier for these brave activists.

Source: Healy-Clancy 2017.

It is perhaps the reforms to marital power, however, that most demonstrate the resilience and persistence of South African women (see Box 2). Beginning in the 1950s and continuing through the Sithole case and beyond, these changes reveal the many challenges that women, and especially women of color, have faced in their struggle for equality. Intertwined with efforts to move toward a true multi-racial democracy in South Africa, this case study will explore the social, political, and economic context around the passage of reforms affecting marital power. The pioneering efforts of those involved offer important lessons on the nature of removing discrimination and the steps and contexts required to implement change. Most significantly, this movement illustrates a hard truth about reaching gender equality: it is not realized by one change, one law, or one person. Instead, people from every corner of society must come together to achieve it, piece by piece.

FIGURE 1. WOMEN, BUSINESS AND THE LAW REFORMS IN SOUTH AFRICA

WBL YEAR	SCORE	INDICATOR	DESCRIPTION
1971	25.6	BASELINE	
1984	28.8	 PAY	Restrictions on women's ability to work at night are lifted.
1986	33.8	 ASSETS	Spouses are granted equal administrative authority over assets during marriage and the value of nonmonetary contributions is recognized.
1989	38.8	 ASSETS	The Intestate Succession Act equalizes inheritance rights for both sons and daughters and male and female surviving spouses.
1993	41.9	 MOBILITY	The Domicile Act allows a married woman to choose where to live in the same way as a married man.
1995	59.4	 ASSETS	Spouses are granted equal rights to immovable property.
1995	59.4	 ENTREPRENEURSHIP	The General Law Fourth Amendment abolishes the husband's marital power and allows married women to sign legally binding contracts, register businesses, and open bank accounts without consent.
1995	59.4	 WORKPLACE	Women are allowed to get jobs without permission from their husbands.
1995	59.4	 MARRIAGE	Legislation protecting women from domestic violence is enacted.
1997	65.0	 PARENTHOOD	The dismissal of pregnant workers is prohibited.
1997	65.0	 PAY	The ban on women's employment in mining is eliminated.
1999	67.5	 PARENTHOOD	Paid paternity leave is introduced.
2000	70.6	 WORKPLACE	Gender discrimination in employment is prohibited.
2001	76.3	 ENTREPRENEURSHIP	New legislation is introduced that prohibits gender-based discrimination in financial services.
2001	76.3	 MARRIAGE	Women are allowed to be head of household.
2003	78.8	 PARENTHOOD	The duration of paid maternity leave is increased to at least 14 weeks.
2013	81.9	 WORKPLACE	Legislation protecting women from sexual harassment in employment is enacted.
2015	88.1	 PAY	Equal remuneration for work of equal value is mandated.
2015	88.1	 WORKPLACE	Civil remedies for sexual harassment in employment are enacted.
2021	88.1	TODAY	



BOX 2. DISMANTLING MARITAL POWER ACROSS AFRICA



ESWATINI

Upon being deserted by her husband, Makhosazane Eunice Sacolo found herself stranded. She was unable to sell any of the livestock she purchased with her own money because she did not have her estranged husband's consent. She sued, and in 2019 the High Court agreed that this violated women's rights to equality and dignity.



LESOTHO

Mrs. Malope could not engage in any court proceedings without the consent of her husband. He refused to assist his wife to bring an action for damages of adultery against a woman he was having an affair with. The court granted the wife permission to sue on her own without the husband's assistance and consent in 1990.



SOUTH AFRICA

Elizabeth Gumede was not permitted by her husband to work during their 40-year customary marriage. She was left impoverished when their marriage broke down despite all her contributions to the household. The Constitutional Court repealed the laws allowing this in 2008.

Source: Fair Planet; South African Legal Information Institute; University of the Free State.

DISMANTLING MARITAL POWER

For centuries, the husband's "unfettered and complete" marital power treated wives as legal minors (see Box 3). In South Africa and around the world, this meant that women were unable to administer property or enter into contracts without their husband's permission, thus occupying a "subordinate position at home and in the community."⁵ As women's rights movements gained more visibility globally, however, governments in all regions of the world began to address and remove the many components and manifestations of marital power in national legislation.

The First Generation of Reforms: Bertha's Bill and Weakening Marital Power

In South Africa, this process was initiated by Bertha Solomon, an advocate and parliamentarian who after World War II asked the Prime Minister to establish a judicial commission to investigate the position and status of women. More women were entering the workforce following industrialization and had become "increasingly dissatisfied with the status quo."⁶ The commission's findings confirmed the extent of women's marginalization in the country, even convincing a skeptical commission chair to support reforms to marital power. As a result, in 1953, the Matrimonial Affairs Act – otherwise known as Bertha's Bill – was passed.⁷ The law curtailed, but did not abolish, the husband's marital power over his wife's property. It also allowed married women to enter into certain limited transactions, such as making deposits into savings accounts without their husbands' permission.

By this time, the National Party had come to power, and was much more concerned with legislating Apartheid than addressing barriers to women's equality and empowerment. Indeed, while all women were disadvantaged by the persistence of marital power, Black women dealt with compounding inequalities due to institutionalized racial segregation.⁸ Subject to the Black Administration Act of 1927, which created a separate political regime and legal system for Black South Africans, Black women were often excluded from legislative changes related to women's rights and from membership in political and social circles. They were also more likely to be relegated to jobs seen as an extension of women's traditional roles, with low wages and little to no legal protection.⁹ Thus, as the structures of Apartheid hardened into place, there would be no more changes to the marital power system for the next thirty years.

