4.1.2

30th September, 1953.

Dr. the Hon. E.H. Brookes,
88, Pietermaritz Street,
PIETERMARITZBURG.

Dear Edgar,

Thank you very much for your letter of the 15th September and for the file of papers on the Status of African Women. I am having copies made and shall return your originals to you. I am very grateful indeed for this, which I am sure will be very helpful.

Yours sincerely,

Quintin Whyte
Director

QW/NB

FROM
DR. EDGAR H. BROOKES
TELEPHONE 2-2714

18 SEP 1953

88 Pietermaritz Street,
PIETERMARITZBURG

15th September, 1953.

Quintin Whyte, Esq.,
C/o S.A. Institute of Race Relations,
P.O. Box 97,
Johannesburg.

My dear Quintin,

I notice from the Institute papers which have come to me that you are having someone working specially on the question of the African woman. I am enclosing with this a file of papers including a memorandum which I prepared while I was still in Parliament on the legal position of the African woman, and correspondence exchanged between myself and the Secretary for Native Affairs on the same subject just before my illness. I thought that these might be of some value to your research worker. If it were possible to have copies made at your leisure and to send them to me or otherwise to return me the originals, I should be grateful, for I have no other copies.

I went to some trouble to check the correctness of the statements made in my memorandum which I think may be taken as correct, except for any changes made by proclamation or by regulations since.

With kind regards,

Yours sincerely,

Edgar Brookes

17th March, 1952.

The Secretary for Native Affairs,
CAPE TOWN.

Dear Dr. Wiselen,

I am grateful for your letter No. 441/400 of the 12th March regarding the status of Native women. I need hardly say, however, that I am somewhat disappointed with the rather meagre results of my representations. On some of the points I shall just have to accept the position but there are a few on which I would like to approach you again.

First, with reference to your remarks about the consolidated Marriage Law which the Department of the Interior is preparing. Will this Law deal with all such cases as those which I mentioned in my original memorandum and will the Department of the Interior consult you before finalising the Bill? If so, I shall be very grateful if you will make the opportunity for me to have a chat with you about the draft before you return it to the Department of Interior.

There are two further points in your letter under reply which I should like to mention. First of all, is your decision about exemption irrevocable? Exemption from the Code of Native Law as distinct from exemption of the Pass Laws is not, as I understand, an award for good conduct, but an attempt to classify the holder of the Letter of Exemption in the best possible legal category. In the provinces other than Natal the Courts themselves have the right to consider the system of Law which it would be most equitable to apply in a particular case. In my judgment they should apply Common Law and not Native Law in the case of people of the grade of civilisation and method of living which the wife and children of an exempted Native in Natal would normally have. But, because xx the system in Natal is rigid, the only way to obtain the same result there is to give these people exemption otherwise the christain and educated Native woman and minor is in a worse position in Natal than in any other province. I earnestly beg for re-consideration of this.

In your letter you demur to the fixing of any set period, e.g. 2 months, after which if the guardian has not been traced or presented himself, the Court proceeds in his absence. You say that to fix a period for the guardian to present himself or to be traced may lead to injustices. There is no doubt however, that the present rule leads to injustices and to a great deal of hardship. Would you not consider fixing a period, even if it were a longer period than 2 months or if you do not feel able to do this by amending the Code, could you not issue an administrative instruction that normally two months - or whatever longer period may seem fair to you - would be the time limit?

There are three points in my memorandum submitted to you which do not seem to be covered by the letter under reply. They are contained in paragraphs 19, (b), (c) and (d), reading as follows :-

"19. (b) That the procedure for obtaining the Chief Native Commissioner's consent where required is simplified by:

(1) eliminating any avoidable delay;
(2) printing the form of Petition;
(3) making the provisions of the law widely known to the people.

(c) Natal law 46 of 1887 should be amended so that the contracting of a customary union after marriage in Natal should as in the other Provinces simply be regarded as an extra-legal relationship, not recognised by the Courts, not as the crime of bigamy.

(d)/....

(d) Natal law 46 of 1887 preventing the children of Christian marriages from contracting customary unions should also be repealed."

I shall be grateful for your sympathetic consideration of this whole matter.

Yours sincerely,

EDGAR H. BROOKES.

EHB/EC.

Copy of letter from Department of Native Affairs, Pretoria.

No. 441/400.

12.3.1952.

Dear Senator Brookes,

Status of Native Women.

With further reference to your letter of the 5th December, 1950, and the Memorandum in regard to the abovementioned subject, I have the honour to inform you that the matter has received careful consideration.

In so far as the question of the marriage laws in Natal is concerned, the Department of the Interior is preparing a consolidated marriage law which will apply to all races in the Union. Your representations on this subject therefore fall away.

My Department has always adopted the view that a man must prove his worth before he is exempted and it cannot agree to the wives and children of exempted Natives automatically taking the status of the head of the family. Special relaxation has always been made in so far as the wives of exempted Natives are concerned and their children may apply when they (the children) attain the age of 16 years. Apart from relaxation of the instructions in so far as wives are concerned, my Department is not in favour of any other alteration of the law as it stands.

As regards emancipation (Natal Code of Native Law, Section 28) my Department is of the opinion that those who require to be emancipated and who have reached a sufficient standard of intelligence to be emancipated soon become aware of the provisions of the law. Although some Native Commissioners agree that this provision should be made widely known others express the fear that widespread publication would lead to many frivolous and unsuccessful applications.

