Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

From Unwritten to Written: Transformation of Jieeng Customary Law into *Qanun Wanh-alel*

Mark A. W. Deng
The University of Queensland, Australia
marko.wek@uqconnect.edu.au

Abstract

This paper is a case-study on *Qanun Wanh-alel* – a customary law of the Western Jieeng enacted in 1975 to regulate offences that occur commonly in their jurisdictions. These include homicide, which has become the most common offence in recent times, elopement and premarital impregnation. The overarching aim in enacting *Qanun Wanh-alel* was to have a codified Jieeng customary law, although it has not been applied uniformly. This is especially clear in the case of blood compensation for homicide which varies across these communities. For example, it is 51 and 31 head of cattle in the Lakes region and the Rek section respectively. The purpose of blood compensation is restitution – to avert vengeance and restore peace and equilibrium.

Introduction

Qanun Wanh-alel is a partially codified customary law of the Western Jieeng (Dinka) communities enacted in 1975.[1] It is formally called the *Code of Dinka Customary Law* and it is the first of its kind. It was subsequently passed as Part II of the *Re-Statement of Bahr el Ghazal Region Customary Law (Amended) Act 1984* which included the customary laws of the Luo and the Fertit tribes of Western Bahr el Ghazal. As will be explained, *Qanun Wanh-alel* is more of an eponym and it is the name by which the *Code of Dinka Customary Law* is known colloquially. It is for this reason that I refer

[1] Western Jieeng (mistakenly called Dinka) refer to the Jieeng of Bahr el Ghazal region of South Sudan, comprising Lakes region (Agar, Aliap, Gok and Yirol), Rek and Ngook of Abyei. Bahr el Ghazal (west of the country) is one of the 3 regions into which South Sudan is divided. Equatoria (south of the country) and Upper Nile (east of the country) are the two other regions.

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

to it in this article as *Qanun Wanh-alel*.

Qanun Wanh-alel deals with offences of both a criminal and civil nature, as an offence constitutes a crime and a civil wrong at the same time in the Jieeng's philosophy of justice. Examples of these offences are homicide, elopement and premarital impregnation. For homicide, whether intentional or unintentional, that is, motive is immaterial, the law prescribes 30 head of cattle to recompense the deceased's family (*Code of Dinka Customary Law*, ss 70–73). These are called *apuk* (blood compensation). Normally, the offender pays an additional ox known as *muor tir* (the ox 'of peace settlement'), and it is killed to reconcile the two feuding families and to normalise their relations, (Deng, 2010, p.136). A *bany-bith* (a spiritual leader) and a chief of the area conduct this reconciliation process in the presence of *baai* (the local community).

For elopement and premarital impregnation offences, the penalty is one heifer paid to the girl's family if the man refuses to marry the girl (*Code of Dinka Customary Law,* ss 42–44). The heifer, which, bluntly speaking, is a penalty for consummation, is called *aruook* in *Thuongjang* (the Dinka language). In the rare cases where a man elopes with a girl or impregnates her with the intention to keep her as his wife but fails to pay the bride-price or cannot afford it, it becomes a matter for court.

The court may order the man and his family and close relatives to contribute 30 cows and 6 oxen and pay them to the girl's family as bride-price (*Code of Dinka Customary Law*, s 24). The girl becomes his legal wife once the bride-price is paid. The girl's family would, however, deem this as a loss, especially if the girl is beautiful/educated – beauty and education being the factors that weigh significantly for the bride's family when negotiating the bride-price (Deng, 2021, p.2)

Cattle are used to pay the bride-price and blood compensation, among other things, because they are customarily the means of exchange in Jieeng society (and in many other tribes in South Sudan, eg, the Nuer tribe with which the Jieeng share major similarities). This is changing rapidly, however, as money – a product of modernity – is becoming the predominant means of exchange in South Sudan.

This paper is a case-study on *Qanun Wanh-alel*. It proceeds in two parts. The first part discusses the general meaning of customary law briefly, an understanding of which is crucial to this study. The second part discusses

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

how *Qanun Wanh-alel* developed and how it deals with various offences, such as homicide, elopement and premarital impregnation, that occur frequently in the Jieeng society.

