

THE NATURE OF MARRIAGE, DIVORCE AND CUSTODY OF CHILDREN UNDER  
“SOUTH SUDANESE DINKA CUSTOMARY LAW IN COMPARISON WITH  
AUSTRALIAN FAMILY LAW: A PYSCHOTHERAPHY PRACTICE”

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## Table of Contents

CHAPTER 2: LITERATURE REVIEW .....	1
INTRODUCTION .....	1
BACKGROUND .....	2
THE NATURE OF MARRIAGE, DIVORCE, AND CHILDREN CUSTODY IN THE AUSTRALIAN FAMILY LAW .....	3
MARRIAGE .....	3
DIVORCE .....	3
CHILD CUSTODY .....	6
THE NATURE OF MARRIAGE, DIVORCE, AND CHILD CUSTODY IN UNDER SOUTH SUDANESE DINKA CUSTOMARY LAW .....	6
MARRIAGE .....	6
DIVORCE .....	14
CHILD CUSTODY .....	16
THE IMPORTANCE OF POLYGAMY IN SOUTH SUDAN’S ETHNIC AND POLITICAL HISTORY.....	16
LEGAL PLURALISM.....	28
THE DOMESTIC VIOLENCE AND THE ROLE OF INTERNATIONAL COMMUNITIES .....	29
Summary .....	32
APPENDICES .....	40

## **CHAPTER 2: LITERATURE REVIEW**

The reviewing of literature in this research study is used for developing an understanding of “the Australian family law” and “South Sudanese Dinka Customary Law”. The past studies and researches that are relevant for the identifying the similarities and differences between these two laws will be followed in this chapter. In this chapter, the research study collected data from various internet sources including EbscoHost, Proquest, Emerald, Science Direct, and JSTOR.

### **Introduction**

The literature review investigates family laws of the South Sudanese Dinka Law and the Australian Law. The research study highlights the main controversies, issues, and importance of the South Sudanese Dinka Family Law and Australian Law, with respect to the marriage, divorce, and children custody in case of divorce. The South Sudanese Australians Dinka face many difficulties in understanding the Australian Family Law as their practices of the Dinka customary law are contrary in many ways (Fadlalla, 2009).

These differences are mostly related to the customary practices in relationships, divorce, child custody, and ownership. The Australian Law is more similar with the British Common Law, considering the cultural and practical applications of the Family Laws. The Australian Law is consistent with the International Laws and the rules of Human Rights Charter. On other hand, the customary law possess a number of contradictions against the international law, particularly with Human Rights Charter.

Thus, the literature also explains the role of international framework in many situations, where the nature of marriage, divorce, and custody of children under South Sudanese Dinka

Customary law violate the rights of children and women (Fadlalla, 2009). The literature review is directed towards the aims and objective of the research study. Therefore, this chapter provides the structure and right track to the research methodology and analysis. The literature clarifies the concepts of the two legal systems, the cultural practices of the people belonging two different family systems, the settlement of South Sudanese Dinka in Australia and the issues faced by the families due to the difference in their cultural associations and family laws (Fraser, 2009).

### **Background**

The researches and studies on the customary or cultural practices in the South Sudanese and Australians reflect the conflicts between the two legal systems for the nature of marriage, divorce, and custody of children. The definition of marriage in the South Sudanese Dinka can be defined as, the Dinka Customary Act 1984, section (20) that defines marriage as a relationship between a man and woman or women for their living and purpose of sex cohabitation (Jok et al., 2004).

While in Australia, “the Act of 1961”, defines as “the marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life” (Nicholson, 2005). The Dinka also allows polygamy marriage, which is not being practiced in Australia because of the diseases in male (Fadlalla, 2009; Hartley, 1969). The Sudanese custom puts a lot of pressure, injustice, and discrimination against women. In some cases, the rights of children are compromised. The Australian Law is not biased, or discriminate the rights of women, as well as assists in better future of children than Dinka Custom.

## **The Nature of Marriage, Divorce, and Children Custody in the Australian Family Law**

### **Marriage**

In Australia, the family is recognized as two or more people living together in a household, where at least one of them must be 15 years old (Mills & Marlene, 2012). The union of a man and woman is marriage, where both individuals have right to choose the person and there are no restrictions religion, nationality, and race, by the law. Families and individuals in Australia are identifies by the suburbs and local council area where they live, it could be in metropolitan city or region. The man and women are entitled equal rights at the time marriage and divorce. However, the marriage is defined differently in the Australia law.

The Marriage Act 1961 and Family Law Act 1975, describes “the marriage as the voluntary union of a man and a woman”, recognizing it as the only legal form of marriage in Australia. The Australian Family Law system does not have provisions for the status of a ghost wife etc. These practices are considered illegal as they violate Australian family law. The marriage is only recognized as a valid relationship if two families or individuals are agreed. The marriage is not though as the decision of only two people but, although the consent of couples is most important, though parents can support, object, raise voice or their thoughts for the marriage if it does not affect legal status of the marriage (Cole, 2013, p. 53-55).

### **Divorce**

Australian family law deals with divorce differently, it dissolves the bonds of marriage but it does not deal with where children live, who supports the children or the division of the property. It is also a legal requirement within Australian law that the couple must be separated

for twelve months with no possibilities of a future reconciliation before either could apply to the court for divorce (See Appendices Image 3).

In Australia divorce rate has been growing for the changes in the absolute values, which are dependent on other variables demographic serve the relative values, and in particular the so-called 'sums of divorce rates by duration of marriage (Ermisch, 1991). When love has grown cold inevitably emerging divorce child custody issues and how it is maintained during the marriage formed dividing property equitably applied to the problem boils down to.

Divorce itself is not easy to deal with psychologically painful process of divorce, property division issues emerging issue is divorce and child custody disputes account for most today is a double-divorce dispute, we'll divider. Australia's property division at the time of divorce for the married couple has a principle of "just and equitable liquidation" (Merin, 2010). To do this, just and equitable distribution of the property belonging to the community property assets and debts must be determined. These third parties have a couple of co-monetary assets contributed to the formation of the quotient is calculated. Then, couple of non-monetary contributions of the parties is calculated.

It refers to non-monetary contributions, such as housework or child care refers to, etc. Other consideration is that the couple during the marriage of the parties to calculate the negative contributions. What is the negative contribution of domestic violence, gambling, or refers to such spousal abuse. Less on the second to the fourth used a sort of court official to property division laws can be called. In fact, the interesting thing is that the actual effect of the court ruling looking at property, usually the common property of spouses Divide at about half and half constitutes the ruling.

The couple married, living together for some time, the father of a child to live a divorce, the marriage during the first who came to have more money, or at home with his wife only to engage in housework and child-rearing days taking care of all the monetary contributions, one of these non-monetary recognition, such as those at the money when the property distribution gives recognize. The end of marriage as contributing to the formation of property on the contribution basis reflects the distribution of property upon divorce, but women are often the housework and child-rearing and the financial contribution of the non-monetary contributions to the real estate treated equally distribute (Lawson, 1994; Baldini et al., 2002).

