

Report on the African Communities Consultation for the Family Law and Culturally & Linguistically Diverse (CALD) Communities Project

August 2004

Background

The Legal Services Commission, in partnership with the Migrant Resource Centre of South Australia and the Multicultural Communities Council of SA Inc, received a grant from the Law Foundation of South Australia to assist it to administer a project to enhance access to and understanding of Australian family law for Culturally and Linguistically Diverse (CALD) Communities. The project was intended to benefit CALD communities with 'high need'. A project reference group was set up, including representatives from Multicultural SA, Migrant Women's Support and Accommodation Service Inc, Survivors of Torture and Trauma Assistance and Rehabilitation Service Inc, and the Family Court of Australia - Adelaide Registry. Following consultation with the reference group, the African, Asian and Middle Eastern communities were identified as high need communities. The reference group also confirmed that community consultations would be beneficial to ascertain the needs of the communities and appropriate ways to deliver community education in a culturally sensitive fashion. With the assistance of the African Communities Council of South Australia and the Migrant Resource Centre of South Australia, consultations were organised with the various communities and were attended by community members and leaders.

African Communities Consultation

The African Communities Consultation was held at the Migrant Resource Community Centre of South Australia in Adelaide on 14th August 2004. Members of the Sudanese, Eritrean, Ethiopian, Somalia, Tanzanian, Congolese, Sierra Leonean and Liberian communities were present. None of the participants required interpreters.

The aim of the consultation was to obtain information about cultural, religious and community views relevant to these communities when dealing with family issues. However, it must be recognized that this report does not reflect the great diversity among and within different groups, in terms of religion, language, levels of education, culture, demography and experience. Differences in educational background were considerable, with some participants having formal education and others having none whatsoever. Participants' life experiences prior to arriving in Australia varied widely and included both short and lengthy stays in refugee camps, war and rebellious uprisings, oppressive governments, drought, famine and the death of family members through injury, disease or malnutrition. The religious backgrounds of the participants were Christian, Muslim and various traditional tribal religions. Within the same country of origin and religious groups, there were differences in culture and practice. For example, in the Sudan some of the different tribal groups include Acholi, Azande, Bari, Dinka, Kuku, Madi, Muru, Nuba and Nuer. Cultural practices vary considerably from one tribe to another.

It is acknowledged that the issues which were raised in the consultation are by no means a full representation



of the views of the various African communities in South Australia. In addition, while this report has been compiled in consultation with the community leaders of the various African groups, it is acknowledged that information and ideas may have been misinterpreted in the process of transcription.

The participants were seated in groups of 4-7 people while they discussed a case study. Each group had a facilitator from the Legal Services Commission or the Adelaide Registry of the Family Court. The role of the facilitator was to explain the various situations and to record participants' responses. This process was essential when seeking information from people for whom English was a second or third language.

A case study about an African family – “the Niles” – was used to focus discussion on relevant family issues. The case study highlighted the challenges the family faced in settling in to a new and different culture while retaining their traditional cultural values. The case study was developed based on feedback from various community groups about what they perceive as major hurdles in migration and settling into the new country - Australia.

Case study:

The Nile family has recently migrated to Australia from an unspecified location in Africa. They have no support network, their extended family was unable to migrate with them and they have difficulty in settling into the new and very different place. The husband’s English is restricted and he has difficulty finding a job. The wife finds full time work but the children are having difficulty settling into school and the new environment. There are stresses in the marriage. The Niles encounter various problems, including financial difficulties, parenting conflicts, clashes of cultures and domestic violence. Through these difficulties, we explore the interface with the Australian legal system and issues including divorce, property settlement, child protection, child residence/contact and mediation.