Where necessary, court cases – cases decided orally as chiefs' courts do not have a system of recording and reporting cases (and neither do statutory courts of South Sudan as modern institutions) – are discussed to illustrate how this law has been applied in practice. The aim of this study is to foster a broader and contemporary understanding about *Qanun Wanh-alel*. It is not, however, a comprehensive study due to space constraints.

What is Customary Law?

Legal jurists understand customary law in practically the same way. Lon Fuller, the famous natural law theorist of the 20th century, understood customary law as that which 'arises out of repetitive actions when and only when such actions are motivated by a sense of obligation' (Fuller, 1969, p.16). John Hund defines customary law as one 'based necessarily on a constant and uniform usage' and that the method used to 'ascertain the existence of this usage' is engaging directly with the members of a given community to solicit their views (Hund, 1998, p.424).

The World Intellectual Property Organisation, the organisation dedicated to the development and protection of intellectual property (property of the mind), has provided what may be an all-encompassing definition of customary law:

> Customary law is, by definition, intrinsic to the life and custom of indigenous peoples and local communities. What has the status of custom and what amounts to customary law as such will depend very much on how indigenous peoples and local communities themselves perceive these questions… [C]ustom is a rule of conduct, obligatory on those within its scope, established by long usage (World Intellectual Property Organisation, 2013, p.2).

It is important to distinguish customary law from the related concept of customary international law as the two may be confusing. Customary international law, as it has been defined (although this is yet to be a universally accepted definition), is a 'law derived from the consistent

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

conduct of States [as international entities] acting out of the belief that the law required them to act that way' (Shabtai, 1984, p.55). In short, it is a law that derives its binding power from states' consent, a measure without which the law would be ineffective. This aspect of customary international law – i.e. states' acceptance of the practice – is known as *opinio juris* (opinion of law) (North Sea Continental Shelf Cases, 1969).

As can be seen, there is a subtle difference between customary law and customary international law, if the latter occupies a larger realm. In fact, international conventions, which are taken as examples of *opinio juris*, do recognise the existence of customary law as reflected in the 2007 *United Nations Declaration on the Rights of Indigenous Peoples*. *Qanun Wanh-alel* comes within this broader international legal framework.

Qanun Wanh-alel in Context

The Anglo-Egyptian Condominium (1899–1956) saw the benefit of the southern Sudanese customary law systems in helping to settle local disputes in what was then considered an acephalous society. This saw the enactment of two ordinances, essentially local government laws, in the 1930s: *Chiefs' Courts Ordinance 1931* which applied in the south only, presumably as a recognition of the Southerners' distinct customs and traditions, and the *Native Courts Ordinance1932* which applied in the rest of Sudan (el Nur, 1960, p.85). Under the *Chiefs' Courts Ordinance*, the condominium government appointed chiefs and entrusted them with authority to deal with certain matters, including adjudicating civil and criminal matters and collecting (poll) taxes from the people (Collins, 2005, p.188–9). This was in effect a form of indirect rule, with chiefs – generally men who were most feared or *baany-mith* (spiritual leaders) – acting as intermediaries between their people and the condominium government.

The *Chiefs' Courts Ordinance* only regularised chiefs' status. It did not unify the Jieeng customary law. As John Wuol Makec put it, difficult conflicts of rules continued to confront chiefs' courts as each district (jurisdiction) continued to expand the rules in response to new cases and challenges (Makec, 1988, p.39). For example, the penalty for *akoor* (adultery) was 4 cows and 2 oxen in the Lakes District but was 8 cows and 2

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

oxen in Gogrial and Tonj districts.[2] Gogrial and Tonj raised the penalty for *akoor* purportedly in an attempt to combat this offence more effectively. Adding to this conflict of rules was also the intersectional conflicts between the Jieeng of Agar (Lakes region) and the Jieeng of Tonj, caused by elopement cases (Pendle, 2019). Because of blood compensation variance between these two communities, it was difficult to resolve cases of homicide or personal injuries that resulted from violent confrontations. (As will be discussed, eloping with a girl is regarded as a matter of serious disrespect in the Jieeng culture and generally leads to violence.)