In the form of wealth distribution that is made here in Australia at the time of the divorce, property distribution format. This only 50:50 in the distribution method, one or the other exception is that the couple before marriage divider written agreement, or if either of the couple has established a trust to be placed in their own separate property. This is very short and each one is a separate case, a divorce financial management equal ratio of wealth distribution is difficult (Lawson, 1994; Baldini et al., 2002).

Besides the distribution of property in divorce application is separate from the got away arbitrarily ruling out the distribution itself is not wealth (Davies & Shorrocks, 2000). It has a common-law for relationship or marriage relationship is over, people are trying property division or distribution if, other than as instructed on the law should not be confused with the above information provided. It should be noted that another, regardless of the divorce property division apply anytime after you have apply for separation from your spouse, but the final judgment of divorce to be filed within 12 months to be. More than 12 months must be authorized by the court's separate property division need to keep in mind when applying (Bruner, 2011).

The distribution of the property division of community property when the couple admitted that it is not necessarily the person as well as your spouse's name is on the other hand it is a definite person, regardless of the content of the common property of the couple can be recognized by the same distribution (Kulzer, 1972). The distribution of property upon divorce that the court to consider the details of the prospective of spouse maintenance and child support expenses such as living standards, with consideration of the "just and equitable liquidation, settlement." It is the child's custody and property distribution that causes a plenty of problems.

### **Child Custody**

The marriage practice and child custody has remained unchanged, even in the current time. The concept of customary law is defined by Woodman as a set of customs and rules that reflect a certain community's beliefs, habits and values, also referred to as a mirror of accepted usage (Dewar, 1998). This will be discussed in further detail in the child custody section. It would be argued that some of marriages may not qualify to be considered marriage within Australia family law, and this would cause legal implication between the parties involves.

## **The Nature of Marriage, Divorce, and Child Custody in Under South Sudanese Dinka**

### **Customary Law**

#### **Marriage**

In the culture of South Sudan, the marriage has more than one definition. The Dinka Customary law Act 1984 explains "marriage as a union between one man or his successor and one woman or more women," for the purpose of sexual cohabitation (Jok et al., 2004). The other definition to describe marriage is the maintenance and breeding of the homestead. The marriage,



according to Dinka customary law is recognized as not between the man and woman/ women but it is considered to serve the purpose of continuing family line as a relation between a barren woman and another woman or women. The other definition also uses the term between man and woman or women. The item Wunlit the agreement with regard to missing persons and abducted, contains several provisions that refer directly to cultural forms described by Evans-Pritchard in *The Nuer*, but especially in the later work, *Kinship and Marriage among the Nuer*. Its sub-components:

- Abducted girls still single would be returned to their families;
- Girls who had married in captivity would be consulted as to wish to return to their place of origin or remain: if they wanted to come back, would be released immediately if they wanted to stay, then “the bride wealth must be collected and presented to her parents or relatives,” if they had children of this marriage” then “the natural father may choose to redeem the Children.” According to Dinka / Nuer tradition, if “the father refuses to redeem the children, the mother is free to leave with them”
- Women who were already married earlier should be returned with all his children;
- All boys and men abducted should be returned, unless they had been married and wanted permancer where they were if they had married and wanted to go back, “then his family Which Shall pay the bride wealth was paid by his captor”, could return to his wife and children.

First, the consent of the bride and groom, mentioned in items B and D, corresponding to a Nuer practice verified by Evans-Pritchard. As to the meaning of the other items, we see that we have the information. Marriages among the Nuer were made in several “steps”, consisting of gifts and counter among the relatives of the groom and the bride, primarily in cattle. For a

marriage to be considered valid, the union of fact and benefits in cattle that reconfirm avam, not being neither sufficient were necessary (Girgis et al, 2012). Marriages among women abducted and his kidnappers not “exist”, so unless they are duly confirmed by these benefits, statements and confirmations of ties between families. The amount of livestock thereby passed between families was negotiated, since the “first instalment” in “conversations cattle”.

The consummation of a marriage could take years until her husband could deliver the combined number of heads, before that, there was no marriage. The item D reveals that the “bride price”, essential for the confirmation of the first marriage, had been paid by their captors, which makes clear that the rules still apply and are recognized for both “sides” of the conflict. Just as marriage, parentage only becomes legitimate once paid the benefit in cattle (RUOK), usually 4-6 heads (Corvino & Gallagher, 2012).

The payment of bride price itself does not, the husband, the legal right to the children of his wife, but the right to legitimize both the sons of this, by paying the RUOK. Perceives (item C) in the case of married women now, there is no possibility of breaking the bond set by the payment of bride price (“must be returned”), which gives the husband the “undeniable right” to become if pater of the children of his wife, although generated by another man. All these relationships among Nuer and Dinka, duly established and recognized, certainly reinforce the insertion of segments of the two peoples in a common social fabric.

Have Evans-Pritchard noted that approximately half of the Nuer were Dinka descent, built mainly through marriage and adoption (1940: 221), so there is something new here. On the other hand, the “tissue” was traditional by nature, “elastic”, and Evans-Pritchard himself compares the intermarriages “elastic bands” between political segments far from creating large stable units, kinship relations provided that “the non-political texture of the political system”

allowed absences and approximations, fissions and fusions successive and constant. With the signing of the peace Wunlit, in March 1999, the process of political unification of southern Sudan took a step considered crucial by all participants and observers.

Six months later, a communiqué of the Peace Dinka-Nuer (West Bank) reported the progress of the process. “Historical narratives” and conversations between representatives of the Dinka and Nuer, the document says, showed encouraging results: 148 abducted persons had returned to their homes and five “proper marriages” had been made.

The reports of the working groups provide details. Among those abducted, yet there were eight Dinka and Nuer 42 missing. The five marriages in question were made between the Nuer. In many communities of South Sudan is still a widespread practice of early marriage and girls are considered a source of wealth, since they are given as wives for cows.

According to the Ministry of Gender and Child Affairs, 48% of South Sudanese girls 15-19 years are married, some 12 years also. Despite South Sudan’s Child Act 2008 provide that the minimum age for marriage is 18 years, and provides for the imprisonment of those who do not respect the law, it is not taken into account.

Early marriage is part of the customs of many communities, where once a girl reaches puberty is considered a woman and as a result, many families do not hesitate to “give it away” in marriage in exchange for cows.

Others favour early marriage for fear that their daughters remain unmarried pregnant yet, a phenomenon condemned by local culture and, consequently, no one wants more these girls as wives or only in exchange for a few cows. The local women and girls are particularly vulnerable. After 21 years of civil war with Sudan, many were victims of horrific violence and abuse of all

kinds, including rapes and kidnappings. Early marriage, violence against women and many other gender disparities are due to the rules of customary law.