Responses to the case study

What is ‘family’ in African communities? *Many families who have come here from countries affected by war have lost everything. Family members could have been lost, killed or displaced. The concept of extended family is universal in all communities in Africa. Family includes mother, father, children, sisters, aunts, uncles, cousins, nieces, grandparents, great grandparents, first and second cousins. A family includes those members under the same roof as well as those connected by blood and marriage. Among people from the Congo, long term friends who live under the same roof can be considered as family.*

If there is no extended family nearby, even neighbours or people from the same village become like brothers and sisters to the family. In the Islamic world, neighbours can be very important, especially if one’s family is not close by. The Koran specifies that one must respect one’s neighbours and not make enemies of The male often describes himself as the head of the family. There is a hierarchical relationship within the family and boundaries of responsibility and authority are determined by this hierarchy. Family can be so close that the children of two brothers would recognize the authority of the uncle over them as much as the authority of the father.

There is little social security available and relatives are relied upon to support each other. Kinship is more valuable than money and people expect to rely on their families for support.

The reputation of the family is all important and each person is viewed primarily as a representative of his or her family rather than as an individual. A person’s reputation therefore derives from the reputation of his or her family, rather than his or her individual behaviour. If a person behaves badly, the entire family will lose respect in the

community. The tribal networks will be aware of who comes from a “good” or “bad” family.

Participants felt that mainstream services need to be aware that life in Australia is very different for people who have been living in refugee camps. Even some household appliances, used daily in Australia, are very new and unfamiliar to these new arrivals. Families are often isolated in Australia and have no extended family to help them. When help is needed in Australia, they have to make an appointment to see someone. This is a very alien concept.

Family dynamics in Australia

The nuclear Nile family (mother, father and children) have migrated to Australia. The extended family remain in Africa. The wife finds full time work in Australia as her proficiency in English is sound. The husband struggles to find suitable employment. He becomes a “house husband”. This is a major change in the family dynamic. The male/female role reversal is one fraught with difficulty. The male is no longer the source of income in the family. The female is overloaded with both domestic chores and external work and there is a view that family duties are being neglected, having a negative impact on the children.

Culturally, it would not be acceptable for the man to cook, clean or care for the children even if his wife was in full-time work. However, in Islamic law a man should help at home, especially while his wife is pregnant and for the 40 days after the delivery when she should not work. Most African men prefer the cultural values and practices where they are not active in the domestic sphere. It all changes in Australia and men are generally expected to help with the domestic chores here. Religion is very important to Muslims and devout Muslims will find the change of roles unusual and difficult to accept.

The husband may have an inferiority complex as he sees himself as the head of the family and the role reversal may lead to the erosion of his position of authority. There could be a breakdown of the “chain of command” leading to a loss of respect. He may feel inadequate and refuse to help with domestic house work. He may see the wife as having changed because of mixing with “white” women. The man may feel depressed as he is used to having an outside job and he would not like the role reversal. It is seen as the wife’s responsibility to look after the children and to do the cooking. If she is working, this could cause fights between the couple. The wife may be upset by the fighting. The husband’s frustration could lead to domestic violence.

The wife may not be happy to be working externally and may feel that she is neglecting her traditional role of caring for the children and other tasks within the domestic sphere. She may be overloaded with both home and work responsibilities.

Equal rights are unknown in most African societies as the husband is the authority figure. There may be practical difficulty with this stance as the wife is now the financial provider for the family. The wife must see her husband as the head of the family despite the reversal of roles. The children may find it difficult because they would be looking up to the mother and not the father, which would be unacceptable in some African families.

The husband may be jealous and may not trust his wife. He may ring and check on her at work. Due to insecurity, she may not declare all her financial income to her husband. She would expect him to find a job. The priority for the family is survival not conflict resolution.

Marriage traditions

Traditionally men become adults after initiation (about age 15 in the Sudan) and as part of becoming a man his role is to care and look after his family and property including the cows and farm. A girl becomes an adult woman at the menarche and is now able to take on the role of a mother with a responsibility to care and share and help the family



and society.

In general, marriages are "arranged" between the husband's and the wife's families. Some intermarriage is permissible within families in some places. In Somalia, the father would usually select a husband for his daughter when she is around 13 to 15 years of age. The new husband would take the girl away with him to his family, usually to his parents' house. He gives money or gold to the bride's father ("bride price"). A three-day celebration is organised by the husband's family.