BOX 3. MARITAL POWER, COLONIAL LEGACIES, AND WOMEN'S ECONOMIC EMPOWERMENT

The concept of codified marital power in Sub-Saharan Africa can be traced back to legacy legislation brought to the continent by colonial powers (in the case of South Africa, the Netherlands). At the time, marital power was seen as a "law of nature:" because men were considered wiser, women should be subject to their rule. It relegated wives to a position akin to minors in relation to their husbands, limiting "women's independent access to family and community resources, including the ownership of property, access to credit, access to reproductive health services, and inheritance." As such, the marriage was a legal unit over which the husband had full control. After marital power was introduced in the 17th century, it soon formed part of marriage laws in colonies that would eventually include Botswana, Eswatini, Lesotho, Namibia, South Africa, and Zimbabwe. The effects of such laws on a woman's economic empowerment could be devastating: without her husband's permission, she would be unable to sign contracts, open bank accounts, register businesses, or administer assets.

This trend has today been largely reversed among the former colonial powers. The Netherlands, for example, granted legal capacity to married women in 1956 after 30 years of legal advocacy from women's rights groups. However, remnants of marital power remain in formerly colonized countries, and more reforms are needed where colonial-era legal codes are still used and amendments have not been passed. In Equatorial Guinea, for instance, the 1960 Spanish Civil Code is still in force. Equatorial Guinea and Eswatini are now the only economies examined by *Women, Business and the Law* where a woman needs her husband's permission to sign a contract. Similarly, Chad, Eswatini, and Niger still rely on colonial provisions in civil laws that do not allow married women to open bank accounts without their husbands' permission. Marital power also persists under customary law in Eswatini. The same was true in Lesotho until 2006, when the Legal Capacity of Married Persons Act outlawed both the customary and legal treatment of women as minors within the institution of marriage.

Source: Mavundla, Strode, and Damini 2020; van Zyl 1990.



Moving toward Democratization:
Reforms in the 1980s and after the End of Apartheid

By the 1980s, facing local and international pressure, political violence, and the increased suffering of its people, the government of South Africa began to take steps to dismantle the edifice of Apartheid. With this shift toward democracy came the emergence of a powerful women’s movement determined to insert “gender equality concerns into the heart of democratic debates.”¹⁰ Marital power was still the default system for property administration within marriage; while couples could opt out of this arrangement by choosing to marry in community of property, just four percent of them did so.¹¹

The movement’s first success on this front came in 1984, when the Matrimonial Property Act abolished marital power prospectively (that is, for all civil marriages that were contracted after its enactment).¹² Still, at the time it was predominantly white women’s voices that were heard with regard to legal reform: the law did not apply to marriages between Black people. As calls for racial equality grew, an amendment in 1988 abolished marital power for marriages between Black people contracted after December 2, 1988. For couples married before that time, a two-year window was provided in which they could change their marital property regime with the consent of both spouses. It did not, however, apply to marriages contracted under customary law.

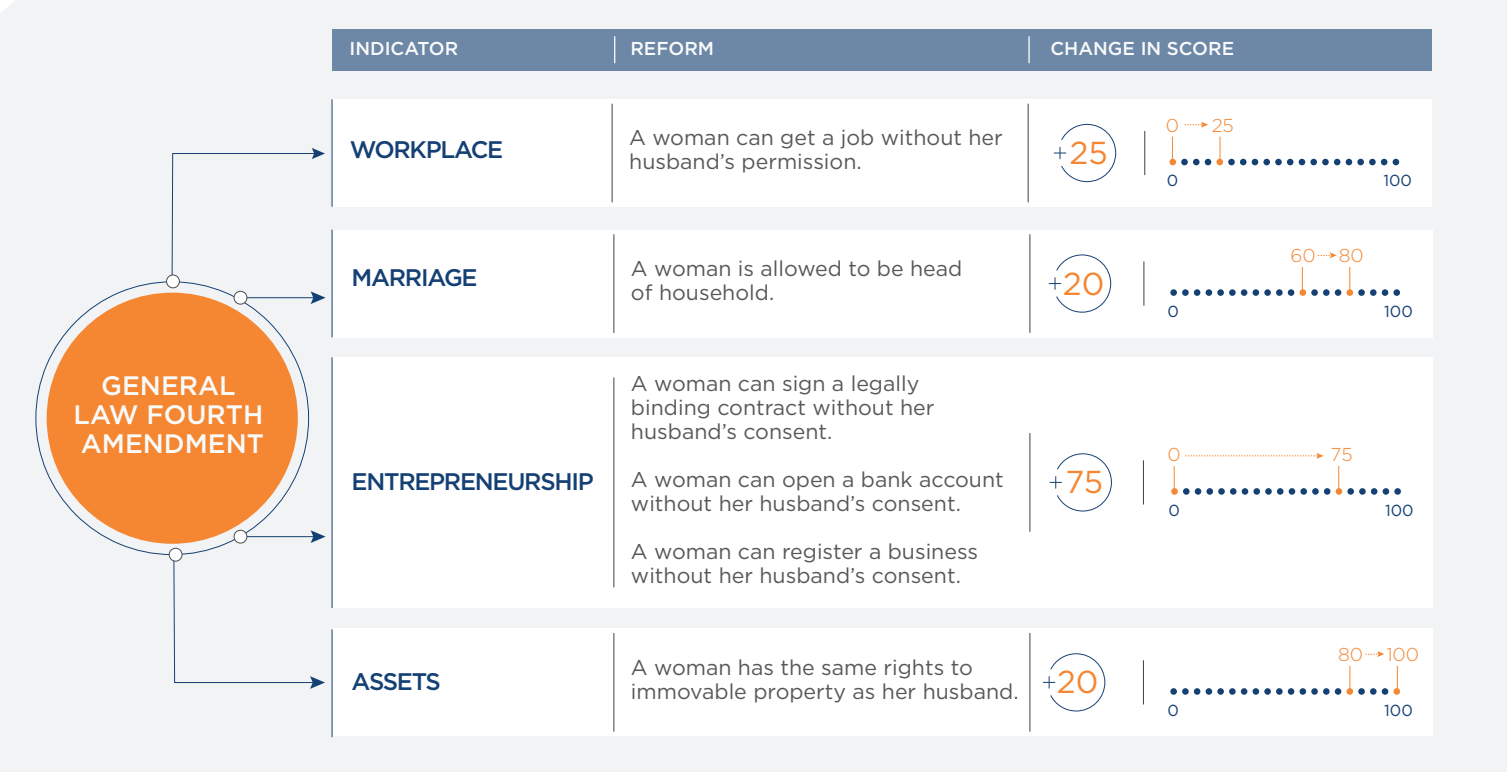
In February 1990, then-President F.W. de Klerk of the National Party took the first significant steps toward formal negotiations to end Apartheid when he announced a repeal of the ban on the African National Congress (ANC) and the release of its leader, Nelson Mandela, from prison. The ANC was a social democratic party intent on ending Apartheid and granting full voting rights to Black South Africans. An integral part of the ANC’s negotiations with de Klerk was

