

Customary v Statutory legal systems: The challenge for South Sudanese communities in Australia

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Abstract

The Australian legal system is based on written rule, applied and adjudicated by lawyers and judges in a formal setting. The legal rules are clearly documented in legislation which is accessible to all citizens. If one experiences an injustice or a legal dispute, there are services and avenues available to offer advice and representation to take the matter through the legal system. The South Sudanese legal system is quite different to the Australian however. It is based on customary, oral laws passed down from generation to generation, applied by the local chiefs and leaders in a public, informal setting. Disputes are not considered 'legal' but rather 'familial' and 'communal', and resolutions are not decided according to written legislation by unknown judges, but according to the wellbeing of the community by its most respected chiefs or elders. These differences may not come as a surprise and may not cause an upset in a global setting. However, for South Sudanese communities residing in Australia, these differences can lead to misunderstandings with the law, lack of access to services and legal injustices. This paper explores the legal implications of these differences in dispute resolution processes for Sudanese communities in Australia, drawing upon a qualitative study in progress. It highlights the difficulties South Sudanese communities face in understanding, following and applying the Australian law, as well as the importance customary law still plays in their daily lives in Australia. The paper concludes that service providers in Australia need to have a clearer understanding of the functions of South Sudanese customary law before they can tailor services to meet the legal needs of South Sudanese communities.

Background

For a community or society to work, it needs to have a level of structure that applies to everyone and is understood by everyone. Laws create that structure and regulate the way in which people, organisations and governments behave.¹

Every society has such laws or similar rules which govern and regulate the people and their behaviour. A 'legal system' is a term that "describes the laws we have, the process for making those laws, and the processes for making sure the laws are followed."² The Australian legal system is based on the rule of law, meaning that no one is above the law and that the law is equally applicable to all.³ The rule of law is the most important principle in Australian law, as it ensures that the government is made subject to the law and that democracy can effectively prevail.⁴ The Australian legal system is also adversarial in nature, meaning that two competing parties put forward a case to be decided by an independent judge or panel of judges.⁵ The judges hear the cases of both sides and apply an independent decision based only on the facts presented to them, the relevant law and any existing precedents.⁶ They do not perform any investigation into the case. Laws are primarily made by parliaments in Australia through statutory law, where Acts of parliaments are passed which become binding law on all citizens. All Australian laws are clearly documented and available to all. If one experiences a legal issue and needs to access the legal system, there are avenues and services available to them, all of which work interchangeably together. For example, a police officer may categorise a dispute as a personal or criminal matter, deciding whether it is a breach of the law and warrant arrest or prosecution.⁷ If so, the matter will then be taken further through the legal system, utilising lawyers, courts or any other relevant services. The lawyer's role is to "evaluate a client's dispute in terms of whether it raises legal issues or violates

¹ Legal Information Access Centre, "Australian Legal System," *Hot Topics: Legal Issues in Plain Language*, no. 60 (2007): 1.

² Legal Information Access Centre: 1.

³ James Miller, *Getting into Law* (Sydney: Butterworths, 2002), 10.

⁴ Guy Green, "The marginalisation of the law in Australia," *Brief: The Law Society of Western Australia Incorporating Law Bulletin* 30, no. 4 (May 2006): 5.

⁵ Legal Information Access Centre: 3.

⁶ In criminal cases, the defendant has a choice of having their case heard and decided by a panel of peers, namely a jury.

⁷ Sharyn L. Roach Anleu, *Law and Social Change* (London: SAGE Publications, 2000).

legal rules and advise seeking a compromise or initiating litigation on that basis.”⁸ The Australian legal system is a functional and unbroken system based on fairness, equality and transparency. It protects groups and individuals by clearly outlining their legal rights and responsibilities, while prosecuting wrongdoers and compensating the victims through formal legal processes and written laws.

In South Sudan however, most legal problems are not governed by the formal legal system.⁹ Instead, the majority of disputes are regulated through a customary law system. Fadlalla defines customary law as “common rule that reflects the common understanding of valid, compulsory rights and obligations, those underlying social norms that have become the recognised law of a society.”¹⁰ These customary laws are the oral customs and traditions which are passed down from generation to generation and widely applied as legal rules. This oral tradition is “the basis of all social organisations and the means to guide the regulation of relationships.”¹¹ In South Sudan, 95 per cent of all legal disputes are resolved through the customary law.¹² Customary law is recognised in law and in the South Sudanese Constitution,¹³ and there are a number of customary courts established throughout the country forming part of the court hierarchy, presided by the local chiefs or leaders who act as judges.¹⁴ However, these courts are not formal, but communal. They are held in public, often outside with large numbers of community members observing and commenting.¹⁵ Further, in cases where the issue is not covered under the tribe’s

⁸ Roach Anleu, 110.