Activists argue that the fact that the laws are not transcribed allow local leaders, mostly men, to interpret them to your liking. According to the judicial system of South Sudan, the common law, which consists of many traditional unwritten laws, is applied in accordance with statutory law. However, the practice is still controversial, since many cases of customary law are considered unfair. Before a treaty of 2005 put an end to the conflict dividing Sudan into two, were killed about 2 million people and another 4 million people were displaced. According to the UN, in 2011, at least 1,600 people died in clashes between the Murle and Lou Nuer ethnic groups.

Polygamy in any culture is marriage in which a spouse of either sex may possess a plurality of mates at the same time. Polygamy is the practice of having more than one wife at one time. Here each wife and her children form an economic subunit with a separate kitchen, fields for food production, and cattle. The polygamy marriage is allowed in the Dinka customary law (Section 19). Furthermore, the law defines the term ‘succession’, where a man can marry another woman/ women in the event of death of a wife or husband or infertility of the husband or wife. The Dinka customary law does not mentions any limits for the number of wives that a man can marry.

Each extended family is embedded in a sociological structure characterized by networks of wider economic and political obligations based on kinship ties. Nonetheless, most households are self-sufficient economic units producing their own food, housing, and other necessities. Until recently, a large family was highly respected in many African communities. Of importance, here is that in many African societies today, including the Dinka, the term “wife” has two basic: “a

female married to a given male” (or female) and a “female married into a given compound or lineage” (Deng, 2006). Thus, this type of marital social organization is communal, rather than composed of nuclear family units.

An extension of polygamy is the practice of levirate marriage, an ancient custom mentioned in the Bible. According to this practice, if the husband die, the parents of the dead man select one of his brothers to continue procreating with the widow in the dead man’s name. In Dinka society, a prospective husband pays bride wealth in cattle, often via a bidding system controlled by the prospective father-in-law.

The highest bidder usually acquires the woman, and the bride wealth is made in a series of payments over an extended period. Under the system of levirate marriage, if a man dies before having paid all the bride wealth, one of his brothers acquires the widow and continues making payments to the woman’s family.

Thus, a woman’s procreative capabilities are never “wasted,” and she is never without a husband to care for her and her children. Not all polygamy African families practice levirate marriage today and the usage have died out in many cultures, including a number in South Sudan (Deng, 2006).

Among most of the Western Nilotes of this region, however, particularly the Dinka and Nuer, the practice continues to be observed, largely because the acquisition of many wives is important for the Dinka socioeconomic lifestyle. Until recently, adage was that “many wives shall bring forth many daughters who shall be married with greater numbers of cattle.”

Yet these “kinship systems do not merely exchange women”; they also exchange “sexual access, genealogical status, lineage names and ancestors, rights, and people”. They bind men, women, and their children into concrete networks of social bonding. Historically, polygamy has

been critical to the successful economic, political, and ethnic expansion of the Dinka within the southern Sudan region.

A system that prevails across Australia, there are people of completely different breeds and which are more or less modified forms throughout Africa and Australia, need to be explained historically. The “father”, “son”, “brother”, “sister”, names are not simply honorary titles but, on the contrary, imply serious mutual duties, clearly defined, and which together form an vital part of the system in the social settings of these people. And the clarification has been found that there was, in the first half of this century, a form of family in which there were “the same parents and mothers, brothers and sisters, sons and daughters, uncles and aunts, nephews and nieces” of the kinship system.

It is true that the system of Australian classes also represents a starting point for the gens, the Australians have the genes, but lack the Punaluan family, but a more primitive form of group marriage. In all forms of family groups, one cannot know for sure who the father of a child, but it is known who the mother is. Although he calls his children to all of the joint family, and has maternal duties towards them, it is nevertheless to distinguish their own children among the rest. It clear, therefore, that everywhere where there is a marriage by the descent groups can only be established the maternal side, and therefore only recognizes the female line.

It designates the Exclusive recognition of maternal affiliation and relations of his inheritance deducted under the name of law breast. I retain this term for the sake of brevity, but it is inaccurate, because at that stage of society did not exist right in the legal sense of the word. Let us now punaluan family in one of two typical groups - specifically, a series of carnal and collateral sisters (that is, descendants of fleshly sisters first, second and further degrees) with his sons and his brothers side by carnal or maternal line (which, according to our assumption,

are not their husbands), and we have exactly the class of individuals who, later, members appear of a gens, the primitive form of this institution.

All have the common trunk and a mother, because this origin, descend the female form teeth generations of sisters. However, the husbands of these sisters have not may be his brothers, therefore cannot be descended from that breast and trunk do not belong to this group consanguineous, which later comes to be the genes, although their children belong to such a group, because the descent through the maternal line is the only decisive, as the only right. A prohibited time relations sex among all brothers and sisters, even the farthest side, from the maternal line.

The group we becomes a gens, that is, constitutes of a closed circle of blood relatives by female line, who cannot marry each other, and, thereafter, this circle is consolidating each increasingly through common institutions, social and religious order which distinguishes it from other genes of same tribe, shall return in greater detail in this issue. Children are customary not allow to identified themselves to their maternal family however they can only refer to their maternal family as blood related but not belong to that clan or tribe (Davies & Dagbanja, 2009). Considering, however, that the gens arises from Punaluan family, it's not only necessary but of course, we plea to consider almost beyond doubt the former existence of this form of family in all the people that can be proven Gentile institutions, that is, in almost all civilized peoples and barbarians.

When Morgan wrote his book, our knowledge about marriage groups were very limited. I knew something was marriage between organized groups Australians in classes. To my knowledge and this study, there are examples of conjugal union between parents and children in Australia, and, moreover, the later form of exogamy, the gens based the right breast, tacitly

assumes a prohibition of this trade as something that had already been established before the onset. The system of the two classes lies not only in the Mount Gambier region, south of Australia, but yet, on the banks of the Darling River, to the east, and Queensland in the northeast, so that is quite widespread.

This system excludes only marriages between brothers, between siblings and between children of children of sisters by maternal line because they belong to the same class, the children of brother and sister, the otherwise, can marry each other. We observe, therefore, that the trend to prevent marriage between consanguineous manifests here and there, but spontaneously in attempts without clear awareness of the targeted purposes. Marriage by groups that, in Australia, is also a marriage for classes, the conjugal union mass of a whole class of men, often scattered throughout the entire continent, with a whole class women no less dispersed, this marriage groups, seen up close, not monstrous like the fantasy figure of the Philistines, accustomed to the society of prostitution.