Qanun Wanh-alel was adopted in 1975 to address this conflict of rules, that is, to unify the Jieeng customary law. It resulted from multiple chiefs' conferences. The first conferences were held in *Wanh-alel* in the then Tonj District in the early 1970s, and were attended by chiefs from Tonj and Gogrial, and representatives of the Sudanese government (district commissioners and heads of government departments) (Makec, p.39). Through these conferences the two districts reached a consensus to adopt a code to regulate issues that occur commonly in their jurisdictions. These include adultery, recovery of the bride-price and the redemption of children of marriage after divorce (*Code of Dinka Customary Law*, ss 10 and 41). The code was limited to family law only. (It is not clear from the limited literature what this code was called.)

Still, conflict of rules between the two districts (Gogrial and Tonj) and other districts in Bahr el Ghazal remained unresolved and problematic. This led to another conference in 1975 in *Wanh-alel,* facilitated by the Commissioner of Bahr el Ghazal Province, Isaiah Kulang Mabior. This was the most inclusive conference. All the chiefs from the then seven districts of Bahr el Ghazal, the heads of government departments, the representatives of local governments, and the esteemed elders attended the conference (Makec, p.39).

Two important resolutions resulted from this conference. The first was a consensus to have a unified Jieeng customary law in Bahr el Ghazal to ensure easy resolution of intersectional disputes and cases. The second was the

[2] Lakes, Gogrial and Tonj (predominantly Jieeng inhabited areas) were some of the districts into which Bahr el Ghazal was divided during the Anglo-Egyptian Condominium.

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

adoption of the existing code (Makec, p.39–40) The code was, however, expanded to include property law, damages for personal injuries resulting both from criminal acts and civil wrongs, and law of succession (*Code of Dinka Customary Law*, Chapters II, III and IV). The resolutions from the conference were passed into law by the People's Regional Assembly of Bahr el Ghazal as the *Bahr el Ghazal Province Local Order No. 1 of 18th December 1975* (Local Order). This Local Order was later passed as Part II of the *Re-Statement of Bahr el Ghazal Region Customary Law 1984*, which included the customary laws of non-Jieeng tribes in Bahr el Ghazal, particularly the Luo and the Fertit.[3]

The late John Wuol Makec, who was the Speaker of the People's Regional Assembly of Bahr el Ghazal at that time and later became Southern Sudan's first Chief Justice during the interim period (2005–2011), drafted *Qanun Wanh-alel*.[4] As mentioned in the introduction, *Qanun Wanh-alel* is an eponym. It takes its name from two words: *Qanun*, which is an Arabic word for law (ie. civil law as opposed to the religious Sharia law) and *Wanh-alel* which is a river in the Tonj South County.[5] This explains why this law is called by that name – it takes its name from the place it was adopted.

As might be apparent, *Wanh-alel* is also a conflation of two words in *Thuongjang*: *wath*, which is a cross-river passage and *alel*, meaning rock. *Wath* becomes *wanh*, which is a form of possessive pronoun and can be translated as 'river of'. So, *Wanh-alel* means river of rocks for the obvious

[3] See Part III and Part IV of the *Re-Statement of Bahr el Ghazal Region Customary Law 1984.* The People's Regional Assembly of Bahr el Ghazal was a quasi-Parliament created in the pre-separation era in Sudan. It worked in coordination with the national government of Sudan to raise matters of concern on behalf of the people of Bahr el Ghazal.

[4] John Wuol Makec was the first to author a book on the Jieeng customary law, difficult a task as this might have been. I am grateful to him for providing this informative work. It is indeed a handbook for researchers and practitioners of Jieeng customary law.

[5] Counties are administrative units into which states are divided in South Sudan. They make up local government. See the *Transitional Constitution of South Sudan 2011* article 165 (5).

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

reason that it has rocks in it. The more correct name might be "*Wanh-aleel", aleel* (rocks) being the plural of *alel* in *Thuongjang*.