⁹ South Sudan is a legally pluralistic state, operating both a country wide statutory law system and individual tribal customary law systems. However, the statutory law system has been disrupted during war time, and the people of South Sudan have largely only ever utilised the customary system. For a more detailed discussion see Christina Murray and Catherine Maywald, "Subnational Constitution-Making in the Southern Sudan," *Rutgers Law Journal* 37, no. 4 (2006).

¹⁰ Mohamed Fadlalla, *Customary Laws in Southern Sudan: Customary Laws of Dinka and Nuer* (New York: iUniverse, 2009), 3.

¹¹ SPLM Secretariat for Legal Affairs and Constitutional Development (SOLA) and Customary Law Steering Committee (CLSC), "Workshop Report" (paper presented at the First Customary Law Work Plan Workshop, held 14-16 December 2004, Nairobi, 2004).

¹² Aleu Akechar Jok, Robert A. Leitch, and Carrie Vandewint, "A Study of Customary Law in Contemporary Southern Sudan," (World Vision International and The South Sudan Secretariat of Legal and Constitutional Affairs, 2004), 30.

¹³ *The Interim Constitution of Southern Sudan (ICSS)*, Southern Sudan. (2005)

¹⁴ Maude Fournier, "A Comprehensive Overview of Sudan's Legal Framework in Light of the Darfur Crisis," (Pearson Peace Keeping Centre, Occasional Paper 3, 2008), 8-9; Natale Olwak Akolawin, "Personal law in the Sudan - Trends and developments," *Journal of African Studies* 17, no. 2 (1973); Adila Abusharaf, "Sudan," in *Legal Systems of the World*, ed. Herbert M. Kritzer (Santa Barbara: ABC Clio, 2002).

¹⁵ Tiernan Mennen, "Legal Pluralism in Southern Sudan: Can the Rest of Africa Show the Way?," *Africa Policy Journal* 3(2007).

existing customary law, the chiefs or judges will often adopt 'customary norms of fairness' based on public opinion to the dispute at hand.¹⁶ In other words, chiefs or judges have the power to make customary law if such law does not exist, according to public opinion and fairness. This customary law differs from the Australian statutory law in a number of ways, which can cause significant difficulties for South Sudanese people settling in Australia.¹⁷ This paper explores some of these difficulties and offers possible solutions to help minimise them. It needs to be highlighted here that this discussion is not exhaustive and only focuses on some of the differences causing difficulties for this group. There are many other significant differences which are outside the scope of this paper, especially in the area of family law.¹⁸

Methodology

This paper draws upon a qualitative study in progress which explores the legal needs of Sudanese refugees in Australia.¹⁹ Twenty-two members of the South Sudanese community in Adelaide were asked questions about any difficulties and/or concerns they experienced with the Australian law. Participants were recruited through service providers and refugee organisations. Six women and sixteen men (three of whom were community leaders) were interviewed using in-depth, semi-structured interviews. Interviews consisted of closed and open-ended questions where participants were presented with the opportunity discuss their concerns in detail. Interview length ranged from 30 minutes to 2 hours, and all interviews were voice recorded and transcribed. All the data collection, transcription and data analysis was performed by the researcher. Participants were assigned pseudonyms for confidentiality reasons. This research is the first qualitative study exploring the legal needs of South Sudanese refugees in South Australia, presenting the

¹⁶ Mennen.

¹⁷ Statutory law meaning written law established and enacted by legislation.

¹⁸ For a more detailed discussion of issues with family law for South Sudanese people in Australia, refer to Danijela Milos, "South Sudanese communities and Australian family law: A clash of systems," *Australasian Review of African Studies* 32, no. 2 (2011): 146-62. and Migrant Information Centre Eastern Melbourne, "Family violence within the Southern Sudanese community - Project evaluation report," (Dec 2008).

¹⁹ This study is drawn from my PhD research conducted at Flinders University, Adelaide. The study does not focus specifically on family law problems, but any general legal issues the participants experienced, such as issues with housing, driver's licences, employment and discrimination, and the ways they resolved those problems.

community with an opportunity to voice their concerns of the Australian legal system.²⁰ By reference to this study as well as an extensive literature review, this paper explores the many differences between the legal systems of South Sudan and Australia.

