

Submission:
'Sham, Forced and Servile
Marriages'

Australian Catholic Religious Against
Trafficking in Humans (ACRATH)

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1. Sham Marriages

ACRATH is grateful for the opportunity to respond to the discussion paper 'Forced and Servile Marriage' because we have been concerned for a number of years about women coming to Australia and finding themselves trapped in slave-like sham marriages. Colleagues from refuges in Melbourne have told ACRATH stories of women, usually from poor families in developing countries, who have come to Australia expecting to enter into a marriage with an Australian citizen, but after they arrive, they find that there was no real marriage ever planned by the man. In some instances, the man planned to have the woman work in domestic service, or in his business, or in one extreme case, to offer sexual services for money to the man's acquaintances. One refuge worker told ACRATH that in one instance the Melbourne man already had a wife, so the woman expecting a marriage was put in a bungalow in the back yard, was forced to work, had her passport taken, was told she may not leave the property, and was threatened with being reported to Immigration who would deport her. An ACRATH member told of a Filipina she knew who was required by her 'husband' to have sex with 4 or 5 of his friends. In our submission ACRATH will refer to these marriages as sham marriages.

ACRATH has been concerned for these women because of their extreme vulnerability. They are usually escaping poverty and have responsibilities to earn money for their families in their home countries. They often don't speak English. They are frightened of being reported to the authorities. They are isolated in a foreign city with no friends and with no ability to access help.

ACRATH asked our refuge worker colleagues to explore the incidence of women coming to their refuges in these or similar circumstances. ACRATH wondered how many women found themselves in these circumstances. The refuge workers asked at a refuge network meeting how many refuges had women in their refuge who had arrived recently in Australia; about 50% of the refuges present said they did. This initial investigation suggests the need for further research. It raises alarm bells for ACRATH for two reasons: the immediate concern of this Inquiry concerning sham marriages, and also because refuges may not be covered by their government funding to offer support to women in these circumstances. This lack of funding also needs further research.

One refuge manager colleague wrote that the work preparing for a submission to this Inquiry *'raises a hidden issue, hidden perhaps because abuse in marriage is still seen as private, in spite of its criminality.'* She wrote that one Domestic Violence (DV) service

'has seen a number of women over the years who have come to a refuge after being held against their will in a marriage or de-facto marriage. Some of these women do not know their rights, have not been to English classes, are forbidden to contact –or complain to family overseas, have not had medical supports and are kept at 'home' –imprisoned in the house for sex or housework or both (including supporting the partner or spouse's elderly parents – who also, in some cases, add their abuse.) Sometimes women are locked into the house or a room with telephone removed or sometimes are imprisoned by 'fear' without locks.

The refuge system has many women using supports who are new migrants and have no income. Not all of these relationships are for financial gain by the partner/spouse but many are. Many of these women's families have paid the fare to Australia in the belief that the woman can have security and in the hope that the relationship will grow to being supportive, if not loving.

In supporting these women we hear stories of men who have had multiple 'wives' who come into the DV service system eventually, at different times or occasionally simultaneously. (5 or more in spite of immigration restrictions)

These women are a financial asset to these men, sometimes with sex added – that is the sole purpose of the transaction. Some women know this prior to the agreement but do not expect they will be injured or kept prisoner.

Additionally, in the past, these women also fell short of being protected under family violence and immigration supports – when it was disclosed that the partner had no intention of an intimate 'marriage' relationship. In one instance the issue of the marriage not being 'consummated' was used as a piece of evidence to see her returned to her country.

This abuse of women (and sometimes children) is ...I believe ... an issue to be addressed within the definition of trafficking.'

ACRATH also believes this Inquiry includes in its ambit the protection and support for women in situations where they are especially vulnerable to exploitation, for example as 'mail order' brides or as women in email and internet schemes to introduce Australian men to women from developing countries. ACRATH is concerned for the vulnerability to abuse that can arise from relationships based on unequal power.

2. About ACRATH

ACRATH works towards the elimination of people trafficking in Australia, the Asia Pacific region and internationally. ACRATH does this by:

- a. conducting education and community awareness campaigns
- b. networking with like-minded organisations in Australia, the Asia Pacific region and internationally to advocate for measures to address people trafficking
- c. working to ensure trafficked people's needs are met, be they retraining, access to financial compensation, medical and dental care, accompaniment, or other needs.

ACRATH is pleased to see that this Inquiry involves several Federal government departments, researchers and the community sector. We believe change can be achieved when civil society and government work co-operatively to tackle issues. We endeavour to work from a collaborative model.

3. Response to the issues: Key points

ACRATH has considered the Discussion Paper, *Forced and Servile Marriage*. In our response to this paper, we will raise four key issues, and also we will make a brief response to a number of specific paragraphs in the discussion paper.

3.1 Human Rights approach

We believe the best outcomes will be achieved when the government response to women experiencing sham, forced and servile marriages is underpinned by a human rights approach.

3.2 Need for research

We believe that there is a clear need for evidence-based research in which researchers seek input from:

- a. Survivors of sham marriages
- b. NGOs, especially those working in the family violence sector, and those working in CALD communities
- c. People working in organizations tackling human trafficking
- d. People associated with the already existing forced and servile marriage court cases.

