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South Sudanese communities and Australian family law: A clash of systems

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Abstract

The Sudanese community has been one of the fastest growing groups in Australia over the past decade. All bring with them a piece of their culture and customs, which they have to juggle with the Australian culture, values and laws. This article explores the differences in these cultures with regard to family law. It highlights the many discrepancies between the family dispute resolution processes of South Sudan and Australia, illustrating the difficulty South Sudanese communities face in understanding and adapting to the Australian family law. Drawing on a qualitative study in progress, this article shows that South Sudanese communities in Australia justifiably do not have a clear understanding of Australian family law and still widely utilise the customary law dispute resolution system of South Sudan. The article concludes that more targeted education on family law is needed in order to gain a better understanding of their rights and responsibilities, while the Australian legal system needs to acknowledge and utilise the traditional customary processes of the community in order to meet the needs of South Sudanese families.

Background

In South Sudan, family law is not governed by the formal legal system.¹ Rather, family disputes are regulated and resolved within families and communities, 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.”² 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

¹ 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, especially for family law matters.

² Mohamed Fadlalla, *Customary Laws in Southern Sudan: Customary Laws of Dinka and Nuer* (New York: iUniverse, 2009), 3.

to guide the regulation of relationships.”³ In South Sudan, 95 per cent of all legal disputes are resolved through the customary law.⁴

Customary family law differs from the Australian statutory family law in a number of ways.⁵ Under the South Sudanese customary law,⁶ at the very basic level, the man is seen as the head of the household and family matters are resolved by the father or oldest male either within the household or the extended family.⁷ So most family issues are kept within the family. If the matter cannot be resolved within the household or the extended family, it will go to the local chief who applies the local customary law and has the final say on the matter within the community. As customary law is recognised in law and in the South Sudanese Constitution,⁸ there are a number of customary courts established throughout the country, presided by the local chiefs or leaders who act as judges. These form part of the court hierarchy, and are considered part of the legal system.⁹ However, these courts are not formal, but communal. They are held in public, often outside with large numbers of community members observing and commenting.¹⁰ 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.¹¹ Further, in cases where the issue is not covered under the tribe’s existing

³ 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).

⁴ Aleu Jok Akechar, 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.

⁵ Statutory law meaning written law established and enacted by legislation.

⁶ 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.

⁷ Sharanjeet Parmar, “An Overview of the Sudanese Legal System and Legal Research,” GlobaLex, <http://www.nyulawglobal.org/Globalex/Sudan.htm> (accessed 6 August 2008); Gak Woul, “Are We Really Integrating?,” *Focus*, 4 (2010): 5-6.

⁸ *The Interim Constitution of Southern Sudan (ICSS)*, Southern Sudan. (2005)

⁹ 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.

¹⁰ Tiernan Mennen, “Legal Pluralism in Southern Sudan: Can the Rest of Africa Show the Way?,” *Africa Policy Journal* 3(2007): 54-55.

¹¹ Mennen.

customary law, the chiefs or judges will often adopt ‘customary norms of fairness’ based on public opinion to the dispute at hand.¹² 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. It needs to be highlighted here that this law is oral rather than written law.

The Sudanese community is one of the fastest growing groups in Australia, with the number of entrants rising by an average of 34 per cent each year between 1996 and 2006.¹³ There are now over 20,000 Sudanese people living in Australia, most of who have fled South Sudan and entered Australia on a humanitarian visa.¹⁴ Upon arrival, most quickly realise that family law in Australia is very different to the customary laws they are used to. If there is a legal problem within the family in Australia, such as domestic violence or divorce, the law intercepts and decides on the outcomes of the case.¹⁵ For example, government officials have the power to take children away from their parents if they believe the law has been broken and the children are in danger.¹⁶ Australian law is also based on formal, written rules and procedures, and cases are decided based on facts and procedures rather than oral customs and public opinion. This is a major point of difference which has the potential of creating numerous settlement difficulties for South Sudanese refugees. Burgoyne and Hull

¹² Mennen.

¹³ Department of Immigration and Citizenship, “Sudanese Community Profile,” (Government of Australia, 2007), 4; Department of Immigration and Citizenship, “Community Information Summary: Sudan-born,” (Government of Australia, 2006). The numbers of Sudanese entrants has declined since 2007, with the government announcing a cut in the intake of Sudanese refugees.

