



Research in Practice

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Forced and servile marriage in the context of human trafficking^{*}

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Trafficking in persons is a crime that impacts many countries around the world, including Australia. Internationally, trafficking in persons crimes are prohibited under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol), supplementing the United Nations Convention Against Transnational and Organized Crime.

In Australia, trafficking in persons and slavery offences are captured in Divisions 270 and 271 of the Commonwealth *Criminal Code 1995*. This legislation is part of the Australian Government's anti-trafficking response, which broadly satisfies Australia's obligations under the Trafficking Protocol with regards to prevention, detection and investigation, criminal prosecution, and victim support and rehabilitation. In February 2013, amendments were made to the *Criminal Code 1995* under the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 that broaden the definition of people trafficking, and introduce a spectrum of slavery and related offences in order to 'ensure that the broadest range of exploitative behaviour is captured and criminalised' (Parliament of the Commonwealth of Australia House of Representatives 2012: 1). Specifically, the amendments introduced new offences around forced marriage and amended the existing definitions to capture servile marriage as a condition similar to slavery. Servile marriage involves a person being sold, transferred or inherited into marriage.

Under s 270.7A(1) of the Bill, a forced marriage is defined as a marriage that is not freely and fully consented to because of the use of coercion, threat or deception. The new offences relate to adults as well as children who are forced into marriage by either the person they are marrying or another person, such as a parent. The amendments apply to marriages that occur in Australia, as well as to marriages that occur in another country that involve Australian citizens. There is a maximum penalty of seven years imprisonment for forcing a person into marriage.

Child victims fall within the definition of forced marriage 'since children are, by definition, incapable of consent or of exercising the right of refusal' (Huda 2007: 9). Child marriage is a violation of children's rights under the United Nations Convention on the Rights of the Child and an abuse of human rights (Forced Marriage Unit 2009). In Australia, there have been a number of cases that raise concerns about children being removed from Australia for forced marriage (eg see Madley & Madley and Anor [2011] FMCAfam 1007; Kandal & Khyatt & Ors [2010] FMCAfam 508).

Data on forced and servile marriages

There is a lack of data, on trafficking in persons involving forced and servile marriage in Australia and elsewhere. This is partly explained by a lack of systematic data collection (Bokhari 2008), which is compounded by the particularly secretive nature of this crime (Ming Zhao 2003) and the difficulty in identifying cases (Legal and Constitutional Affairs References Committee 2012). In the United Kingdom, it is estimated that there are 300 cases of forced marriage each year, of which 30 percent are children under 18 years of age and 15 percent are male (Bokhari 2008).

To improve knowledge of the different forms of human trafficking in Australia, the Australian Institute of Criminology has undertaken research directed at understanding the role of marriage and partner migration in the trafficking of persons (Lyneham & Richards forthcoming). The research involved interviewing relevant stakeholders from government, non-government organisations, law enforcement and victim supports services, and a small number of victim/survivors of trafficking in persons and related exploitative scenarios involving marriage (n=8). This was supplemented by analysis of partner migration data supplied by the Department of Immigration and Citizenship and analysis of case files of the victim/survivors that participated in an interview (n=8). This research revealed that marriage and partner migration have been used to facilitate the trafficking of people

into Australia in a small number of cases. Specifically, marriage has been used as a method of recruiting or receiving women into Australia by means of deceiving the women about the nature of the marriage and the condition of their married lives for the purpose of exploitation as domestic servants and wives. Importantly, cases were often detected as domestic violence matters and were likely to be treated as such, which raises important considerations for the correct identification of, and appropriate responses to, this form of trafficking in persons (see AIC 2012).

Conclusion

The inclusion of forced and servile marriage in the concept of human trafficking is an important step in ensuring that current protections are made available to this group of victims. While this exploratory consideration of marriage in the context of human trafficking provides an initial insight into the nature of this crime, further and more detailed assessment is required to understand the extent of the problem and the implications for detecting, enforcing and monitoring this phenomenon now that it is embedded in criminal law.

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URLs correct at March 2013

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