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Hullo Barbara, Hullo Simon,

I trust you don't mind me joining you in this letter, but most of what I want to say to each of you overlaps. Later I'll add separate notes.

It's about family law, here in Mozambique - to give you some information and to make a request. I'll explain the issues in terms of my own consciousness.

Mozambique is a wonderful place to be in for people wishing not to build some abstractly beautiful society but to solve the problems of the people of Africa. And all the problems of the continent are here, in good measure. The people are overwhelmingly poor, dispersed, not one in ten can read and ~~write~~ ^{write}, not even one in five can speak Portuguese, the language of national unity. Before independence, the country was culturally isolated to an extreme degree, sunk in the dual obscurantism of an ultra-reactionary Church and an ultra-conservative traditionalism. The people as a people were degraded by forced labour and migrant work and de-personalised by the whole system of colonialism, of foreign rule. They learnt to despise their songs and dances

as savage, to blot ² out their own history as though it never existed, to look to Portugal for ideas and South Africa for income. The economy at the time of independence was catastrophic, and this even before the massive flight of people with technical skills. It is still catastrophic, though recovering. There is a dispossessed class in nearly exile, planning return, organising murder and bomb attacks. There is a vast refugee population from Zimbabwe, and Rhodesian planes and troops frequently raid deep into the country. South Africa stands like an economic and military giant threatening every advance made here. Some neighbouring African states have very different ways of seeing and doing things and this can create 'shocks'. The small class of Mozambicans given formal education under the old system were imbued with opportunistic deference and the habits of conformism and bureaucracy. Large sections of the country were dislocated and shattered by war. By massacre, the burning of villages, the creation of artificial living zones. The towns became centres of pleasure, degraded by the army, by tourism, with vast numbers of prostitutes, drunkards and beggars. And all

the time threatening to ^{3.} come out is what is called here the new class of would-be exploiters, the generation with some schooling, some position in the administration, anxious to get on, ever ready to use skin-colour as a weapon of advance, hating Europe yet wanting to live like the Europeans, hostile to minorities yet eager to promote business with racist South Africa.

[I am interrupted by the sound of loud harmonious singing outside. I look through the window: a platoon of soldiers is marching past - the singing gets louder as they move by - in the front someone with a little red flag to warn the traffic, then soldiers in rows with rifles, marching vigorously, then soldiers carrying a blackboard, a table and chairs, the chairs held on their heads - the singing gets quieter as they move round the corner.....]

These are just some of the problems, added to which in recent years there have been serious floods, a terrible hailstorm, and even plague. And yet there is this optimism here, a feeling of social calm, a sense of being in history, an eagerness for the future. Where does this confidence

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come from? It comes not from the attainment of independence, but the manner of its attainment, from the armed struggle and the liberated zones. In ten years of fighting a vast amount of experience was gained of how to shape a new consciousness, how to build a new society. Problems were tackled and resolved, a style of work developed, a language of leadership and communication, a mode of involving the people, a set of principles for public life. Hundred and hundreds of cadres were trained, not just technically, not primarily technically, but politically, in the new values and new way of doing things—today they are the Government leaders, the provincial governors, the local administrators, the head of financial institutions, state farms and industrial undertakings. They work cohesively, with a strong set of moral standards—^{many} people who use their office at any level for private gain are publicly exposed and criticised by their fellow workers, whether for hanging on to funds, or forcing their secretaries to sleep with them, or showing favouritism to relatives (for some reason not a major problem here).
Then, this sense of taking part in history