## **Divorce**

Divorce is very rare, and strongly discouraged. It is economically challenging, since brides' wealth, which has been distributed throughout an extended family, will need to be returned. As a result, the extended family has a stake in the marriage and will bring pressure to bear on the couple to find a way to resolve their differences. Unity and harmony, which are experienced when a sense of balance and order is present, are highly valued in both the Dinka and Nuer cultures (See Appendices Image 3).

These concepts are expressed by the Dinka with the verb, which literally means "to live together" and "to look after." There is a caring element implied in *cieng*, which Deng (1972)



describes as a concept of ideal human relationships. Cieng is learned at home among family, yet it is idealized in the much broader sense of people living together in the village, community, or country. Cieng has the status of a moral code inherited from the ancestors.

Deng explains that “the social background of a man”, his “physical appearance”, “the way he walks, talks, eats, or dresses”, and “the way he behaves towards his fellow men” are all factors in determining his considerations” (p. 14). Cieng and dheengare closely related; a person would not be capable of acquiring the virtue of dheeng if cieng did not define the moral standards required to achieve it.

Duany (2003) describes mal as an ideal of peace, unity, health, unbroken wholeness; it is experienced as a state of dynamic equilibrium. The importance of this value to the Nuer is reflected in a common greeting within Families. Continuity of the lineage through procreation is of vital importance to the Dinka and Nuer, and is the most important function of marriage (Juma, 2001).

A woman strengthens her position in a family by producing children. While all children are loved and valued, sons are necessary for continuity of the lineage. A man who dies without sons, who has no one to carry on his name and to remember him, is considered truly dead. Sons link the lineage from the past, through the present, to the future generations, and as a result bring immortality to their fathers and the lineage. Dinka and Nuer naming systems reflect the importance of the lineage.

A son is given his own name at birth, followed by the name of his father, the name of his grandfather, the name of his great-grandfather, and so on. At a very young age children are taught to memorize and recite their father’s genealogy to the most distant known ancestor. Important connections with ancestors are honoured as the paternal lineage is recited back

through twenty generations or so, by name. The Dinka and Nuer have a system, which allows a family to maintain continuity of the lineage from generation to generation even when a man has no sons to follow him (Juma, 2001). If a man is married, and dies without sons, or is absent for years because of war, responsibility for ensuring that his name continues falls to his family.

Divorce (Section 35) in the traditions of Dinka is the dissolution or end of marriage. The Dinka customary law Act 1984, propose the legal end of marriage with the consent of both families, through court.

### **Child Custody**

According to the Dinka custom, the man has all the legal rights for recovering his property as well as, the father can take full custody of their child/ children after the marriage is ended by the court with the mutual consensus of the two families. If the father does not take the responsibility of their child/ children, he has to recompense it with the cattle. In the case child/children are living in the maternity family for 5 years or more. In the Dinka Customary law, the men has rights of custody of the child/ children, while the women has almost no rights over children if the men does not allow them to have children custody.

### **The Importance of Polygamy in South Sudan's Ethnic and Political History**

Polygamy in any culture is marriage in which a spouse of either sex may possess a plurality of mates at the same time. The Dinka provide eloquent confirmation of Sandra E. Greene's thesis that when considering pre-colonial Africa, gender studies and ethnicity cannot be understood in isolation from each other. Historically, the Dinka were not indigenous to South

Sudan; rather they migrated into their present homelands centuries ago from what is now northern Sudan.

Rapid Dinka ethnic expansion into the south took place within a few centuries, largely because the bride wealth of these Nilotes was higher than that of their surrounding neighbours. Thus, expensive Nilotic wives were accessible primarily to other Nilotes, who, however, could also more easily afford to acquire additional non-Nilotic wives. Over time, the Dinka expanded ethnically at the expense of many of their surrounding neighbours, and in so doing, they decreased the pool of marriageable non-Dinka women on their periphery.

Polygamy is the practice of having more than one wife at one time. Here each wife and her children form an economic subunit with a separate kitchen, fields for food production, and cattle. The polygamy marriage is allowed in the Dinka customary law (Section 19). Each extended family is embedded in a sociological structure characterized by networks of wider economic and political obligations based on kinship ties. Of importance, here is that in many African societies today, including the Dinka, the term “wife” has two basic referents: a female married to a given male (or female) and a female married into a given compound or lineage. Thus, this type of marital social organization is communal, rather than composed of nuclear family units.

Within a few centuries, the Dinka had become the largest ethnic group in South Sudan, and indeed in the twentieth-century Sudan nation as a whole. Thus, the age-old Dinka polygamy marriage customs were always critical to the community’s later political, military, and economic power in the region. Furthermore, the law defines the term ‘succession’, where a man can marry another woman/ women in the event of death of a wife or husband or infertility of the husband or wife. The Dinka customary law does not mention any limits for the number of wives that a man

can marry. With the coming of British colonial control to South Sudan in the early twentieth century, however, marriage patterns everywhere saw changes. Among some ethnic groups the changes were drastic, while in other cases the effect of the colonial regime on gender relations was more limited.

Sudan has been ravaged by civil war with brief interruptions since 1955, the longest ongoing civil war in the world. The war pitted government forces of North Sudan, which is predominately Arab and Islamic, against the peoples of South Sudan, predominately black Africans who adhere to indigenous beliefs and/or are Christian.

While a Comprehensive Peace Agreement formally ending the war was signed in 2005, the agreement is showing signs of strain, and the potential for further conflict remains. The causes of the conflict are complex and include racial, cultural, religious, economic, and political differences.

Parties on all sides of the conflict have committed crimes, and civilians are the ones who suffered most, through the enslavement of women and children, the conscription of child soldiers, and the raiding and pillaging of villages, which often resulted in starvation and death. Nonetheless, most households are self-sufficient economic units producing their own food, housing, and other necessities. Until recently, a large family was highly respected in many African communities.

According to “the United States Department of State Bureau of Population, Refugees, and Migration” (2001), approximately 3,800 young South Sudanese refugees, commonly referred to as the Lost Boys and Girls of Sudan, were resettled in the United States from Kakuma refugee camp in Kenya between November 2000 and September 2001.

The lost boys and lost girls (LBLG), the majority of who were children and young adults between the ages of 16 and 24 at the time of their resettlement, identify themselves as Dinka and Nuer people of South Sudan. Eighty-nine lost girls who were found to meet the resettlement criteria, along with 3,276 lost boys, were admitted to the United States as refugees without parents, minimal understanding of life in the United States, and no knowledge of the American health care system. Sudan is the largest country in Africa. It covers an area of 967,490 square miles, which is more than one quarter the size of the United States (Bateman, 2002).

Khartoum, the capital of Sudan, is located in the northeast part of the country and serves as the political center of North Sudan. The “capital of South Sudan” is “Juba”, where the newly formed government of “the semiautonomous south” is building a state from scratch. The land rises all along the southern borders of Sudan, reaching its highest point at Mount Kinyeti on the Ugandan border.