Qanun Wanh-alel is not a complete code and it is likely that a complete code could be adopted in the future, possibly for the entire Jieeng society. However, it has helped customary courts to overcome some of the conflict of rules in Bahr el Ghazal, creating relative certainty and stability. For examples, cases involving blood compensation (homicide cases), elopement and premarital impregnation are now easy to resolve, although, as discussed below, blood compensation has been modified in some sections of the western Jieeng. Elopement and premarital impregnation are treated as offences in the Jieeng society for the obvious reason that girls are a major source of wealth for their families.

Blood Compensation

Blood compensation, sometimes called blood money, is a practice whose origin is impossible to trace with exactitude. Many people practised it in ancient times. Today, it is more commonly practised in African tribal societies, and Islamic countries. In the Ovambo tribe of Namibia, for example, blood compensation is paid irrespective of whether or not the offender has been punished in accordance with substantive law (Moriasi, 2018).

Even in countries that strictly imposed the death penalty for murder, eg, Kenya, the victim's family still prefers blood compensation in some cases. For example, in the murder case of *Republic of Kenya v Abdulahi Noor Mohamed,* the parties – the victim's family and the offender – entered an agreement to settle out of court and for the offender to pay compensation. They applied to court to have this settlement approved, but the court rejected their application on the ground that the offender had committed a serious crime and must face justice pursuant to Kenya's *Penal Code* (*Republic of Kenya v Abdulahi Noor*, 2016).

Blood compensation is the equivalent of *diya* paid under Sharia law in Islamic countries, the amount of which varies from country to country (Pascoe, 2016). In Sudan, the *Criminal Code Act 1991* allows *diya* in cases of homicide and bodily harms (*Criminal Code Act 1991*, ss 43–44). It is fixed at 100 camels, or the equivalent value of that in money, for murder (*Criminal Code Act*, s 42). This gets reduced substantially in cases of unintentional

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

killing and personal injuries (*Criminal Code Act*, s 42 (5)). In Iran, *diya* is capped at US$62,500 for a male Muslim victim (Pascoe, 2016, p.157–62). If the victim is a woman or non-Muslim, the compensation is much lower. This applies in all Islamic countries.

Diya is similar to *apuk* (blood compensation) paid under *Qanun Wanh-alel* as both are remedies for homicide and personal injuries. The difference is in payment. *Diya,* as noted above, is paid in camels and/or money, whereas *apuk* is paid in cattle as the mainstay of the Jieeng economy. But *apuk* can also be paid in money if the victim's family demands it. (Mostly, it is those living in metropolitan areas where cattle are less in demand that may prefer this option.)

Apuk: A Collective Responsibility for a Clan

Qanun Wanh-alel caps *apuk* at 30 head of cattle, which are paid by the offender's clansmen on a per clan unit basis (*Code of Dinka Customary Law*, ss 69–73). That is, each clan unit and/or sub-unit contributes one head of cattle to *apuk*. The process for collecting cattle is simple. After a case has been heard, the chief appoints a bailiff accompanied by one or two of the victim's relatives to collect cattle. The offender's relatives normally cooperate, and this allows the process to be completed speedily. Once collected, the cattle are brought to the chief's custody who then hands them over to the victim's family. The end of this process is ceremonially marked by killing an ox to reconcile the two families and to normalise their relations. Professor Francis Mading Deng (2010) has described this more clearly:

> …The chief calls upon the relatives of the deceased, sacrifices a bull known as *mior de kueng,* "the bull of peace settlement," and asks the aggrieved group to take an oath to keep peace and avoid vengeance... On an appointed day, the two groups are [again] convened and a bull known as *mior de yuom*, "the bull of the bone," is sacrificed. The chief, or one of his relatives acting on his behalf, takes the bones of the right hind leg of the animal, breaks them in two, and throws one half to the killer's kin group and the other to the relatives of the deceased, who must at first show resistance and wage a mock attack of vengeance on the killer's relatives, until they are persuaded by the chief to accept the settlement (pp.135–136).