induces vast confidence ^{5.} - problems which looked at in isolation seem insuperable, become conquerable against the backdrop of Cuba and Vietnam, of the successes achieved by the socialist states in overcoming illiteracy, backwardness, poverty and superstition. And history extends backwards as well as forwards. The past, like the present and the future, is a part of struggle against exploitation. The empires of Zimbabwe and Giza and Monomotapa might have had their physical splendours, but basically they were class societies in which a feudal elite dominated and exploited a peasant and artisan majority. Slavery and colonialism had a devastating effect on Africa, but they did not introduce exploitation to the continent, only modified its forms and intensified it. The backwardness of the continent, its social misery, hunger, unemployment, people barefoot and without clothes, are products not only of 'colonial capitalism' but of 'traditional feudalism', which, apart from trapping the mind in superstition, regonialism and tribalism, institutionalised exploitation of women by men and of youth by the aged. These issues are out in the open. They are discussed in the villages and the factories. None is sent to

prison for believing in ^{6.} sorcery, or taking a second wife by customary law, or paying lobolo, nor does anyone lose his job. The problem is one of consciousness, understanding. So you can't belong to FRELIMO if you are involved in witchcraft, or are a recent polygamist, or, if you have recently married by lobolo (which is seen as psychologically enslaving the women).

Then there is the remarkable way in which racial awareness and chauvinism have been overcome, not by exhortations or appeals for tolerance, but by collective work and the example set by the government. It's wonderful not to be white, just to be oneself, judged in all the big things and all the little ones by one's contribution. The freeing of the people from ~~of~~ their racial complexes is one of the great achievements of FRELIMO, and its effects are truly liberating for the whole population. This was very much an achievement of FRELIMO, for which it fought hard in the darkest days of the armed struggle just as the ANC is doing now in relation to our country. The organisation was split right down the middle - at least

^{copy} Eduardo Mondlane his life. The questions very concretely were what to do about leaders married to whites, what to do with captured Portuguese soldiers, but in the background was the question, what are we fighting for, who is the enemy, what kind of society do we want to build? When in the years 1966-1970 first Mondlane, then the group around Machel fought for the non-racial principle, for defining enemies in terms of class rather than race or nation, they were laying the basis for the present calm in Mozambique. What they realised was not only that progressives throughout the world came in all skin colours and from all nations (including Portugal) but that reactionaries too came in all skin colours and from all parts of the world (including black Mozambicans). This emphasis on internationalism has done a vast amount to free people from hang-ups about Africa and Europe, from the deference/resentment situation of people formally free but economically and psychologically still dependent. Thus there is no difficulty in getting people to look at the Family Law Codes from, say, Cuba or

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the German Democratic Republic. The continental
origin of these documents will be irrelevant,
what matters is their assumptions about the nature
of the family, about property relations and so on.

Which brings me to the heart of the
problem. What are the assumptions here about the
nature of the family? What kind of new law is
envisaged? That there has to be a new law,
and soon, is widely recognised. The Civil Code
sections on the Family are hopelessly out of date -
they've been scrapped in Portugal, and many
of them have been implicitly repealed by the
Constitution here, which in several articles
enshrines gender equality (and, in what may
be unique as a constitutional statement in the
world, expressly declares the need to struggle
for the liberation of women). To up-date,
modernise, make progressive the Code, would
technically be quite easy: emphasise the principle
of equality and mutual support, permit divorce
by mutual consent or divorce when the marriage
has in reality come to an end, and adopt the
welfare principle for all children. As private
property largely disappears (i.e. rentable property)
leaving only personal property and income to

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be distributed, the division of estate on divorce
or death becomes fairly straightforward.

But the real task is not to re-design the
Code, it is to create a new family law
that deals with the family lives of all the
Mozambican people, not just a small section
mainly in the towns. It must concern itself
with the problems of the millions married by
customary law, as well as the vast numbers
simply living together in de facto unions,
not to speak of those married simply in
terms of some religious code. The popular
community character of justice is emphasised
at every opportunity, in fact, it is the
creation of the new ^{Popular Tribunals} ~~Populares~~ which
is the spur for the new legislation, the
source of the urgency. So, there cannot be
first class and second class marriage,
or marriage systems simply 'tolerated' because
they happen to be there. In a society working
night and day to get itself together, where
concepts of the integrity of the people and
the raising of consciousness are so important,

