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***The improvement of marriages and divorces statistics in South Africa:
Relevance, registration issues and challenges.***

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The improvement of marriages and divorces statistics in South Africa: Relevance, registration issues and challenges.

Sulaiman Bah

Summary

With the recent passing by parliament of the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), it is now possible to increase the coverage of registered marriages and divorces in South Africa. In the past, since certain unions were legally not recognised, the marriage statistics collected by the Department of Home Affairs excluded a large proportion of marriages, for example customary marriages among Africans. However, the passing of legislation on its own is a necessary but not sufficient condition to ensure that customary marriages are indeed registered. The aim of the paper is to explore ways of making sure that these marriages in particular and marriages in general, are adequately registered. The paper starts by outlining the relevance of statistics on marriages and divorces, drawing from published literature. This is followed by a discussion on registration issues and the challenges to be faced in trying to improve the registration of marriages and divorces. The paper ends with a discussion followed by a conclusion.

Introduction.

If we want to improve on the coverage of marriages and divorces in South Africa, it is no secret that the population sub-group which must be targeted is the Africans/blacks who have not had any schooling and reside in non-urban areas. According to the 1996 census, this population sub-group numbered 2,75 million or 6,8% of the total population. This population sub-group is statistically disadvantaged for several reasons. First, this is the segment of the population that is most likely to fail to register their marriages or divorces. Second, this is the population sub-group that is most likely to solemnise their marriages through customary unions.

The older legislation that were in place, together with the past practice adopted here at Statistics South Africa, ensured that Africans/blacks, till recently, was barely visible to the vital registration system. Furthermore, all those marriages that were solemnised only according to customary rites remained invisible to the system. Until 1990, the marriages data that was processed and published by Stats SA were those of whites, Indians/Asians and coloureds. From 1991 till date, the data received from the Department of Home Affairs did not make any distinction between the population groups. As such, during the 1990s, Stats SA could not publish information on marriages among Africans/blacks even if it wanted to.

In the case of divorce statistics, the divorce forms (Form 07-04) are implemented by Stats SA. While the earlier forms only provided for three population groups (whites,

Indians/Asians and coloureds), the option for self-identification among divorcing African/black couples was later added on the forms about 1991. Information on divorce among Africans/blacks was not available from 1970 to 1993. It was only in the 1994 marriages and divorces publication that divorces among Africans/blacks first came to light.

In this paper, we wish to address the issue of the improvement of statistics on marriages and divorce particularly among those couples whose form of marriage is not recognised as being legal. Prior to the enactment of the customary marriages Act, marriages solemnised according to customary rites used to belong this category. There are still other forms of marriages which fall under this category.

The paper starts by outlining the relevance of statistics on marriages and divorces, drawing from published literature. This is followed by a discussion registration issues and the challenges to be faced in trying to improve the registration of marriages and divorces. The paper ends with a discussion followed by a conclusion.

Relevance

In a paper published in a leading demography journal, a former president of the Population Association of America (PAA), Linda Waite posed the following simple question, “Does marriage matter?”. In the paper she went on to present results from national surveys conducted in the United States and from other published reports. Some of her findings and the findings of others that she reported upon are as follows:

- Married men and women exhibit lower levels of negative health behaviours than the unmarried.
- Based on the Panel Study on Income Dynamics, it was found that for both men and women, the married showed the highest probability of survival between age 48 and 65.
- Based on the Health and Retirement Survey, it was found that the per capita wealth of married couple households was substantially higher than those of other households.
- Drop-out rate from schools showed that children from one-parent families drop out from schools twice as much as children from two-parent families.
- Based on the National Longitudinal Survey on Youth, it was found that marriages increased men’s wages (as marriage makes men more productive at work and it increases their incentive to perform well at work among other reasons).

In answer to the question posed, Linda Waite concludes that marriage does matter as it provides important and substantial benefits to couples (Waite, 1995).

