

***ISSUES FOR WOMEN OF NON-ENGLISH
SPEAKING BACKGROUNDS***

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This paper is largely based on the experiences of workers at the Immigrant Women's Support Service in their work with women and children of non-English speaking backgrounds who have suffered domestic violence and/or sexual assault.

The lived experiences of women reveal themes and patterns which transcend assumptions about the nature of so called family conflict and assumptions about cultural stereotypes. In the works of Kate Gilmore, formerly of the Royal Women's Hospital in Victoria, like political torture, domestic violence is a systematic and long term dismantling of a woman's personality. Both the victim of politically sponsored torture and the victim of domestic violence speak of the violence being replaced quickly and perversely with kindness and apology; promises are given that the violence will end if only she, the victims, will promise in turn never again to question, never again to doubt, never again to challenge. The goal of the torturer is the same as the goal of the perpetrator of domestic violence, complete control and the destruction of her free and independent spirit.

But look at how differently we respond to political torture. We organise against political torture; we develop human rights conventions and monitor it through the United Nations and other worldwide organisations such as Amnesty International. For domestic violence the victim is still all too often advised to return to her rightful place with the torturer in order to preserve the family unit, the cornerstone of our society.

However, as all of us here today know violence against women is about oppression of both individual women and women as a class or particular social group. It is part of the broader picture of power and oppression. We talk hopefully about ending domestic violence and breaking the cycle of violence. Do we also talk fervently about the hierarchy of status that gives the dominant culture greater power, influence and control over other cultural groups in our society? How committed are we to inclusive service delivery – inclusive of "all Australian", as the Howard Government likes to say. That is how consciously and actively do we recognise that the term "All Australians" must logically include the linguistic and cultural diversity in the Australian community. How conscious are we, both as individuals and as workers in our agencies that we do not reflect and therefore reinforce the power imbalance between those from dominant Anglo-Australian culture and those from indigenous and non-English speaking backgrounds.

For women from non-English speaking backgrounds, the hierarchy of status that gives the dominant culture greater power, influence and control over all other cultural groups, results in living with a triple disadvantage. The gender-based violence endured is reinforced and exacerbated through racial violence, discriminatory practices, and lack of culturally inclusive service delivery by significant numbers of government and non-government organisations.

Strategies which are based solely on the experiences of "Anglo-Australian" women are limited in their assistance to women of non-English speaking backgrounds. Whilst there are similarities for women of all cultures and races in their experience of domestic violence, additional barriers exist which must be addressed before effective assistance can be provided for women of non-English speaking backgrounds. These additional barriers arise from issues of ethnicity, race, class, immigration and/or refugee experiences. It is not that culture and race cause women of non-English speaking backgrounds to become victims of domestic violence, but culture and race impact on a woman's access to appropriate assistance with domestic violence.

Managing diversity in a way which is understanding and respectful of difference is essential in creating a fair society. Being consistent and coordinated in our response to cultural and racial diversity must be integrated into our response to domestic violence generally. Just as systemic discrimination is pervasive in this society and practiced unconsciously as well as consciously, our appropriate response to people from diverse cultural backgrounds must also become pervasive and well-integrated into our overall service delivery.

It is well documented that women of non-English speaking backgrounds are greatly disadvantaged in accessing information, services and justice. Research by Patricia Eastaerl indicates that although it is widely accepted that violence affects women across all cultures and socio-economic backgrounds, there is evidence that women from immigrant and refugee backgrounds are more likely than non-immigrant women to be murdered in domestic violence, and are less likely to access services, or to receive appropriate support from those services, when they seek to leave a violent relationship. (Eastaerl. P. 1996: 6, 10, 11).

There are many obstacles for immigrant and refugee women to overcome in accessing information, support services and the legal system.

- Lack of access to information;
- Little knowledge of services;
- Communication difficulties;
- Fear of not being understood;
- Fear of authority particularly on the part of women from corrupt or oppressive regimes;
- Social isolation, especially where there are marked language and cultural differences between Australia and their country of origin and especially where domestic violence is a factor;
- Reluctance to use services such as counselling because of misunderstandings of what counselling offers based on their experiences with services or lack of such services in their country of origin;
- Socialisation to place greater value on keeping family together no matter what;

- Fear of being judged and blamed;
- Discriminatory or insensitive work practices by service providers;
- Fear of losing children if a complaint is lodged;
- Fear of bringing shame and dishonour to family;
- Fear of being judged by family and community;
- Fear of deportation;
- A lack of multilingual and culturally appropriate information about legal entitlements and processes;
- A lack of appropriate outreach programs by service providers;
- And of course the intimidating nature of court proceedings

Non-English speaking background women's perceptions, experiences and expectations of the legal and administrative system in Australia vary considerably. Many are fearful, particularly those who come from regressive regimes, many are cynical, many expect corruption.