Communal Justice

Norms and values of societies in South Sudan are “negotiated and enforced primarily through family and neighbourhood arenas of mediation, decision-making, social contract and moral teaching.”²¹ Under the South Sudanese customary law,²² at the very basic level, the man is seen as the head of the household and most trivial problems are resolved by the father or oldest male either within the household or the extended family.²³ If the matter cannot be resolved within the household or the extended family, it will go to the local community where the chief applies the local customary law,²⁴ as *David* explains:

A lot of disputes are resolved within the family, because if I have a problem, I try to solve it within my immediate family, and then I go to my extended family, then I go to the whole clan, and then I go to the whole tribe. So that's how it is normally.

²⁰ A number of studies have emerged over the past ten years exploring the settlement needs of Sudanese refugees in Australia. See for example Human Rights and Equal Opportunity Commission, "African Australians: A report on human rights and social inclusion issues - Discussion Paper," (Government of Australia, 2009).; Sally Aplin, "Analysis of the Legal Needs of Horn of Africa People in Melbourne," (Melbourne: Pro Bono Fellowship Report, 2002).; Eileen Pittaway and Chrisanta Muli, "The settlement experiences of refugees and migrants from the Horn of Africa," (Horn of Africa Relief Development Agency, The Centre for Refugee Research UNSW, 2009).; Nigar G. Khawaja et al., "Difficulties and Coping Strategies of Sudanese Refugees: A Qualitative Approach," *Transcultural Psychiatry* 45, no. 3 (2008).; Robert Schweitzer et al., "Trauma, post-migration living difficulties, and social support as predictors of psychological adjustment in resettled Sudanese refugees," *Australian and New Zealand Journal of Psychiatry* 40(2006). and Jay M. Marlowe, "Beyond the Discourse of Trauma: Shifting the Focus on Sudanese Refugees," *Journal of Refugee Studies* 23, no. 2 (2010).

However, none of these studies focus specifically on the legal needs of South Sudanese refugees.

²¹ Cherry Leondardi et al., "Local Justice in Southern Sudan," in *Peaceworks No.66* (United States Institute of Peace, 2010), 28.

²² There are over fifty different tribes in South Sudan, each with their own set of customary laws and traditions. While these differ from tribe to tribe in their styles, they are very similar in substance. Most tribes have very similar family laws covering marriage and family responsibilities. For a detailed account of the Dinka and Nuer tribes' customary laws see Fadlalla.

²³ Sharanjeet Parmar, "An Overview of the Sudanese Legal System and Legal Research," *GlobaLex*, <http://www.nyulawglobal.org/Globalex/Sudan.htm> (accessed 06/08/2009); Gak Woul, "Are We Really Integrating?," *Focus*, no. 4 (2010).

²⁴ Liv Tonnessen, "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Law among Northern and Southern Elites in Khartoum," (CMI Working Paper No.4, 2007), 6.

If the matter cannot be resolved after consultation with community, it will then progress to the local chiefs' courts established throughout the tribes.²⁵ Due to the lack of infrastructure and the informality of the proceedings, the courts are often held outside under large trees rather than court buildings.²⁶ Lawyers are not permitted at these proceedings, and up to seven chiefs can form a panel which acts as advocate and arbiter, with the community acting as public opinion.²⁷

The community can come and gather around, listening, involving. The judge also sees the views of the people standing, so when he makes the decision he includes maybe what the people say... So he is also listening, acquiring, collecting something from people standing around. Take into account the culture... like when the judge makes the decision he has to consider what the culture has to say sometimes. (Interview with David)

It is a very communal system based on the preservation of social order and relations. As a result, "most people are generally reluctant to take relatives or other close relations to the police or even to court, as a retributive outcome could harm or destroy social relations."²⁸ Instead, they will always try to resolve the matter within the family or community and keep it from escalating. In cases of domestic violence for example, South Sudanese women are not permitted to talk to anyone outside the family, and are encouraged to resolve their issue with their husband's family and stay in the marriage for the sake of the family.²⁹

Furthermore, South Sudanese customary law is inquisitorial in nature, where chiefs or judges often actively engage in the investigation during the decision making

²⁵ Abdel A.H. Salam and Alexander De Waal, eds., *The Phoenix State: Civil society and future of Sudan*, Justice Africa Committee of the Civil Project (Lawrenceville NJ: The Red Sea Press, 2001), 180.

²⁶ Leondardi et al., 32; Salam and De Waal, eds., 180.

²⁷ Mennen; Antony N. Allott, "What is to be done with African customary law? The experience of problems and reforms in anglophone Africa from 1950," *Journal of African Studies* 28, no. 1 (1984): 60-61.