Other research from the United States show that children whose parents have divorced or have separated are more likely to report acute and chronic health problems than

children living with both biological parent. The risk of ill health was found to increase immediately following parents marital separation (Mouldon, 1990).

As another example, a longitudinal study of family income and poverty rates in the United States, between 1983 and 1986, found that, among children whose father left the family during the period of study, family income fell by 37 percent in the immediate aftermath of the separation and poverty rates among children rose from 19 to 39 percent (Bianchi and McArthur, 1991). Other studies also confirm that the welfare of children born to unmarried mothers is substantially compromised, if not by the single parenthood status of their mother, then by her socio-economic circumstances (Lloyd and Duffy, 1995).

In summary, information on marriages and divorces is very important in learning about:

- the socio-economic status of households (as an aspect of the 'feminisation' of poverty);
- behavioural determinants of health among adults;
- the life circumstances of children and youths.

Registration issues

While surveys and other administrative data sources could provide data on marriages and divorces, by far the most important sources are censuses and the vital registration system. The census gives information on the marital status of all individuals who are older than a certain minimum age. This is stock information which can allow us to do several analyses on families and households. From the point of view of the law, certificates of marriages and of divorces are important as they have implications for; inheritance, alimony and child maintenance, nationality and citizenship and (in some countries) for conferring upon a child his/her legitimacy status. For the purpose of meeting these and other legal obligations, states set up the civil registration system. Vital statistics (comprising births, deaths, marriages and divorces) come as by-products of the civil registration system. Vital statistics is one of the best sources of flow information such as, first marriages and remarriages. The data on marriages and divorces, obtained from vital statistics could be found useful in welfare planning. The statistics are of importance to analysts and researchers working in the areas of fertility and family demography.

Complete statistics on marriages and divorces would help us to provide answers to the following three fundamental questions:

- Is the marriage rate increasing or decreasing?
- Is the divorce rate increasing or decreasing?
- Are the number of children from divorced couples increasing or decreasing?

Having obtained answers to these questions, researchers could then proceed with further investigations on the factors underlying the observed trend and their implications. In the case of South Africa, these questions need to be further qualified before they could be

answered. The reason for this is that there is marked differentials in completeness in all of vital statistics. Completeness is highest for whites followed by Indians/Asians and coloureds and is least among Africans/blacks. If the data is aggregated over all population groups as has been the case since 1991, the overall completeness would be low.

The reported number of marriages and divorces reflect the reality only to the extent to which they are registered. The registration of these events depend on a combination of factors including the following:

- the individuals' perception of marriage or divorce
- the definition of legal unions according to the relevant Acts pertaining to marriages and divorces.

Individuals' perception of marriage or divorce

In making a decision to get married, couples operates within their religious/cultural world view with or without thoughts given to issues pertaining to legal rights and obligations. When couples are solely concerned about self-fulfilment, the registration of a marriage or a divorce plays a secondary role. The couples sense of fulfilment would be satisfied as long as, in their assessment, the marriage was legal (according to religious or cultural norms), the state's recognition of its legality was immaterial.

This fact of life is acknowledged in the Marriages Act, No. 25 of 1961 in section 11 dealing with unauthorised solemnization of marriage ceremonies forbidden. Subsection 3 reads as follows:

'Nothing in sub-section (2) contained shall apply to any marriage ceremony solemnized in accordance with the rites or formulation of any religion, if such ceremony does not purport to effect a valid marriage'.

In the past, this was the part of the reasoning that drove couples to solemnise their marriages only according to customary rites. At present, this reasoning is still driving couples to solemnise their marriages through only religious ceremonies.

One would expect that with as couples become aware of the civil rights they would be entitled to once the marriage is recognised by the government as legal union, they would then strive to make it legal according the laws set by the Government. The state has vested interested in ensuring that a union or disunion is legal as it confers or withholds rights of couples based upon recognition of such a legality.