The suggestion that the Court at the centre where the woman is actually residing should have jurisdiction is generally not favoured and my Department is of the opinion that it would detract from the well established rule of law that action should be instituted in the Court having jurisdiction over the defendant. For it to be otherwise would in many cases impose hardships on guardians who would have to travel many miles to the woman's self-selected place of residence. There would, however, be no objection to the guardian consenting to the jurisdiction of the woman's court. There is no need for an amendment of the Code in regard to this matter as the position is governed by Section 10(3)(c) of the Native Administration Act No. 38 of 1927, as amended.

In regard to the suggestion that a period, e.g. two months, should be fixed after which, if the guardian has not been traced or presented himself, the Court proceeds in his absence, it is felt that each case should be judged on its merits. To fix a period for the guardian to present himself or to be traced may lead to injustices. The alternative suggestion finds little support amongst the officers of my Department, the view of the majority being that Natives have not yet reached the stage for the general emancipation of widows. There has been no indication of any general desire for such a change and it is conceivable that in some cases emancipation would not be in the interests of the widows themselves. In any case marriage by Christian Rites is not an infallible criterion to a greater stage of advancement.

My Department considers that although Natives have readily taken to the form of marriage by Christian Rites the great majority of those being under tribal conditions still prefer the system of succession which Native custom has evolved. The regulations as they stand at present afford the Native a choice. By making a declaration in favour of community of property or by executing an ante-nuptial contract he can secure for himself

the/....

the common law provision as to the devolution of estate property. By omitting such steps he can be assured of having these matters dealt with in terms of Native custom (save for certain exceptional circumstances) whilst at the same time he can have his marriage celebrated by Christian rites.

The proposal that, in the case of a Christian or civil marriage, the husband may by will make provision for his widow to assume guardianship of his children after his death (on the analogy of Act 12 of 1933, Southern Rhodesia) would not be popular today: but in any case the legal position since 1929 would appear to be that there is nothing to prevent any Native from validly appointing his wife by means of a Will as the guardian of his children.

Yours sincerely,

Sgd. W.W.M.Eiselen.

Senator Dr. the Hon. E.H.Brookes,
The Senate,
CAPE TOWN.

MEMORANDUM ON THE LEGAL STATUS OF

AFRICAN (NATIVE) WOMEN.

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1. The general position of women under tribal law is that of perpetual minors. A woman is always under the guardianship of some male. Guardianship passes from her father (or, if he is dead, her guardian - his nearest male relative, usually her elder brother) to her husband on marriage. Marriage is an affair between the two family-heads concerned. Universally a payment, usually in cattle, passes between the two families. This payment, generally described by the Zulu term lobolo, inaccurately translated "bride-price", has been variously analysed and defined: Perhaps as good an explanation as any is that it is the compensation to the family of the woman for the loss of the children whom she will bear to strengthen her husband's family. On widowhood, the woman falls under the guardianship of her own son if he is an adult, or her husband's brother or other male relative. If she re-marries this guardian receives the lobolo for her, and the children remain under his guardianship.

2. The tribal law has been modified by the Legislature. One of the earliest modifications was the requiring in all cases of the consent of a woman to her marriage. Practice has also changed as a result of culture contacts with Europeans, missionary work, economic forces, etc., in other aspects of marriage. In the Province of Natal, including Zululand, all these matters are regulated by the Natal Code of Native law. In other parts of the Union they are not codified and the Native Appeal Courts are expected in their judgments to take cognisance of changes in the customary life of the people. Both systems have their drawbacks. In Natal there is a certain rigidity which can only be overcome by amending the Code. In the other Provinces there is uncertainty and the law is not always clearly known by the people. In both systems, but especially in the Natal system, there is the danger that the law will lag behind the rapidly changing facts, and the woman be denied a freedom which she may well desire to have. Outside Natal an unmarried woman or a widow if over twenty-one years of age is treated as a major and can inherit in her own right. In Natal she remains a perpetual minor unless "exempted" for all purposes or emancipated for certain purposes (See paragraph 9).

At this stage opportunity should be taken to acknowledge the sympathetic attitude of many officers of the Native Affairs Department in these matters. This memorandum is not being written as a criticism of the Department but out of a feeling that the time has arrived to bring the law up-to-date with the facts and to ensure that protection is given, not only by the sympathetic majority, but by the minority who may be unsympathetic but more likely rushed or not completely acquainted with the conditions actually prevailing in the areas to which they have been transferred.

3. For many years a distinction has been drawn between marriage according to Christian (or civil) rites and marriages under Bantu law and custom. The Native Administration Act, 1927, confines the term "marriage" to the former and uses the term "customary union" for the latter. This terminology is not entirely satisfactory, but it is the legally accepted terminology and we shall use it in this Memorandum.

4. A marriage by Christian (or civil) rites takes place substantially under the same rules as apply to Europeans. A lower charge is made for civil marriage. As to the preliminaries of Christian (or civil) marriage, except for the general provision referred to in paragraph 5, there are no special rules in the Cape or in the Orange Free State. In the Transvaal, the procedure is that the parties must first appear before the Native Commissioner (as if they were going to contract a civil marriage) and satisfy him that everything - including the bridegroom's pass - is in order.

He/...

He may then marry them forthwith, or issue an Enabling Certificate, without which an ecclesiastical marriage officer may not marry them. The couple may also choose to be married by the Native Commissioner and then have the union "blessed" in Church.

In Natal, civil marriage is permissible only when both parties to the marriage are exempted from Native Law (for the meaning of this phrase see paragraph 8). Where both or either of the parties are unexempted they must appear before the Native Commissioner, pay a fee of 10/- and give full particulars of their names, ages, tribes, etc. The Native Commissioner must explain to them the nature of a Christian marriage and the legal consequences which flow from it. Finally the consent of the father or guardian of an unexempted Native woman is required. Where such cannot be obtained, e.g. on account of death, insanity or absence, or is unaccountably withheld, the parties may petition the Chief Native Commissioner who may authorise the issue of a licence. In the ordinary way the licence is issued by the Native Commissioner. Without such a licence the couple may not be legally married in Church.