A Muslim man can marry a Christian woman, but a Christian man can not marry a Muslim woman. There are often difficult relationships between a wife and her mother in law. She must be respectful to his parents, but not necessarily do what they say if it is not fair. The quality of her life in the matrimonial household depends on whether her husband loves her and whether she is a "good" woman deserving of his support.

In Uganda, marriage is often dictated by the man, who is the head of the family and the decision maker. The marriage ceremony amongst some non-Christian communities can be informal. The boy's family gives the cola nut, or other symbolic gifts, to the bride's family. These gifts will be kept as "bride price". The amount of the "bride price" can depend on the girl's level of education and social status, because a highly educated bride will be able to work and enhance the financial standing of the husband's family. Once the "bride price" is paid, the girl moves to her husband's home and they commence living as man and wife. The return of the cola nut to the girl's family signifies divorce, which means that the males can remarry.

In the Sudan, the man's social status and prosperity is signified by having many wives. There is sometimes much tension amongst the various wives, which can cause frequent flights from the urban marriage homes. Some rural women welcome other wives as they make up additional workers. It appears that in some cases when migrating to Australia, the man brings one partner as his wife and the others as extended family (sister, wife's sister) etc. so that this practice continues in real terms in Australia, although legally it is not acceptable.

In some southern Sudanese tribes, the groom generally pays 20-40 cattle and the marriage is completed only after the wife has borne 2 children. If the wife only bears one child and the husband asks for a divorce, he can also ask for either the return of the cattle or the first child. In addition to the "bride price" there can also be a dowry called "kasuru bet" (literally "to break a home"), which the groom pays to the bride's parents and is non-refundable. If the couple have been living in a de facto relationship and already have children, the husband will need to pay a dowry for each of the children as well as the "bride price" before the couple marry.

The woman has to be submissive because there is a belief that the wife has been paid for and as a consequence must submit to the husband.

Tribal women have no rights if polygamy is practised. They must be submissive to retain their place. Christians do not allow polygamy, so their women are not as submissive as the Muslim or tribal women, but they are still expected to acknowledge the husband's authority. There is continuous dialogue as the Christian woman has comparatively greater rights.

In many traditional tribal marriages everything is arranged by the families of the husband and wife. This is because the marriage occurs between clans, not just the individual man and woman. The family will not allow the marriage to break down because this would bring shame and loss of respect to the whole family, especially if there are children involved. If no children are involved, it is easy to separate because children are viewed as the purpose of marriage. Marriage and divorce among Christians is generally not easy, but depends on the particular religious denomination. Muslim African men find it easy to marry and divorce by following the Koran, if the husband or wife "breaks the rules". The women from all the above groups generally find it difficult to remarry.

Children's issues

This part of the case study deals with the Niles' teenage son who is having difficulty in school. He is receiving negative reports from school, getting into fights with other children and being disruptive. The school has told the parents.

The parents are upset. They migrated in order to give their children a better life. Negative reports from school are viewed extremely seriously.

The father attempts to remedy the situation. He has not had domestic responsibility before and finds it difficult to communicate with the child. He disciplines the child physically. The school becomes aware of this incident and the principal requests that the parents make an appointment. The parents are fearful that the government may take the child away from them.

Such interference by the school or the government is unknown in Africa. School is not a superior authority to the parents. Mainstream services are mostly unaware of African culture and practices. Africans need support systems and feel that Australian law should make concessions to the African view that physical discipline is exercised for the wellbeing and development of the child. Discipline by the father is acceptable throughout Africa. Many people find it hard to adapt to the Australian way. There can be serious problems when the children are being influenced by mainstream Australian culture and are torn between two different ways of living. The parents would be confused as they see it as their role to discipline their children and often feel that if they don't discipline them properly, they won't learn. The parents may be worried about losing control and being unable to direct the children's future. They often feel that their children are becoming too stubborn.

In Africa, elders can and should discipline younger people, even other people's children. Older children are expected to "discipline" younger children as part of their responsibility. Some children take advantage of the freedom that they think Australian society gives them and don't take notice of their parents or older people.