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

Apuk is paid regardless of whether the killing was intentional or accidental. Professor Deng has reported some really sad cases of accidental killing, one of which involved the killing of a girl by her suitor. The suitor visited his girlfriend and spent a night with her. He was carrying a rifle with him. During the night, the girl collected the rifle and placed it in a safe corner inside the hut. In the morning, as the visitor (suitor) was preparing to leave, his rifle was returned to him. He immediately started to check the rifle and it fired accidentally, killing the girl (Deng, p.135). The case was determined pursuant to *Qanun Wanh-alel.* The court ordered the offender to pay a full *apuk* of 31 head of cattle to the victim's relatives. He was also fined heavily in cattle for reckless use of firearms (Deng, p.135).

As noted earlier, *Qanun Wanh-alel* has undergone some changes – changes that would not have been possible in a modern parliamentary process without formally amending the relevant provisions of *Qanun Wanh-alel*. For example, in the Lakes region *apuk* has been increased from 30 to 51 head of cattle (Pendle, 2019, p.19–20). This modification was made by the then Lakes State governor during Southern Sudan's interim period. Chiefs of Yirol (a section of the Lakes region) also modified the law governing elopement and premarital impregnation reportedly due to the pressures of the civil war (pre-independence civil war). Deng Biong Mijak (2004) reports:

> The harsh and risky life of a soldier has to be accorded special consideration as many of the local young men have joined…[the war]. If a soldier [had] eloped with or impregnated a girl, …his relatives [were] ordered to proceed with marriage. If he is junior in the line of marriage, his relatives [were] asked to hand over 11 cows to the relatives of the girl. The rest of the marriage proceedings are then suspended until the time when it is his turn in the family to marry (p.19).

It is unlikely that these exceptions to the law for soldiers are still applicable in Yirol in post-independence South Sudan. However, they go to show the susceptibility of *Qanun Wanh-alel* to social and political exigencies.

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

Purpose of *Apuk:* Punitive or Restitution?

The purpose of *Apuk* is not clear, and *Qanun Wanh-alel* is silent on this. It has been a subject of debate, as such. Professor Deng has provided two perspectives. The first is that *apuk* is to be used to marry a wife to the name of the deceased man (ghost marriage) to continue his 'procreative potential' which is a customary practice of the Jieeng. The second is that it is to avert vengeance (Deng, 2010, p.131). He quotes Michael Makuei Lueeth, Attorney-General of the then partially independent Southern Sudan, with whom he conducted an interview:

> There is a strong cultural bias against capital punishment … In our customs, capital punishment never existed … To avoid vengeance, it was decided that people should be compensated… With the introduction of statutory laws came the idea of sentencing the offender to death (Deng, 2010, p.136).

Neither of these assertions is wholly factually correct for various reasons. First, *apuk* is rarely used for ghost marriage, at least not in the Rek section with which I am most familiar. It is normally divided among the close relatives of the deceased. The late John Wuol Makec was perhaps the first to object to this assertion, saying: 'If the need to marry a wife for the deceased were the basis of the compensation, there will be no need for the deceased relatives … to share those cattle among themselves. Marrying [a wife to the name of a deceased man] may… be…an incidental aspect of [*apuk*]' (Makec, 1988, p.199).

Professor Deng's counterargument is that 'the people who share the blood wealth are the same people who contribute to the bride wealth and that the procreative potential and value does not end with having already had children' (Deng, 2010, p.131). Again, this is not entirely valid. The people who share blood compensation are not always the same people who contribute to the bride-price. *Apuk is* obligatory for an entire clan, depending on how big a clan is. If a clan is big, then not every unit of the clan would pay because to do so would mean collecting more cattle in excess of the number of cattle required. Bride-price, on the other hand, is non-obligatory. It is normally the closest relatives that contribute to the bride-price.

Australasian Review of African Studies, 2022, 43(1)
http://afsaap.org.au/ARAS/2022-volume-43/
https://doi.org/10.22160/22035184/ARAS-2022-43-1/41-55

The second assertion – that the purpose of *apuk* is to discourage vengeance – may hold water. This is consistent with the general objective of African customary law, which is the restoration of peace and social equilibrium. British anthropologist J. H. Driberg has described this concisely (and, although he made this observation in roughly 90 years ago, it is still valid today):

> African law is positive and not negative. It does not say Thou Shalt Not, but Thou Shalt. Law does not create offences, it does not make criminals; it directs how individuals and communities should behave towards each other. Its whole object is to maintain an equilibrium, and the penalties of African law are directed, not against specific infractions, but to the restoration of this equilibrium (Driberg, 1934, p.231).