The snag in this case is the requirement that the guardian must give his consent. It seems very reasonable, but it does not work out reasonably in practice. The guardian refuses to travel a long distance to the Native Commissioner's Court, or delays indefinitely, keeping the young couple waiting. Often an illegitimate child is born owing to the unreasonable delay, where this would not have happened had the law been different. There is a tendency on the part of some Native Commissioners to try to find a guardian at all costs even if there is no close or obvious guardian. The petition has in the past involved using the services of a legal man, at a customary fee of £5. I am informed that this is no longer necessary as any Native Commissioner's office will assist such a case without fee but it would be of some help to have a form of Petition printed and to advise the Natives of this through the quarterly meetings and otherwise of the facts as here stated.

It is suggested that in all cases the guardian should be allowed to report to the Native Commissioner's office nearest to him (that officer transmitting the certificate to the Native Commissioner before whom the bride and bridegroom appear) that the term "unreasonable delay" be understood to be a delay of more than two months after citation. It would be better for the law to be amended to fix this period of two months and to allow the Native Commissioner himself to authorise the marriage thereafter, thus eliminating the Petition to the Chief Native Commissioner. The delay in all this procedure is even more of a burden than the cost.

5. Under Section 22 of the Native Administration Act, 1927 a Native who has contracted a customary union may turn that customary union into a marriage by complying with the conditions summarised in Paragraph 4 above, but if he wants to marry (e.g. by Christian or civil rites) another woman he must, under heavy penalty, first register with the Native Commissioner full particulars of every existing customary union, the children born of each customary spouse, and the nature and amount of the moveable property allocated to each "house" (i.e. the children of each customary union). Their rights are protected. They inherit as if the widow - the woman married by Christian or civil rites - were simply an additional customary spouse, and she inherits as if she were such. (For full particulars, see Section 22, Act 38 of 1927).

6. Legal effects of marriage: Marriage (i.e. Christian or civil marriage) does not involve community of property, unless both parties ask for it within one month before the marriage. A Native may of course enter into an ante-nuptial contract. If he does not, the effects of

his/....

his marriage are sui generis. There is nothing in European marriages corresponding to it. The question of succession arises and is referred to in paragraph 12.

7. Legal effects of marriage (contd.): Marriage by Christian rites in Natal produces the effect that any customary union contracted during the subsistence of the marriage is bigamy and punishable as such. Elsewhere the customary union would not be punishable but would be unrecognised, the law treating it simply as an illicit relationship. The difficulty of the Natal law lies in the administration. Sometimes there are prosecutions for bigamy, sometimes not. Probably the law of the other Provinces (simply non-recognition) is better.

Under the Natal Law children of Christian marriages must themselves when they marry, marry by Christian rites, and may not contract a customary union. This provision, at any rate, is regarded as objectionable by ecclesiastical as well as secular critics, and should be repealed.

8. Legal effects of marriage (contd.) If an "exempted" man marries an "unexempted" woman she does not automatically take his status but must apply for exemption. This application is usually granted. If on the other hand an "exempted" woman marries an "unexempted" man she loses her exemption and is reduced to her husband's status. Either the woman should retain her status throughout or take her husband's status throughout. The latter seems preferable, with exemption being given automatically to the children of the marriage when the husband is exempted. (At present exemption is usually granted to children over the age of 16 years).

"Exemption" is exemption from the operation of the Code of Native Law of Natal and also from the pass laws and from the obligation of obtaining a licence before marrying. The above rule applies to Natal only. Exemption in the other Provinces is simply exemption from the pass laws.

"Exemption" in Natal is not a right. It is in the absolute discretion of the Governor-General. Usually it is not refused to a woman over 25 years of age who has passed Junior Certificate. To a woman exemption is very important as it enables her to inherit property in her own name and to be free from guardianship (see also paragraph 9).

9. Widowhood: We shall now proceed to consider the legal position of widows. (Remember that we are still speaking of marriage, i.e. Christian or civil marriage: customary unions will be dealt with later). Outside Natal a widow, if over twenty-one years of age, is a major. In Natal the widow passes, immediately upon her husband's death, under the guardianship of the nearest male relative of full age, e.g. her own major son, her husband's eldest surviving brother. From this guardianship a woman can be freed in two ways (a) by exemption; (b) by emancipation.

The question of succession is complicated by these rules about guardianship. Much has been done in recent years, as will be indicated below, to improve the position for women as regards succession, but these improvements are vitiated if the woman remains under guardianship. In the old tribal life, public opinion and the watchful eye of the Chief prevented to some extent the abuse of powers by the guardian. To-day these sanctions have gone. Theguardian may be an almost unknown brother-in-law in Johannesburg who turns up, collects the money and disappears with it, to spend it on himself. In practice, except for exemption or emancipation, there is no effective legal protection against this. There is of course the protection of a civil action but in view of the fact that the guardian may already have dissipated the assets something more is desirable.