¹⁴ Andrew Jakubowicz, “Australia’s migration policies: African dimensions,” in *African Australians: A review of human rights and social inclusion issues (Background paper)* (Australian Human Rights Commission, May 2010).

¹⁵ In Australia, most family law cases are resolved out of court. The courts support and encourage alternative dispute resolution processes and out of court settlements. However, all these cases are resolved in the ‘shadow of the law’, utilising the legal system and its processes. See Rosemary Hunter, “Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law,” *Journal of Law and Society*. 30:1 (2003): 156- 176.

¹⁶ *Children’s Protection Act*, South Australia, (1993), Section 16 (1) of the Act states: “If an officer believes on reasonable grounds that a child is in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect the child from harm (or further harm), the officer may remove the child from any premises or place, using such force (including breaking into premises) as is reasonably necessary for the purpose.” Similar Acts are in force in other Australian states, including *Child Protection Act*, Queensland. (1999) and *Children, Young Persons and their Families Act*, Tasmania. (1997).

emphasize this, stating that “on arrival in Australia, all Sudanese refugee learners are unfamiliar with ways of operating in a culture that places a high premium on the universal daily use of the written word.”¹⁷ The reported literacy rate among men in South Sudan is 37 percent, and 12 percent among women.¹⁸ However, the United Nations Population Fund (UNFPA) Sudan reports that up to 98 percent of South Sudanese women are illiterate.¹⁹ This alarming rate presents a significant issue upon arrival in Australia, as most the information presented to new arrivals is in written form and is not likely to be understood even when translated into their spoken language. Further, the Australian culture is individualistic, while the South Sudanese culture is very collectivistic with strict gender roles.²⁰ Women and children are particularly vulnerable under South Sudanese customary law, as women are not considered legal subjects and there is no juvenile justice system.²¹ These differences in family law often lead to ignorance about the role and power of the law in Australia for South Sudanese people. Hebbani et al point out that as a result of these differences, South Sudanese families often face adaptation challenges in the areas of negotiating gender roles and domestic violence.²² This lack of knowledge of Australian family law creates misunderstandings within South Sudanese families, which can lead to serious legal problems such as families being broken up or charges of domestic violence.

Methodology

This article draws upon a qualitative study in progress which explores the legal needs of Sudanese refugees in Australia.²³ Twenty-two members of the South Sudanese community in Adelaide were asked questions about

¹⁷ Ursula Burgoyne and Oksana Hull, “Classroom management strategies to address the needs of Sudanese refugee learners,” National Centre for Vocational Education Research, ed., (Department of Education, Science and Training, Government of Australia, 2007), 9.

¹⁸ Weep for Southern Sudan, “Who are we?,” <http://www.weepforsouthernsudan.org> (accessed 15 September 2011).

¹⁹ UNFPA Sudan, “Welcome to UNFPA Sudan,”(2010), http://www.countryoffice.unfpa.org/sudan/2010/02/20/1840/welcome_to_unfpa_sudan (accessed 15 Sept 2011).

²⁰ Aparna Hebbani, Levi Obijiofor, and Helen Bristed, “Intercultural Communication Challenges Confronting Female Sudanese Former Refugees in Australia,” *Australasian Review of African Studies*, 31: 1 (2010): 39.

²¹ Yasmine Sherif, “Promoting the rule of law in post-conflict Sudan,” *Forced Migration Review*, 24 (2005): 29.

²² Hebbani, Obijiofor, and Bristed, 39.

²³ 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.

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 Australia, presenting the community with an opportunity to voice their concerns of the Australian legal system.²⁴ This provided a unique opportunity to examine whether the South Sudanese community does in fact face the difficulties of understanding and accessing the legal system outlined above, what kind of difficulties they face and why, and finally, how *they* believe those difficulties could be overcome and met by the Australian legal system.

Changing gender roles

One of the main legal problems identified through the interviews was the difficulty in understanding and following family law, as participants come from a system where problems are resolved in the family.²⁵

²⁴ 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 or 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, Katherine M. White, Robert Schweitzer, and Jaimi H. Greenslade, "Difficulties and Coping Strategies of Sudanese Refugees: A Qualitative Approach," *Transcultural Psychiatry* 45: 3 (2008): 489-512; Robert Schweitzer, Fritha Melville, Zachary Steel, and Philippe Lacharez, "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): 179-87; and Jay M. Marlowe, "Beyond the Discourse of Trauma: Shifting the Focus on Sudanese Refugees," *Journal of Refugee Studies* 23: 2 (2010): 183-198. However, none of these studies focus specifically on the legal needs of South Sudanese refugees.