In short, *apuk* lies at the heart of *Qanun Wanh-alel* and it serves as a restitutive, not punitive, payment. In the next section, I look at two other offences regulated under *Qanun Wanh-alel,* namely elopement and premarital impregnation.

Elopement and Premarital Impregnation

Elopement and premarital impregnation are offences under *Qanun Wanh-alel*. The penalty is one heifer (*dan aruook*) if the man (or an offender) cannot afford the bride-price or refuses to marry the girl, which is often the result of impregnation cases (*Code of Dinka Customary Law*, ss 42 and 44).

Elopement and premarital impregnation are treated as offences in the Jieeng society for two principal reasons. The first, as mentioned previously, is that girls are a source of wealth for their families and thus acts that may spoil a girl (and hence reduce her market value) are strictly prohibited. It is this reason that accounts for the rise in the bride-price in the Jieeng society, at least partly (Deng, 2022, p.3–4).

The rise in the bride-price is exemplified by the marriage of Nyalong Deng Ngong – a tall and beautiful Jieeng woman. In 2018, six Jieeng men, including a former state governor, competed for her. Kok Alat was the winner, paying 530 head of cattle, 3 Land Cruiser V8 cars, and US$10,000.00 (Deng, 2021, p. 2). (Nyalong's marriage is one example among many but it

is a case of a competition taken to a whole new level.)

The second reason is that elopement and premarital impregnation are considered as seriously disrespectful to the girl's family. Initiating the marriage process in the right way – through an official process usually led by the groom's elders – is the accepted norm. This has two notable advantages. First, it prevents violence that results from elopement or premarital impregnation – in the sense that the girl's relatives take the law into their own hands and act violently against the offender and/or his relatives. This sometimes results in serious injuries and death. Second, it is a respectful and dignifying thing for Jieeng. This in turn has its own advantages. For example, if a man is poor but has initiated his marriage in the right way, he can be allowed to marry the girl by paying whatever number of cattle he can afford, or the payment can even be deferred as long as he promises to pay. Professor Deng has discussed this in more detail:

> Sometimes, a girl is given in marriage to a poor man after a nominal payment on the grounds that sooner or later his female relatives will be married or somehow he will acquire wealth to enable him to discharge the debt. In such cases, the amount is not discussed. If the husband acquires wealth and there is disagreement on the amount to be paid, the court will fix a reasonable amount. There must always be prompt, even if partial, payment to validate the union. If a girl is given on deferred payment with a nominal validating fee, her relatives will not be permitted to revoke the agreement (Deng, 2010, p.118–119).

Overall, there are economic, social and moral reasons for criminalising elopement and premarital impregnation.

Conclusion

Qanun Wanh-alel is a partial code of the Jieeng customary law that resulted from multiple chiefs' conferences held in the 1970s at *Wanh-alel* in what is today called Tonj South County. While it has not always been applied uniformly, it has enabled the western Jieeng communities to overcome some of the difficult conflict of rules. Cases of homicide, elopement and premarital impregnation – cases that occur frequently in these communities – are now

easy to resolve. Thus it has created some level of certainty and stability.

Being the first written law in the Jieeng's history, *Qanun Wanh-alel* has become a source of boundless pride for so many people, particularly in the Rek section. Songs, for example, have been composed about it, saying things like "*Qanun Wanh-alel ka ok nyoth yen tene Muonyjang aben ben*" (we created *Qanun Wanh-alel* as a governing law for the Jieeng nation).

Qanun Wanh-alel adds to the richness and strength of the customary law in South Sudan, which has been recognised as a source of legislation. This is provided in article 5-(b) of the *Transitional Constitution 2011*. The *Local Government Act 2009*, in section 98, goes a step further and recognises customary courts as dispensing justice concurrently with statutory courts 'in accordance with customs, traditions, norms and ethics of the communities'. This is essentially legal pluralism in practice. There is, however, a strong possibility that statutory law could replace customary law completely. To ensure this does not happen, effective ways to harmonise the two systems will need to be found. It is important that customary law system which has served communities well for so many centuries be maintained.

