The Dinka Legal System

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March-24-2017

Law is not a concrete concept that is neutrally posed above, cultural, political, and social realities of an individual community. It is a normative framework which regulates the constitutive processes of the society. These processes are guided by the main postulates which act as the determinants of the distribution of power among people and other values, both procedurally and substantively. Therefore, the law is a tool of control that regulates the relationships that exist between people, managing the resources, and promoting resources that are available in a given community. This is the reason why the study of customary law should go beyond the legalistic principles to investigate the complexities found in the social order as well as its determinants. This section aims at identifying and elucidating the cultural concepts of the Dinka people who are submitted to Southern Sudan, which is vital to understanding their customary law and how it is still used in the modern world.

**The Value System of the Dinka People**

Moral Characteristics of Leadership

One of the most important concepts of leadership among the Dinka people comprises the *dom, muk, and guiter*. *Dom* It establishes control over a group. *Muk* is responsible for maintaining and supporting the community, while *guiter* improves the lot of the group. Each of the three values of leadership is mutually reinforcing and recurring in nature. These features of the normative worldview that are shared among the Dinka people means that the spiritual and temporal worlds are interconnected tightly. The chiefs who are believed to be gifted with the power of spirits to see wrong and right is a man who is inspired by God to search for and find the divine wisdom. This is achieved by being guided by the ancestral spirits and God to lead the people on a righteous path of societal ideals and righteousness. However, the virtues of chiefs are unique degree since every individual in the community shares something of the spiritual, moral, and divine order. It is the main thing that makes the Dinka people as individuals as well as individuals who are profoundly religious people, despite the fact that they do not have institutionalized or formalized religion. Among the Dinka people, legal norms are fundamental components of their culture, and so is the religion, as well as all other aspects of their life (Mennen, 2007).

Procreation Immorality: Clan Identity, Children, Women

Virtually, the culture of the Dinka people is deeply rooted in lineage system. The ancestors are seen to be closer to the other deities and, eventually to God, which plays a very significant role. It can be described as an immortalization concept which its main aim is to ensure that there is continuity of every person in the community after his or her death, with an identity that is permanent, and influence which is shown in the two-way but interconnected worlds of the living and the dead. According to the Dinka people, this is called *koc e nhom,* or in other words, standing the dead man’s head upright. The concept is responsible for ghost marriage which is marrying for the dead man to make sure that the children are born to his name for continuity. Also, it is in charge of *levirate* which is window inheritance whereby, a widow who is the age of child-bearing lives with one of the deceased’s relatives to reproduce children in the dead man’s name.

Although this system is always in the male line, the role that is played by the woman is of great importance, not only for procreation but also because it is the mother who teaches the children about the old values system of the Dinka community. Despite the fact that men dominate in the public forum among the Dinka people, the power of women is considered to be significant in such a way that it must be contained through encouraging allegiance to the agnatic group. The influence and place of mothers among the Dinka people are therefore much complicated and more distinct that it appears to many outsiders.

The children on the other side are more prized since they provide the community with basis on which the ancestral line is erected and upheld. Boys play the role of adding names to the ancestral line. On the other hand, through the bride prize, girls provide the means by which their brothers marry and reproduce children to continue the ancestral line. Among the Dinka people, the son tends to be identified with his father directly, while the daughter is allowed to be more close to her mother. Being called “son of a woman” among the community implies that a boy is so close to his mother as well as her influences, this is so serious in the community that no boy wants to risk.

The nuclear family then increases to an extended family and so on to the ancestral lineage and its primary expansion which is the clan. Among the Dinka people, the tribe comprises all the people who can trace their origin to the original ancestor where the clan got its name from. Beyond the clan in the community, the identity of a person becomes predominantly territorial. The values that govern the family relations are interconnected with the relationships that are based on the territory, through the entire tribe, or its subtribes, which becomes a virtual family.