It is often felt that police should not be involved as it will interfere with the elders' role in resolving disputes. In Africa, if there is a problem with the children in the family the extended family steps in to settle it. It is the responsibility of the whole community to help the family. In Australia, the parents might contact a social worker if they need help. This is a very alien concept for most African people.

Separation

There is ongoing tension in the marriage. Due to this, the wife moves out of the matrimonial home, leaving the husband and children. She moves in with a friend from work.

The wife could be in danger, in a domestic crisis and facing violence. It is advisable that she does not stay under one roof with her husband. She can stay with relatives or someone trusted to give him "time out" to allow things to cool down. However, the husband will view her leaving home in a very negative light. If she wants to leave, her family must usually return the bride price.

In South Sudan, primarily among the Dinka and Nuer tribal groups, the parents of the bride must return the 'bride price' or dowry if there are no children of the marriage. If there are children, it need not be returned. The children will remain with the father unless they are very young.

If there are problems in a Madi family, the wife is expected to turn first to her husband's brothers to resolve it. If she has not tried this, her family may return her to her husband's family to do this first. If she has returned home, her husband is likely to approach her family with his brothers and elders and pay her family a "ti awi". "Ti" means "mouth" and "awi" means "to open". "Ti awi" is therefore the gift given to the bride's parents to make them speak. If the wife is seen as guilty by both families, she has to apologize to her husband and return home after she has been "disciplined" by her parents and aunts, and told not to shame the family. If the husband is seen as the guilty party, he must apologize to wife and all will "discipline" him. Sometimes this may mean he has to pay an amount of



money to the wife's parent. If he still owes some "bride price", he will be told that she won't return until it is paid in full. Usually the children are left with the husband's family unless they are under 2 years old, or the husband tells the wife to leave and take the children.

Due to the ongoing tension, others in the community may direct the husband and wife to approach an elder. Usually one becomes an elder when one's adult children are married. Then the older person can serve the community more than the immediate family. They also have a responsibility to pass on community values, rules and roles by using the oral tradition of telling stories about how to live and about other people's experiences.

The wife may be frustrated and fearful that she will be taken back to her parents. In Nigeria, the husband can order the wife to leave the house with her personal possessions.

In the Congo and the Sudan usually the woman should never leave home without permission and when she leaves she must go back to her parents' house.. The parents would bring the wife back to the marital home and advise and warn the wife and her parents would apologize to the husband and give him a token gift. If she goes to her friend's house she will be seen as a wayward woman. If she has a problem, the wife would normally go to her mother's house, not to a friend. The friend may not advise her to go back to the husband, whereas her parents would be likely to advise her that it is better to go back to the husband and family.

She would feel bad because she has left the children there and she would consider going back because of the children. She would be worried because of the obligation to the husband and family. The extended family would almost always encourage her to go back to the home and children, thus keeping the family together.

She may seek support to see a lawyer or a counsellor. She would want to see her children and would be concerned about money and expenses for them. She may be worried that the government might take the children and that the husband might move away. A woman's first priority is her home and perhaps she should resign from employment before considering unsettling the marriage and the children.

The husband would find the separation strange and unacceptable. Separation is recognized but very rare. Divorce is acceptable only if there are logical reasons, for example if the woman is not happy because she has a violent, drunk, drug addicted or irresponsible husband or vice versa.

It would be a very difficult situation and if the husband was behaving badly (drinking, with other women) the wife would say nothing to anybody, but everybody in the community would know. There are no secrets from the community.

In the Islamic culture the wife would not be allowed to go to a friend's house but could go to her family. This is a very important point as there would be more stress and anxiety because she had broken religious and cultural traditions.

In Islamic families, often a very young child may stay with the mother up to age seven and after that the child should be returned to the husband or his family.

Separation is sometimes decided by a Council of both families.

The most common ground for divorce is adultery or refusing to assimilate into the married family. Some of the Sudanese participants said that only the wife can commit adultery. The husband is not liable for his extra-marital sexual relationships; the only exception being if he has had a sexual relationship with particular women within the family. This may also be classified as adultery and the husband can be fined for engaging in this forbidden relationship. He may be asked to pay a certain price in terms of cattle or money but if a child is born from the relationship, that child will remain the child of the first husband.