Acknowledgement
I thank Valentino Malueth Akec, an Engineer and a Jieeng elder, who gave me his insight into how *Qanun Wanh-alel* developed in the 1970s. I thank Professor James Allen (and my colleague) for correcting the language. Finally, I thank the editor of the *Australasian Review of African Studies Journal,* and the anonymous reviewer for their helpful comments on this article.

References

Collins, R. O. (2005). *Civil Wars and Revolution in the Sudan: Essays on the Sudan, Southern Sudan, and Darfur 1962 –2004*. Tshai Publishers and Distributors.

Deng, F. M. (2010). *Customary Law in the Modern World: The Crossfire of Sudan's War of Identities.* Routledge, Taylor & Francis Group.

Deng, M.A.W. (2021). Bride Price in the Patriarchal South Sudanese Society: A Legal Perspective. *International Journal of Law, Policy and the Family*, 35 (1) 1–19.

Deng, M.A.W. (2022). The Practice of Bride-Price in the Australian Dinka Community: Is It Permissible under Australian Law? *Alternative Law Journal,* 1–6.

Driberg, J. H. (1970). *The African Conception of Law*. Frank Cass.

El Nur, M.I. (1960). The Role of the Native Courts: In the Administration of Justice in the Sudan. *Sudan Notes and Records,* 41, 78–87.

Fuller, L. (1969). Human Interaction and the Law. *American Journal of Jurisprudence,* 14 (1), 1–36.

Hund, J. (1998). Customary Law is What the People Say it is – H.L.A.'s Contribution to Legal Anthropology. *Philosophy of Law and Social Philosophy,* 84 (3), 420–433.

Kuol, L. B. D., and Logan, S. (Eds.). (2019). *The Struggle for South Sudan: Challenges of Security and State Formation*. Bloomsbury. https://www-bloomsburycollections-com.ezproxy.library.uq.edu.au/ book / the-struggle-for-south-sudan-challenges-of-security-and-state-formation/

Makec, J. W. (1988). *The Customary Law of the Dinka People of Sudan: In Comparison with Aspects of Western & Slamic Laws*. AfroWorld Publishing Co.

Mijak, D. B. (2004). *The Traditional System of Justice and Peace.* United Nations Development Programme, Sudan, 19.

Moriasi, P. (2018, April 19). Payment of Blood Money and the Offence of Murder in Kenya, the Quandary. *pmlegalke.* ttps://pmlegalke.wordpress.com/2018/04/19/payment-of-blood-money-and-the-murder-offence-in-kenyathe-quandary/

Pascoe, D. (2016). Is Diya a Form of Clemency? *Boston University International Law Journal,* 34 (149), 149–179.

Pendle, N. (2019). Learning from Customary Law: Forging Ethnic and National Identities in South Sudan. In Kuol, L. B. D., and Logan, S. (Eds.), *The Struggle for South Sudan: Challenges of Security and State Formation* (pp7–26). Bloomsbury Collections: 10.5040/9781788316361

Shabtai, R. (1984). *Practice and Methods of International Law. Ocean* Publication.

Wilson, J. H. (2014). *Blood Money in Sudan and Beyond: Restorative Justice or Face-Saving Measure*. Unpublished doctoral dissertation, Georgetown University.

World Intellectual Property Organisation. (2013). Customary Law, Traditional Knowledge, and Intellectual Property: An Outline of the Issue. https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf

Cases

Netherlands (Advisory Opinion and Orders) [1969] ICJ
North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v
Republic of Kenya v Abdullahi Noor Mohamed [2016] EKLR 90

Legislations/Declaration/s

Bahr el Ghazal Province Local Order No. 1 of 18th December 1975
Local Government Act 2009 (SS)
Penal Code (rev*)2012* (Ke)
Re-Statement of Bahr el Ghazal Region Customary Law Act 1984
Sudan's Criminal Code Act 1991
The Transitional Constitution of South Sudan 2011
UN General Assembly, United Nations Declaration on the Rights of the Indigenous Peoples (2007)