**The Value System of the Dinka People’s Implication to The Customary Law**

The Dinka people do not assert that they live up to the principles of their cultural standards. This is not typically a gap between reality and idealism. It is simply the shoot of the family alignment of the society. The unity of purpose in the community conflict with the contentious personal interests. As a result, conflict, and tension are generated. It threatens the ideals of harmony and unity. The value system of the Dinka has various important implications for the managing conflict as well as customary law.

First, in itself, customary law is an integral feature of the traditional life which is characterized by well-established fundamental principles which are recognized, respected, and observed by the society. While the specialized decision makers in the society like elders and chiefs, know and understand the law better than the other members, almost all adults understand the fundamental principles. Since these principles of the law are considerably flexible to adapt to the gaps that are created by the changing times in the modern world, they give a certain degree of predictability and stability to the law. The law may be guiding through providing guidance on the way in which the community can facilitate the harmonious human relationships by defining what is right, like in the issue of marriage. On the other hand, the law can be prohibitive in that it can forbid certain behaviors or acts that are seen as injurious to others or wrong. Breaching either prohibitive or regulatory rule can result in mistakes which are considered civil or criminal depending on the seriousness of the crime. In the current legal system in the community, the judicial and spiritual elements of the cases are intertwined to such an extent that the differentiation between them is petite.

Second, while the Dinka people are governed by a set code of conduct in the sharing and shaping wealth, power, as well as other values, every level of the community down to the family is independent and self-determining. The primary role that is played by the authoritative decision makers is regulating the relations and resolving conflicts that arise among the Dinka people without interfering with the management of affairs. The primary goal of such interventions in a legal system of the Dinka is not punishment like in the Western point of view but the achievement of the result that both sides will accept as a fair settlement basis and the restoration of harmony and unity which has been disrupted (Makec, 2008). Among the Dinka, reconciliation is the heart principle of settling the dispute.

Third, the importance of a particular group of people means that the kinship loyalties that are the individuals who are in disputes are relevant to the resolution of disputes. To impose the judgment short of mobilizing the public emotion, including that of the group of wrongdoers, can build up rather than settle the current conflict between the two groups (Wassara, 2007). Cases in the community take the system of groups against groups. An insult that is directed to a person quickly turns a slur against the group. As a result, it may lead to intergroup hostilities. However, this does not imply that people in the community do not suffer or litigate the consequences of doing wrong individually. Also, the litigation problems concern the personal matters specifically, those that result from complex systems of marriage affinities. Being of domestic nature, they often involve family bonds. Therefore, emphasis should be more focused on reconciliation for the purpose of bringing about the harmony that is necessary in maintaining the minimal calmness and order within the expanded and immediate communities.

Fourth, the Dinka legal system is more focused on preserving the value system. Because the fundamental elements of the old values and worldview are cyclical, interconnecting life and death as well as continuity, the idea of a linear method of progress or development are unknown among the Dinka people. The standard objectives of life can be achieved, and for the best part of it, they are achieved. A person may have many or few children to continue his name. The harmony and unity of the community and family could always be presumed better. And so was the status of the unit family, whether the image was derived from its ancestral image or its wealth. A person could be endowed more or less with the material wealth or any other resources, cultivate larger pieces of land, accumulate numerous herds of cattle, build bigger and better homes. However, these are all within the ability of the members of the society. Indeed, to the extent that the shared values tend to aim first at the continuation of the male line, they tend to discriminate against the children and women among the Dinka people.

Since there were no other alternatives that were outside the Dinka system during the colonial periods in Southern Sudan, the forces that were for conformity were nearly insuperable. A close look can bring us to the conclusion that although there seems to be a consensus that exists between the normative framework and fundamental values that they shape, there is a significant system inequality that is revealed (Danne, 2004). This inequality is either accepted or at times tolerated because alternatives do not appear to be practicable in the relatively isolated community. The only substitute that was available among the Dinka people was self-exile. It meant people are moving away from the community to unknown worlds which were likely to be a more hostile environment. It was a risk that only the most daring or foolhardy person would choose. Due to the subtleness of the Dinka community’s discrimination and stratification, the more confident modern promotion of the universal human rights, as well as the humanitarian standards is observed with a lot of ease. It is viewed to have been founded on the misunderstanding of the cultural values and the advantages that they accord children and women. The later section of this essay explores the problems this assertiveness poses to the current efforts of reforming the customary law.