²⁵ It is interesting to note that participants were not asked questions about family law or family disputes specifically. However, almost all participants expressed their concern with the difficulties the South Sudanese community faces regarding family law.

I will say the Africans, 90 per cent have problems with their wives and kids, because of the law in this country. So I will say this law is hard to understand. (Interview with John)

It's really difficult to understand. Because one, the country I come out of, or the country I grew up in, the laws are quite different from the laws here. When you have a problem from the family itself, you begin things there; somebody from the family will intervene. Not going to the law straight away. But here anything that happens there, straight away to the police, in which is the law. (Interview with Adam)

Yea that will definitely affect the families, because they grow up there and they believe that when they come here they will still do what they were doing there. (Interview with Linda)

The resolution of problems within the family follows the expectations of traditional gender roles, with men being the patriarchal head of the family. However, the move to Australia often changes these traditional gender roles, as the role of men and women or husbands and wives is quite different in South Sudanese and Australian cultures. Sudanese women are expected to stay at home, have children and take care of the home and the children, while the men work and provide for the family.²⁶

They stay home and do other housework, like collect wood, fetch water, cooking. But not the men, men just sit. If you cook food, you bring, men can eat and you can come back and take the plate back. Men cannot cook or wash dishes in the house, no, not good. (Interview with Anne)

The participants highlighted that it is quite common for this relationship between men and women to be threatened if women wish to become more independent and take on non-traditional 'male' roles. Women in Australia are given a lot more opportunity to pursue a career or education, and they are also provided with social security payments. These opportunities were not available to most women in South Sudan, as *Janet* explains:

I feel like back in Sudan most women, because we come from a very traditional military regime, because it has been in war for many,

²⁶ Aniko Hatoss and Hendrik Huijser, "Gendered Barriers to Educational Opportunities: Resettlement of Sudanese refugees in Australia," *Gender and Education* 22: 2 (2010): 156.

many years. So I feel like to role of women is just so different, women are voiceless there... A woman is not supposed to be smarter than men, or she is not supposed to be more successful than men.

These new opportunities can be seen as both very beneficial as well as quite detrimental for Sudanese families. They are firstly beneficial in that they provide women with rights and choices as to how they want to live their lives, which they never had before. This is seen by some South Sudanese women as a great advantage and opportunity:

Here you have a right, here women have a right to do what they want to do. They have a right to pursue their career; they have a right to follow their dreams. You know, where back home their rights are very limited. (Interview with Lisa)

However, the more independent the wife becomes, the more the structure of the family changes and weakens, as the traditional role of the wife and family is being undermined.²⁷ In this way, access to education, employment and even social security payments in the woman's name can all contribute to the breakdown of the traditional Sudanese family in Australia. Men can feel that their role as the family provider and breadwinner is undermined, putting a strain on the marriage and family.²⁸ This often leads to a breakdown in marriages and increase in divorces as highlighted by the participants:

We have a lot of divorces for no reason, we have like you know wives kicking husbands out of the house which is something unheard of in the Sudanese community, it is usually the other way around. So yea, there are a lot of problems. (Interview with Paul)²⁹

Some participants attributed this problem to the differences in the legal systems of South Sudan and Australia:

Ok, husbands and wives. We understand here that the law supports women. And ours in Sudan, the laws are there to guide women. You see the difference there? But entirely is based on the man. Two different things, two different environments, a lot of problems.

²⁷ Burgoyne and Hull.

²⁸ Australian Human Rights Commission, "In Our Own Words: African Australians: A review of human rights and social inclusion issues," (Australian Human Rights Commission, Sydney, 2010), 35.

²⁹ Paul, Adam and Brian are the three South Sudanese community leaders interviewed. They spoke in detail on behalf of their communities, expressing their general concerns. They were highly aware of the issues their communities face, and their comments represent a general consensus amongst all 22 participants.

That's why problems are happening; people tend to be even single mothers or single fathers because of that one. (Interview with Adam)

This tension between the man and the woman can lead to acts of violence. Because South Sudanese society is male orientated where females do not have many rights or protections, violence against women is common.³⁰ It is widely accepted (and somewhat expected) in the South Sudanese culture for the man to hit his wife if she does not conform to the norms.³¹ Linda explains that in the refugee camp where she spent time before coming to Australia, this type of violence was common:

But back in Uganda you don't complain because they can definitely do something to you because you break their rule. It's not the government's rule, but their rule.