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it is inconceivable that the regulation of family problems should be left to makeshift local arrangements. The traditional tribal structures have been totally eliminated, together with the bureaucratic colonial institutions with which they had become enmeshed. The local chief and headmen are disgraced as the former tax collectors and 'captains' of forced labour - they are now just ordinary farmers, right outside the structures of government and law, and could not form the basis of a new judiciary for the rural areas. The new Popular Tribunals are being elected by the Popular Assemblies of their level (locality, district, province and nation). Like their electors, they are drawn from the rural poor - the barefooted men and women whom we see at the many, many meetings held in this country. They are not the tribal elders under a new name, the African gentry steeped in feudal ideology. And yet the only marriage systems they know are the customary ones (or, simply, de facto unions), tied in with lobolo, and,

frequently, polygamy. — They know the hardship that the traditional forms bring, especially polygamy, ~~so~~ for the displaced older wife or the dominated younger one, they know how the youth can be exploited by the old as mere sources of income. But they also know the reality of such unions, a reality that cannot be legislated away by statute, or dissolved by political exhortation. And, what's more, they are enjoined by the statute constituting them as judges to take into account local sentiment as the basis of their adjudications.

Everything turns on what is meant by 'popular justice'. At the level of politics, the word 'popular' is clear — it is totally opposed to concepts of tribe, region or race. The 'people' are united by their shared history of exploitation and their common struggle for liberation. The emphasis is always on class factors, the terminology is modern-political. In the sphere of culture, on the other hand, there is a huge move to revive 'popular' art forms, to

re-establish the Mocambican personality, to construct an art based on the songs, the dances and the handicrafts of the people.

Family law lies half-way between government and culture - it is very 'political', in the sense of articulating the basic values of the society, values deeply embedded in social structures, and it is also very 'cultural', in the sense of being surrounded by ceremonies and practices in which the people actively express themselves, in which community solidarity is re-inforced.

What are the practical problems that require solution? Rites of initiation. In some areas girls of four and five are inducted into the art of giving sexual pleasure to their future husbands. The newspapers here tell of how from their early years girls are prepared as ~~sex~~ objects of sexual pleasure. Often there is physical mutilation. Is there a role for the criminal law? In prohibiting fee-taking? In banning physical mutilation? In banning premature marriages. The building of schools in the rural areas highlights the clash - a teacher notices that a girl is absent, speaks to

parents, who say she has ¹³ been betrothed and is getting ready to marry. The girl is 12. What can the teacher do? He goes to the court - what can the judges do? What powers should they have? Clearly the new law must have a minimum age for marriage, to give meaning to the concept of free consent. But what sanctions for non-compliance?

Lobolo. This is at the heart of the whole traditional marriage system, in one form or another.

The President and the Women's Movement have come out very strongly against it. It enslaves the woman mentally. Her sense of worth depends not on her capacity, her activity, but on the lobolo paid for her. There is a campaign on against lobolo. People stop paying lobolo - and many give presents instead, calculated in exactly the same way. You cannot join

FRELIMO if you were secretly married with lobolo. The struggle is by example, not by prohibition. And yet someone comes to court, demanding return of cattle paid over in respect of a marriage that never took place. Should the judges say: serve you right; or should they apply some kind of unjust enrichment principle; or apply the traditional law?

Polygamy: It is criticised, it is denounced,

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but it exists and it continues. Miners returning from Johannesburg invest their savings in wives. Men who want more children, or a new sexual partner, take another wife. Parents who are destitute, women abandoned, organise marriages for ^{wives} someone already married. There is no social security system, or virtually none. And the new forms of social living - especially in the aldeias communais (communal villages) - include at most ten per cent of the population. So a marriage remains a form of investment, a way of dealing with disaster or forestalling destitution. And at meetings in various parts of the country, women speak out bitterly at their humiliations in polygamous marriages, in the way they are played off against each other, and in their vulnerability to exploitation. The new law cannot sanction polygamous marriages, nor, at this stage can it prohibit them, nor can it ignore the reality of ^{such} existing polygamous marriages. Within the framework of the general FRELIMO policy, it is the people

themselves who must ¹⁵ decide, not simply through representatives, not ~~in~~ by some anarchic plebiscite, but through direct discussion at meetings in the locality. The question is: what options should be put before them? Concretely, what are the choices? By taking part in the process of deciding, the people 'assume' (as they say here) responsibility for implementing the decisions. We jurists cannot decide the basic questions, but we can help to formulate the options.