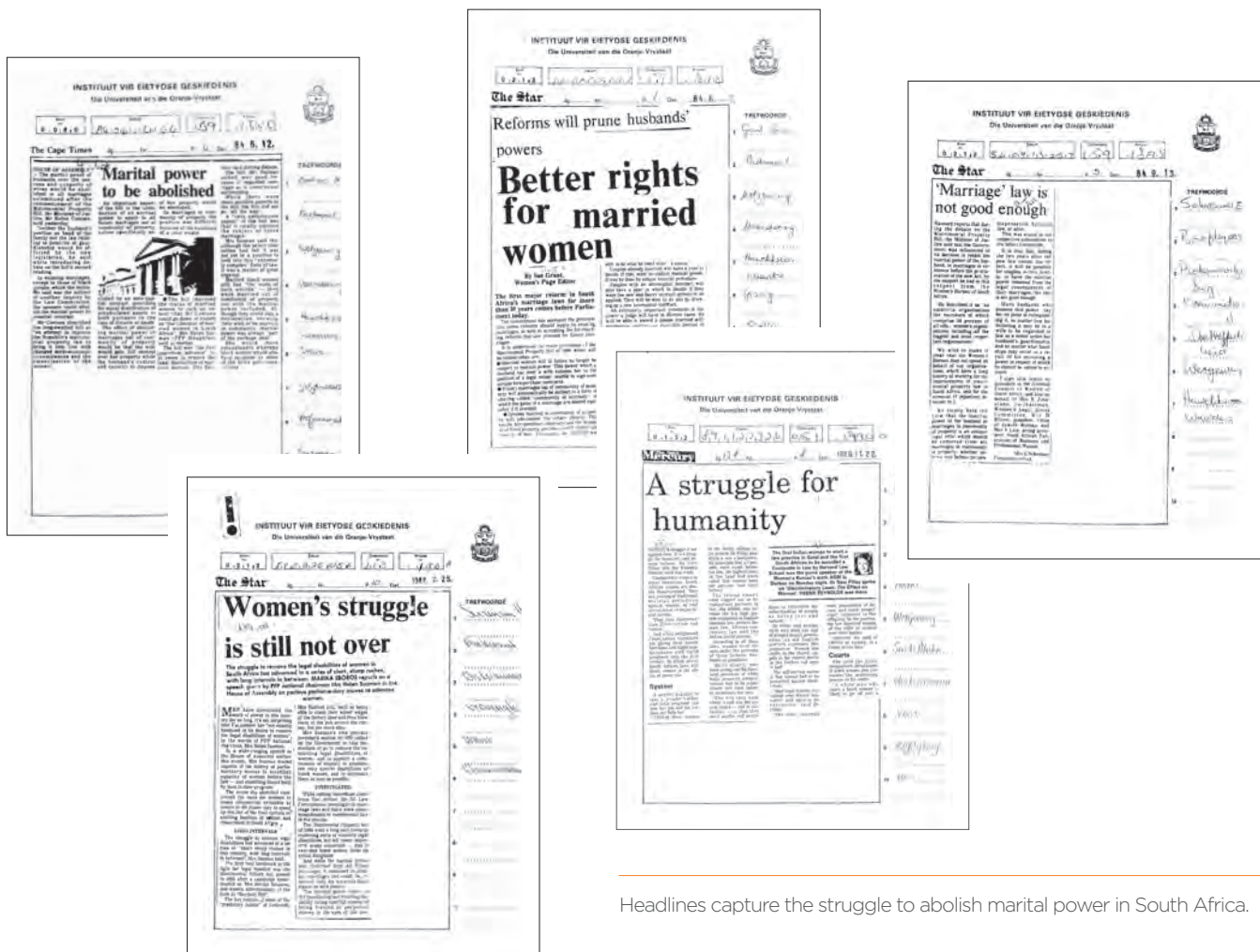
the creation of a new, non-discriminatory constitution for the country. This possibility opened the door for more women of color to engage in gender debates. It also led to the creation of a national representative structure for the women’s rights movement, the Women’s National Coalition, and the possibility to pursue an agenda of reform at the national political level.¹³

As negotiations for a post-Apartheid political system proceeded, and it became clear that the country was headed toward its first general election that included citizens of all races, the National Party rebranded itself as a civic nationalist and conservative organization representing all South Africans. The Party was acutely aware of the hurdles it would have to overcome to maintain its power in the coming years. As such, while still operating in a white Apartheid state, several bills aimed at removing discriminatory legislation were put forward in an attempt to gain supporters. For women in particular, this included a consideration of laws on employment equity, domestic violence, and marital power.