Domestic violence is a family issue in Sudan, where women accept this as a cultural norm and are encouraged to stay in the marriage for the sake of the family (except in very serious situations).³² Women are not permitted to talk about domestic violence, and no one is allowed to interfere unless they are invited to do so.³³ However, domestic violence is a criminal offence in Australia where the authorities often intervene and suggest immediate separation or divorce.³⁴ This matter is quite complicated. It is not only an issue of domestic violence. It is an issue of conflicting cultures whose expectations and management of family roles clash. Sudanese men may see this new found freedom and power of their wives as a threat to their family and culture, and act according to tradition and custom by hitting their wives. Some men may not believe they are doing anything wrong by being violent towards women. In fact, they could believe that they are upholding the rules and customs of their culture by doing so, which could be viewed as something to be valued and respected, rather than condemned. This difference in gender roles and customs can have serious legal implications for the families in Australia.

³⁰ Sherif; Jane Kani Edward, "Women and customary law in southern Sudan," *Sudan Tribune*, 8 March 2007; Karl Vick, "Sudanese Tribes Confront Modern War," *Washington Post*, www.washingtonpost.com/wp-srv/inatl/daily/july99/sudan7.htm (accessed 13 December 2008).

³¹ 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), 7.

³² Hebbani, Obijiofor, and Bristed: 49.

³³ Nyawaragak Dei Wal, "Southern Sudanese Culture," (Migrant Information Centre - Eastern Melbourne, 2004), 7.

³⁴ Hebbani, Obijiofor, and Bristed: 55.

Issues with children

Much like the expectations of women, the expectations of children within a South Sudanese family are different to those of an Australian family. First, the concept of 'youth' is something new to the South Sudanese community, as in South Sudan children often transition into adulthood upon puberty.³⁵ Raising children is a collective responsibility in South Sudan, where the extended family and community play a strong role in child care and discipline.³⁶ As such, children are expected to obey their parents and their elders.³⁷ This custom conflicts with the way of life in Australia, which causes problems between parents and children:

A lot of young people now they don't live at home. In our culture, the only reason you can leave your parents' house is when you are married. Whether a boy or a girl, doesn't matter. You have to move out of the house once you get married, otherwise you stay with them. (Interview with Paul)

This is quite different in Australian culture, where young people are expected to leave their parents home and build their own lives, even before they are married. They are provided with education and employment opportunities, social security payments and assistance with accommodation, making them more independent and free, which also conflicts with the South Sudanese culture.³⁸

So children are not really dependent on their parents, and because they are not really dependent on their parents, they feel this power, certain power over them. And this is creating a problem in the Sudanese community. (Interview with Paul)

This has shifted the power balance from the parents over to their children to some extent, upsetting the traditional South Sudanese family structure once again, which could potentially lead to violence in the home. Hebbani

³⁵ Elizabeth Cassity and Greg Gow, "Making up for lost time: The experiences of Southern Sudanese young refugees in high schools," *Youth Studies Australia* 24: 3 (2005): 52.

³⁶ Hebbani, Obijiofor, and Bristed: 40.

³⁷ It is common for a South Sudanese family to consist of more than eight members, often including nieces and nephews or cousins and their children. This causes further difficulties as the parents may not be the biological parents, therefore their rights may not be recognised by Australian law.

³⁸ Foundation House, "Education and Refugee Students from Southern Sudan," (Victorian Foundation for Survivors of Torture, 2005), 14; Peter Westoby, "Sudanese Refugee Narratives of Social Distress - Brisbane and Logan," *University of Queensland*(2007), <http://espace.library.uq.edu.au/view/UQ:34513> (accessed 19 September 2010).

et al point out “Sudanese and Australian disciplinary practices vary, as verbal commands and physical punishment (such as smacking the child) are deemed appropriate in Sudanese culture but inappropriate in Australia.”³⁹ The common use of physical punishment in South Sudan was also expressed by the participants:

Because back in Sudan if you find a child doing a stupid thing, you just use corporal punishment. Like you cane them, and that’s the end of the story. If that child goes to the mother and tries to complain that you caned him or her, he or she is going to get another beating for telling tales. (Interview with Paul)