Historically, the Sudd provided a physical barrier, which served to isolate the people of the plain from outsiders. During the Anglo-Egyptian Condominium, the British left education in the south to the missionaries. This led to an entwinement of religion and education. Those who attended school became Christians, joining the denomination of the missionaries running their school.

Discussion and debate, which continue today, could arise within families as sons returned home as Christian converts. Tensions were not too great as there are inherent similarities between Christian worship and Dinka traditional religions. In addition, worldview, symbols, and the language used to describe God are nearly identical. Schools worked at forming good relationships and changing the attitudes of the people towards education. The students

themselves became ambassadors for education as they shared their knowledge of reading and writing at home.

Francis Deng (1972) suggests, “for the Dinka, who see a linkage between knowledge and mysticism, writing and reading came to assume a respected place in their system of values as sources of wisdom”. While education became available for the small number of boys whose families allowed it, education remained unacceptable for girls. It was not considered safe for girls to be away from home.

People also worried that boys in the family would not be able to marry, as they would be deprived of their sisters’ bride wealth if their sisters became educated and delayed marriage. Bride wealth is the payment, in cattle or cash equivalency, presented by the family of the groom to the family of the bride as part of the marriage agreement. The bride wealth received when daughters marry is often used to provide the bride wealth necessary for sons to marry (Duany, 2003).

Education for some, but not all, contributed to the development of social classes. In her memoir, Julia Duany (2003), a Nuer woman now living in the United States, speaks of changes that occurred, some more positive than others did, after she moved from her home village to a Catholic boarding school. “The more we learned further [sic] we moved away from our community.

The language of education in the missionary schools was English. Following independence, the government in the north took over all schools. The relationship between the government and Christian missionaries deteriorated, culminating in the expulsion of all foreign missionaries from Sudan in 1964. Arabic replaced English as the language of instruction. The focus of education shifted from a Westernized Christian perspective to a Muslim-Arab

perspective. There was no formal educational offering from a traditional Dinka or Nuer perspective.

As the conflict between north and south grew, many schools were destroyed, and few children were able to attend those that stayed open. The government of Sudan has made a commitment to education for all by 2015, but there currently is little evidence that a plan has been developed to achieve this. Literacy rates are low, with 71.8% of men and 50.5% of women over the age of 15 reported able to read in 2004.

With most of the fighting occurring on southern soil, it is likely that literacy rates for those in the south were much lower. A key finding from a study funded by Save the Children and focused on the vulnerability of people living in South Sudan, was that Dinka participants defined vulnerable people as “those without an adequate kinship structure around them to protect them” (Harrigan & Chol, 1999, p. iv).

Kinship ties are extremely important to the Dinka and Nuer, with family members providing an essential support network. Julia Duany (2003) describes kinship among the Nuer as “a communal bond that binds past, present and future generations together” (p. 77). One important family unit consists of those who belong to the same subclan. Leinhardt (1961) defined subclans of the Dinka as “all of those who come into contact with each other who know themselves to be agnatic descendants of an original ancestor” (1961, p.8).

This patrilineal structure theoretically allows everyone to trace his or her ancestors back to a single person. The closer the connection of the descent group, the more that is expected from one another in the way of alliances and mutual support. Another vitally important family unit consists of those people in the extended family who contributes to the bride wealth.

This grouping, which includes family in the matrilineal line as well as relatives connected by marriage, is expected to provide unquestioning support for one another. Traditionally marriages are arranged between the men of the families involved. Marriages bring together two sets of extended families, in a relationship that is contracted and sustained through payment of bride wealth from the extended family of the man to the extended family of the woman. Historically, the system of marriage has kept families strong in time of crisis, and provided safety and security for women and children.

Since bride wealth is given from one extended family to another, it serves to strengthen the bonds between the families. If either her husband or his family mistreats a woman or her children, members of her extended family may intervene with the husband's family on her behalf. Often just the knowledge that his wife's family is aware of a problem is enough to change the husband's behaviour.

The family will choose a kinsman, usually a brother, to have children for him with his widow or abandoned wife. If a man dies who has never married, his family will arrange a 'ghost marriage' with a woman they have selected for this purpose. Bride wealth will be paid to the woman's family, and she will beget her husband's children with a kinsman of his family's choosing. Leininger's "theory of culture care diversity and universality" (Leininger, 1991, 1996, 1997a, 1998; Leininger & McFarland, 2002, 2006) will provide the framework necessary to elicit new knowledge related to the domain of inquiry. The theory reflects a synthesis of knowledge from nursing and anthropology which provides a focus on care as uniquely nursing and culturally oriented.

Leininger holds that while human care practices and values, specifically how people perceive, understand, and provide care, differ between cultures, there are commonalities about



care among cultures too (Leininger, 1996). The two major constructs of culture and care “were conceptualized as being very broad, integrated, embedded, and nestled into each other like an irreducible whole, a gestalt, or a humanistic orientation to life and living” (Leininger, 1991, p.20). The focus of the theory is on care; indeed.

Leininger (1997a) states “care is essential for well being, health, growth, survival, and to face handicaps or death” (p. 39). She distinguishes between two types of care, generic (folk) care and professional care. Generic care is culturally learned, is the oldest form of care known, and is necessary for the survival, health, and growth of human beings (Reynolds & Leininger, 1993). Professional care is the formally or informally taught, learned, and transmitted culturally based professional knowledge that focuses on human care.

Historically, generic care has not been valued in Western institutionalized nursing. It is for professional care recommendations to be incongruent with generic caring practices. The theory of culture care provides a means to bring the two together in a meaningful way allowing for the delivery of culture care, which is congruent with the health care beliefs, and practices of the care recipients.

Leininger (1997a) maintains, “understanding of both professional and generic care could avoid practices including cultural conflicts, cultural clashes, cultural imposition, and other unfavourable results”.

Leininger asserts that there are differences (diversities) and similarities (commonalities or universals) in human care both within and among all cultures of the world. This knowledge is best elicited from the people’s perspective as opposed for the ethic, or outsider’s perspective. The discovery of these diverse and universal care patterns, meanings, and expressions will provide nurses with the knowledge they need to guide professional decision-making and actions,

which support health and well-being. The researcher and informants to confirm their accuracy, ensuring that the researcher is accurately representing the insider's perspective, discuss all discoveries made collaboratively.

Leininger has identified three modes of action and decision making which reflect the nurse researcher's thinking, planning and use of data from informants to provide care that promotes health and well-being. The three modes allow for mutually agreed upon decision-making and action with regard to both generic and professional care.

When creatively used and thoughtfully developed with the care recipient, the modes of action and decision making lead to the provision of culturally congruent care, which is the goal of the theory. Leininger's background as both an anthropologist and a nurse is evident in the Sunrise Model Enabler, which she developed to provide assistance for the researcher, and provide clarity between the concepts put forth in the theory.