10. Widowhood: Exemption and Emancipation: (a) Exemption is in practice only a help to women of a considerable degree of education. While the law leaves the Government complete discretion about exemption the administrative practice is to demand the Junior Certificate and attainment

of the age of twenty-five years as conditions. A woman must, as previously stated, be exempted personally but she is as a rule granted exemption when her husband is exempted. It is desirable that this process should be automatic (see paragraph 8). If she marries an unexempted man she takes her husband's status. The majority of exemptions are granted under Act 38 of 1927 but there are still many people holding certificates of exemption under law 28 of 1865 (Natal) whose rights are defined by that law. Exemption is a complete answer to the problem of guardianship but the number of people helped by it is very small and likely to remain so.
(b) Emancipation. The provisions about emancipation are very little known, and it seems advisable to quote them in extenso (Natal Code of Native Law, Section 28):-

> "28(1) Any unmarried female, widow or divorced woman, who is the owner of immovable property or who by virtue of good character, education, thrifty habits or other good and sufficient reason, is deemed fit to be emancipated, may be freed from the control of her father or guardian by order of the Native Commissioner's Court and vested with the full powers of a kraal head or with full rights of ownership in respect of any property she may have acquired and with full power to contract or to sue or be sued in her own name. Any such widow or divorced woman may in the discretion of the Court be given control over the property of her minor children.
>
> (2) Application by a woman for emancipation as in sub-section (1) provided shall be upon affidavit and motion to the Court of Native Commissioner having jurisdiction and upon notice to to the applicant's father or guardian and the Court shall grant its order thereon".

This remedy is quite adequate for its purposes if granted. At present it is not as effective as it should be, owing to the facts (1) that women often do not know of its existence; (2) that the practice of Native Commissioners varies, some being readier to grant emancipation than others; (3) that delays are possible, owing to the fact that the Court having jurisdiction may be situated at the time at a place other than the place of residence at the time of the woman and/or the guardian, and that the guardian may be absent (e.g. working on the Mines) and thus delay may ensue.

It is suggested that (a) the existence of this remedy should be made known as widely as possible by missionary societies and other bodies having to do with Natives; (b) the Court at the centre where the woman is living should be enabled to act on behalf of the Court having jurisdiction (c) a period e.g. two months, should be fixed after which if the guardian has not been traced or has not presented himself, the Court proceeds in his absence.

It is possible to go further. If the law in Natal laid down that widows married by Christian or Civil rites should be automatically emancipated it would be laying down in fact no more than actually exists as law in the Cape Province. In the Transvaal and Orange Free State, under Government Notice 939 of 1947 where a woman is married without community of Property the estate is administered under Native Law and custom and therefore the woman is in the same position as in Natal without the remedy of emancipation. A partial remedy affecting the inheritance but not the status of the woman is found by stating a special case for the Minister's decision under paragraph (d) (iii) of the Government Notice referred to. A better and more complete remedy would be the amending of the law outside the Cape Province to provide that all widows of Christian or Civil marriages in Natal, the Transvaal or the Orange Free State shall be automatically emancipated in Natal, or granted a legal status equivalent

to/...

to emancipation in the Transvaal and Orange Free State after a lapse of a period of two months unless within that period the guardian lodges an objection in which case the Court shall proceed to judge the issue on its merits.

11. Succession: Testate. Subject to the remarks made under paragraph 9, a Native may devise by will any of his property except (i) movable property allotted by him or accruing under Native law and custom to any woman with whom he lived in a customary union or to any "house". (ii) land in a location or reserve held by a Native in individual tenure upon quit-rent conditions (e.g. the Glen Grey system). Apart from these two points a Native may devise his property freely by will, under the same conditions as a European. His freedom to do this is not limited by whether he is "exempted" or married by Christian or civil rites. (house is defined in the Natal Native Code as "the family and property, rights and status, which commence with, attach to, and arise out of the customary union of any Native woman or the marriage of any Native woman").

12. Succession: Intestate: This is covered by Government Notice No. 939 of 9th May 1947 which might well be read in full (See Rogers Native Administration of the Union of South Africa, 2nd edition, pages 228 to 229). The most important section is section 2 which reads as follows:

> "2. If a Native dies leaving no valid will, so much of his property (including immovable property) as does not fall within the purview of sub-section (1) or sub-section (2) of section twenty-three of the Act shall be distributed in the manner following:-
>
> (a) If the deceased was, during his lifetime, ordinarily resident in any territory outside the Union other than Portuguese East Africa, all movable assets in his estate after payment of such claims as may be found to be due shall be forwarded to the officer administering the district or area in which the deceased was ordinarily resident for disposal by him.
>
> (b) If the deceased was at the time of his death the holder of letters of exemption issued under the provisions of Natal Law No. 28 of 1865, or of a letter of exemption issued under the provisions of section thirty-one of the Act, exempting him from the operation of the Natal Code of Native Law contained in the Schedule to Proclamation No. 168 of 1932, or any amendment thereof, the property shall devolve as if he had been a European.
>
> (c) If the deceased, at the time of his death was -
>
> (i) a partner in a marriage in community of property or under ante-nuptial contract: or
>
> (ii) a widower, a widow or divorcee, as the case may be, of a marriage in community of property or under ante-nuptial contract and was not survived by a partner to a customary union entered into subsequent to the dissolution of such marriage, the property shall devolve as if he had been a European.
>
> (d) When any deceased Native is survived by any partner
>
> (i) with whom he had contracted a marriage which, in terms of sub-section (6) of section twenty-two of the Act, had not produced the legal consequences of a marriage in community of property: or

(ii) withwhom he had entered into a customary union: or

(iii) who was at the time of his death living with him as his putative spouse, or by any issue of himself and any such partner, and the circumstances are such as in the opinion of the Minister to render the application of Native law and custom to the devolution of the whole, or some part, of his property inequitable or inappropriate, the Minister may direct that the said property or the said part thereof (as the case may be) shall devolve as if the said Native and the said partner had been lawfully married out of community of property (whether or not such was in fact the case) and as if the said Native had been a European.