Participants also expressed their concern over the ways these disputes were handled. The traditional way is to resolve these disputes within the family or seek the advice of community leaders. However, their children are taught at school to call the police if they are ever being abused or threatened, and, as Hebbani et al highlight, are demanding that their Sudanese parents adopt Australian methods of discipline.⁴⁰ This creates further tension between the parents and their children, as in Sudanese culture it is considered disrespectful to question parents. If the police become involved, these disputes can have serious implications and can lead to the children being taken away and criminal charges for the parents, as Adam explains:

And when the police comes and as a parent you are trying to make rules and teach your child the way you were brought up. Police says it’s against the law. Otherwise you are going to have social services come take your children. And for that I think it is hard for the Sudanese community.

This finding is supported by Shakespeare-Finch and Wickham, who found that parents “expressed concern about losing control of their children, and experienced a sense of impotence due to the protection of children’s rights by the Australian government.”⁴¹

Dealing with family law issues

Participants explained that because most people are not aware of the services or the ways of resolving legal problems in Australia, they continue resolving their family problems the only way they know how; by

³⁹ Hebbani, Obijiofor, and Bristed: 40.

⁴⁰ Hebbani, Obijiofor, and Bristed: 47.

⁴¹ Jane Shakespeare-Finch and Kylie Wickham, “Adaptation of Sudanese Refugees in an Australian Context: Investigating Helps and Hindrances “ *International Migration* 48:1 (2010): 36.

involving the community leaders and sharing their problems with their families and community. This theme was expressed by *David*:

A lot of disputes are resolved within a 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.

One conclusion which can be drawn from this research is that South Sudanese communities in Australia continue to resolve their legal problems using their customary law process. They are, in fact, expected to continue to use and uphold the customary law and keep problems within the community rather than take them to the law, as *Paul* explains:

If it had been a Caucasian, being a white Australian I would have taken the matter to the police and say she is harassing me right? But in my culture I can't really do that. If I do that, I bring shame to myself, to the family and they will be talking about it for years. I don't want that to happen. So I have to like you know report it to the members of my family to go and talk to the members of her family so that the members of her family can convince her not to do that.

This is an important consideration which stands as a significant barrier to access to justice for South Sudanese communities. What it means for south Sudanese families is that even when they are aware of the services and legal processes available to resolve their problems, they are not likely to access these services as that would bring shame to their families and community. Therefore, the formal legal system is not a desirable, thus not an effective method of resolving family disputes in the Sudanese community, and alternative methods should be explored and supported. Most participants suggested that family problems experienced by South Sudanese people in Australia should continue to be dealt with within the community, rather than through the legal system.

Treat them differently. If a husband and wife have a problem, send them back to the community. If a child wants to move out of the house, don't ring the police, no you ring the community first, sort it out, if they can't sort it out, then step in. That's what I mean differently. (Interview with Paul)

The participants recognised that the legal system is trying to deal with these problems and that it can be useful at resolving them. However, they suggested that Australian legal approaches are based on a different set of values and perceptions of family, and often cause more harm to the families. This is supported in the Australia Human Rights Commission

report, which found that “in some instances, services and interventions can inadvertently undermine the collectivist basis that is crucial to African Australian communities, particularly the family unit.”⁴² These interventions are described as inappropriate, as most of the time they are based on limited understanding of the communities’ culture, background and experiences and cause frustration and despair in the South Sudanese community.⁴³

They are doing their best and I like that, it should be like that. But the most things, what I hope, they should consult the elders... from South Sudan. They should look for elders and like you are now asking me, we may have some solutions to let these children be good... Because the youth are a problem. But we know the medicine. So if we combine the experiences and knowledge together, we shall make good youth. Yea?... And we know how to solve their problems. But needs contribution of minds. (Interview with Joe)

The vital part of this widely utilised customary law dispute resolution process are the community leaders, who are still expected to guide and advise the community in Australia.

They have to involve the community leaders. If it is a major problem, like breaking up the family, problems between children, and yea about culture, what the culture says and what the law says, so that they will know, they will come together, the community leaders and maybe the police or the people in authority to take, to come together would be the right thing. Between the law, and the culture, and what the people think is a good idea... It is very simple to solve the problem with the leaders. (Interview with David)

The importance of the community and its leaders is highlighted in a study on the educational experiences of South Sudanese youth, which concluded that a community development approach liaising with community leaders is the best way of helping to meet the unique educational needs of South Sudanese students.⁴⁴

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. (Interview with Brian)

⁴² Australian Human Rights Commission, 9.

