

FOOTSCRAY COMMUNITY  
LEGAL CENTRE INC-  
AFRICAN LEGAL SERVICE.

Preface to Report  
22 June 2009.

## **FOOTSCRAY COMMUNITY LEGAL CENTRE INC.**

### **AFRICAN LEGAL SERVICE**

The Hon. Michael Kirby AC CMG  
Past Justice of the High Court of Australia

Nearly twenty years ago, before my appointment to the High Court of Australia which has just concluded, I was serving in the Court of Appeal of New South Wales. I was asked by the Footscray Community Legal Centre (“the Centre”) to write a foreword to a case study on Vietnamese migrants and refugees, whose legal problems had brought them to the Centre and necessitated separate study and explanation.

Now, two decades later, the Centre is still at work assisting migrants, refugees and the marginalised who become caught up in the machinery of the legal system of Australia. Because of the differing waves of newcomers to Australia, it is impossible to stand still, either in the assistance that is afforded or in the study of the differences that emerge in providing services to ethnic groups.

As I pointed out in 1991, the Vietnamese newcomers in Australia derived from a society with a mixture of cultural forces: the Confucian, the Buddhist and the French colonialists. They came from the Asian mainland, where great emphasis is commonly placed on the community rather than the individual; upon duties rather than rights; and upon the rule of powerful men of virtue (as the ideal) rather than the rule of impersonal laws.

It is to the great credit of the Centre that it has moved with the times: not only providing legal assistance to newcomers from different regions but also by examining the particularities of the legal and social problems that they present.

Even before my service in the Court of Appeal, in the Australian Law Reform Commission, I learned, thirty years ago, that to provide effective laws and lawyering, it is necessary to go beyond solving immediate problems. Lurching from one problem to the next, without examining the underlying causes of the difficulty, leads to a band-aid mentality. Indeed, this is often the fault of the common law system itself. True, it is a highly practical system of law because it provides solutions for every individual case. However, it is often weak in conceptualising the law, defining underlying causes, identifying broad themes and trends, and tackling systemic problems.

This is why this present work is so much to be admired. In the past eighteen months, since the establishment of the African Legal Service, the Centre has seen more than 350 clients deriving from countries with distinctive cultures, languages and problems but with common backgrounds of violence, oppression, autocracy and intolerance that exceed even those faced by the earlier wave of migrants from Vietnam. One has only to mention the countries from which the clients consulting the African Legal Service derive, to appreciate the huge step that is taken when a person from such countries arrives in Australia to an utterly different culture, language, tradition and outlook: Sudan, Somalia, Ethiopia and Eritrea are a new catchment area for refugees and migrants presenting with very serious legal and social challenges.

My partner of forty years, Johan van Vloten, derives from the Netherlands. There is probably no other society in a non-English-speaking country that has so many similarities with life in the Australian community. Apart from everything else, the people of the Netherlands seem to be able to speak as well, or better than we do, English and a few other European languages thrown in. But the English language, although increasingly the universal language of commerce, culture, air travel and global communications, is not a major language in the countries of north-eastern Africa from where the refugees and migrants come now to Footscray. Sudan, at one stage, briefly, was a condominium ruled by Britain and Egypt. But the other lands had different rulers, local chiefs and autocrats or no rulers at all. They are often places of cruel violence, prejudice and inequality, especially in their treatment of women and of minorities. To arrive in Australia, and specifically in the cosmopolitan community of Footscray, must be a tremendous culture shock. Little wonder that legal problems quickly present.

A point made in this work is that the legal problems arising are not those that the advisers in the Footscray Centre expected. The stereotype of lawless African youths, arrested for crimes of violence, drugs and conflict with the police, have not been borne out by the actual experience of the Centre to date. Instead, most of the legal problems can be traced to simple misunderstandings or attempts to graft onto the very different society of Australia, social norms and behavioural traditions that do not fit easily into our legal and social system.

Stereotypes and animosity are often the qualities that the popular media love. They are said to sell newspapers. In an earlier generation (and sometimes

even today) stereotypes about gays pandered to stigma, discrimination and the status of a second-class citizen. As I am old enough to have experienced those features of society and its laws in Australia, I can partly understand the problems arising in the encounter between newcomers from the Horn of Africa and the agencies of law and order in Australia. The *Golden Rule*, which is common to all the world's great religions, requires us all to see the lives of others as we would have them understand our lives. This means, to provide skills and legal assistance to newcomers with problems, just as we would hope for similar assistance if the tables were turned on us.

There is nothing like a healthy dose of empirical data to undermine fixed assumptions and to replace stereotypes with new perceptions. This is what this report seeks to provide. It makes the point that the newcomers to Australia from Africa overwhelmingly desire the same features in their lives that other Australians want: good housing, access to education, food and friendship, calm and stability, opportunities for advancements, provision of expert health care and occasionally a bit of fun and laughter in life.

The world's most creative societies – those that get the Nobel prizes, that produce great technological leaps and cultural achievements – tend to be ethnic melting pots. Occasionally, such societies have difficulties that monochrome communities do not face. But they tend to be livelier, more interesting and more creative. This is what we will find in Australia. Indeed, if we have been looking, we have already seen it emerging. Wave after wave of immigrants have come, bringing their differing cultures, traditions, viewpoints and genetic gifts. Of course, there will be legal problems. Sometimes there

will be crime (although long-standing statistics show that first generation immigrants tend to be very crime-averse).

I hope that the endeavour of the Centre to replace stereotypes with empirical research will continue into the future. What they found two decades ago in the case of Vietnamese immigrants, they are finding again in the case of African Australian newcomers. Above the entry to the Centre should be the words: "Down with stereotypes!".

I congratulate the Centre for its ongoing work to support the rule of law in our multicultural society. I honour the lawyers and other staff who have worked to make the law an actuality; to reveal its imperfections; and to work constantly for its reform.

A handwritten signature in black ink, appearing to read "W. Cairns".

Sydney  
22 June 2009.