(e) If the deceased does not fall under any of the classes described in paragraphs (a), (b), (c) and (d), the property shall be distributed according to Native law and custom."

It would appear that in the interests of the woman paragraph (c) (i) should read: "A partner in a marriage" deleting the words "in community of property or in ante-nuptial contract" ("marriage" is by definition a marriage by Christian or Civil rites). If this is not done the estate may be disposed of by Native law and custom, excluding the widow from succession. The proposed change would have to be accompanied by a provision ensuring the protection of the rights of the children in the case of re-marriage.

13. Divorce: Divorce takes place under the same conditions as in the case of Europeans, but as an alternative to expensive Supreme Court proceedings special Native divorce courts with a cheaper procedure are provided.

14. Guardianship of Children in the case of Widowhood or Divorce: A widow is not automatically the guardian of her own children, except in cases where both she and her late husband were exempted.

Emancipation may give her (a) personal custody over her children, (b) control over the property rights of the children. Sometimes (b) is given without (a).

The same applies to an order of divorce.

Otherwise the guardianship rests in the nearest male heir. Denys Shropshire in "The Bantu Woman under the Natal Code of Native Law" suggests that the Native Wills Act of Southern Rhodesia (No. 18 of 1933 should be applied, by which, in the case of a Christian marriage, the husband may "make provision by will for the guardianship of his children".

15. Customary Unions: Preliminaries: We now pass from marriages, strictly so called, to customary unions. It may be agreed that hard cases will not so often arise here. That is true, but they do arise because while cases of customary unions where both parties are Christians may not be frequent,

(a) one party may be Christian:
(b) both parties may subsequently become Christians:
(c) the conceptions of individual freedom are beginning to influence even non-Christian Bantu Society.

The prerequisites for customary union form a most fascinating study of social anthropology and law, but need not detain us here No attempt is made in this memorandum to deal exhaustively with the whole status of women, but only with the transitional cases which lack legal remedy at present.

Under European influence, the woman's personal consent is required to a customary union. This is occasionally evaded, e.g. consent is extorted by a preliminary beating and by threats. Such a woman would be protected if she does appeal to the magistrate, but it takes courage to do so.

16. Customary Unions: Dissolution: Outside Natal, customary unions may be dissolved by the husband's action in driving away or abandoning his wife. In Natal there must be a dissolution by the Court (Native Commissioner's Court). The grounds for dissolution are :-

(a) Adultery,
(b) Continued refusal to render conjugal rights:
(c) Wilful desertion;
(d) Continued gross misconduct.
(e) Imprisonment of the other partner for five years or more.
(f) Conditions such that continued living together is insupportable or dangerous.

In addition the female partner may sue for divorce on the grounds of :

(a) Gross cruelty or illtreatment;
(b) Accusations of witchcraft.

In the case of such dissolution a woman may be given personal custody of her children either while they are very small or for a longer period, but never controls their property rights.

17. Customary Unions: Widowhood: It is almost impossible to imagine in practice the entering into customary union of two exempted Natives. The remedy of exemption would thus not apply. Emancipation is however possible, but in the nature of the case the chance of a woman who had been a partner in a customary union getting emancipation would be less on the facts than that of a widow of a Christian marriage.

Unless emancipation is obtained the surviving partner remains subject to the disabilities enumerated in paragraph 1.

18. Customary Union: Succession: Testate succession in the case of a customary union is governed by the same law as in the case of marriage. (See paragraph 2). Intestate succession is governed by Native Law.

19. Summary of Reforms suggested:

(a) In all cases where the guardian's consent is required to a marriage he should be allowed to report to the Native Commissioner's office nearest to him, and that the period of "unreasonable delay" be defined administratively as two months, or alternatively that the law (Transvaal and Natal) be amended to state two months as the maximum period of delay.

(b) That the procedure for obtaining the Chief Native Commissioner's consent where required is simplified by :

(1) eliminating any aviodable delay;
(2) printing the form of Petition;
(3) making the provisions of the law widely known to the people.

(c) Natal law 46 of 1887 should be amended so that the contracting of a customary union after marriage in Natal should as in the other Provinces simply be regarded as an extra-legal relationship not recognised by the Courts, not as the crime of bigamy.

(d) Natal Law 46 of 1887 preventing the children of Christian marriages from contracting customary unions should also be repealed.

(e) An unexempted woman should automatically take her husband's status on marriage and all minor children whether born before or after the exemption should also be automatically exempted.

(f) As regards emancipation (Natal Code, Section 28 :-

(i) the law regarding emancipation should be made known more widely.

(ii) the Court at the centre where the woman is actually residing should be a Court of jurisdiction,

(iii) a period, e.g. two months should be fixed after which if the guardian has not been traced or presented himself, the Court proceeds in his absence.

Alternatively to (i), (ii) and (iii) above, the Code of Native Law should be so amended that widows of a marriage by Christian or civil rites should be automatically emancipated in Natal or granted a legal status equivalent to emancipation in Transvaal and the Orange free state after the lapse of a period of two months unless within that period the guardian lodges an objection, in which case the Court shall proceed to judge the question on its merits.

(g) Government Notice 939 of 9/5/47 should be amended by the deletion in section 2(e)(i) of all words after "marriage" (i e. succession shall be by European law in the case of a marriage by Christian or civil rites, even if that marriage is not accompanied by a Declaration of community of property or an ante-nuptial contract.

(h) In the case of a Christian or civil marriage, the husband may by will make provision for his widow to assume guardianship of his children after his death. (on the analogy of Act 12 of 1933, Southern Rhodesia).