After separation the wife will find it very difficult to be married a second time. It was felt by some that no man would want a divorced woman. The welfare of the children of a second relationship was an important consideration for a

number of participants, who questioned whether they would be accepted and well cared for. This could be a big deterrent for the couple (especially the wife) against separation. In many communities the children remain the property of the father and remain if the mother leaves.

In tribal Africa a chieftain of the tribe may make the decision about separation. However there is a “three strike rule” in that the chief would try on at least three occasions to reconcile the differences. After this, he may accept that the husband and wife should separate.

In general, divorce is discouraged among the Christian community, especially in Catholic denominations.. It is also rare among more traditional tribal families because it is a shame on the entire tribe, not just the individuals.

Property Settlement and Divorce

Part of the case study deals with the wife returning back to the matrimonial home. The husband wants her to sign an undertaking not to make any claim on the marital property.

The participants pointed out that this kind of written agreement is uncommon in Africa. A written agreement signifies a lack of trust. Also, the “bride price” is paid by the husband to the wife's parents. If they separate, it is still the wife's parents' property.

In the home country, people normally reconcile after separation. This is driven by necessity to an extent. In Australia, the African people may seek help from the Migrant Resource Centre (SA) or the African Community Council. However, when there are Centrelink benefits available, the wife may not want to reunite if she can have the children and money.

The husband and wife reconcile temporarily, but later separate again. The participants were asked to talk about the issues would surround divorce and division of property.

In Somalia, often the wife's family give the girl away in return for money, gold, cattle or sheep. Usually the husband's family would usually keep everything after separation and divorce. Religious divorce is possible if the husband is not a good man and does not care for his wife and children.

For West Africans, the payment of “bride price” is generally an essential consideration when one considers property settlement upon the dissolution of the marriage. “Bride price” is governed more by indigenous customs rather than the Muslim concept of “mahr”.

In some African countries, Muslim women have certain rights to property that the non Muslim women do not enjoy. The law may dictate that the husband controls the wife's property, preventing her from entering into contracts that will jeopardize his rights to such property. For example, she needs her husband's consent prior to entering into any kind of hiring arrangement. However, for Muslim women the Sharia law specifies that a married woman is entitled to her own property.

The groups differed as to the woman's rights after divorce. Amongst some West African groups the women keep their houses after divorce, while others consider that the women are expected to return to their parent's homes.

In the Sudan, polygamous practices may have a real impact on property settlement issues. Sometimes the first wife divides the supplies from her husband with other wives.

A divorce and property settlement conducted in Australia may have repercussions in Africa, especially if either party wants to remarry within the community. For example, the wife's family will have to return the “bride price” to the parents of the groom if it is her decision to leave. If she remarries, her new husband repays the “bride price” to the first husband. Failure to repay means that she should be returned to the first husband.



Some felt that depending on the number of children of the marriage, the “bride price” need not be repaid, or only repaid in part. Participants gave the example that if there are four children and the “bride price” equalled 7 cows, it does not have to be repaid. If there are fewer children, then at least some of the value of the cows must be repaid.

If a husband dies, his family must provide a new husband to the widow. Often a brother will be judged suitable. Any children born to the new husband are considered to be the children of the deceased. This ensures ongoing care for the wife and the children of the deceased person within the family.

Mediation

The term mediation is used for the traditional counselling process, in which the elders of the community play an important role in resolving family disputes.

In Sierra Leone, the wife usually cannot explain the problem in the husband's presence when they come before the elders to resolve a dispute. The wife is not present for the decision making by the elders.

In the Sudan, generally the husband and wife both sit in front of the elders to describe their problems. The elders would never lecture a man about his behaviour in front of his wife, but may do so when she is not present.

