

2009 African Australians: A Report on Human Rights and Social Inclusion Issues

31 July 2009

**Submission by the NSW Young Lawyers
Human Rights Committee**

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To Whom It May Concern,

African Australians Project Submission

The Human Rights Committee (**HRC**) of the NSW Young Lawyers is grateful for the opportunity to make a submission on the '2009 – *African Australians: A Report on Human Rights and Social Inclusion Issues*'.

NSW Young Lawyers is made up of law students and legal practitioners who are in their first 5 years of practice or under the age of 35. The HRC is concerned with a range of human rights issues both in Australia and abroad and aims to raise awareness and provide education to the legal profession and the wider community on these issues.

If you have any questions in relation to the matters raised in this submission, please contact Claire Hammerton, Chair of the NSW Young Lawyers Human Rights Committee at hrc.chair@younglawyers.com.au



INTRODUCTION

1. The NSW Young Lawyers Human Rights Committee ('NSWYLHRC') strongly supports the '2009 African Australians: A Report on Human Rights and Social Inclusion Issues' to find out, on a national level, the human rights and social inclusion issues for African Australians.
2. The NSWYLHRC is made up on young lawyers and law students and in that regard, we provide suggestions and case studies from our dealings and experiences as legal practitioners whilst working with or alongside African Australians.
3. The free legal workshops conducted by the Refugee Working Group ('RWG') of the NSWYLHRC has identified and confirmed the need for greater access to legal information by African Australians and a greater understanding of the historical and cultural legacy of African Australians in relation to developing culturally appropriate strategies.
4. NSWYLHRC strongly supports enhancing information specifically designed for African Australians and taking into account their refugee experiences and, in some cases, trauma sustained in their native country prior to arriving in Australia.
5. Having particular expertise in the law, legal issues and matters relating to human rights and justice, this submission is focused primarily on 'Justice'.

JUSTICE

Rights, Justice and the Law

5.4 What services exist to explain to African Australians what their rights are when they are involved in the legal and justice systems?

6. There are many avenues through which African Australian's can learn about their legal rights when they are involved in the legal justice system. While the numerous free legal resources are not specifically designed for African Australians there are many resources readily available.
7. Whilst there are an array of available legal resources from a wide range of sources¹, NSWYLHRC recognises that materials are not fully recognised by the African community. This lack of recognition is a result of the following factors:
 - materials not being passed onto African clients when accessing legal services;
 - materials not published in the correct dialect, and
 - cultural considerations – some African cultures rely more heavily on verbal communication, as opposed to written communication.
8. NSWYLHRC firmly supports the continued publication of legal resources in African languages and dialects, with an increased focus on legal service to relay relevant and appropriate brochures to African clients. It is imperative for

¹ Such as legal materials published by a range of sources, namely (but not limited to), the Legal Aid Commission of NSW, Community Legal Centres, LawAccess NSW (Attorney General's Department), Community Justice Centres and Department of Corrective Services

African Australian client to be aware of the resources that are currently available.

9. An example of free legal resources readily available to the public include, LawAccess NSW. This is a free telephone service which operates as a central information database to various legal resources. Users can call the service with their legal questions and can be directed to a plethora of legal resources and service providers.
10. The Legal Aid Commission of NSW and various Community Legal Centres ('CLC's) are free resources through which African Australians can gather information about their rights.
11. Many Legal Aid Centres and Community Legal Centres provide information on specific areas of the law. For example places such as tenancy advocacy centre, the Disability Discrimination Legal Centre, Intellectual Disability Rights Centre etc are organisations which focus their services on providing information and assistance to a specific class of legal needs and people.
12. In late 2008 to present, the Refugee Working Group ('RWG') of the NSWYLHRC, have run regular free to a range of newly arrived refugees, predominantly from Africa. The workshops have focused primarily on Criminal Law and have been attended by African Australians from Zaire, Democratic Republic of Congo, Uganda, Sierra Leone, Sudan, Mauritania and Kenya.
13. Other topics covered during these workshops include a basic outline of the roles of lawyers, judges, police and legal aid. The workshops are designed to introduce participants to a few key aspects of Australian law.

