

Mr. Scott

For Executive Agenda.

MM

30/10/61.

REGIONAL SECRETARY,
S.A. INSTITUTE OF RACE RELATIONS,
P.O. BOX 803,
DURBAN.

26 October 1961

Dear Miss Thorpe,

MARRIAGE LAWS

We wrote to Dr. Simons, who suggests that the Institute should press for a high level Commission of Enquiry, with African members, to go thoroughly into the whole question of African marriage laws, rights of succession, etc. As there is no urgency about this the G.P.C. decided to make such a recommendation to the Executive, since a resolution from this body would carry more weight than one from the G.P.C.

Incidentally, I have just come from giving evidence to the Commission on Motor Vehicle Insurance, where I pressed for the rights of African women married by customary law to obtain compensation if their husbands are killed in a motor accident through the negligence of a third person.

Yours sincerely,

MURIEL HORRELL (MISS)
RESEARCH OFFICER

Dictated by Miss Horrell and signed for her in her absence.

* See file B/3/1 - Evidence given to
Commissions of Enquiry
(General)
d.d. 26/10/61

COPY

October 3, 1961.

Miss Muriel Horrell,
Research Officer,
S.A. Institute of Race Relations,
Johannesburg.

Dear Miss Horrell,

I have to acknowledge receipt of your letters of Sept. 6, 21 and 27. Thank you for all the trouble you have taken to get information for me. Even the negative response of the Department in the matter of women's rights in land will be useful. I am glad to learn what happened to Mr. Cope's proposed Bill, though I think that he made a mistake in dropping it. The right of widows to damages raises wider issues than that presented by motor car insurance, and the committee appointed to deal with the latter can hardly be expected to cover the whole field. Also, it seems to me likely that there will be much delay before the committee's findings are implemented.

I am interested to learn that the Department is again undertaking a survey of marriage laws. It will not have escaped your notice that the Marriage Act of 1961 leaves the laws concerning African and Asian marriages in a state of suspension - operative but conditional on the power of the GG (President!) to repeal them. I believe that this provision was inserted during the select committee discussions, which indicates that there is some uncertainty as to what should be done.

There ought certainly to be an inquiry, but the kind of one now in process is not likely in my opinion to yield more conclusive results than its predecessor which was conducted along similar lines in 1943. Native Commissioners are in touch only with a section of the people, and are not in a good position to find out what even that section really thinks. The main difficulty here is that Africans lack a forum in which they can express - and shape - their opinions. The next best thing, I agree with your G.P., would be to set up a Commission. The Twentyman-Jones Commission on Women's Legal Disabilities constitutes a good precedent for action in a matter which is more serious and urgent than the one dealt with by that body. I think the Institute should make strong representations to have the whole issue reviewed by a Commission on which Africans should sit. It is their business, and they should decide.

I hope to send you within the next few days a draft of 3 or 4 chapters giving a sociological background to the legal section. You must be quite honest and let me know if you feel that the scope of the survey has been widened beyond the limits contemplated by your

See P.E. Report (H/RA/16/2) letter d.d. 6/12/61

Committee. You will bear in mind that a purely legal analysis is usually somewhat arid and inadequate for the layman.

I am now working on a brief outline of the history of marriage laws for Africans - i.e. marriage by civil or religious rites. I am also collecting material on the occupations of African women with a view to writing a section on their prospects of employment outside the domestic group. If you have information on the latter aspect I shall be grateful to receive it.

My best regards,
Sincerely yours,

JACK SIMONS.

My C.P.C. file

Didn't reach finality at the last meeting about who was to give evidence, so I thought I had better go rather than letting the matter go by default.

Evidence given to Commission of Enquiry into

Compulsory Motor Vehicle Insurance

26 October 1961

Start of my evidence

I said that it seemed from past cases (Fonda vs. Santam Insurance Co., 1960 A.D., Zulu vs. Minister of the Interior, 1956, Natal, etc.) that because it is actually or potentially polygamous, a customary union is not a legal marriage under the common law, although it is under Native law. Thus, under the common law, the male partner in a customary union has no legal duty to support his wife. Should a woman's husband be killed as a result of negligence on the part of a third person, a claim by her ^{for} damages cannot succeed if the case is heard under the common law.

Common law must be applied if the third person is a non-African, and can be applied in a Native Commissioner's discretion even if the case is heard in his court and the third party is an African. It appeared, on the face of it, that a claim for compensation by an African widow might succeed were the case heard under Native law and custom.

The children of customary unions can sue for compensation.

The position is most unfair on women married by customary law, whose needs are not governed by the type of marriage they contracted. An African widow is likely to be in even more need of compensation than is a White one because, due to their low wages, few African families are able to save.

I handed copies of Mr. Cope's draft Bill to the Commissioners and asked that they should recommend its introduction as a matter of urgency.

I was questioned on three main points:

Among questions asked me

(1) What is a customary union?

Commissioners wished to know how insurance companies would distinguish between the wives of customary and of casual unions.

I replied that customary unions are registered in Natal. In other provinces (according to Dr. Simons) each case that comes before the courts is decided on its merits and in the light in which the parties and their parents regard it. I said that the Institute intended pressing for a high-level Commission of Enquiry to investigate African marriages, and

asked/...

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Jan 1962.

asked the present Commission to support this suggestion. In the meanwhile, although difficulties might arise, they were unlikely to be insuperable: the courts were accustomed to dealing with such cases.

2. In the case of polygynous marriages, which wife should receive compensation?

I said that there were not many polygynous unions these days. It might be advisable for the Commission to consult an expert in Native Administration, but speaking as a layman I could see no difficulty in arranging for the wives to share the assessed compensation.

3. The question of African insurance companies

The Chairman said the African Chamber of Commerce had recommended that Africans should set up their own insurance companies, as they did not always receive sympathetic treatment from existing ones. He asked my views.

I replied that Africans should certainly have the right to do so; but I should strongly oppose any suggestion that other Africans should be compelled to insure with African companies only. Existing companies might consider setting up agencies in African townships.

Conclusion

The Commission gave me a most sympathetic hearing, and its Chairman (Mr. du Plessis, ex-General Manager of Railways) promised that members would give full consideration to the whole matter.

The Chairman himself said that it would not be a grave burden on insurance companies if customary wives were entitled to compensation, since the amounts concerned would be relatively small. What his Commission would have to consider was whether practical difficulties could be overcome.

MURIEL HORRELL

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