For some women, because of the previous experiences in their home country, they may regard negotiating with the other side as "betrayal" leading them to not trust their own solicitor. A Romanian woman who came to IWSS did not want to use the same lawyer she had used to obtain a protection order after her husband had breached the order. She felt her lawyer did not believe her and that he did not act in her best interests rather was biased towards her husband. In her view, this was borne out by the husband breaching the order obtained for her by her lawyer. Clear explanations and checking to ensure a woman's understanding of legal procedures is essential when working with women of non-English speaking backgrounds. It is imperative not to make assumptions regarding understanding of the Australian legal system, as it will often be vastly different to the same they have previously known and which has shaped their view of legal processes.

Many women are isolated in the community and, in our experience, for many this isolation is deliberately maintained by abusive partners. All of these factors combine to prevent women from obtaining accurate information about the existence of domestic violence protection orders, the requirements of the domestic violence provisions in immigration law, and other legal matters, and the range of health, welfare, counselling and legal services which exist to assist and support them.

The importance of being able to access accurate information is illustrated by the following situation of a woman assisted by IWSS. The woman, from a Southeast Asian country, was routinely beaten by her husband, including being kicked in the stomach when she was seven months pregnant. When she threatened to go to the police, her husband told her that as he was an Australian resident and she was not, the law allowed him to treat her however he wanted to and that he could even kill her without committing any offence. When she sought help from friends in her

community, she was advised to be a better wife and not to embarrass the community by making trouble for her husband.

Many of the women we have worked with who are not permanent residents of Australia have not even been aware if an application for permanent residence has been lodged on their behalf by their Australian resident partner, and if so, what kind of application it is and what requirements have to be met. Again, in many instances this misinformation and lack of information is part of the power imbalance and a feature of the domestic violence they experience.

Access to information however, is only the first of many hurdles to be overcome for women of non-English speaking backgrounds escaping domestic violence. Being able to communicate in a language common to both parties is essential to obtaining assistance from domestic violence services, counselling services, legal services, and the range of other relevant service providers.

The principle of equality before the law, held to be fundamental to notions of justice, requires that people be provided with the means to communicate in a language that they can speak and understand. Many reports point to the failure of our legal system to provide adequate access to interpreters and I refer here to the reports of the Australian Law Reform Commission on "Multiculturalism and the Law" and more recently "Equality Before The Law. Women's Access to The Legal System".

We are aware of many occasions where women have been to court where no interpreter has been present. On many occasions these women have left the court with a two-year protection order but have not known what the order contained, or what it really meant for them.

In Queensland there is still no statutory right to an interpreter yet the fundamental principle of equality before the law surely requires that people be provided with a means of communicating in a language they can speak and understand. Irrespective of this there remains a reluctance on the part of police and judiciary to engage an interpreter, or to advise women that they can request an interpreter.

At present judges and magistrates have a broad discretionary power in determining whether or not an interpreter will be used in court. Yet, they have no training or skill in assessing levels of English language competency. A more reliable mechanism would be the use of Australian Second Language Proficiency Ratings established through the National Languages and Literacy Institute of Australia. (Lachowicz. R.,

1993, Cross Cultural Communication in Law: A Training Module and Seminar Guide, SBICLS)

Interpreting is a complex process. It seldom involves word for word translation but requires distilling the meaning of what is being said from the form used by the speaker; understanding the logical relationship between what is being said and the rest of the text, and from within the context; and recognising the various stylistic devices employed by the speaker. Interpreters are primarily concerned with the meaning and impact of the utterances, rather than specific word translations. (Ton-Tha Quynh-Du "Legal Interpreting" in A. Pauwels (ed) Cross Cultural Communication in Legal Settings, (1992), pages 58-61). Herein lies enormous room for miscommunication and misunderstanding and reasonable allowances must be made particularly where findings in relation to credibility are at stake.

A simple illustration of this was given by Justice Kirby at an Interpreting and the Law Conference in Sydney in 1988. He recalled an interpreter translating the phrase "out of sight, out of mind" to the equivalent of "invisible idiot" in the witness' first language.

He went on to refer to a case where a defendant was committed to a psychiatric institution for observation as when the magistrate had asked the defendant how he felt, he used an expression which translated literally meant "I am the God of Gods". However, this expression in his first language was a colloquialism for "I am feeling on top of the world".

It is impossible to translate concepts in one language into "equivalent" concepts in another language. "Language is intimately connected to culture and though, and without a knowledge of culture it is impossible to understand fully the utterances of another person". (Bird, G., The Process of Law in Australia: Intercultural Perspectives, 1993, P. 216). The view that what one has said can be restated exactly in another language is simply an ignorant one. In interpreting there often exists a real chance that the witness will not receive the exact question that was asked, and that the Judge, jury, or prosecutor will not be receiving the answer exactly as it was intended.

Language and cultural differences incorporate differences in our thought processes, how we structure information, and differences in discourse or the ordering of the conversation, the level of background information provided, the repetition of statements, and the targeting of the sensitivities of the listener.

Linear thinking, where every cause has an effect and every effect has a cause, is perhaps most common in Western settings. Whereas Eastern thought for instance, is said to be more contextual and cyclical than the Western approach. How does this impact on communicating in court, particularly given that logic is the foundation of proof in our legal system? At IWSS we are all too familiar with the impatience and frustration which arises in court when the witness does not state the information sought in the manner or order in which it is expected.