It was the additional reforms to marital power that stuck first. On October 6, 1993, the General Law Fourth Amendment was enacted, replacing sections of the Matrimonial Property Act and for the first time definitively stating that “the common law rule in terms of which a husband obtains the marital power over the person and property of his wife is hereby repealed.” This reform led to a substantial increase in South Africa’s score on the *Women, Business and the Law* index, from 41.9 in 1993 to 59.4 in 1995 (see Figure 2).¹⁴ The Amendment allowed a majority of women to be head of household and to get a job, sign a legally binding contract, register a business, and open a bank account without the permission of their husbands. It also granted them the same rights to immovable property as men. This would permit millions of women to make effective choices, enter the labor force, and contribute to their growing economy.

FIGURE 2. IMPACT OF GENERAL LAW FOURTH AMENDMENT ON SOUTH AFRICA’S WOMEN, BUSINESS AND THE LAW 1995 SCORE





Headlines capture the struggle to abolish marital power in South Africa.

Yet despite this great stride, this reform was not as inclusive as it may have seemed. While the law now applied to all civil marriages, regardless of when they were contracted, women in customary and religious marriages still faced constraints on their agency and decision-making ability. In addition, it clearly stated that the abolition of marital power “shall not affect the legal consequences of any act done or omission or fact existing before such abolition”, such as certain provisions of the Black Administration Act.¹⁵ Finally, the Amendment did not apply to women in the Transkei, an area originally set aside for Black South Africans that ostensibly operated as an autonomous parliamentary democracy. Thus, though much had been achieved, particularly for white women in South Africa, there was more work to be done to reach gender equality for non-white communities.

Despite the National Party’s attempts to win over women voters with these reforms, the 1994 general election was a major victory for the African National Congress. Their Government of National Unity, formed by the ANC in the wake of its win, immediately set to work drawing up a new constitution. Women in more than 500 towns and cities organized to press the government to consider gender issues in any version of the document, and with its passage in 1996, they succeeded. This was the first time that women were formally recognized as equal before the law and with the right to equal protection from discrimination and enjoyment of all rights and freedoms.¹⁶

With these new guarantees came more possibilities for women to challenge remaining discriminatory legislation. Section 15(3) of the new constitution authorized parliament to pass legislation recognizing customary marriages. Consequently, in 1998, the Recognition of Customary Marriages Act abolished marital power for all marriages contracted under customary law throughout the country. Though this was an attempt to ensure that customary marriages were contracted in accordance with the equality principles of the Constitution, inconsistencies and uncertainties remained.

For women in the Transkei, for instance, marital power was still law, forcing the wife to remain “under the guardianship of her husband for the duration of her marriage.”¹⁷ These provisions were challenged in court in *Prior v. Battle and Others* (1999), in which the plaintiff asked the Constitutional Court to consider them invalid and unconstitutional. The Court agreed that the law violated her rights to human dignity, to life, to freedom of trade, occupation, and profession, and to housing, calling the law “outmoded and anachronistic.”¹⁸ Marital power was therefore outlawed in the Transkei, five years after the territory itself was reincorporated into South Africa.

The Sithole Case: Tackling the Vestiges of Marital Power

Still, this was not the end of the road for the remnants of marital power in South Africa. More than 20 years later, Agnes Sithole's case would challenge one such vestige. Although hers was a civil marriage, it remained subject to legal uncertainty. She had heard of the legislative changes to marital property and assumed her 1972 marriage was automatically converted to a regime of community of property. However, she and her husband had not registered their marriage as such in the two-year window provided by the amendment to the Matrimonial Property Act of 1988, which otherwise did not apply to marriages conducted before that date.

This fact, taken together with provisions of the Black Administration Act automatically considering marriages between Black people as out of community of property that had not been explicitly repealed, meant that the law maintained her husband as her legal guardian. This left Sithole, as well as an estimated 400,000 other Black South African women, vulnerable to economic insecurity and poverty during and after dissolution of marriage.¹⁹ She sought help from the Legal Resources Centre and the Commission for Gender Equality, both of which helped prepare her case on behalf of these women. In particular, the Legal Resources Centre noted their commitment to "protect and advance...the right of African women to acquire, control and own land or any other asset – like any other South African citizen."