²⁸ Leondardi et al., 50.

²⁹ Aparna Hebbani, Levi Obijiofor, and Helen Bristed, "Intercultural Communication Challenges Confronting Female Sudanese Former Refugees in Australia," *Australasian Review of African Studies* 31, no. 1 (2010); Nyawaragak Dei Wal, "Southern Sudanese Culture," (Migrant Information Centre (Eastern Melbourne), 2004).

process.³⁰ These judges are the leaders of the community, who are widely known and respected by all, and in some instances chosen by the people to be their leaders.³¹ So the expectation is that a decision will be made by a trusted, known leader who personally investigates the case and takes into account public opinion and culture rather than written law. This is not so in the Australian system however, where the judge (and the lawyer in some cases) is not known to the parties, and will not investigate the case, but hear the facts and arguments and apply a decision based on legal rules.

Another important distinction is the lack of written law and written documents in general in the South Sudanese culture.³² The reported literacy rate among men in South Sudan is 37 percent, and only 12 percent among women,³³ with some reports that up to 98 percent of South Sudanese women are illiterate.³⁴ Coming from a system where almost nothing is written and customs, laws and traditions are passed down orally through generations, to a system where everything is documented and expected to be presented in written form can be highly confusing.³⁵ *Paul* highlights this difference:

So things are done differently there, it's mostly like that they are not written laws, they are just conventional laws. I suppose these here are like written laws... There... customary laws, like the Aboriginal customary law, it's from generation to generation to generation.

³⁰ Alexander P. Danne, "Customary and Indigenous Law in Transitional Post-Conflict States: A South Sudanese Study," *Monash University Law Review* 30, no. 2 (2004): 209; Leondardi et al., 33.

³¹ Leondardi et al., 24.

³² Springvale Monash Legal Service, "Comparative analysis of South Sudanese customary law and Victorian law," (2008), 35.

³³ Weep for Southern Sudan, "Who are we?," <http://www.weepforsouthern Sudan.org> (accessed 15/09/2011).

³⁴ UNFPA Sudan, "Welcome to UNFPA Sudan," (2010), http://www.countryoffice.unfpa.org/sudan/2010/02/20/1840/welcome_to_unfpa_sudan (accessed 15/09/2011).

³⁵ Ursula Burgoyne and Oksana Hull, "Classroom management strategies to address the needs of Sudanese refugee learners," ed. National Centre for Vocational Education Research (Department of Education, Science and Training, Government of Australia, 2007), 9.

From understanding information which is given to them in booklets and brochures, to filling out forms and signing documents; these are all new and foreign processes to some South Sudanese communities.³⁶

Objectives and Legal Sanctions

The South Sudanese customary law system differs from the Australian law in that it often adopts a 'conciliatory approach' to dispute resolution.³⁷ The objectives of South Sudanese customary law are not punitive but restitutive, and can be summarised as "the maintenance of peace or equilibrium and the restoration of the status through the payment of damages."³⁸ This differs from the goal of Australian law, which is to ascertain the truth, regardless of whether the truth brings satisfaction or resolution to the parties. Danne explains that "African dispute resolution has been described as placing a premium on improving relations on the basis of equity, good conscience and fair play, rather than the strict legality often associated with Western justice."³⁹ Therefore, when a crime is committed, it is common that the court orders the criminal to pay compensation to the victim's family to restore equilibrium. This is seen as more effective than applying penal sanctions, as it is said to "induce obedience and enable society to maintain a strong sense of discipline."⁴⁰ Brian explains:

It's our social mechanism of resolving things. We think it is much better than ending up with a resolution in court, one in jail and one fined or something, that brings back some hatred in the community. There are ways to do this; the best thing put in mind by the community is to make sure that the community remains stable.

³⁶ The Australian Indigenous community faces similar issues with the legal system, as it conflicts with their ways of telling stories and conveying information. For a detailed discussion refer to Janet Ransley and Elena Marchetti, "The Hidden Whiteness of Australian Law," *Griffith Law Review* 1, no. 1 (2001).

³⁷ Danne: 209.

³⁸ John Wuol Makec, *The customary law of the Dinka people of Sudan: In comparison with aspects of Western and Islamic laws* (London: Afroworld Publishing, 1988), 36, 46.

³⁹ Danne: 210.

⁴⁰ Makec, 45.