Mode Of Selecting Decision Makers

From the time of colonialism, legislation has provided for the selection and removal of the participants of the traditional courts. These traditional leaders are typically appointed using traditional rules taking over the new positions, with all authority entrenched in their legality among their subjects, conforming with fundamental values of leadership. However, the modern state requirements have adversely affected the traditional principle where the conventional ones have tried to adjust and merge both conventional and modern rules. Despite the fact that the current system puts emphasis on democratic elections of leaders, the ideas of ancestral supremacy still apply with favor to men not just in leadership but also clans and lineages as well as men being in control of women and children. It means that the authority of the Dinka people is mainly men although much efforts have been made to include women in judicial and political organs.

There is an important aspect of the traditional system on how decisions are made (Itto,2006). Many efforts to separate roles of traditional leaders as political authorities, judges, and administrators have been implemented, but even after all this, the traditional chiefs keep on insisting that there is no connection among all those. In some instances, the duties are separated and still exercised by same personalities, but even when the figures are separated according to roles, they tend to refer judges and administrators as Chiefs. In the customary system, the leaders are believed to have been chosen by divine power and inference from their ancestors and their God. The colonial rule undermined traditional leaders and used them as agents and also empowered through the dominant force of the state. Traditional leaders were replaced by chiefs who were salaried by the government, and their authority was from the secular power of the state. However, they use myths of divine origins to prove their legitimacy.

The traditional system had their leadership inherited and held for life, but when the colonial system came in, a form of election was introduced were members of the community would choose a leader to lead them. Mostly, elections were done when the person entitled to take over was unable to lead or when there was ambiguity on who should lead the community. Many interviews conducted in the Dinka community on judges and lawyers’ states that the Dinka people have started to adopt the Western-style of democracy during elections. The traditional notion is that the people elect their leader in a democratic way by nominating some candidates and dialogues and debates follow until the people agree on who to choose.

Dispute Resolution.

Traditionally, people of the Dinka community believe that reconciliation from disputes should be done out of court. The minor disputes and family disputes are resolved out of the court. The mediation is done with regards to one party either the one who is wronged or the wrongdoer (Redekop,2007). A specified number of elders in a council act as mediators. However much the case is lengthy, the council will still aim at settling the dispute. But there are much more severe cases that are resolved out of court but informal ways. Procedures from the court are not followed, but they involve records. Both common and formal courts have the same aims of restoring harmony, amicable family relations and unity just that the principle applied are not the same. There are instances when the cases are moved to courts and can be again solved outside the tribunal.

The traditional law does not recognize formal courts as advisors to the parties involved. The Dinka community typically do not recognize formal courts as they see attorneys as bribed hired personnel. The Dinka believe that justice means including everyone who is affected by the dispute and settling in by balancing all the opposing positions until they reach a point of reconciliation. Their objective is finding the truth in interest to dispute settlement, and the investigators dig for facts that will help him pass a fair and accurate judgment without oppressing one party. The processes of solving a conflict are quite lengthy since there is a statement of parties, witnesses, and court members and also reciting oaths. The Dinka people are hostile people, and they involve in physical fights. But when it comes to resolving a dispute, the Dinka are known to be reasonable and gentle. Courtesy and quietness in the speech of the elders is a status of wisdom and an attempt to extract the whole truth of the issue at hand.

During the discussions, direct evidence is preferred to circumstantial evidence which has a greater possibility of error. Anyone interested in saying something is allowed to talk, but the expectation is that they should speak emphasizing on the wrong of the party they favor. As the case concludes, judgment is passed in ascending order such that the junior judges give their verdict first and the senior superior judge or president. The senior judge after listening to all the view, he will assemble them and pronounce what is closest to the court's consensus. In instances where the case judgment from the senior judge is unsatisfactory, there is also room for appealing where they are forwarded to the appellate authority for reviewing.

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