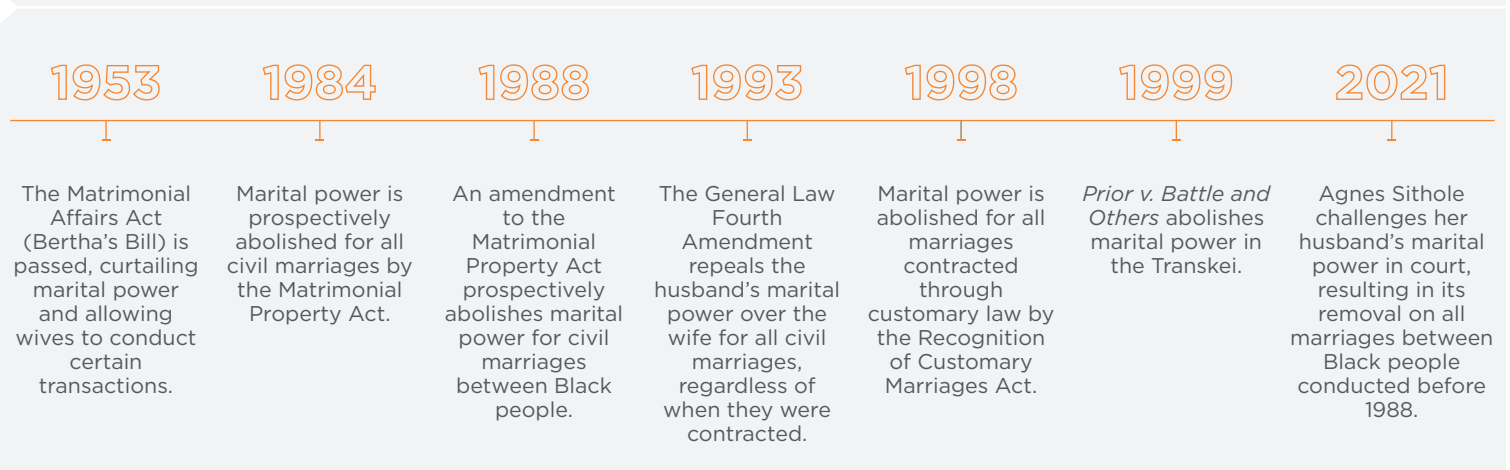
On April 14, 2021, the Constitutional Court agreed that this imbalance of power was invalid. It acknowledged that although the General Law Fourth Amendment had fully abolished marital power with respect to all civil marriages, the discriminatory effect of the Black Administration Act had persisted by not converting "the default position of marriages of Black people so that they were automatically in community of property like those of other races."²⁰ It was found that any provision that maintains and perpetuates such discrimination is unconstitutional: "All marriages of Black persons that are out of community of property and were concluded under section 22(6) of the Black Administration Act before the 1988 amendment are...hereby declared to be marriages

in community of property."²¹ This confirmed the judgment of the High Court, which previously stated that "the discrimination the impugned provisions perpetrate is so egregious that it should not be permitted to remain on our statute books...The recognition of the equal worth and dignity of all Black couples of a civil marriage is long overdue." Agnes Sithole herself "shed tears of joy. It dawned on me that we had saved thousands of women in marriages similar to mine."²²

The Sithole judgment is just the latest step in a perhaps slow, but steady, movement toward fully abolishing marital power (see Figure 3). By mid-2021, legislation had not been passed affecting such dynamics in religious marriages, and in particular Muslim marriages, which has become the next cause that advocates in this space have taken up.²³ A judgment on this issue is currently pending before the Constitutional Court; if it decides that Muslim marriages should be recognized by law, they too will be subject to community of property rules.²⁴ The Department of Home Affairs and the South African Law Reform Commission are also considering a single statute that would replace the marriage laws discussed here. Uniform marriage legislation such as this would "enable South Africans of different religious and cultural persuasions to conclude legal marriages that will accord with the doctrine of equality as set out in the Constitution of the Republic of South Africa."²⁵ If successful, the passage of this kind of statute would remove many of the current complexities within marriage laws and guarantee the absence of marital power in all marriages concluded in South Africa, past and present.

While encouraging, these proposed changes have not yet entered into law. It is clear, however, that like the reforms seen over the last 30 years, continual follow up and advocacy will be necessary to sustain pressure on parliament, or to use the court system, to enforce the equal rights of all South African women to empower themselves and their communities both within and outside of marriage. Through such movements, South Africa can continue to move closer to a more equal society.

FIGURE 3. THE ROAD TO ABOLISHING MARITAL POWER IN SOUTH AFRICA



LESSONS LEARNED

As the example of marital power shows, South Africa's journey toward a more inclusive and egalitarian democracy has taken time. Progress is largely due to a combination of factors, from the momentum generated by transitional politics in the 1990s, to the active engagement of multiple stakeholders throughout the decades and historic rulings by the Constitutional Court. However, women in South Africa still experience deep-rooted inequalities. Moreover, initial reforms missed the opportunity to meaningfully tackle the cross-cutting issue of marital power and benefit women from all walks of life. Though the work is far from over, several lessons can be drawn from the South African legal reform experience and its movement toward abolishing marital power (see Figure 4).



FIGURE 4. KEY FACTORS THAT ENABLED LEGAL REFORMS TO MARITAL POWER IN SOUTH AFRICA



POLITICAL MOMENTUM

Government transition towards democracy offers a unique opportunity to advocate for structural legal reforms.



WOMEN'S ACTIVISM

Women's role in articulating demands and participating in political life advances the conversation on pressing for legal changes that secure their rights.



STRATEGIC LITIGATION

Using the court system can bring about change and set the legal reform agenda towards a more equitable society.

South Africa is emblematic of the importance of seizing opportunities afforded by political transition to advance legal reforms aimed at addressing persistent and historic gender gaps. Government transitions are periods of intense politicization and are often associated with increased sociopolitical crisis. Yet however critical or contentious, these junctures can also enable new ideas and institutions to play an active role in political life. They also offer a unique window into how social structures underlie political practices.²⁶

Activism for women's rights has additionally historically led to the creation of structures that promote gender equality during periods of transition to democracy.²⁷ In South Africa, political momentum and changing social norms and attitudes during democratization offered an important platform for the creation of a national representative structure for the women's movement. The active engagement of women of all backgrounds in the public discourse indicated that things in South Africa were slowly changing. The ability to articulate demands, despite the challenges faced at the time, was crucial to advance the conversation on pressing legal changes that were necessary to move toward a more equitable South Africa.