The sanctions in Dinka law for example,⁴¹ rather than being based on fear of imprisonment, are based on the fear of God, the fear of supernatural powers, the fear of public criticism and the fear of revenge.⁴² The fear of revenge is perhaps the most effective deterrent to violent crime, as revenge is collective and a whole tribe can be held responsible for the wrongful actions of one member of their tribe against another tribe. Therefore, it is in the whole tribes' best interest to prevent individuals from committing wrongs, and when a wrong is committed compensation to the wronged party or tribe is best paid "within a reasonable time to prevent revenge."⁴³ This can be contrasted with Australian law which does not tolerate revenge crimes but relies on the legal system to punish the wrongdoer, and only the wrongdoer, accordingly.

Prison sentences are generally not accepted nor liked in South Sudanese culture, as they are seen to achieve nothing and exacerbate a breach in social relations.⁴⁴ In cases where prison sentences are considered, compensation is usually directly commensurable often resulting in the prisons containing poor people who cannot pay their fines.⁴⁵ Flogging is also considered a suitable punishment as it serves as an example to others and inflicts humiliation, and is "largely reserved for thieves, teenagers, or particularly drunk or abusive defendants."⁴⁶ In cases of rape, marriage is often seen as the best outcome as it restores the respectability to the girl and her family.⁴⁷ This greatly contradicts the punishment for rape in Australia, which is considered to be one of the most serious crimes and is punishable with long prison sentences. Similarly, in cases of murder, it is common for compensation to be provided to the victim's family to 'replace and reproduce life', which can come in forms of cattle, money and traditionally in the past, a young girl.⁴⁸ Leonard et al highlight that "the idea is not that relatives benefit from the death, but rather that the loss of life is mitigated by the productive use of compensation."⁴⁹ In some cases, the

⁴¹ The Dinka are the largest tribal group in South Sudan, comprising approximately 40 percent of the Southern population.

⁴² Makec, 46.

⁴³ Makec, 52.

⁴⁴ Leonard et al., 38.

⁴⁵ Leonard et al., 37.

⁴⁶ Leonard et al., 38.

⁴⁷ Leonard et al., 61.

⁴⁸ Leonard et al., 63.

⁴⁹ Leonard et al., 65.

victim's family is consulted and chooses what kind of punishment will be most suitable; ranging from monetary payments, imprisonment or execution.

Criminal v civil matters

In South Sudanese customary law, there is no distinction between criminal and civil law.⁵⁰ The rationale behind this is the desire to restore social equilibrium through the payment of damages, as discussed above.⁵¹ This creates confusion for the community in Australia when they are faced with a legal issue, as they may not understand which section their problem belongs to and how they should attempt to resolve their problems. *Brian* explains:

People don't understand what is the difference between civil and criminal law, insurance policies, corporate law. No one understands all this, and there is no way for us to simplify this so that we can look at one paper and know what we have to do. It's just too complicated.

The participants mainly saw the legal system as a means of punishing wrongdoers and keeping peace. However, most participants were ignorant of the fact that through civil law cases, one can use the legal system to rectify a personal situation where another person has left them in an undesirable situation. Although payment of damages is a common resolution in South Sudanese customary law, suing people for personal damages when have not committed a crime is something that is not common nor acceptable. *Andrew* explains that it is simply not part of the South Sudanese culture:

Because in Australia what they really look for is money. But that's not in our heart. All we need is to be free and get rid of that problem rather than you know, asking for money or suing that person and all that. That's not what we have back home. We don't sue people.

⁵⁰ Makec, 37.

⁵¹ Danne: 209.

What this results in is an inability and unwillingness to enforce one's legal rights when done wrong by somebody else, placing South Sudanese communities in a vulnerable position when it comes to protecting their own rights.

Self-reporting of crime

Another significant difference and vulnerability for South Sudanese communities is self-reporting of crime; "There is a strong culture of admitting guilt in certain cases, notably sexual offences and murder."⁵² Participants explained that if somebody commits a crime or does something contrary to the customs or laws, they are expected to confess and report themselves:

So you do a crime... maybe kill somebody, you report yourself to someone else, say this is what I did. Then people start the process very quickly.
(Interview with Brian)

Because of the communal nature of the customary law system in South Sudan, the community works together to resolve and prevent crime, and to restore order and equilibrium to society as quickly as possible. This is usually assisted by the wrongdoers reporting their crimes and accepting their punishment. The Australian legal system does not work in this way however, and confessing to a crime before knowing one's rights or the consequences can be a serious vulnerability. *Brian* goes on to explain the implications of this custom for the South Sudanese people in Australia:

So most Sudanese would tell someone from Australia when they do something wrong, it will not take more effort to discover that. That is a serious vulnerability and that is a serious disadvantage. And it is now up to us to tell them, no no no, that is there, here it is changed. This here could be your enemy...maybe for those who are born here, that's fine. But for us who came here, that is a serious vulnerability for us. We expect this, and we expect them to confess if they do a crime... And the resolution what we have, what we do there, we don't really

⁵² Leondardi et al., 33.

investigate more, no more investigation. Someone commit rape, they come and say 'look this is what I did'. Now this is not the rule anymore.