In general in Africa, mediation is done by the families. However, it is also possible to seek counselling through religious or tribal leaders. The Christians and Muslims would go to priests and the tribal people would seek help from the village chieftain. The mediator/counsellor may request both parties to ask for forgiveness and make peace. This depends on the extent of the conflict. A new beginning is always welcome and reconciliation is the preferred outcome.

If African style mediation fails, the local secular village courts will step in. The family may step in and force the hands of the couple and put pressure on the wife to reconcile. Assistance might be sought from the church or a religious leader who would try and get the husband and wife to resolve the issues in a counselling process.

Australian style counselling and mediation is not seen to be acceptable to many of the participants from African communities as they believed it may not conducive to the prevention of the separation of families. It was felt that professionals are restricted by ethical and privacy concerns and do not understand the diversity of the African community, cultures and religions.

Mainstream mediation is seen as not suitable for African relationships as a mediator must understand the traditional roles, especially the male/ female relationship and the extended family. Mainstream mediation is not trusted. The community, family and leaders have an interest in the survival of the marriage. In Ethiopia and Somalia, the idea of external mediation would be generally acceptable only if the problem cannot be resolved by family and community.

Mainstream services must consider counselling to bring people together before going down legal avenues. As there is a wide diversity of African cultures represented in SA, participants suggested that counsellors (and other mainstream services) need to ask questions of their clients to understand the specific African culture and religion before counselling African people. The overall perception amongst the participants is that not enough opportunity is given in mainstream counselling processes for the couple to reconcile.

Domestic Violence

In Uganda, some said the male can be punished if he is violent to the wife. He will be forced to live alone and the wife and children taken away until he reforms. He may be required to perform community service. If he

continuously abuses his wife, separation is the next step.

Violence is not acceptable and the community, the church and/or elders would counsel the husband. The belief is that if one parent is violent, at least one child can become violent.

In Islam, if a man pulls a woman's hair or chokes her neck, he may be divorced. It is seen as very bad if he hits her face because he is jealous and doesn't want another man to take her. It is not acceptable to hit with a stick or break bones. The wife's family would be angry with him and would speak to him, his family might apologize for him but it would not be forgotten or forgiven.

Domestic violence is an issue for both families. Domestic violence is shameful to the families as the breaking of relationships is destructive to both parties. Violence would be seen as not complying with the culture and there would be a loss of the confidence by the community.

When domestic violence or other issues are encountered by the nuclear family, the extended family should be consulted and involved in solving the problem. Traditionally disputes are resolved inside the family. They would also try to resolve disputes before anyone would apply to the legal system.

Conclusion

It is essential to note the very high need these communities have identified for access to information and services in the field of family and the law. They also desire the mainstream services to be aware of the African cultures: the diversity within each group, religious influence, geographical influence, role of extended family in processes such as mediation and counselling etc. Many of the African participants were new migrants, without the support of an extended family network.

There were some misconceptions which need further exploration and clarification in legal training sessions for men and women. There is a perception that women have access to training sessions and not men. African women's groups have indicated that they want men to have equal access to training sessions in all areas, particularly areas such as domestic violence.

Other issues that need exploring include beliefs that:

In Australia women have more rights than men.

The "best interest of the child is paramount" concept in family law erodes the authority of the parents, family leader or elder in the community.

The African culture is predominantly an oral culture. It is important to take the time to establish a trusting and open two way relationship. Printed material may not have much impact at all. For example, mailing an invitation to a community consultation is often not enough and phone calls by the community worker and face to face meeting are sometimes needed to discuss the invitation and related issues. The personal process of communication is time consuming. However, there is much to be gained from this style of communication as it builds partnerships and contributes to a positive relationship between mainstream service providers and the different community groups.

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Alfred Matthew, Sudanese Community



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Training Needs Assessment

Congolese Community

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources in SA	Centrelink

Sudanese community *men and women's groups*

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources in SA	

Somali Community *men and women's groups*

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources in SA	

Liberian Community

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources in SA	Immigration and family

Sierra Leonean Community

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources in SA	Immigration and family

Tanzanian Community

Child protection	Family law (children & property)	Domestic Violence
Australian legal system	Legal resources	