This active participation of South African women in the fight for democratic change and the recognition of their rights was no small feat. It took courage, patience, and strategy. Their involvement ensured the support needed during

critical moments of negotiation, including surrounding the passage of the General Law Fourth Amendment.²⁸ Such female protagonism is a powerful tool for change. In fact, women's increased participation and leadership in political and public life is widely recognized as crucial to achieve the Sustainable Development Goals,²⁹ and to influence outcomes related to investments in social services and welfare.³⁰

At the same time, neither political transition nor the strong voice of the women's movement was sufficient to ensure the rights of all women. Over the decades, the court system also played an important role in amplifying the voices of South African women – and as a result, changing the law. When deep-rooted inequalities persist and the pace of legal reform is slow, strategic litigation may serve as a key tool to bring about change.³¹ It took years of cases brought before the Constitutional Court so women like Agnes Sithole, and many others that came before her, could finally see the removal of constraints and compromises associated with marriage in South Africa. Her battle represents the importance of the judicial system in setting the legal reform agenda and bringing about systemic change. Strategic litigation is also an opportunity to offer an adequate rationale – based on research, data, and internationally recognized best practices – and accompanying legislative language to judges and magistrates to achieve meaningful and long-lasting reform outcomes. In the case of South Africa, the Court has not hesitated to appropriate remedial language, effectively rewriting the law where it sees fit.

THE FRUITS OF REFORM, AND LOOKING AHEAD

Many factors can influence the attainment of legal reform. South Africa's transition to a multi-racial democracy demonstrates the importance of timing and the role that politics can play in providing opportunities to push for change. As women increasingly engage in politics and with civil society, their voices are more likely to be heard and represented, both in court and throughout the legislative process. This effort, however, must be sustained over generations to meaningfully achieve the desired goals.

If successful, such reforms can have significant effects. In 2020, South Africa is the highest scoring economy among China, India, and Russia, and the second-highest scoring economy in Sub-Saharan Africa as measured by *Women, Business and the Law*. It also was a leader in the region, as most economies in Sub-Saharan Africa did not begin implementing substantial reforms until the 2000s, after the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) was passed. These relatively early reforms allow for more comprehensive analysis of their effects.

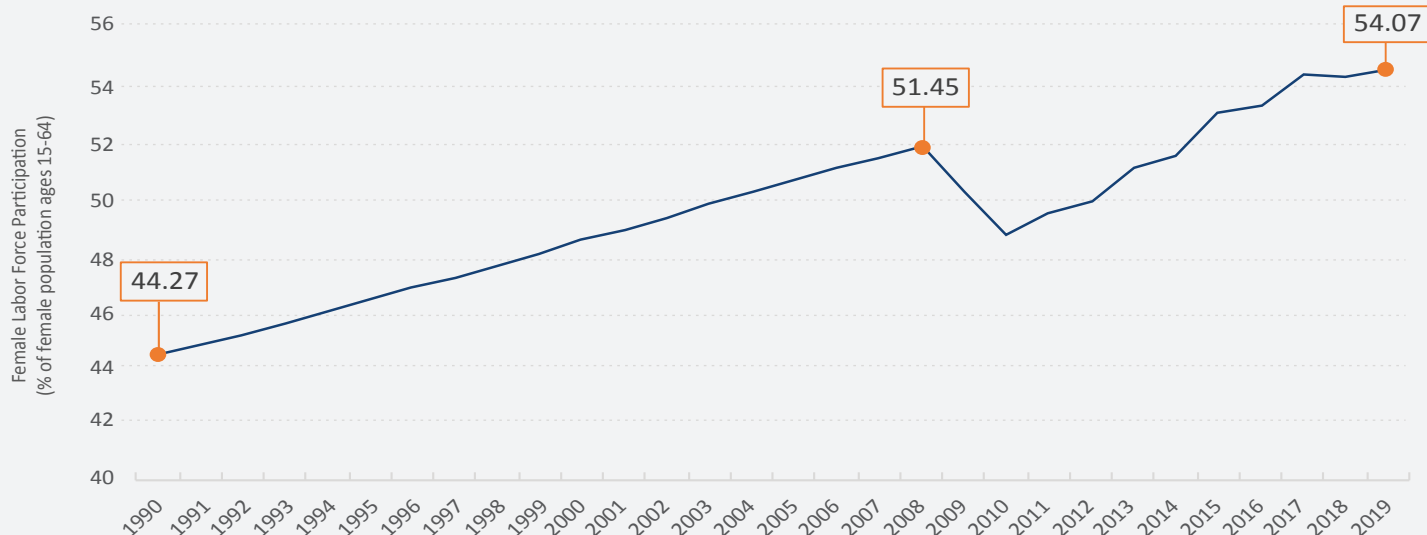
In the years since the first reforms to marital power were passed, for example, women's standing in South African society has changed greatly. Female labor force participation has risen steadily since the 1990s. In fact, the biggest increase in female labor force participation rates in South Africa happened in the period post-democratization and the passing of the General Law Fourth Amendment, reaching an all-time high of 54.07 percent in 2019,³² and with women representing more than half of professional and technical positions (see Figure 5).³³ The environment for female business owners has also changed; reports indicate an improvement in women's overall entrepreneurial activity and a more supportive environment for female business ownership. Additionally, evidence suggests a long-term narrowing of the gender wage gap, from 40 percent in 1993 to about 16 percent in 2014.³⁴ With regard to representation, the proportion of seats held by women in the South African national parliament has almost doubled, from 25 percent in 1997 to about 47 percent in 2020.³⁵ These developments illustrate that legal reform influences what happens on the ground, demonstrating that when societies move toward equality, economies can become more resilient.