This is a significant difference in the legal systems, and one which can have devastating consequences for the people of South Sudan. It is imperative that they understand and learn that self-confession of crime may not be in their best interest, and that they are advised of their legal rights and 'correct' processes of dealing with these issues.

Reconciling the differences

The main issue which arises out of these differences is the lack of knowledge and understanding of the Australian laws and legal system, as *Paul* highlights:

There are some people in the community that lack the language skills and their only understanding of the laws they have is inherited laws, or passed down from generation to generation laws. And so they know nothing about the system, they know nothing about the services, so these are the people that are having the problems.

Therefore, legal education is necessary to familiarise the South Sudanese communities with the Australian system and procedures. *Kurt* explains that it is up to the Australian system and government to provide this education to South Sudanese communities, in order to help them integrate and understand:

When it comes to the law, I will say that how would you bring somebody here, who does not know anything about that country, and expect him to behave in the same way as a citizen of that country?... So if there is a better way they could... educate them a little on the laws before they settled in the country that would be really nice. Because you can't assume that somebody will know everything right from the start.

Janet explains that new arrival communities are made aware that new, different laws exist and that they need to be aware of these laws and protect themselves.

However, she argues that the substance of those laws and the procedures for upholding and protecting ones rights are not explained, and that more specific education needs to be provided:

Yes, we know the law exists, Australia is a different country and you have to follow those rules. And that's how it is. But as an immigrant or as a new arrival you are confused because you just came to a society that is totally different from your own. I feel like the government is obligated and has the responsibility to try and teach people the laws and try to help them, try to interpret. Interpret and basically try to make people apply it, because you know the law exists, but you don't know as a person how you can protect yourself from breaking the law... I think that is what we should do, so have services like that that can help new arrivals, like basically assimilate into society.

The most effective way of reaching the South Sudanese community and delivering this education is through their community ties. As the community leaders are well respected and still hold a lot of power in Australia, South Sudanese communities continue to utilise their customary law powers to ask for advice and resolutions to problems. Therefore, the community leaders should be involved in all aspects of legal education to the community, as *David* explains:

They have to involve the community leaders... they will come together, the community leaders and maybe the police or other people in authority... to come together would be the right thing. Between the law, and the culture, and what the people think is a good idea.

So this education, rather than being provided on a large scale to all new arrival communities at big gatherings, should be delivered through community leaders and be tailored to the individual communities and their needs, as *James* explains:

I think it would be good if we do it through some communities. Like get a list of all the communities around, all these people have some community leaders. So we do some workshops through this community. Instead of doing legal advice sessions here [at refugee associations] I find very few come, so the message

may not get out. So the good thing is if we go out to them, the individual communities, like if you want you can come to our community, we contact the chair person who organises it, all the community members, everybody will be there. Then they will get the message.

Because of the oral nature of South Sudanese law, the people are looking to the community leaders for education and advice rather than searching legal documents and services. Therefore, targeting community leaders rather than the communities themselves ensures that the information that is presented to the community is culturally appropriate, easily understood and accessible to the people, as *John* explains:

Speak to the community leader and then the leader may call a meeting and explain the law to the people who don't have access to reading material.

It can thus be concluded that the best way to provide legal education and meet the legal needs of South Sudanese communities is through their community leaders. In order to do this, community leaders need to be educated on Australian law and dispute resolution, and work with service providers to develop appropriate services.

Maybe, the community leaders have to meet with the people in power, and bring out the solution. (Interview with David)

Conclusion

It is clear from the above discussion that the “adversarial litigation model is foreign to South Sudanese communities.”⁵³ The processes and systems they are familiar with differ greatly from the Australian systems and processes. This is highly likely to result in misunderstandings and ignorance of the law and a lack of access to justice for this group of people. The biggest challenge South Sudanese people face in Australia is

⁵³ Springvale Monash Legal Service, 41.

understanding how the Australian legal processes operate.⁵⁴ Therefore, providing education about the role and function of the law, as well as the community's rights when dealing with the legal system, should be of the utmost importance to service providers.⁵⁵ This is also expressed by the Springvale Monash Legal Service, who states that "adequate opportunities for the South Sudanese community to learn Australian laws over a long period of time are necessary if they are to understand their rights and obligations under the Victorian legal system."⁵⁶