Then, perhaps, the biggest problem of all: one marriage system, or two, or three, or five? How to integrate the existing systems, how to unify a civil system with its preoccupation about bigamy, with a 'customary' system that permits polygamy? How to ensure a basic unity of rights and duties 'from the Kavuma to the Maputo', without depreciating existing arrangements or unjustly subordinating one system to another? How to deal judiciously with the past, the present and the future - one comprehensive statute, or phased legislation? And what is the role of the Register? There are big discussions going on about transforming the Registries.

Under colonialism, documents were used to harass and control the people. Delays were (and still are) inordinate, people were rudely treated. As the new Mozambique starts to organise itself, it finds it requires more organisation, not less, more registration, more collation of information. Family data are crucial for health and education planning, and the data need to be standardised for the whole country, so that none gets left out. Documents have great status here. Despite vast adult literacy campaigns, the great majority of the people still cannot sign their names or fill in a form. Identity documents are required for more and more purposes - should their issue be connected with extensive and eventually compulsory registration of all 'marriages' i.e. unions of permanency between men and women intended to create family relations?

At a National Conference on Justice, the head of a Marriage Registry tells us of a daily problem: a woman comes forward to object to someone getting married - 'his my husband (marido), we've been married for twenty years, we have six children. Then he left me for this other

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woman, saying she was better educated and younger than me. He can't just leave me like that. I object to his marriage. He is already married to me. ... And it turns out their marriage was never registered. What must the Registrar say? Can an unregistered marriage, with children, known in the community, be an impediment to ^{contracting} a registered marriage? If so, how can it be dissolved?

As in all societies where ^{many} women lack economic and spiritual independence, the greatest fear seems to be of abandonment, greater than of adultery or even ill-treatment. But what can the law do about it? It cannot reach the humiliation aspect. But it can affect the material consequences. Is this the possible solution - a member of an existing de facto union can only marry another if he (or she) proves that satisfactory arrangements have been made for the support of members of the first union? Should the role of the law in all these matters be basically practical, saying we recognise a multiplicity of ^{types of} unions, and are concerned to create a single system

to resolve problems: 18. how to regulate separation in a dignified way, how to distribute assets on death or separation in a just fashion, how to protect the interests of children, ensure maintenance. Then it doesn't matter how you were 'married'.

But what of the educative role of the law? Should it not look to the future, set standards? Should the family statute not be a programme as much as a mechanism? With a preamble, and statement of principle, of objectives? After all, family law in a society without private property or feudal political relations, is about human relationships, ~~not about property or rank,~~ and should not be essentially technical in character.

And, then, about divorce: in a society that places such a strong emphasis on the raising of consciousness, on the acceptance of social and moral obligations, on the rejection of egotism, should the law emphasise that to marry is to incur mutual obligations? Or so that divorce can only be obtained

if there has been a ⁹ breach of obligation.
Or, in this very pragmatic society, with its
emphasis on solving concrete problems in a
practical way, should the emphasis be on
the reality or otherwise of the union - does
it still have meaning (as the Cuban and
G.O.R. Codes ask)? And reconciliation, if
there, must be mentioned - but is this just
a gesture, or are there real mechanisms that
can be created to shore up breaking unions?