20. Uniform Marriage Law: Complicated provisions of the Transvaal and Natal laws requiring Enabling Certificates should be simplified and a single law, as simple as possible and containing no new restrictions, should be introduced. It would be desirable to have a uniform law for the whole Union but not if this means any restrictions not at present existing in the Cape and Orange Free State as this would cause legitimate dissatisfaction in those provinces.

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31. Procedure: Every effort is made to check the statements of fact and law contained in this memorandum and they are believed to be accurate. There is however the necessity of considering the constructive recommendations put forward. If the Minister is not prepared to accept these without further investigation it is suggested that a small departmental committee might be asked to consider them and report to the Minister. In that case it will be deeply appreciated if the committee would consult the framer of this memorandum before finalising its recommendations.

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the Hon.
Dr. E. H. Brookes
12 Chamberlain Road.
Pietermaritzburg

our Ref C/A/2/2

Dear Dr. Brookes

As promised I am enclosing a copy of your memorandum on the legal status of African women and have posted three copies to Miss Nakanya.

Yours sincerely

Admin asst

6 copies please of
this Memorandum

Miss. S. BUSISIWE MAKHANYA,

Community Centre

P. O. Umbumbulu,

Natal

Our Ref C/A/2/2

Dear Miss Makhanya,

As requested by Dr. Brookes we are sending you three copies of his memorandum on the legal status of african women.

Yours sincerely

Administrator

11th February, 1954.

Professor M. Wilson,
Department of Bantu Studies,
University of Cape Town,
RONDEBOSCH, Cape.

Dear Professor Wilson,

At the request of Mrs. Brandel, I enclose a copy of the "Survey of the Needs of African Women" for your information.

Yours faithfully,

P.van Kraayenburg,
Secretary to Mr.Quintin Whyte.

and to: Dr. A.W. Hoernlé
Dr. Ellen Hellmann,
Dr. T. Gutsche,
Mrs. Schuller
Mrs. Schonland.

Encl:

QW/PvK.

11th February, 1954.

Mrs. M. Brandel,
The Cottage,
68 Killarney Rd.,
HYDE PARK, Johannesburg.

Dear Mrs. Brandel,

I enclose, as you requested, copies of the "Survey of the Needs of African Women". Enclosed too are the copies of the letters sent to the various persons to whom you asked me to send copies of the Survey. Mr. Whyte suggested that Professor Monica Wilson should receive a copy, hence only three remain.

Yours faithfully,

P. van Kraayenburg

19th February, 1954.

Mrs. M. Brandel,
The Cottage,
68 Killarney Rd.,
HYDE PARK, Johannesburg.

Dear Mrs. Brandel,

I enclose the copies of the letters I have written giving the correction and addition to the "Survey of the Needs of African Women", and trust that this is now in order.

I am sorry not to have been able to get this out before today, but there was rather a lot here that had to be attended to.

Yours faithfully,

Secretary to
Quintin Whyte,
Director.

19th February, 1954.

Dr. A.W. Hoernlé,
38 St. Patrick's Rd.,
Houghton,
JOHANNESBURG.

Dear Dr. Hoernlé,

At the request of Mrs. M. Brandel I wish to give you a correction to the "Survey of the Needs of African Women" - item 'VIII - What This Investigation Can and Cannot Yield. 2'. The first sentence in this paragraph should be replaced with the following:-

> "It can never attain the accuracy and precision of a quantitive survey, nor the objectivity of a purely enumerative and descriptive record."

There is a final paragraph too, which was omitted in error, which reads:-

> "I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Yours faithfully,

Secretary to
Quintin Whyte,
Director.

19th February, 1954.

Mrs. B.F.J. Schonland,
c/o Dr. B.F.J. Schonland,
Bernard Price Institute,
University of Witwatersrand,
Milner Park, JOHANNESBURG.

Dear Mrs. Schonland,

At the request of Mrs. M. Brandel I wish to give you a correction to the "Survey of the Needs of African Women" - item 'VIII - What This Investigation Can and Cannot Yield. 2'. The first sentence in this paragraph should be replaced with the following:-

"It can never attain the accuracy and precision of a quantitive survey, nor the objectivity of a purely enumerative and descriptive record."

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"I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Yoursfaithfully,

Secretary to
Quintin Whyte,
Director.

19th February, 1954.

Mrs. E. Schuller,
c/o Mr. E. Schuller,
Messrs. Anglo-transvaal
Investments Company Ltd.,
Anglovaal House,
Fox Street, JOHANNESBURG.

Dear Mrs. Schuller,

At the request of Mrs. M. Brandel I wish to give you a correction to the "Survey of the Needs of African Women" - item 'VIII - What This Investigation Can and Cannot Yield. 2'. The first sentence in this paragraph should be replaced with the following:-

> "It can never attain the accuracy and precision of a quantitive survey, norethe objectivity of a purely enumerative and descriptive record."

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> "I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Yours faithfully,

Secretary to
Quintin Whyte,
Director.

and to: Dr. Thelma Gutsche,
113 Gleneagles,
Killarney,
JOHANNESBURG.

19th February, 1954.

Professor M. Wilson,
Department of Bantu Studies,
University of Cape Town,
RONDEBOSCH, Cape.

Dear Professor Wilson,

At the request of Mrs. M. Brandel I wish to give you a correction to the "Survey of the Needs of African Women" - item 'VIII - What This Investigation Can and Cannot Yield. 2'. The first sentence in this paragraph should be replaced with the following:-

> "It can never attain the accuracy and precision of a quantitive survey, nor the objectivity of a purely enumerative and descriptive record."

There is a final paragraph too, which was omitted in error, which reads:-

> "I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Yours faithfully,

Secretary to
Quintin Whyte,
Director.

BY HAND.