However, this education should not stop there. It is also highly important that the Australian community and service providers understand the South Sudanese culture and processes if they are to adequately meet their legal needs and maintain a positive mutual relationship with this growing community.⁵⁷ Because of the lack of understanding of the Australian law, South Sudanese communities are highly likely to still utilise their customary law processes; by resolving their problems within their families and seeking the advice of their community leaders. They are also not very likely to access the Australian legal services as they differ so greatly from the services they are accustomed to and may not meet their individual needs. It has been reported that in some instances, the current "services and interventions can inadvertently undermine the collectivist basis that is crucial to African Australian communities".⁵⁸ Therefore, Australian service providers need to become aware of the collectivist and communal nature of South Sudanese law, and need to tailor their services to reflect and respect that system if they are to meet the legal needs of these communities. The most effective way of doing this is to educate and involve the community leaders in formal dispute resolution processes. The community leaders are already acting as advocates and mediators in their communities by responding to the needs and problems of their people. The importance of their role needs to be recognised, supported and monitored by the Australian legal system in order to meet the legal needs of South Sudanese communities.

⁵⁴ Bill Collopy and Emma Langley, "Sudanese in South East Melbourne: Perspectives of a new and emerging community," (South Eastern Region Migrant Resource Centre, March 2007), 34.

⁵⁵ Azita Khademy Deljo, "Refugees Encounter the Legal Justice System in Australia: A Case Study," *Journal of Psychiatry, Psychology and Law* 7, no. 2 (2000): 252.

⁵⁶ Springvale Monash Legal Service, 68.

⁵⁷ Springvale Monash Legal Service, 69.

⁵⁸ Australian Human Rights Commission, "In Our Own Words: African Australians: A review of human rights and social inclusion issues," (2010), 9.

Bibliography:

- Abusharaf, Adila. "Sudan." In *Legal Systems of the World*, edited by Herbert M. Kritzer, 1542-47. Santa Barbara: ABC Clio, 2002.
- Akechar Jok, Aleu, Robert A. Leitch, and Carrie Vandewint. "A Study of Customary Law in Contemporary Southern Sudan." 1-67: World Vision International and The South Sudan Secretariat of Legal and Constitutional Affairs, 2004.
- Akolawin, Natale Olwak. "Personal law in the Sudan - Trends and developments." *Journal of African Studies* 17, no. 2 (1973): 149-95.
- Allott, Antony N. "What is to be done with African customary law? The experience of problems and reforms in anglophone Africa from 1950." *Journal of African Studies* 28, no. 1 (1984): 56-71.
- Aplin, Sally. "Analysis of the Legal Needs of Horn or Africa People in Melbourne." 1-47. Melbourne: Pro Bono Fellowship Report, 2002.
- Australian Human Rights Commission. "In Our Own Words: African Australians: A review of human rights and social inclusion issues." 1-44, 2010.
- Burgoyne, Ursula, and Oksana Hull. "Classroom management strategies to address the needs of Sudanese refugee learners." edited by National Centre for Vocational Education Research, 1-40: Department of Education, Science and Training, Government of Australia, 2007.
- Collopy, Bill, and Emma Langley. "Sudanese in South East Melbourne: Perspectives of a new and emerging community." 1-51: South Eastern Region Migrant Resource Centre, March 2007.
- Danne, Alexander P. "Customary and Indigenous Law in Transitional Post-Conflict States: A South Sudanese Study." *Monash University Law Review* 30, no. 2 (2004): 199-228.
- Dei Wal, Nyawaragak. "Southern Sudanese Culture." 1-8: Migrant Information Centre (Eastern Melbourne), 2004.
- Deljo, Azita Khademy. "Refugees Encounter the Legal Justice System in Australia: A Case Study." *Journal of Psychiatry, Psychology and Law* 7, no. 2 (2000): 241-53.
- Fadlalla, Mohamed. *Customary Laws in Southern Sudan: Customary Laws of Dinka and Nuer*. New York: iUniverse, 2009.
- Fournier, Maude. "A Comprehensive Overview of Sudan's Legal Framework in Light of the Darfur Crisis." 1-16: Pearson Peace Keeping Centre, Occasional Paper 3, 2008.
- Green, Guy. "The marginalisation of the law in Australia." *Brief: The Law Society of Western Australia Incorporating Law Bulletin* 30, no. 4 (May 2006): 5-9.
- Hebbani, Aparna, Levi Obijiofor, and Helen Bristed. "Intercultural Communication Challenges Confronting Female Sudanese Former Refugees in Australia." *Australasian Review of African Studies* 31, no. 1 (2010): 37-61.
- Human Rights and Equal Opportunity Commission. "African Australians: A report on human rights and social inclusion issues - Discussion Paper." 1-26: Government of Australia, 2009.
- The Interim Constitution of Southern Sudan (ICSS)*, 2005, Southern Sudan.
- Khawaja, Nigar G., Katherine M. White, Robert Schweitzer, and Jaimi H. Greenslade. "Difficulties and Coping Strategies of Sudanese Refugees: A Qualitative Approach." *Transcultural Psychiatry* 45, no. 3 (2008): 489-512.