Yet persistent gender-related obstacles remain. The story of the abolition of marital power in South Africa reveals that achieving just legal gender equality can take lifetimes, sometimes with long stretches of very little change. In the areas measured by *Women, Business and the Law*, South Africa has yet to introduce paid parental leave or establish a mandatory contributory pension system, both of which would further increase women's economic security and empower them in the workplace and at home.

Such laws also require meaningful implementation and enforcement to be effective. For example, though there have been victories toward abolishing marital power for all women throughout the last several decades, there may be women who are still unaware of their rights or of recent changes to applicable laws. In other areas, including domestic violence, incidence remains high despite comprehensive legislation.³⁶

Achieving gender equality in South Africa and all over the world will require a concerted effort from a variety of actors, including government, civil society, international organizations, and ordinary citizens. Reforms must reflect the context of each country and include well-functioning mechanisms to implement and enforce legal measures. By looking at the successes and failures of the past, other countries hoping to reform in these areas can ensure that they are executed in a way that is inclusive of all women and cognizant of the intersectional discrimination that some may face. Though obstacles to achieving gender equality are likely to be in place for years to come, the story of marital power in South Africa shows that over time, they can be removed. This story of resilience and a continuous commitment to gender equality, in even the most difficult of circumstances, is key to building a world in which all women are equal and empowered.

FIGURE 5. RISING FEMALE LABOR FORCE PARTICIPATION IN SOUTH AFRICA, 1990-2019



Notes

- 1 Broughton 2021; FW de Klerk Foundation 2021; Harrisberg 2020.
- 2 Hassim 2002.
- 3 *Women, Business and the Law* database.
- 4 For the full list of reforms enacted in South Africa and around the world, please visit <https://wbl.worldbank.org/en/reforms>.
- 5 Law of SA, Volume 28(2)(3ed).
- 6 South African History Online.
- 7 South African Jewish Report 2019.
- 8 Nolde 1991.
- 9 Healy-Clancy 2017.
- 10 Hassim 2002.
- 11 la Cock 1984.
- 12 De Rebus 1982; South African Law Commission 1982.
- 13 Hassim 2002.
- 14 *Women, Business and the Law* indicators are based on standardized assumptions to ensure comparability across economies. As such, the woman in question: 1) resides in the economy's main business city; 2) has reached the legal age of majority and is capable of making decisions as an adult, is in good health and has no criminal record; 3) is a lawful citizen of the economy; 4) is a cashier in the food retail sector in a supermarket or grocery store that has 60 employees; 5) is a cisgender, heterosexual woman in a monogamous first marriage registered with the appropriate authorities (de facto marriages and customary unions are not measured); 6) is of the same religion as her husband; and 7) is in a marriage under the rules of the default marital property regime, or the most common regime for that jurisdiction, which will not change during the course of the marriage.
- 15 *Women, Business and the Law* database.
- 16 Constitution of the Republic of South Africa 1996.
- 17 Barker 1999.
- 18 Constitutional Court of South Africa 1999.
- 19 Broughton 2021.
- 20 Constitutional Court of South Africa 2021.
- 21 Id.
- 22 BBC News 2021.
- 23 Bulbulia 1983.
- 24 News24 2021.
- 25 South Africa Law Reform Commission 2019.
- 26 Jaquette and Wolchik 1998.
- 27 Gouws and Coetzee 2019.
- 28 Id.
- 29 UN Women 2020.
- 30 Hessami and Fonseca 2020.
- 31 TAP Network 2019.
- 32 Labor force participation rate, female (% of female population ages 15-64)(modeled ILO estimate), The World Bank (database), <https://data.worldbank.org/indicator/SL.TLF.ACTI.FE.ZS?locations=ZA>.
- 33 Mastercard Index for Women Entrepreneurs 2020 (database), Mastercard, <https://www.mastercard.com/news/research-reports/2020/mastercard-index-of-women-entrepreneurs-2020/>.
- 34 Mosomi 2019a; Mosomi 2019b.
- 35 Proportion of seats held by women in national parliaments (%), The World Bank (database), <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=ZA>.
- 36 World Bank Group 2018.

ACKNOWLEDGMENTS

Support for the *Women, Business and the Law* case study series is provided by the Bill & Melinda Gates Foundation and the William and Flora Hewlett Foundation. This case study would not be possible without the generous contributions of Prof. Cathi Albertyn, Prof. Wesahl Domingo, Ms. Judith February, Ms. Samaneh Hemat, Ms. Geraldine Moloj, Ms. Rosinah Nkuna, Ms. Jennifer Smout, Mr. Pierre van Wyk, Ms. Lisa Vetten, and the LexisNexis Rule of Law Foundation. Newspaper images are courtesy of the South African Law Reform Commission (SALRC).

Affiliation: *Women, Business and the Law*, World Bank Group

Objective and disclaimer: *Women, Business and the Law* country case studies analyze the political economy of how successful reforms have been carried out in order to highlight lessons learned and inspire other countries to undertake similar efforts. The case studies carry the name of the authors and should be cited accordingly. The findings, interpretations, and conclusions are entirely those of the authors. They do not necessarily represent the views of the World Bank Group, its Executive Directors, or the governments they represent.