19th February, 1954.

Dr. Ellen Hellmann,
Johannesburg.

Dear Dr. Hellmann,

At the request of Mrs. M. Brandel I wish to give you a correction to the "Survey of the Needs of African Women" - item 'VIII - What This Investigation can and Cannot Yield. 2.' The first sentence in this paragraph should read as follows:- (replacing the existing sentence.)

> "It can never attain the accuracy and precision of a quantitive survey, nor the objectivity of a purely enumerative and descriptive record."

There is a final paragraph too, which was omitted in error and this final paragraph reads as follows:-

> "I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Yours faithfully,

P.van Kraayenburg,
Secretary to Mr. Quintin Whyte.

Dear,

You will by now have received a letter from Mrs Mia Brandel addressed to all members of the Committee which was set up to give advice on the Investigation of the Needs of African Women. The letter came as a complete surprise to me and I must confess upset me considerably,

Mrs Brandel had herself told me that she had someone competent who was correcting the english while she was away on holiday during December. She then herself laboriously retyped a great part of the report and then told me that she could not undertake, especially the retyping of the life histories of the women as she could not spare any further unremunerated time on the Report but must seek other paid employment.

I myself told her not to worry, that the Institute would have the whole Report retyped before despatching it to the members of the committee and the donor. Since that time I have been agitating to get the retyped report. The work had to be done in between other work in the Institute hence partly the delay, but further ~~Dr Hellman, who very kindly took over the responsibility of supervising the retyping, found on meticulous rereading that~~ the english needed considerable correction. Dr Hellman -generously I thought-undertook the laborious task of correcting nearly three quarters of the manuscript herself and obtained Mrs Friedman's voluntary help to do the remainder. I enclose a copy of Mr Quintan Whyte's Letter (A) to Mrs Brandel after the report was received in the offices of the Institute, together with part of her reply B (the substance of the rest is contained in the letter from her which you have received) from which it seems clear that she accepted Dr Hellman's suggestions for abbreviations and corrections. The "person selected" mentioned in the 3rd paragraph from the end

The main problem now is what should be done with the very valuable information which Mrs Brandel has collected.

She herself has made two sets of suggestions.

In her letter to Mr Whyte dated 27.3.55 she writes " publishable in terms of the explicitly stated aim of this investigations are in my opinion,mainly:

i the section on "Organisations" (re-edited,enlarged or abbreviated)

ii the summary of the needs (possibly more detailed)"

In a letter dated IO.8.55 she writes:-

" In my opinion the report is wholly unsuited for condensation and publication as a whole. It should therefore be broken down into separate articles,to be published in pamphlet form."

" As such articles,I could suggest,for instance,the following:-

i The problem of the urban African middle class woman
(to be ~~breakendown~~ subdivided into three main headings: as a wife as a mother,as a person.)

ii Women's Organisation
(patterns of leadership,group cohesion,organisational behaviour)

iii The Manyanos

iv The Stockfel

v African Women's Self-help
(the Funeral Societies. The Home Makers Clubs. The Community Service Groups)

vi The Problems of sex-education.

etc.etc

vii " But prior to this,I feel,that a Summary of the Needs of African Women should be published as soon as possible in one of the numbers of the Race Relations Journal, as the Findings of the"Enquiry into the Needs of African Women" which was announced by the Institute at the time. For this purpose the Summary as presented in the Report should be rewritten"

" I would further suggest~~ion~~,that whereas the Summary should be

rewritten by me, and published over my name with acknowledgement of the sponsorship of the investigation, the above mentioned articles should be published under joint authorship of someone, say Mrs I, Haggie and myself. I am convinced that Mrs I, Haggie is a very fortunate choice and that close collaboration and joint re-stating with someone like her would be very successful."

I think it will be accepted by everyone that the report as a whole cannot be published. It was not written for publication and contains many references to persons and organisations which could not be printed. Typed copies, however, should be kept by the Institute and could be made available to ~~eedr~~ qualified social ~~xxxx~~ research workers.

My own desire, in the first instance, was for the " Summary of the Needs of African Women" which Mrs Brandel herself suggests should be a first priority.

Another suggestion is that the Report be entirely rewritten by someone other than Mrs Brandel— probably Mrs Haggie— to exclude most of the theoretical matter of the opening sections, to concentrate on the descriptive data, to stress 'evaluation' of the women's needs rather than a comparative 'evaluation' of the organizations studied and to reduce the size to about one quarter of the present length. This, I understand, Mrs Brandel does not wish.

The separate articles would have to be judged on their merits. Mrs Brandel might offer them to the Institute's publication committee for consideration, or she might prefer to offer them elsewhere. The Institute, I consider, cannot undertake to pay for the writing of these articles nor can it undertake to pay for their publication out of its presently available funds.

4

I am sorry this letter is so long but I thought it important that the whole problem should be clearly stated. You now have the full report before you and I should be most grateful to you if you would give your advice on the suggestions mentioned in this letter and on any other proposals you wish to make.

James Duncan.

C.G.H.

To.

Dr Hellman ✓
Dr A.G.H. ✓
Dr Q Whyte ✓
Dr Schönland ✓
Dr Gatsche ✓
Dr Jessie Wilson

CORRECTION AND ADDITION.

First sentence in item VIII - What This Investigation Can and Cannot Yield. 2.

"It can never attain the accuracy and precision of a quantitive survey, nor the objectivity of a purely enumerative and descriptive record."

ADDITION - as final paragraph to the Survey.

"I wish to end this interim report by expressing my sincere thanks for the confidence which my committee has shown me as well as for the great liberty of action they have afforded me."