14. The workshops are run in conjunction with a booklet the NSWYLHRC has published titled, 'New Land New Law'. This resource provides readers with information on employment law, tenancy, criminal law and a host of various other areas of law migrants and refugees often engage in upon arrival in Australia. The booklet has been published in Arabic, Farsi and English.
15. The aim of the workshops is to empower its participants with resources and knowledge so that if they are engaged in the legal justice system they can make an informed decision as to what actions they can take.
16. NSWYL stresses that none of the above resources are *specifically* designed for African Australians. Some services are, however, utilised more readily by African Australians. For example, tenancy advocacy services cater their services to specific geographical areas. Due to the high ratios of African Australians living in certain suburbs these services are utilised by a higher portion of African Australians.
17. Following participant feedback from the legal workshops run by the NSWYLHRC, we submit that many African Australians are unaware of the above services, how to utilise the services and the costs (if any) associated with using such services.
18. During the free legal workshops, NSWYLHRC hears a running theme of legal concerns and issues. Issues relating to tenancy law, employment law and criminal law are few of the common issues that are raised by participants of our workshops.
19. Many tenants of African heritage are unaware of their rights as tenants.

CASE STUDIES

- We often hear about tenants who pay their rent on time, however, have come to their home to find their belongings on the front yard and an eviction notice on the door.
 - Another family informed us that it took their landlord three months to fix the hot water system and ignored their concerns about a rat infestation in their house. Fear of immediate eviction muted this family into silence.
 - Another tenant was unaware that it was illegal for her landlord to increase the rent every month.
20. These participants were unaware that specialised free services, such as tenancy advocacy centres, existed within their local community. Participants were often surprised to hear that disputes with their landlords could be resolved through formalised tribunals and that a landlord cannot use a threat of eviction as a means to silence their concerns.
21. Employment law is another key area of concern where African Australian need to be made aware of their rights. While certain migrants may be aware of minimum wage rights many are unaware of their leave entitlements, OH & S issues and discrimination in the work place.
22. Discrimination is a word that is often heard amongst the community, but very few are aware what it actually means. Participants may be aware that something is 'unfair' but whether something amounts to discrimination or not is a mystery. They are unaware of what the legal test for discrimination is and how they can address the issue whether it is at work, in public or private.

23. In conclusion, whilst there are many resources and service providers who can educate African Australians about their rights when they become involved in the legal and justice system. While there are no such services tailored specifically to African Australians the many services are free and readily accessible.
24. The critical issue is that many African Australians, whether they are recent arrivals or have been in Australia for a lengthy period of time, are unaware of the resources and services available to them.

5.6 What factors can contribute to negative interactions between African Australians and law enforcement?

25. Many African migrants to Australia have had negative experiences with police authority in their home countries. Stories of police brutality in African nations, involving torture and murder, are tragically common.
26. For instance, Human Rights Watch recently reported no less than seven incidents in Nigeria alone in which police forces arbitrarily killed innocent victims (not to mention killings perpetrated by military forces).² Such incidents are common in many African nations where the rule of law has failed to take hold.
27. As Australians, we are very fortunate to have a nation whose police force is respectful of human rights and who are regulated by bodies such as the Ombudsman (NSW) and the Police Integrity Commission. Our fortunate situation also makes it very difficult for us to fully comprehend the effects such brutal treatment, perpetrated by police, could have upon citizens. Despite being foreigners to such mistreatment by law enforcement, it is not difficult for us to conceive that such terrible experiences may lead to an instinctual fear

and mistrust of authority. The lingering and tormenting experiences continue to affect many African migrants, even when they have settled in Australia.