⁴³ Australian Human Rights Commission.

⁴⁴ Cassity and Gow.

Keeping the community stable is of the highest importance for community leaders, who are still expected to hear disputes in the community and apply fair and just outcomes for all. There is a lot of pressure on community leaders and elders to keep peace and stability in the community. However, this vital role of the community leaders is not recognised in the Australian legal system.

Conclusion

This study has brought to light the family issues South Sudanese refugees are exposed to upon arrival in Australia. Coming from a very different place with different values, beliefs and processes, they are largely unaware of the laws and regulations governing family life in Australia. South Sudanese communities need to be better educated about family law and its procedures in Australia, as it differs so greatly from the customary law system they are familiar with. They need to “be informed about the role and function of the law and law enforcing agencies. They also need to be informed about their rights when dealing with the legal system.”⁴⁵ The few studies in Australia exploring the legal issues South Sudanese communities face have demonstrated that “[c]ommunity education was viewed as being the most effective approach for preventing family violence, while collaboration between mainstream providers and ethnic community representatives was seen as essential to developing effective, culturally appropriate programs.”⁴⁶

It is also crucial for the Australian legal system to recognise and understand the customary law processes that the South Sudanese communities still widely adopt throughout Australia.⁴⁷ The use of family and community mediation and the respect and power of community leaders is something that is instilled in the South Sudanese communities. Therefore, if service providers are to meet the needs of and assist in preventing and controlling family issues within the South Sudanese community, these customary processes must be acknowledged and incorporated. Jensen and Westoby suggest a ‘restorative justice model’ to

⁴⁵ Azita Khademy Deljo, “Refugees Encounter the Legal Justice System in Australia: A Case Study,” *Journal of Psychiatry, Psychology and Law*, 7: 2 (2000): 252.

⁴⁶ Australian Human Rights Commission, 33.

⁴⁷ Indigenous communities throughout Australia often resolve family disputes within their families or communities applying their own traditional customary laws. My study and argument does not extend to Aboriginal families, however a link could be made to the ways the Australian legal system has incorporated Indigenous customary law to respond to the needs of Indigenous families. See for example National Alternative Dispute Resolution Advisory Council, “Indigenous Dispute Resolution and Conflict Management,” (January 2006).

deal with issues of South Sudanese youth by positively reframing the role of elders and integrating it to current youth justice system.⁴⁸ Such a system, incorporating both customary law practices and the Australian law, would benefit the South Sudanese community and the wider Australian community in response to issues with family law.⁴⁹ After all, access to justice means more to this group of people than access to the services and to the legal system – access to justice for this group of people means access to families, communities and community leaders and elders. It means access to customary law processes so that they keep their communal dispute resolution processes and keep their own social cohesion. This type of customary law system has worked to keep their families together for centuries, during times of peace and war, and it is still working today in the suburbs of Australia. However, these customary processes must first be recognised by the Australian legal system, and then be incorporated into it in a way that addresses the specific needs of the South Sudanese community, while also respecting the processes of the formal legal system. This is no easy task, as it would require a combination of two somewhat conflicting legal systems. But, as the participants have highlighted, perhaps what is needed is a ‘contribution of minds’, where the community leaders could be brought into the existing legal system and be provided with training and formal dispute resolution responsibilities. Perhaps we need to rethink the current reactive and retributive adversarial system, and create more dialogue and collaboration with the many diverse customary systems that operate quietly underneath it.

⁴⁸ Paul Jensen and Peter Westoby, “Restorative Justice: An integrated model for resettling young Sudanese,” *New Community Quarterly*, 6: 3 (2008): 15.

⁴⁹ The Migrant Information Centre developed a group counseling session to address the issues of family violence within South Sudanese communities in Eastern Melbourne, which recognized and respected traditional gender roles and responsibilities and incorporated the assistance of community leaders. This received mixed results, with the participants largely being very satisfied with it, while others did not wish to participate as they felt that it was an intrusion into their private lives and should be left to their families and communities to resolve themselves. This example highlights the difficulty, but also the possibility, of combining the different systems to assist South Sudanese families in resolving their family disputes. For more information, refer to Migrant Information Centre Eastern Melbourne, “Family violence within the Southern Sudanese community - Project evaluation report,” (December 2008).

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