Sundaynight,

Dear Quint,

Herewith my "abomination". I have tried to satisfy all and everybody.

1) I am sorry that the necessity of rewriting the beginning of "Approach" convinced me of the necessity of already now calling some of the spades, some of the spades. (Only Dr. Gutsche I believe realised how much this report is only on method and avoids substance).

2) I donot know another word for "Subjct of investigation"

3) I thought I'd better explain a little more about this "verbatim recording".

4) I think I have eliminated all "females". In case you find some more, please change them. Except on p.10, where I talk of "female society", which cannot be changed into "women", since women are not hierarchically structured'.

5) I also thought I'd explain a bit more about this classification of organisations into "types". Since all classification is a product of the human brain, and never quite reproduces reality, the names given are of course arbitrary. I thought I'd better give the defining factor and some examples to make this clear. I hope that Dr. Helman now understands that the names given donot matter very much.

6) I donot know what to do with the subjectivity inherent in all qualitative inquiry, and which only Prof. Wilson seemed to realise during last meeting. But maybe Dr. Gutsche is right and it only awakens sleeping dogs of doubt in the donor.

I think in my final report I shall have to make a special study of varieties of conditional phrasings in the English language as well as hundreds of synonyms for "in my limited experience" or "as far as I have been able to observe", etc.

I know you're busy, but have you thanked Maida for letting me meet Mrs. Nkomo and Dora Mamabolo? The last is a little pet, so genuine and limpid. I wish there were more women like that.

My very great thanks indeed for everything.

yours, Mia

I am dropping this in RR on my way to Roodepoort. Hold your thumbs, I've got a few hard nuts to crack there, and I would like to get it over with in one day. I shall be in Mondaynight, and Tuesday during the day.

38 St. Patrick's Road,
Houghton,
JOHANNESBURG.

7th September, 1955.

Mr. Quintin Whyte,
P. O. Box 97,
JOHANNESBURG.

Dear Mr. Whyte,

You will by now have received a letter from Mrs. Mia Brandel addressed to all members of the Committee which was set up to give advice on the Investigation of the Needs of African Women.

The letter came as a complete surprise to me and I must confess upset me considerably.

Mrs. Brandel had herself told me that she had someone competent who was correcting the English while she was away on holiday during December. She then herself laboriously retyped a great part of the report and then told me that she could not undertake, especially the retyping of the life histories of the women as she could not spare any further unremunerated time on the Report but must seek other paid employment.

I myself told her not to worry, that the Institute would have the whole Report retyped before despatching it to the members of the committee and the donor. Since that time I have been agitating to get the retyped report. The work had to be done in between other work in the Institute hence partly the delay, but further the English needed considerable correction. Dr. Hellmann - generously I thought - undertook the laborious task of correcting nearly three quarters of the manuscript herself and obtained Mrs. Friedman's voluntary help to do the remainder. I enclose a copy of Mr. Quintin Whyte's letter to Mrs. Brandel after the report was received in the offices of the Institute, together with part of her reply - (the substance of the rest is contained in the ltter from her which you have received) from which it seems clear that she accepted Dr. Hellmann's suggestions for abbreviations and corrections. The "person selected" mentioned in the third paragraph from the end of Mrs. Brandel's letter to you is Mrs. I. Haggie of whom Mrs. Brandel approves.

The /...

The main problem now is what should be done with the very valuable information which Mrs. Brandel has collected.

She herself has made two sets of suggestions.

In her letter to Mr. Whyte dated 27.3.55 she writes "publishable in terms of the explicitly stated aim of this investigation are in my opinion, mainly:

" (i) the section on "Organisations" (re-edited, enlarged or abbreviated)

(ii) the summary of the needs (possibly more detailed)."

In a letter dated 10.8.55 she writes:

"In my opinion the report is wholly unsuited for condensation and publication as a whole. It should therefore be broken down into separate articles, to be published in pamphlet form."

"As such articles, I could suggest, for instance, the following:

(i) The problem of the urban African middle class woman (to be subdivided into three main headings: as a wife, as a mother, as a person).

(ii) Women's Organisation (patterns of leadership, group cohesion, organisational behaviour).

(iii) The Manyanos.

(iv) The Stockfel.

(v) African Women's Self-help (the Funeral Societies. The Home Makers Clubs. The Community Service Groups).

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etc. etc.

(vii) "But prior to this, I feel, that a Summary of the Needs of African women should be published as soon as possible in one of the numbers of the Race Relations Journal, as the Findings of the "Enquiry into the Needs of African Women" which was announced by the Institute at the time. For this purpose the Summary as presented in the Report should be rewritten."

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mentioned /...

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I am sorry this letter is so long but I thought it important that the whole problem should be clearly stated. You now have the full report before you and I should be most grateful to you if you would give your advice on the suggestions mentioned in this letter and on any other proposals you wish to make.

Yours sincerely,

A. Winifred Hoernlé,

Ref. C/A/2/2

15th August, 1956.

Miss Sibusisiwe Makhanya,
Community Centre,
P.O. Umbumbulu,
N A T A L.

Dear Miss Makhanya,

As requested by Dr. Brookes we are sending you three copies of his memorandum on the legal status of African women.

Yours sincerely,

K. Glynn (Miss),
ADMINISTRATIVE ASSISTANT

15th August, 1956.

Ref. C/A/2/2

Dr. the Hon. E.H. Brookes,
12 Chamberlain Road,
PIETERMARITZBURG.

Dear Dr. Brookes,

As promised I am enclosing a copy of your memorandum on the legal status of African women and have posted three copies to Miss Makhanya.

Yours sincerely,

K. Glynn (Miss),
ADMINISTRATIVE ASSISTANT