- Legal Information Access Centre. "Australian Legal System." *Hot Topics: Legal Issues in Plain Language*, no. 60 (2007): 1-28.
- Leondardi, Cherry, Leben Nelson Moro, Martina Santschi, and Deborah H. Isser. "Local Justice in Southern Sudan." In *Peaceworks No.66*, 1-98: United States Insitute of Peace, 2010.
- Makec, John Wuol. *The customary law of the Dinka people of Sudan: In comparison with aspects of Western and Islamic laws*. London: Afroworld Publishing, 1988.
- Marlowe, Jay M. "Beyond the Discourse of Trauma: Shifting the Focus on Sudanese Refugees." *Journal of Refugee Studies* 23, no. 2 (2010): 183-98.
- Mennen, Tiernan. "Legal Pluralism in Southern Sudan: Can the Rest of Africa Show the Way?" *Africa Policy Journal* 3 (2007).
- Migrant Information Centre Eastern Melbourne. "Family violence within the Southern Sudanese community - Project evaluation report." 1-61, Dec 2008.
- Miller, James. *Getting into Law*. Sydney: Butterworths, 2002.
- Milos, Danijela. "South Sudanese communities and Australian family law: A clash of systems." *Australasian Review of African Studies* 32, no. 2 (2011): 146-62.
- Murray, Christina, and Catherine Maywald. "Subnational Constitution-Making in the Southern Sudan." *Rutgers Law Journal* 37, no. 4 (2006): 1203-34.
- Parmar, Sharanjeet. "An Overview of the Sudanese Legal System and Legal Research." *GlobaLex*, <http://www.nyulawglobal.org/Globalex/Sudan.htm> (accessed 06/08/2009).
- Pittaway, Eileen, and Chrisanta Muli. "The settlement experiences of refugees and migrants from the Horn of Africa." 1-87: Horn of Africa Relief Development Agency, The Centre for Refugee Research UNSW, 2009.
- Ransley, Janet, and Elena Marchetti. "The Hidden Whiteness of Australian Law." *Griffith Law Review* 1, no. 1 (2001): 139-52.
- Roach Anleu, Sharyn L. *Law and Social Change*. London: SAGE Publications, 2000.
- Salam, Abdel A.H., and Alexander De Waal, eds. *The Phoenix State: Civil society and future of Sudan*, Justice Africa Committee of the Civil Project. Lawrenceville NJ: The Red Sea Press, 2001.
- Schweitzer, Robert, Fritha Melville, Zachary Steel, and Philippe Lacharez. "Trauma, post-migration living dificulties, and social support as predictors of psychological adjustment in resettled Sudanese refugees." *Australian and New Zealand Journal of Psychiatry* 40 (2006): 179-87.
- SPLM Secretariat for Legal Affairs and Constitutional Development (SOLA) and Customary Law Steering Committee (CLSC). "Workshop Report." Paper presented at the First Customary Law Work Plan Workshop, held 14-16 December 2004, Nairobi, 2004.
- Springvale Monash Legal Service. "Comparative analysis of South Sudanese customary law and Victorian law." 1-90, 2008.
- Tonnessen, Liv. "Gendered Citizenship in Sudan: Competing Perceptions of Women's Civil Rights within the Family Law among Northern and Southern Elites in Khartoum." 1-12: CMI Working Paper No.4, 2007.
- UNFPA Sudan. "Welcome to UNFPA Sudan." (2010), http://www.countryoffice.unfpa.org/sudan/2010/02/20/1840/welcome_to_unfpa_sudan (accessed 15/09/2011).
- Weep for Southern Sudan. "Who are we?" <http://www.weepforsouthernsudan.org> (accessed 15/09/2011).
- Woul, Gak. "Are We Really Integrating?" *Focus*, no. 4 (2010): 5-6.