Definition of 'legal' union or disunion

The definitions of a marriage and of a divorce are quite unambiguous. According to the United Nations (1991),

Marriages is defined as follows:

‘Marriage is the act, ceremony or process by which the legal relationship of husband and wife is constituted. The legality of the union may be established by civil, religious or other means as recognised by the laws of each country’.

Divorce is defined as follows:

‘Divorce is a final dissolution of a marriage that is, the separation of husband and wife which confers on the parties right to remarriage under civil, religious and/or other provisions, according to the laws of each country’.

The problems arise in the definition of ‘legality’. In most developed countries, only two forms of marriage exist- civil marriage and religious marriage. The definition of which of these forms of marriage is legal varies from country to country. In Western and Eastern Europe, as at 1995, only civil marriage was recognised by the law while in Northern and Southern Europe, civil marriage was in competition with religious marriage. As a specific example of the latter case, civil marriage were only introduced in Greece in 1982. However, in Greece, there is a general lack of interest in this form of marriage. As a result, between 1983 and 1987, the official statistical year-book gave the annual total number of civil marriages simply in the form of a note to a table while in the 1989 year-book, the figure was omitted altogether (Dittgen, 1995).

In many parts of Africa, in addition to the two forms of marriage mentioned, there is third form of marriage, namely, customary marriage. Among the three forms, civil marriages was given preference over all other types of marriages. This resulted in a dualism. Couples who got married under customary or religious ceremonies would further perform a civil marriage in order to ‘legalise’ the marriage. In a rare case where such dualism has been overcome, Tanzania promulgated an act in 1971 in which all three forms of marriages were integrated into a single code (South African Law Commission, 1997).

In South Africa, the forms of marriages that were recognised, prior to the enactment of the customary marriages bill, were civil and religious marriages. To some extent, the South African Marriage Act (Act 25 of 1961) was very accommodating with regards the status of civil and religious marriages. According to the Act, ministers of religion could be marriage officers. According to Section 3 sub-section 1,

‘The Minister and any officer in the public service authorized thereto by him may designate any minister of religion of, or any person holding a responsible position in, any religious denomination or organisation to be, so long as he is such a minister or occupies such position, a marriage officer for the purpose of

solemnizing marriages according to Christian, Jewish or Mohammedan rites or the rites of any Indian religion.’

In section 30, subsection 2, the Act reads,

‘Subject to the provision of subsection (1), a marriage officer, if he is a minister of religion or a person holding a responsible position in a religious denomination or organization, may in solemnizing a marriage follow the rites usually observed by his religious denomination or organisation’.

Under the dual system practised in the past, if a couple solemnises a marriage according an unrecognised form and then proceed to solemnise it again as a civil marriage, the marriage becomes a civil one. Customary marriages have now escaped this treatment while Islamic marriages still face it. In this regard, South African Law Commission (1997) cite a case (Ryland vs Edros) wherein the position was held that failure to recognise Muslim marriages would violate the right to equality between cultural and religious groups.

Challenges

In order to improve on the registration of marriages and divorces the following challenges must be addressed:

1. Ensuring that couples are informed about the legality of customary marriages and are sufficiently motivated to want to register the marriages.

The Recognition of Customary Marriages Act largely puts the onus of registering the marriage upon the couple. Section 4(1) reads:

‘The spouses of a customary marriage have a duty to ensure that their marriage is registered.’

Experience with birth and death registration show that in many cases, parents (in the case of births) or next of kin (in the case of deaths) are not much aware of the requirements for registration and the procedures to follow in getting an event registered.

2. The re-inclusion of the population group variable in the marriage form.

As from 1991, no distinction was made between the population groups. This was the case in the births and deaths statistics collected by DHA. Now that the population group variable has been re-introduced in the new death notification forms, we suggest that the same be applied to the statistics on marriages. With the breakdown of marriages according to population group, one would be able to tell whether marriage rates are increasing or decreasing among whites, Indians/Asians and coloureds. For

Africans/blacks, it would not be easy to distinguish genuine trends in marriage rates from trends reflecting improvement in coverage.