Cross-cultural communication goes further than the use of interpreters. Language cannot be separated from its cultural context. There is a need in cross-cultural communication to be aware of the pitfalls involved in having a limited knowledge of the cultures we are engaging with.

A Croatian woman seeking a domestic violence order was mistakenly provided with Serbian interpreter. The woman refused to speak to the interpreter, as she strongly believed that this would compromise her in the eyes of her Croatian community. The Magistrate responded by stating that "international conflicts should not be brought into the arena of the Australian courts". He suggested that if she could not use the services of an interpreter, then quite clearly this indicated that she was not in desperate need of a protection order. (p143)

It is only through the provision of appropriately qualified, professional interpreters, combined with training for all those involved throughout the legal process and in the provision of services to domestic violence victims, that the most basic requirement of effective communication can possibly occur. And, effective communication is mandatory in any notion of equality before the law, and essential in providing culturally inclusive service delivery.

A more subtle of bias occurs when a woman's need for an interpreter in court is used against her, used as a means of unsettling her and of questioning her credibility. Lack of skill by lawyers in using interpreters when questioning a witness often results in miscommunication and misunderstanding, or in the lawyer concluding that the interpreter and woman are colluding, or in the interpreter feeling the full force of the cross-examination rather than the witness.

When an appropriately accredited interpreter is not used consistently and uniformly it can significantly affect the quality of the evidence provided by the witness.

Another common scenario of injustice and inappropriate response by service providers is where the woman's culture is used to justify the violence perpetrated against her through stereotyped assumptions that a level of violence is tolerated in

certain cultures. The focus is then inappropriately shifted from the perpetrator's violent and unacceptable behaviour to the woman's culture.

For some immigrant and refugee women there may be an unfamiliarity with or lack of the language used to discuss and domestic violence and sexual assault. Also their experiences as girls and women may lead them to think such behaviours are usual and therefore acceptable. They may not realise that such behaviour may constitute a crime in Australia. This is not to suggest that these women are tolerant of or complacent about such violence, and the fact that violence against women may be common in cultures should never be used in sentencing to lessen its significance as crime. The tension often existing between cultural tradition and human rights should always come out on the side of human rights. However, the culture practice may well be a reason why women do not report it or seek assistance. They are not likely to know their options for dealing with the violence or about their legal and other entitlements. (Cunneen, C and Stubbs, J., 1996, p. 26-7)

As suggested by *Gonzalez and Gilmore in Desperately Seeking Justice*, any best practice models must acknowledge that within any person's experience there will be universal similarities, cultural specifics and individual differences, thus recognising that we cannot place all women of non-English speaking background, or all women from a specific cultural background, into a unitary category bound by a homogenous identity. (Gonzalez and Gilmore, *Desperately Seeking Justice*, 1992)

Whilst it is important that values which can be attributed to a specific ethnic community be identified and understood, it is imperative that this occurs without ascribing universality to those values. The impact of gender, ethnicity, class, the experience of migration and settlement, the refugee experience, and the woman's own unique experiences must also be considered.

The case illustrations given in this paper are by no means exceptional stories. They simply illustrate the reality for women of non-English speaking backgrounds who are victims of domestic violence and who on top of that have to deal with a legal and welfare system which is often discriminatory, biased and which lacks the knowledge and skills necessary for working with people from diverse linguistic and cultural backgrounds. Some of you here may have heard some of these stories before, but I believe their importance is in no way diminished by their being repeated. Certainly many of you would have heard these issues raised before. Whilst some progress has been made, there is still a considerable way to go. To progress further and ensure that access to justice becomes reality rather than rhetoric it is recommended that cross-cultural communication training be made available for the judiciary and all those involved in all levels of the legal system.

Also, it has been consistently recommended over the years that protocols for appropriate response to the victims of domestic violence be developed and/or implemented by the police, through all levels of the legal system, the health care system and other social service providers. We extend that recommendation to ensure that any protocols include issues involved in working with victims of domestic violence who are from diverse language and cultural backgrounds.

(*)It is time that we also begin to re-frame the manner in which we perceive issues for non-English speaking background women, or indigenous women, or others whom we place in the "special needs category". It is not they who are requiring special needs, but us, the service deliverers. We are the ones who require the understanding, the knowledge and skills to respond to women from diverse backgrounds. It is us who are constrained by our stereotypes, inflexibility and general apathy.

(*)There are still many of us who design projects, programs and service without due consideration given to those for whom these services are being developed. We are still developing and delivering services for people who are most like "us". It seems we are only meeting "our" needs rather than the needs of all women subject to violence. In diluted attempts to meet real needs in the community, we then access training which teach us "cross-cultural" skills, without challenging inherent prejudice, stereotypes and racism. We look at the statistic in our services and conclude that there are low numbers of non-English speaking background communities in our area because we have had two women access our service in a year. The NESB women are there in rural communities, they are there in the wealthy communities – our service simply makes them invisible.

(*)Until the most disadvantaged women, the invisible women in our communities are made visible by the delivery of services; the domestic violence legislation will remain a very, very limited response to a very, very small number of women and children. Until the human rights of the most discriminated women in our society are upheld, no woman's human rights are safe.

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