For more information, including analysis over time, please visit wbl.worldbank.org or contact wbl@worldbank.org.



REFERENCES

- Barker, Harry. 1999. "Marital power and ancient law: Prior v. Battle and Others 1992(2) SA 850 (Tk)." *De Rebus*: 41-43.
- Broughton, Tania. 2021. "Concourt rules that marriage act oppressing thousands of women is unconstitutional." *Ground Up*. April 15. <https://www.groundup.org.za/article/concourt-rules-apartheid-act-was-still-oppressing-hundreds-thousands-black-women-unconstitutional/>.
- Broughton, Tania. 2020. "Court victory for 400 000 elderly black women." *New Frame*. February 3. <https://www.newframe.com/court-victory-for-400-000-elderly-black-women/>.
- Bulbulia, M A E. "Women's rights and marital status Are we moving closer to Islamic law?" *De Rebus*: 430-435.
- Constitutional Court of South Africa. 1999. "Prior v Battle and Others." Johannesburg. <https://collections.concourt.org.za/handle/20.500.12144/9387>.
- Constitutional Court of South Africa. 2021. "Sithole and Another v Sithole and Another." Johannesburg. <http://www.saflii.org/za/cases/ZACC/2021/7.html>.
- Constitution of the Republic of South Africa* [South Africa], 10 December 1996, available at: <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1#:~:text=The%20Constitution%20of%20the%20Republic%20of%20South%20Africa%2C%201996%2C%20was,the%20provisions%20of%20the%20Constitution> [accessed 20 July 2021].
- De Rebus. 1982. "Report of the South African Law Reform Commission on Matrimonial Property Law." *De Rebus*: 299.
- FW de Klerk Foundation. 2021. "ConCourt ruling a powerful step for black women in SA." *FW de Klerk Foundation*. May 10. <https://www.politicsweb.co.za/documents/concourt-ruling-a-powerful-step-for-black-women-in>.
- Gouws, Amanda & Azille Coetzee. 2019. "Women's movements and feminist activism." *Agenda*: 33:2, 1-8. <https://www.tandfonline.com/doi/full/10.1080/10130950.2019.1619263>.
- Hassim, Shireen. 2002. "A Conspiracy of Women." *Social Research*: 69 (3): 693-732.
- Harrisberg, Kim. 2020. "Elderly black women in South Africa win property rights in landmark ruling." *Reuters*. January 29. <https://www.reuters.com/article/us-safrica-land-women-trfn-idUSKBN1ZSIFV>.
- Healy-Clancy, Meghan. 2017. "Women and Apartheid." In *Oxford Research Encyclopedia of African History*, ed., Thomas Spear. Oxford University Press.
- Hessami, Z. and da Fonseca, M.L., 2020. Female political representation and substantive effects on policies: A literature review. *European Journal of Political Economy*, 63, p.101896. <https://www.econstor.eu/bitstream/10419/216437/1/dp13125.pdf>.
- Jaquette, J.S. and Wolchik, S.L. eds., 1998. *Women and Democracy: Latin America and Central and Eastern Europe*. JHU Press. <https://books.google.com/books?id=YqKHCJtvffUC&pg=PP9&ots=cP6S64gaAb&dq=jaquette%20and%20wolchik%201998&lr&pg=PA1#v=onepage&q=periods%20of%20crisis&f=false>.
- la Cock, J Andre. 1984. "Marriage by way of an antenuptial contract." *De Rebus*: 76-77.
- Mavundla, Simangele D, Ann Strode, and Dumisani C Dlamini. 2020. "Marital Power Finally Obliterated: The History of the Abolition of the Marital Power in Civil Marriages in Eswatini." *PER*: 23: 2-19.
- Mosomi, Jacqueline. 2019a. "An empirical analysis of trends in female labour force participation and the gender wage gap in South Africa." *Agenda*: 33 (4): 29-43.
- Mosomi, Jacqueline. 2019b. "Distributional changes in the gender wage gap in the post-apartheid South African labour market." No. 2019/17. WIDER Working Paper.
- Nolde, Judith. 1991. "South African Women Under Apartheid: Employment Rights, with Particular Focus on Domestic Service & Forms of Resistance to Promote Change." *Third World Legal Studies*: 10 (10): 203-23.
- South Africa Jewish Report. 2019. "The Bertha behind the Bill that changed women's lives." *South Africa Jewish Report*. August 8. <https://www.sajr.co.za/the-bertha-behind-the-bill-that-changed-women-s-lives/>.
- South African Law Commission. 1982. "Report pertaining to the matrimonial property law with special reference to the Matrimonial Affairs Act 1953, the status of the married women, and the law of succession in so far as it affects the spouses." February 8. *Republic of South Africa*.
- South Africa Law Reform Commission. 2019. "Single Marriage Statute." 31 July: 35. *Republic of South Africa*.
- TAP Network (2019). Pursuing Law Reforms, Strategic Litigation and Legal Empowerment. <https://sdgaccountability.org/wp-content/uploads/2019/05/Pursuing-Law-Reforms.pdf>.
- UN Women (United Nations Entity for Gender Equality and the Empowerment of Women). 2020. Facts and figures: Women's leadership and political participation. New York: UN Women. <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>.
- van Zyl, Lesbury. 1990. "Section 13 of the Matrimonial Property Act – an Historical Relic?" *CILSA*: XXXIII: 228-233.
- World Bank. 2018. *An Incomplete Transition Overcoming the Legacy of Exclusion in South Africa* (Republic of South Africa Systematic Country Diagnostic). Washington, DC: World Bank Group.