I haven't even mentioned the wider questions
of maternal / infant protection, of control of
fertility, of social security, of equal opportunity
at work, maternity leave (there are quite good
provisions for this, also for breast feeding time at
work), pre-school care and so on. (Family planning
will start soon on quite a big scale, mainly in the
context of protecting the health of mother and child
by having fewer births). All these are publicly raised
questions, some of which receive more attention than
others. But I have given you a list of the
sort of problems being debated in the Ministry
of Justice at the moment, and which in the

fairly near future ²⁰ should be debated nationally. There is a great shortage here of materials from other countries, especially those in Africa.

And this, in case you were wondering, is where my request comes in. Do you have good comparative materials that deal with the sort of questions stated above? From neighbouring African countries, from elsewhere on the Continent, from Soviet Asia, from India after independence, from Turkey..... We need such materials, and fairly urgently. Mocambique is not very keen on models, even from countries it admires. It believes in the universality of certain principles - there is no African socialism, no Mocambican socialism, only scientific socialism - but their application depends on concrete local conditions. But there is great curiosity about how other countries tried to tackle their problems, about successes and failures abroad. ¶ At the end of December I hope to be spending my annual leave (one month) with my children in London. Could you send me a note there - 43 Anson Rd, London N.7 OAR. ph. 609-1856 - by about mid. December saying

how I could get in ^{21.} touch with you in the
three week period after Christmas? I will be
long on enthusiasm, and short of time and short
of money, please bear that in mind. If we
can meet to discuss some of these things, so
much the better.

So, till later in the year, I
bid you goodbye.

Sincerely,

Albie (Sachs).

SIMON.

Faculdade de Direito
(Faculty of Law)
Av. Kenneth Kaunda
960,

Maputo
R.P. Mozambique
15/11/75

Dear Simon,

London is a little nearer,
so I'm sending the enclosed letter to you,
hoping when you've read it that you can
pass it on to Barbara Havell Bond, at Warwick
Law Faculty, or Oxford, wherever she may be
now! I'd be very happy if you could send
me a note immediately to the effect that
this has reached you.

I've had a very fine year here -
hopefully we can get together some time
when I visit London. I've managed only a tenuous
and roundabout connection with Sebastian. There's
lots to talk about. One senses great changes
taking place in southern Africa - not simply an
end to the gross racist regimes (and here people
confidently expect a Patriotic Front govt. in Salisbury
next year), but secure bases being created for
the construction of truly good new societies.
Warm greetings to yourself & Marion -
Albie.

BARBARA

Faculty of Law, U.E.N.,
Av. Kenneth Kaunda 960,
Maputo,

R P de Mocimboa 44

15/11/78.

Dear Barbara,

I hope you find the enclosed letter interesting - no, I know you will. I've been devouring your materials on Sierra Leone. I wasn't ready for them before, now I incorporate them into my lectures, and re-read sections several times. How similar are the problems, and how different the ways of talking them ~~to~~ (and also, the role of the academic / investigator)!

I've had a rich year here. This country is way ahead of me. I find I know so much - history, geography, politics, books, personalities, law, social systems - I pass some of it on. But how to do things, how to get from A to B, when the 'good' people are in power, here I am learning all the time. Sometimes there are obviously inspiring things, voluntary work, a talk by a young veteran of the liberated zones, but mostly it is bumping up against

a reality that is baffling, frustrating, everything interconnected, but how? I get glimpses of how some of our terrible problems in South Africa will be solved - the divisions, the racism, the recovery from humiliation, the overcoming of that fierce, egotistical greed bred in the streets and institutions of our land. There is such a good humour here, mingled in with the schoolmasterly seriousness (which I like!), people are relaxed by it. No fierce denunciations, just persuasion, persuasion, persuasion, and a quiet pride: this is all yours, it is up to you, to us. Our friends will help us, but it is really up to us, to none else. Then, the defining of priorities, the tackling of problems one by one (we from outside are always so impatient, and then gradually we learn that the problems are being tackled, but in a different way).

Well, hoping for lots of lovely material from you!

Albie