3. The filling-in of the population group variable in the divorce form.

For similar reasons stated above, we would also need the breakdown of divorce statistics according to population group. This has been available for several decades for the three population groups of whites, Indians/Asians and coloured and since 1994 for Africans/blacks. However a worrying development is that couples are increasingly failing to self-identify their population groups. We would also want to see the rate of change in the divorce rates of among the different population groups. However to respect the rights of individuals, we accept whatever way they self-identity themselves. As such, we have modified our computer programs and our reports to reflect 'unspecified' population group as well as couples from different population groups (mixed marriages) Our 1996 data show that the category of 'unspecified' population group comprised 11,7% of all registered divorces.

4. The recognition of other religious marriages

One form of religious marriage that stands out is Islamic marriage. One feature that Islamic marriages share with customary marriages is that of polygamy. This feature was one of the main stumbling blocks in the extending recognition to customary marriages. With the recognition of customary marriages, this blockage has apparently been removed. As such, we propose that a similar status be granted to Islamic marriages.

5. Deliberate non-registration of customary marriages.

There is possibility of deliberate failure on the part of couples to register the customary marriage. This would possibly be done in an effort to circumvent legal implications of divorce. However, the Recognition of Customary Marriages Act reduce such chances Section 4, sub-section 9 states:

'Failure to register a customary marriage does not affect the validity of that marriage'.

6. Guarding against false alarms (artefact of data)

In the period when the level of coverage is rising. When does a decline signify actual decline? This situation was faced in the comparing the statistics of divorces among Africans/Blacks over the period 1994 to 1996.. Elaborate...

Discussion

In the developed countries, data on marriages and divorces have shown a distinctive trend over the past few decades. Data compiled by Monnier and Guiber-Lantoine (1997)

show the developed countries experienced almost universal decline in first marriage rates over the period 1970-1996. This decline is accompanied by increase in divorce rates and increase in the number of extra-marital births. In the case of South Africa, one is able to study trends in first marriage rates of whites, coloureds, Indians/Asians only up to 1991 after which there is a gap in the data. For Africans/blacks, one has no knowledge about their first marriage rates. Hence for South Africa as a whole, one has no idea about the trend in the first marriage rates. This lack of knowledge hampers our knowledge about the dynamics taking place in the South African family.

The enactment of the customary marriages act is a first step towards getting a fuller picture of marriages statistics among a large segment of the population which had hitherto been excluded from official statistics. In order to increase on the coverage of marriages, thoughts should be given on recognising other forms of marriage, such as Islamic marriages. In addition, the Marriages Act should be amended to register the population group of the couples getting married.

Findings on the social impact of labour migration allude to high marital instability among labour migrants. It would be possible to explore further these hypotheses through the use of record-linkage. Using probabilistic record linkage based on a few identifying variables, marriage and divorce statistics could be linked to the census to produce a rich data set for carrying out such investigations.

Conclusion

The Recognition of Customary Marriages Act has the potential of increasing the coverage of marriages and divorces statistics several folds. Analysis of the trend in marriage and divorce rates over time help us to understand the social dynamics taking place in South Africa. However, from the experience in the statistics on births and deaths, we know that legislation alone is necessary but not sufficient for the actual registration of events. Mechanisms have to be put in place to strengthen registration of marriages. For religions whose formula of solemnisation is recognised, attention must be put on those cases where ministers of religion solemnise marriages according to their religious rites but do not register those marriages simultaneously. For religions whose formula of solemnisation are still not recognised, the South African Law Commission should consider working towards their recognition following similar process as was done for customary marriages. Through neglect of such recognition, many marriages slip through the system and in the long run they serve against the interests of women and children.

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