The Sunrise Model Enabler provides an overall picture of the major dimensions or interrelated components of the theory. It functions as a cognitive map, which depicts the cultural care worldview, social structure dimensions, environmental context, language, and ethno history as they influence and are influenced by culture care and health. The enabler provides visual evidence of Leininger's belief that human beings cannot be separated from their cultural background and social structures. It also reflects her ideal that culture care transcends the individual to be inclusive of families, communities, and society.

The Sunrise Model Enabler guides the nurse in the discovery of culture care knowledge and in the application of the knowledge in ways that are meaningful within the cultural context of the care recipients. Linkages and influences between the concepts are evident, particularly between the three modes of nursing care decisions and actions and culturally congruent care.

Leininger's (1991) Sunrise Model Enabler achieves its purpose of depicting both abstract and concrete aspects of the theory "whose goal is to discover inductively and explain, interpret, and predict culture care knowledge and its influencers in order to understand and develop ways to provide culturally congruent care".

With this strong trans cultural focus, cultural imposition practices may occur, resulting in frustration, loss of trust, and lack of caring from the perspective of the person requiring care. The Naivasha Peace Agreement (termed 'Comprehensive Peace Agreement', or CPA) that ended 22 years of civil war in Sudan in 2005 provided, after a period of five years, the achievement general elections in 2010 and, after six months in 2011, a referendum on self-determination in Southern Sudan.

The signing of the CPA had the support of all the international community, and that it was keen to monitor the peace process until the respective completion and funding the elections and referendum. This was also the position the European Union, which sent an election observation mission and provided a significant budget to technically support the Sudanese, who voted for first time more than 20 years. In the referendum, the overwhelming majority of South Sudanese ruled in favour of independence, without any of the key issues to resolve, among them defining boundaries, has been the subject of agreement between the North and the final report of the South electoral mission concluded that there was a process of referendum credible, despite grave breaches, and policy implementation and organizational remarkable considering the deadlines. However, the referendum in the South was not the only requirement APG.

The CPA also provided for a referendum on the status of Abyei (South of the border area Kordofan rich in oil reserves) and conflict resolution in two states of Sudan: Southern Kordofan and Blue Nile. There are still conflicts, not succeeded in achieving the referendum on Abyei and

popular consultations are suspended. Furthermore, APG urged Also both parties, the case should proceed to separation, to resolve outstanding issues regarding citizenship regime, power sharing, wealth sharing, including oil wealth, debt sharing and conclude agreements relating to security, among others. Once again, progress is limited.

The Comprehensive Peace Agreement has not yet reached its term and, for the community international, the work is far from complete. Two years after proclamation of the independence of South Sudan, this report intends to assess the situation of this young country and the difficulties currently facing (Danne, 2004).

The stability of the entire this region of the Horn of Africa depends on it. Europe is doing enough? And so visible enough? Their priorities were adequately defined? Europe is far from being the only actor in this scenario, since the United Nations indicated for both the North as for the South, missions and significant resources (UNMIS and UNMISS) to stabilize conflict areas such as Abyei (UNISFA) or Darfur (UNAMID).

The African Union has also a prominent role. The conclusion of cooperation agreements in Addis Ababa in September 27, 2012, with 8 additional agreements (relating to oil, trade, issues relating to borders, to banking, to the status of the respective national, pensions, certain economic issues and security measures) and later, the signing of the plan implementation of agreements on March 12, 2013, was made through the intervention of the High Level Panel of the African Union (AUHIP) composed of the former South African president Thabo Mbeki, by its current President and the former Presidents Pierre Buyoya of Burundi and Abdulsalami Abubakar of Nigeria. Said panel is funded by the European Union. These agreements allow, in particular, and after a year of switching to reopen and resume exploration of oil wells. South Sudan fully dependent on infrastructure (pipelines, etc.) Sudanese.

However, these agreements remain fragile and are susceptible of being used as a weapon by the Sudanese government, as demonstrated by the recent retreat announced. In turn, the international community, particularly the U.S., the European Union, Britain, Norway and 40 other governments and international organizations, met on 16 April 2013 in the context of a forum in Washington. The forum in question marks the beginning of a partnership to strengthen governance, political inclusion ('political inclusiveness'), the sustainable development of South Sudan and the progress achieved after its independence.

In this context, the European Union, along with the troika composed by the U.S., Britain and Norway, has played a key role the creation of the New Partnership for South Sudan, which will be reflected in a 'new compact agreement' based on reciprocal commitments and that seems to be approved within a High Level Conference on Investment taken during the current year.

In exchange for financial support from our partners International, which includes budgetary support of International Financial Institutions (IIF), a contract for the consolidation of the rule of the European Union and a Fund Donor Partnership of Southern Sudan (multi-donor South Sudan Partnership Fund) administered by Britain and the USA, South Sudan must comply with standards ("benchmarks") that relate to the improvement of their economic and political governance, financial management public sector, management of natural resources and the fight against corruption.

However, considering the current political tensions and the lack of rule solidly constituted, the issue of security is one of the key challenges for the young state. Besides being a permanent destabilizing factor, which is accompanied by severe humanitarian problems. Currently, there are several areas of instability in South Sudan not to mention the conflict with the armed forces of Sudan: The border region of Abyei (petroleum), disputed by South Sudan but

controlled the North, which currently remain strong tensions between ethnic Dinka Ngok and Misseriya.

It should be noted that since May 2011 that access to Abyei region by humanitarian organizations was severely limited, and no these organizations have access to areas of the northern region of Abyei. Sudanese states of Southern Kordofan and Blue Nile oppose the 'rebels' of northern faction of the Movement / Sudan People's Liberation Army (SPLM-N) and other militia forces from the south (FRS MLS, ALS) to Sudanese government forces (AFS). Under the auspices of the said High-Level Panel of the African Union (AUHIP) takes up talks in Addis Ababa in April 2011, in order to appeal to a peaceful solution, but the same failed. Local authorities say 47 000 displaced persons. In controlled by the SPLM-N areas, NGO access humanitarian Sudan continues to not be allowed and it is estimated that the situation humanitarian is very worrying. The intertribal and interethnic conflicts in the state of South Sudan (Mainly between the Murle and Lou Nuer tribes) and hostilities between the Army Sudan People Liberation (SPLA) and the democratic armed resistance David YauYau (SSDA) has, again, been the source of serious exodus and concitarn concerns about the protection of civilians. Security problems in the Unit are identical (eg, theft of livestock 'Cattle raids' in the region of Great Lakes and Unity States, the struggle for access to resources, among others). The civil authorities in areas controlled by the SSDA not hindered access humanitarian, however, remains the impossibility of access to humanitarian areas controlled by the SPLA.

### **Legal pluralism**

The African community in Australia is about 37000 people which about 1.8 % of the Australia' total population (According to bureau of statistics TC). The immigration of African in

Australian occurred at different time periods that also gave rise opportunities as well as a variety of reactions by the civilians. The majority of these migrations were started in the early 90's.