28. This mistrust of authority has a variety of consequences, such as an unwillingness to cooperate with law enforcement or outright hostility when faced with police.
29. Another factor which may lead to negative interactions between African Australians and police is a break-down in communication and language difficulties. Communication is absolutely vital for effective and positive interactions between police and African Australians. Often misunderstanding and miscommunication can be the spark plug which leads to the escalation in hostile situations.
30. Admittedly, language difficulties are not a problem unique to African Australians - many migrant groups face the same problems in communication when first arriving in Australia. However, Africa is a vast continent with over 50 countries on the continent with approximately two thousand languages spoken on the continent.³ Consequently, it is very difficult for services to be provides for the needs all ethno-linguistic groups.
31. Whilst services are available which assist in overcoming the gap in communication, translation services can only be used after issues have occurred. Often, it will be necessary for African persons will need assistance in communicating with police officers directly. Assistance would be required in ad hoc situations when they are dealing directly with law enforcement in particular situations.

² Human Rights Watch, *Arbitrary Killings by Security Forces: Submission to the Investigative Bodies on November 28-29 – Violence in Jos, Plateau State, Nigeria* (2005).

³ UNESCO, *Africa* (2005) Communication and Information/Culture
<http://portal.unesco.org/ci/en/ev.php-URL_ID=8048&URL_DO=DO_TOPIC&URL_SECTION=201.html> at 21 July 2009.

32. Other ethnicities have well-established communities and a variety of services exist to cater such ethnic and linguistic groups which may help migrants settle better into their new environment. Such communities have often built a rapport and understanding with law enforcement, which may assist in facilitating understanding and cooperation between migrant groups and law enforcement.
33. In contrast, African Australians are bereft of this benefit being a relatively recent migrant group: in 2005 to 2006, 4000 South Africans and 3800 Sudanese had become permanent residents, with a total of 248605 Africans living in Australia.⁴

Access to the Legal and Justice Systems

5.7 What barriers do African Australians face in accessing the legal and justice systems?

34. The NSWYLHRC recognizes that there are a number of barriers facing African Australians in relation to seeking access to justice and the legal system.
35. The first and often most obvious barrier is - **not knowing how to navigate the legal system or seek help to do so**. As part of their settlement process in Australia, new entrants need to know:
- what organisations exist. Some organizations include, but are not limited to,
 - The Legal Aid Commission of NSW
 - The Refugee Advisory and Casework Service

- Balmain for Refugees
 - Community Legal Centres
 - Tenancy Centres
 - Community Justice Centres
 - Free Translating and Interpreter Services ('TIS')
- what services are available to new entrants to assist with settlement, such as,
 - Migrant Resource Centres throughout the NSW
 - The Service for Treatment and Rehabilitation of Torture and Trauma Sufferers (S.T.A.R.T.T.S.)
 - Non Government Organisations (NGO's) who have specific refugee based services to assist newly arrived refugees, such as Mission Australia.
 - how to find an affordable lawyer, and
 - when to know one needs a lawyer (and for what area of law).
26. Other barriers facing African Australians in seeking access to the legal and justice systems include:

Language, Literacy, Numeracy

27. Navigating the legal system in Australia requires a certain level of

⁴ Australian Bureau of Statistics, *International Migration* (2008)

understanding of the English language, as well as literacy and numeracy.

Without these basic skills, attempts to seek access to justice and our legal system are likely to be frustrated and fruitless.

28. Adequate infrastructure is required to ensure that new entrants from Africa are provided with access to affordable, regular tuition in English, literacy and numeracy to enable them to navigate the various services available to them. This is particularly so for refugees who have arrived in Australia without having had adequate time to equip themselves with a basic understanding of spoken and written English.

