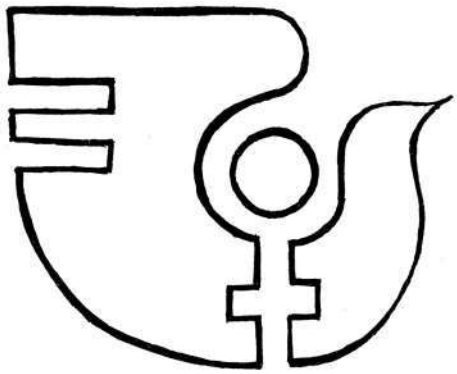
THE LEGAL DISABILITIES OF ZULU WOMEN

PART II



by M. L. Lupton

Two million Zulu women bear the dubious distinction of probably bearing the heaviest burden of legal disability (enshrined in statute) of any group of women in a developed country. One can rightly refer to the Natal Code of Bantu Law, Law No. 19 of 1891, (first drafted in 1878) as being a species of legal dinosaur which has miraculously survived the process of natural legal evolution.

The Matrimonial Affairs Act, No. 37 of 1953, greatly alleviated the legal disabilities, mainly of a patrimonial nature, of married women (its provisions are largely irrelevant to African women), while in the Cape, Free State and Transvaal an African woman acquires the status of majority when she turns 21. Despite these concessions the government has, in its wisdom, seen fit to maintain the shackles of feudalism upon Zulu women in spite of having the opportunity when it revised the Code in 1967 to proscribe the repressive sections.

Fortunately, the KwaZulu Legislative Assembly, realising the plight of their women as being not only a personal hardship, but also a burden to the development of their fledgling state, took the initiative and appointed a Select Committee to thoroughly canvas the legal disabilities Zulu women are subjected to. This committee, under the chairmanship of Councillor S. Z. Chonca presented its report to the Executive Councillor for justice in KwaZulu on the 6th March 1975.

This Committee (of six males) is to be congratulated on the thorough research undertaken in the short time at its disposal and upon the courageous and enlightened report it presented, despite the fact that Government Officials remained opposed to changing the code and failed to co-operate with the Select Committee. They ascribed this to the following, "This attitude is understandable because the provisions of the Code as they stand offer the easiest way out of a difficult problem."

The thirteen recommendations for amendments to the Code were motivated by the Committee as follows, "We . . . feel that vast changes in the law are necessary to take cognisance of urbanisation and the socio-economic inroads it has made in the social structure and the acceptance of Christianity by a large section of Zulus".

The Committee's recommendations can broadly be grouped under the following headings:

1. **Disabilities attendant upon perpetual minority**
   a. The natural starting point was to recommend the removal of the cornerstone upon which all the other disabilities rest viz. section 27 (2) which dooms a Zulu female to perpetual minority and hence to perpetual subjugation and reliance upon a male guardian.

   b. The repeal of section 27 (2) would naturally lead to the repeal of section 28, which makes provision for the emancipation of women. The Committee levelled the following criticism against this section, " . . . it does not go far enough. It does not even pretend to confer on a woman the common law status".

      They also criticised the Bantu Affairs Commissioners, before whom these applications are heard, as being insensitive and unsympathetic to the true legal and social issues involved in emancipation, and of not properly understanding the criteria for emancipation in the light of the altered circumstances of the seventies.

      The Code, and its current interpretation by the Bantu Affairs Commissioners, freezes the law as it was in 1878, losing sight of the fact that had they been left to themselves the traditional African Courts of Law, unfettered by legislation, would have adapted themselves to developing attitudes and circumstances in the normal process of evolutionary legal development.

   c. Further consequences of the repeal of section 27 is that African women will be able to contract without assistance and enter into a marriage without the consent of a guardian (sec. 59 (2)) when they are above the age of 21. This together with the recommended repeal of section 26 will also enable a Zulu female to acquire property in her own right instead of on behalf of her guardian.

   d. The repeal of section 27 would also lead to the repeal of section 44 (4 and 5) in terms of which a widow or a divorcee automatically reverts to the guardianship of her father or former kraal-head. This section is in direct contrast to our common law which confers the benefits of majority upon all married couples.

However, to maintain some link with tradition, the Committee suggested that a new section be inserted in terms of which a widow or divorcee who feels in need of placing herself under the care of a guardian may do so of her own free will.

e. The old section 83 (a) which instructs the court granting a divorce to give implicit directions as to the place of residence of the divorcee unless she is to reside at her guardian's kraal, is also to be repealed and a new section inserted in terms of which she is free to reside where she pleases except that where she has been granted custody of her minor children the suitability of her place of abode must be inspected and approved by her chief or the local authority concerned, in the interests of the minor children. These findings are to be submitted to the Magistrate.

2. **Marriage and Lobolo**

a. The fact that the Zulu economy has changed from a cattle to a money economy and that something as fundamental as this has been ignored by the legislator and not been revised in the Code, bears startling testimony to the irrelevance of many of its provisions in contemporary society.

This is no more starkly illustrated than in section 86 which prescribes that lobolo shall be paid in cattle and that the standard value of lobolo cattle is fixed at R10. Section 87 determines that the maximum lobolo for a commoner is 10 head of cattle.

Because of the current scarsity of cattle, money is increasingly being used as a substitute in lobolo transactions, especially in urban areas. But because the standard value of lobolo cattle fixed in the Code bears no resemblance to reality, fathers pay scant heed to its provisions which are honoured more by default than observance on this point.

On the other hand few young men can afford the sums of R800–R1 000 being demanded for their daughter's lobolo. This the Committee concludes is one of the factors contributing to the high rate of illegitimacy among Africans.