3.3 Need for a hotline

We believe that a woman finding herself in a sham, forced or servile marriage needs access to a telephone hotline. ACRATH asks that the provision of such a service be explored with already existing family violence and Lifeline services. ACRATH does not want to see the provision of a 'half-hearted' inadequate service which requires the woman seeking emergency help to follow a series of complicated prompts to find the service she needs; ACRATH understands this is the case with a current hotline. ACRATH describes this as a breach of trust with, and deterrent for, a woman who believes she has a phone number to a hotline that will lead to a resolution of her current difficulties.

3.4 Prevention of sham marriages

We believe that prevention of these marriages should be our first focus, and we therefore recommend to this Inquiry the following measures:

- a. Community education within the broader Australian community.
ACRATH is currently working on a community education project in which we tackle societal attitudes of patriarchy and exploitation. ACRATH commends this approach to this Inquiry; ACRATH further recommends attaching a community education program to prevent sham, servile and forced marriages to already existing Human Rights and 'No to Violence Against Women' community education programs. ACRATH further

recommends exploring embedding these threads into the Australian national curriculum. We refer to the National Plan to Reduce Violence Against Women and their Children 2010-2022 endorsed by the Attorney General and The Minister for the Status of Women on 15th February 2011.

- b. ACRATH understands that before a woman can enter Australia for marriage, she is interviewed alone by a Department of Immigration official and in some cases assisted by a Department of Immigration interpreter. ACRATH believes this presents a crucial opportunity for supporting women facing marriage in Australia. ACRATH therefore makes three recommendations:
 - i. That a credit card-sized concertina brochure be developed to convey to a woman her rights in marriage according to Australian law and relevant phone numbers should her situation mean she needs to seek assistance. The small size of the brochure has been recommended to ACRATH as something a woman can conceal and keep private. Our colleagues in Brazil have successfully lobbied their government to ensure Brazilian women receive a credit card-sized brochure from the Department of Immigration at the time of their departure.
 - ii. That such a brochure be given to women at their private pre-marriage interview with a Department of Immigration official.
 - iii. That the Department of Immigration officials responsible for conducting these interviews are women and that they receive training about their role in preventing sham, forced and servile marriages.

- c. ACRATH believes a further opportunity for preventing sham, forced and servile marriages occurs during marriage preparation between marriage celebrants with women and men planning their marriage. ACRATH therefore recommends material on this issue be included in pre-service and in-service training for all marriage celebrants, both civil celebrants and ministers of religion. ACRATH further recommends encouragement that marriage celebrants conduct separate interviews with women and men preparing for marriage, and that the small credit-card sized brochure mentioned above be distributed by all celebrants.

4. **Response to the issues: brief response to particular paragraphs**

ACRATH also wishes to make a brief response to particular paragraphs:

- a. **Paragraph 5** Forced and servile marriages are not only something inflicted on children by family members. As we have explained above, these marriages may be forced by the male partner for whom the marriage is fraudulent. This is made clear under ***Australia's international obligations Paragraph 21*** where the need for full and free consent of each spouse is noted. It is also clear in ***Offences under the Marriage Act 1961 (Cth) in Paragraph 54*** which notes that 'a marriage may be void if the consent of either parties was not real i.e. consent was obtained by duress or fraud ...' Thus ACRATH would support the provision in **Paragraph 67** and the inclusion of 'nonphysical forms of coercion including a threat of force, duress, deception or fraud ...'
- b. **Paragraph 39** In this paragraph the Kyrgyz Republic law is quoted as prohibiting not only the coercion of women into marriage but significantly the coercion of women 'to continue marital cohabitation'. This relates to the ACRATH experience of women who have entered into a sham marriage and wish to escape that relationship.
- c. **Paragraph 71** This paragraph includes provision for extra territorial offenses to be pursued under Australian law. ACRATH, having observed successful prosecutions under child sex tourism legislation, agrees with these provisions.
- d. **Paragraph 97** This paragraph includes in the definition of 'loss' aspects of non-economic loss. ACRATH emphatically agrees with this inclusion. In ACRATH's submission to the Inquiry *'The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections'*, ACRATH makes the following point about defining loss: Distinguishing between economic and non-economic loss suffered as a result of an offence is an issue of great importance to survivors of people trafficking, who have typically suffered very significant non-economic injuries. ACRATH is

aware of the following consequences which are often suffered by survivors of people trafficking:

- loss of personal integrity;
 - loss of trust in self and others;
 - loss of self-confidence;
 - loss of emotional equilibrium;
 - loss of psychological health and well-being;
 - loss of family relationships;
 - loss of physical health through excessive and onerous work; and
 - loss of income for self, children and extended family.
- e. **Paragraph 102** ACRATH endorses the range of support, mentioned in this paragraph, which survivors of sham, forced or servile marriages may require in order to begin their healing. ACRATH wishes to add to the list migration advice, assistance in accessing compensation, and assistance from a financial counselor in managing any compensation payment.

5. Conclusion

ACRATH, informed by anecdotal evidence from colleagues in the DV sector, wish to have this Inquiry include consideration of sham marriages. We are keen to see government and civil society work together to prevent these marriages from taking place, as well as supporting women survivors of such marriages to begin to heal and to start a new life.