Whereas the number of migrants are still moving(Prinsloo, 1990). This research study is focusing on the migrations and settlement of the Africans in the recent years, whom are humanitarian entrant.

A short proportion of the south Sudanese have recently resettled in Australia. There has been controversies, conflicts, and debate over the violent behaviour of Sudanese, citing gangs for their lawlessness and dispersing the peace of Australian society. These acts of gives the impression of legal pluralism in Australia. Although some countries allow the adaption of more than one law or legal system in the country, known as legal pluralism.

The legal pluralism is a term of law used for the countries allow operating more than one legal framework at a time in the state or country. The "Expression of Legal pluralism" conceives that separate "personal laws" may operate in "the areas of family law". In such system the people can live according to their Customary law. This is a personal law system that allows the African families to follow their rules in regards to marriage, divorce, inheritance, polygamy and child/ children custody(Prinsloo, 1990). Thus, they can operate within a religious and legal norms, values, and belief for the marriage, divorce, and custody of children.

### **The Domestic Violence and the role of International Communities**

The expert wishes to "acknowledge the considerable support and financial contributions received from national committees for UNICEF", to save the children from the domestic violence in the South Sudanese Dinka (Adam, 2003). The General Assembly of the United Nations and its "Member States is also addressed to regional institutions, UN bodies, specialized

agencies and other competent bodies”, including “NGOs, relevant special reporters and working groups, inter-governmental bodies and civil society”, have played their role in exposing the acts of violence on children and women (Rosen, 2007).

Violent conflicts have always resulted in casualties. However, the patterns and characteristics of contemporary conflicts have increased the risks for children’s future. The personalization of power, as well as leadership and manipulation of ethnicity and religion to personal interests or small groups service, had equally debilitating effects in conflict countries. Abandoned all standards, “human rights violations against children and women” occur in the region due to the old cultural practices cannot be tolerated (Rosen, 2007). Increasingly, children become targets and even perpetrators of violence in the Sudanese culture.

The women seek protection and the social support, as the Australian law provides substantial rights to the children and equal rights to men and women. The change caused by conflict and social violence affected the social networks of well-being among families and the community. Rapid urbanization, the movement of Sudanese in Australia and the spread of values based on Australian laws also helped grind down support systems that once relied on extended family (Kircher). The conflict within communities or amongst various communities results in immense degree of moral, physical, human, as well as cultural destruction due to domestic issues are now losing ground. Children are not only killed and injured in high numbers, like others, and again, grow up deprived of their material and emotional needs, including structures that give meaning to social and cultural life.

The complete building these societies, their homes, schools, health institutions and religious systems, crumbles into pieces. Rape is “a continual threat to women and girls” in these societies, as well as other forms of “gender-based violence, including prostitution, sexual



humiliation and mutilation, trafficking and domestic violence”. Acts of violence based on gender, particularly rape, constitutes a violation of international humanitarian law (Adams, 2003). However, recent efforts to condemn rape as a crime, came to emphasize the difficulties in the application of human rights and international humanitarian law for the South Sudanese.

Women of almost all the ages can be “victims of violence in a conflict”, but “adolescent girls are particularly at risk for a number of reasons, including the size and vulnerability”. Their susceptibility is even more in few localities and less in few. The women are considered to be tortured and affected by the “sexually transmitted diseases and HIV / AIDS as well as men are also affected by such diseases” (Allen, 2007). Characteristics including the determining the risk to violence and rape, for the women or girls who are the victims of violence. The safety of women and girls is at risk everywhere, and they seem in search of safety and rights. Children who are influenced by the domestic violence based on gender also include the children witnessing the rape of their mother or sister or who are ostracized because of aggression to the mother.

“Most child victims of violence and sexual abuse are girls”, but boys are also influenced by the sexual harassment, but the cases of “boys who were raped” or “forced into prostitution” are poorly known (Ahmed et al., 2003). In some cases, boys traumatized by the violence committed subsequently sexual violence against girls. Rape is not inherent in the society, but it may occur at random or uncontrolled way due to a “general disruption of social boundaries and licentiousness”. The child victims of prostitution, sexual exploitation, and early marriages are recognized as the major cultural problems. When pregnancy is enforced, the determination about this being approved to term depending on the various local events, including the safety, support systems, and existing religious and cultural customs.

“Humanitarian responses” are manifestly inadequate. “UNHCR, however, has published guidelines on prevention and response to sexual violence” and “guidelines for the assessment and assistance to victims of trauma and violence” (Oloka-Onyango, 1995). There is significant work done for ensuring the relief for the women and children affected by domestic violence for their specific needs. There are some successful programs that include the project in Kenya “Women Victims of Violence.” This project was launched by UNHCR, when followed by a greater number of violations and assistance of the “local security personnel” (Adams, 2003).

### **Summary**

This paper discusses the literature regarding the family laws of the South Sudanese Dinka Law and the Australian Law. The research study highlights the importance of the South Sudanese Dinka Family Law and Australian Law, with respect to the marriage, divorce, and children custody in case of divorce. The research literature provides a discussion on the difficulties faced by the South Sudanese Australians Dinka in understanding the Australian Family Law, due to the differences in their customary practices. In the chapter 2, the researcher has discussed the following major points using the previous studies and researches published.

- The definition of marriage in the South Sudanese Dinka can be defined as, the Dinka Customary Act 1984, section (20) that defines marriage as a relationship between a man and woman or women for their living and purpose of sex cohabitation.
- Marriages among the Nuer were made in several “steps”, consisting of gifts and counter among the relatives of the groom and the bride, primarily in cattle. For a marriage to be considered valid, the union of fact and benefits in cattle that reconfirm avam, not being neither sufficient were necessary

- In Australia, the Act of 1961, defines the marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.
- The marriage is only recognized as a valid relationship in the Australian culture, if two families or individuals are agreed. The marriage is not though as the decision of only two people but, although the consent of couples is most important, though parents can support, object, raise voice or their thoughts for the marriage if it does not affect legal status of the marriage.
- The Dinka also allows polygamy marriage, which is not being practiced in Australia because of the diseases in male.
- The Sudanese custom puts a lot of pressure, injustice, and discrimination against women. In some cases, the rights of children are compromised. At the time of divorce the law favours man or father for the custody of child/ children.
- The Australian law gives equal rights to men and women in terms of property, assets, as well as children. The rights of children are considered to be the foremost responsibility of the state. Australia's property division at the time of divorce for the married couple has a principle of "just and equitable liquidation". To do this, just and equitable distribution of the property belonging to the community property assets and debts must be determined.
- The Marriage Act 1961 and Family Law Act 1975, describes the marriage as the voluntary union of a man and a woman, recognizing it as the only legal form of marriage in Australia.
- Polygamy is the practice of having more than one wife at one time. Here each wife and her children form an economic subunit with a separate kitchen, fields for food production, and cattle. The polygamy marriage is allowed in the Dinka customary law (Section 19).