The Committee thus recommends that the present provisions for a fixed lobolo be done away with, and that the figure be determined by agreement between the parties concerned, taking criteria such as their social standing, wealth and the girl's beauty into account.

b. The Matrimonial Property Regime is at present regulated by section 22 (6) of the Bantu Affairs Administration Act, No. 37 of 1927, which determines that civil marriages concluded by Africans shall not result in community of property unless the intending spouses appear before a Magistrate or Bantu Affairs Commissioner one month prior to their marriage and make a declaration to the effect that they desire their community to ensue. This is directly opposite to the position in Roman Dutch Law which regulates European marriages.

The Committee is of the opinion that a marriage out of community is not in the best interests of the wife and children, especially in view of the fact that the husband's marital power cannot be excluded. The husband is free to bequeath his entire estate (with the exception of House property) to an outsider by means of a will, thus cutting off the wife's means of support. If the husband dies intestate the estate devolves according to tribal law to the eldest male relative, who cannot always be counted on to support her. The Committee also recorded the intense dislike it encountered amongst Zulu women for heirs **(ondalifa)**, most of whom are only intent upon grabbing the property without accepting the responsibility of supporting the widow and children. Examples of the greed of some heirs which the Committee encountered were that contributions to the funeral expenses had been claimed and in another instance even the yoke and plough had been taken.

The Committee thus recommended that all African civil marriages be in community of property and that these provisions be retrospective, so as to provide a measure of security for widows. They also recommended that the estate should devolve in terms of the Common Law and the Succession Act of 1934.

3. **Succession and Administration of Estates**

The present law regulating succession is one of primogeniture in terms of which the property goes to the eldest son of the deceased in a particular house, or failing a son, to the eldest male descendant. The younger son only inherits if his eldest brother predeceased him leaving no son as heir. The widow and daughters are excluded.

In bygone days the large kraals with their attendant collective responsibility offered security to the widows and children, but this is not possible in urban and semi-urban communities.

Other problems presented by this old system of succession in urban areas are:

(i) The strict norms and social customs of tribal society have broken down with the result that there is no check upon the avarice of unscrupulous heirs who ignore their duty to support the widows.

(ii) There are problems of distance to be travelled where a widow is resident in a kraal while the heir lives in an urban area.

(iii) Because of her minority a widow residing in a township is in danger of being evicted from her home, because it cannot be transferred into her name unless she can find an heir who is her guardian.

(iv) Where the heir is married by Christian rites the constant attention he is expected to devote to the widow places a strain upon his marriage.

(v) Where the estate of the deceased is insufficient to support the widow it can also involve the heir in a heavy financial obligation.

For the above reasons the Committee recommended that the role of the senior member of a

polygamous household, presently known as the general heir, be changed from that of the administrator of the estate to that of an overseer and that the widow should administer the estate.

To ensure that the widow does not abscond with the estate and leave her children destitute, provision is made that upon the death of her husband she should go to the Chief, or Township Council and have an inventory of the assets and liabilities of the estate made, which in turn is to be registered at the Magistrate's Court.

These provisions with the recommendations that the estate should devalue in accordance with the Common law (and not Bantu Law) and that the marriage should bring about community of property should provide the widow with sufficient protection.

CONCLUSION

The Committee notes that ". . . if our proposals are accepted, Zulu women will be at par with the other women of the world and the rest of their battles they can fight on their own. Let us hope that these far-reaching and long-delayed reforms are speedily accepted and the Code amended accordingly so as to finally alleviate the crushing burden of disability under which the Zulu woman groans.□

MR VORSTER AND THE WHITE BACKLASH

by Jan van Eck

Most South Africans are today aware of the fact that a White backlash is building up in South Africa. Although it is a quite recent phenomenon and although it has an in-built ceiling, I believe that we cannot afford to ignore it.

Conservative White South Africans have always existed, but they have never been so outspoken, angry and militant as right now. Allow me to illustrate this. In the Transvaal an organisation was formed on the banks of the Vaal River and the members of the society had to take a blood oath for their cause: "To fight for White survival". The same group rejected the H.N.P. as being 'too liberal' (!).

At a Congress which I attended earlier this year in Pretoria, resolution upon resolution pledged to organise conservatives into a new political party in order to safeguard the White man's future. An interesting new note was introduced, i.e. that not only Afrikaans-speaking Whites should be drawn into the new White "laager" but also English-speaking conservatives. This, surely, makes sense, since verkramptes have never been limited to the Afrikaans-speaking section of our population.

The group which organised this Congress calls itself 'the Committee for Informing the People' and has established strong contacts with leading conservatives in the National Party Establishment as well as in the United Party. They also have strong contacts with people in the Rhodesian Government and spread the story quite openly that the Vorster Government is selling them (the Rhodesians) out to the Blacks. Leading South African conservatives have frequently appeared on Rhodesian TV and have tried to convince White Rhodesians that White South Africa is behind them in spite of what Mr Vorster may say.

Although I do not believe that this conservative backlash poses any serious threat to our country, I believe that it would however be utter foolishness not to take serious note of them since they can, after all, exert a considerable braking pressure on the Government just at a time when it should be moving much faster ahead.

The ostrich-attitude which many Government spokesmen and newspapers adopt, i.e. to ignore them and to act as though they do not exist, will not really help. The fact is that they **do** exist and that their ranks extend beyond the H.N.P. into the N.P. as well as the U.P. As and when Mr Vorster moves further forward into the 20th century according to the demands of detente, the White backlash will, of necessity, increase.

This is, after all, what caused the backlash originally; the promise of change in Mr Pik Botha's speech at the United Nations and Prime Minister Vorster's 'six month' speech.