Cultural Barriers

29. A basic understanding and appreciation of Australian culture is crucial to the ability of new entrants from Africa to:
- equip themselves with life skills,
 - feel included in Australian society, and
 - seek access to legal services and systems in Australia.
30. In order to assist African Australians to develop this understanding and appreciation, appropriate education is required regarding issues such as domestic and family violence, driving and traffic legislation, child protection, legality around age and name, basic rights and responsibilities and what generally constitutes acceptable (or unacceptable) behaviour within the community.

Under Funding

36. Returning now to the first, most obvious barrier – **not knowing how to navigate the legal system or seek help to do so** – a major contributing factor to this barrier is lack of funding for the various organisations, community legal

centres and service providers that exist for the sole purpose of helping people seek access to justice.

37. Waiting lists for services such as R.A.C.S. and S.T.A.R.T.T.S. are inordinately long, and their capacity for caseload is limited due to under funding. Without adequate funding, not only are these invaluable services limited in their capacity to assist new entrants, they are also limited in their ability to advertise their services and reach out to those who need these services the most.

5.10 What can be done to decrease the level of non reporting of crime by African Australians?

38. The problem of non-reported crime is not unique to the African Australian population. This problem so entrenched in Australia that the ABS conducts household surveys of crime to gain further information on why certain offences remain unreported. The main reasons for non-reporting crime, as identified by the ABS include:

- type of offence committed;
- victim's perception of the seriousness of the offence; and
- ability of the police to take action.⁵

38. The most common crimes that go unreported are those relating to domestic violence or sexual offences. The nature of these crimes is such that victims commonly know the offenders, and are therefore often unwilling to report the crime to the police.

39. These types of crimes are accompanied by trauma, humiliation and perceived social stigmatism, which make the victim feel vulnerable and reluctant to discuss the incident. It is also relevant to consider that members of the African

⁵ Identified by the Australian Bureau of Statistics in 'Measuring Wellbeing: Frameworks for Australian Social Statistics 2001', access at

Muslim community, identified as a vulnerable group within the African Australian population, may have religious or cultural constraints that make it difficult for these types of crimes to be reported.

40. Crime may also go unreported by African Australians because of language barriers, making the criminal justice system inaccessible. The NSWYL Human Rights Committee recently addressed this issue in the publication *'New Land New Law'*,⁶ which is a guide to the law of NSW for new migrants and refugees. The guide has been published into four languages to maximise its accessibility. Chapters in the guide include:
- police powers;
 - criminal law; and
 - apprehended violence orders.
41. The purpose of the guide is to demystify the legal system in New South Wales to new migrants and refugees and we have received positive feedback from a number of community groups on the usefulness of the guide. The Human Rights Committee has also hosted several workshops, as discussed in 5.4 herein.
42. From these projects, it is the experience of the NSWYLHRC that while addressing the cultural or religious reasons for not reporting certain types of crime, addressing the physical accessibility to the criminal justice system could be achieved more easily through grassroots information workshops and translating information into the appropriate languages.
43. Despite the myriad reasons for not-reporting crime, these practical measures may go some way to decrease the level of non-reporting of crime by African Australians.

<http://www.abs.gov.au/AUSSTATS/ABS@.NSF/0/2F2F16B508C3875CCA2571B9001D1F48?opendocument>

5.11 What are effective strategies that can be used by governments, NGO's or service providers to combat family violence issues for African Australians?

5.12 How can governments, NGO's and service providers better coordinate family violence services for African Australians?

41. A crucial part of any strategy which seeks to combat family violence issues for African Australians is an understanding of the setting from which African Australians have come and the experiences they have had. This requires an awareness, for example, of the impact of civil war, impact of some refugees' involvement in the military, the use of rape as a widespread and deliberate weapon of war.⁷

42. As Commissioner Tom Calma notes in the introduction to the Discussion Paper,

"Many, but not all, African Australians underwent a refugee experience prior to their arrival in Australia. A refugee experience often involves a denial of some or all human rights".