- This grouping, which includes family in the matrilineal line as well as relatives connected by marriage, is expected to provide unquestioning support for one another.
- Traditionally marriages are arranged between the men of the families involved. Marriages bring together two sets of extended families, in a relationship that is contracted and sustained through payment of bride wealth from the extended family of the man to the extended family of the woman.
- Discussion and debate, which continue today, could arise within families as sons returned home as Christian converts. Tensions were not too great as there are inherent similarities between Christian worship and Dinka traditional religions. In addition, worldview, symbols, and the language used to describe God are nearly identical. Schools worked at forming good relationships and changing the attitudes of the people towards education.
- The child victims of prostitution, sexual exploitation, and early marriages are recognized as the major cultural problems by the International community and UN.
- The UNHCR responses have been inadequate to stop the domestic violence, however, has published their guidelines for preventing and responding the activities of violence on children and women with the assessment and assistance to victims of trauma and violence.
- Violent conflicts have always resulted in casualties. However, the patterns and characteristics of contemporary conflicts have increased the risks for children's future. The personalization of power, as well as leadership and manipulation of ethnicity and religion to personal interests or small groups service, had equally debilitating effects of the domestic conflict.



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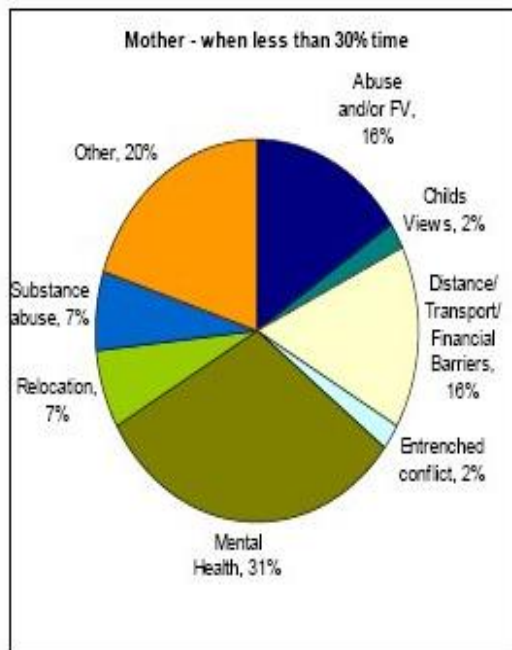
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## APPENDICES



Note: 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

In 9% of litigated cases, the Family Court ordered that children spend 30% or less time with their mother. The **main reasons** for the order include:

Reason	Percentage of cases*
Mental health issues	31%
Distance/ transport/financial barriers	16%
Abuse and/or family violence	16%
Substance abuse	7%
Relocation	7%

Image 1: Children Exposed To Domestic Violence Bulter, (2010)

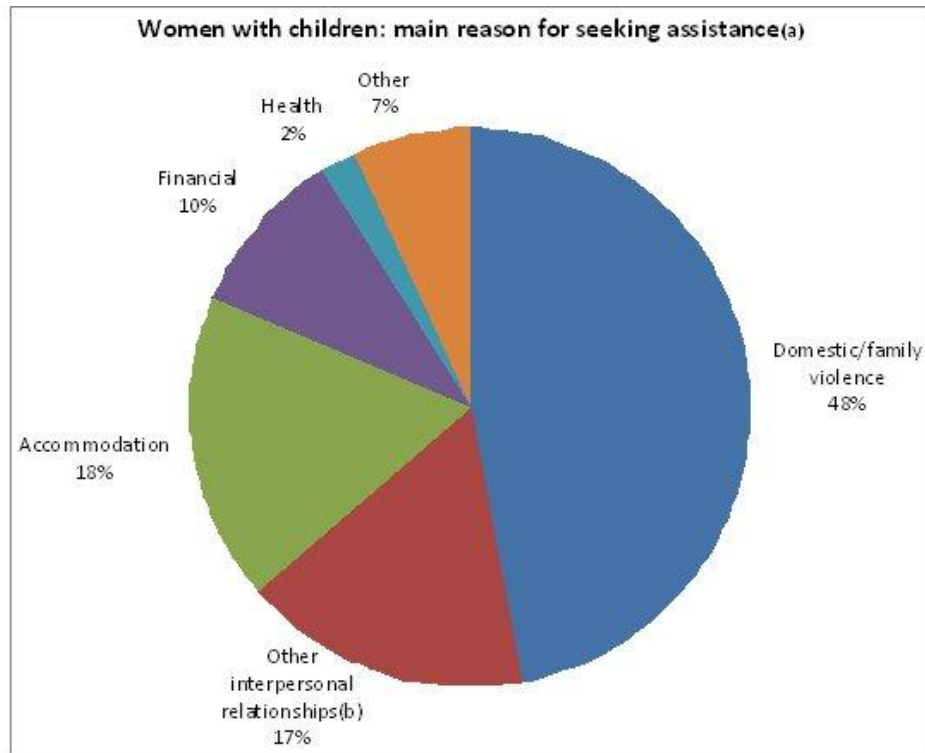


Image 2: Domestic violence in Australia, Mitchell (2011)

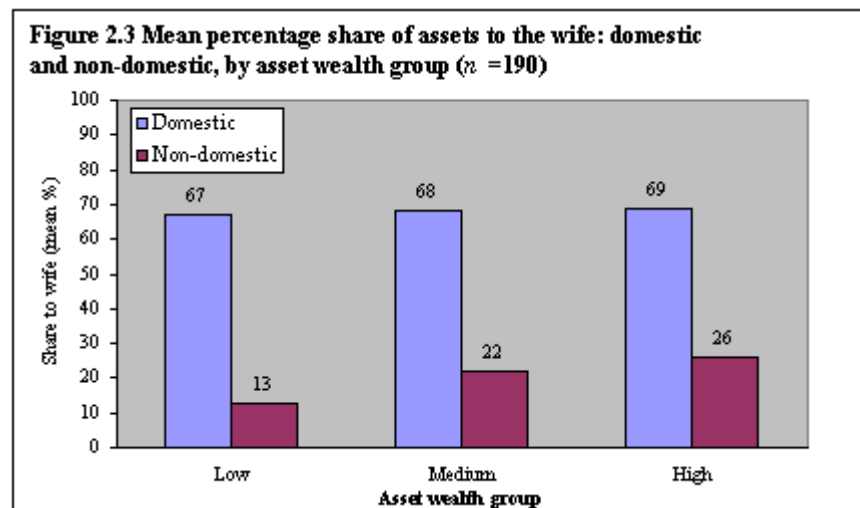


Image 3: Division of matrimonial property in Australia, Sheehan & Hughes (2001)