43. An understanding of the setting from which African Australians have come and the experiences they have had, is important for a number of reasons. These include, but are not limited to, the following:

44. Firstly, it may help to identify services newly arrived African Australians may need. For example, services that help African Australians to address past

⁶ Available at

<http://www.lawsociety.com.au/about/YoungLawyers/Committees/HumanRights/Resources/index.htm>

⁷ For example in the Democratic Republic of Congo – see Caritas Australia, *Forsaken Voices: Desecration and Plunder in the Democratic Republic of Congo*, 2008 accessed on 25 July 2009 at: <http://www.caritas.org.au/AM/CM/ContentDisplay.cfm?ContentFileID=214&MicrositeID=0&FusePreview=Yes> at 17. It is also important to acknowledge that rape as a weapon of war is not limited to countries within Africa.

trauma and to be proactive in preventing any further trauma, such as the Transcultural Mental Health Centre.

45. Secondly, if the police (for example) have been the main perpetrators of oppression and violence in their homeland, this may account for a fear and distrust of police and authority by some African Australians within Australia.
46. Thirdly, if there is greater community awareness and education about the situation from which many African Australians have fled, there may be a greater willingness for people to actively listen to the stories of African Australians and arguably more potential to break the silence about family violence.
47. Several groups can play a role in raising this awareness. For example, international aid and development agencies and refugee services with the knowledge and expertise from working with their African partners, could provide briefings for the Department of Education and other Education bodies so as to provide teachers with background knowledge about the situation from which their African students have come.
48. Schools could (and many already do) promote cultural awareness. Arguably, by encouraging students to share about their culture and for parents to also be involved in this process, this may help to reduce the isolation African women may face if they are the primary caregivers and, generally, remain at home.
49. There is also an important role for development education within a national curriculum and such development education can include a study of the countries from which students have come.
50. There are many African Australian communities within Australia and there is '*no one size fits all response*' that could be applied to all African Australian communities or even to an African Australian community to try and address the issue of family violence.

51. *It is, however, important to consider what networks are in existence and the success of these networks in addressing issues faced by African Australians.*

CASE STUDY

52. The Darfur Australia Network (DAN) is a not-for-profit, independent, community organisation run by members of Australia's emerging Darfur community and concerned volunteers from the broader Australian community.⁸ This group aims to raise awareness within the wider Australian community about issues within Sudan. It also aims to foster a network and support for the Darfur community within Australia.
53. Adopting best practice in community development principles, members of the Darfur community within Australia actively participate, identifying the issues important to their community and are key players in decision-making. Groups like DAN should be consulted about effective strategies in combating family violence issues for African Australians.
54. Any effective strategy in addressing the issue of family violence needs to be participatory in nature rather than imposed. It also needs to consider the importance of building relationships of trust and acknowledge that this takes time.
55. *A key plank to any strategy should be a focus on social inclusion.* Generally speaking, males within the African community are the breadwinners and women have the role of caring for the children. This often means that the males have more of an opportunity to develop their English skills and are likely to control the finances within the home, while the women are more likely to be isolated at home.
56. In addition to programs in schools discussed above, networks could be established, for example, where women come together with their children at a

⁸ Darfur Australia Network, <http://www.darfuraustralia.org/about/aboutus>

local meeting place, such as a neighbourhood centre. Additional activities and opportunities can be provided to the women such as partaking in financial counselling, learning about the law surrounding domestic violence and how to access services which assist people in dealing with trauma.

CONCLUSION

57. NSWYLHRC acknowledges the numerous legal services currently in place that have scope for assisting migrants, including African Australians. We stress, however, the importance of ensuring the information that is available is made available to African Australians and information is relayed about the free legal services available.
58. It is imperative to understand the refugee experience of many African Australians and the various linguistically and culturally diverse backgrounds of which they arrive to Australia from their native homeland.
59. Lastly, NSWYLHRC strongly supports the provision of hands on information sessions, like the free legal workshops conducted by the HRC, in order to empower African Australians with information about their rights and responsibilities as Australian citizens.