

Een verkennend onderzoek naar
de aard en aanpak van gedwongen
huwelijken in Nederland

HUWELIJKSDWANG

Een verbintenis voor het leven?



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In opdracht van

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Omslagontwerp

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Huwelijksdwang: een verbintenis voor het leven?

Een verkenning van de aard en aanpak van gedwongen huwelijken in Nederland

Summary

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In 2005 the following working definition of 'forced marriage' was developed by order of the Advisory Committee on Aliens Affairs (*Adviescommissie voor Vreemdelingenzaken*): 'a marriage in which one or both marriage partners have no say in the contraction of the marriage and do not, or would prefer not to, consent to it. This situation also includes co-operation to the formal (legal) acts of marriage, albeit under physical or psychological threat.' This definition has resulted from legal (Schmidt & Rijken, 2005) and anthropological (De Koning & Bartels, 2005) research.

There have been only few developments in tackling forced marriages since this definition was first drawn up. The criminal investigation and prosecution agencies lack expertise with regard to marriage under duress, partly because this is not a variable that is registered. Hence, this angle does not provide any insight into the extent of the phenomenon. Mainly in response to concrete cries for help from victims, however, some local support organisations are developing a number of initiatives.

A forced marriage often has a great impact on the victim in question, which is why politicians are asking the question what (legal) possibilities exist to tackle this phenomenon. This is why, at the request of the Dutch Scientific Research and Documentation Centre (WODC), Beke Research and Consultancy Group has answered the following research questions:

- What is meant by 'forced marriage'?
- What forms does this phenomenon take in the Netherlands?
- Are there sufficient (criminal law) instruments to act against forced marriages?

This study is in the nature of a quick scan and was intended to get a clearer picture of the current state of affairs with respect to forced marriages. To this end, various interviews with experts were conducted, desk research was carried out and stock taken at the police regions and the Domestic Violence Advisory and Support Centres (*Advies- en Steunpunten Huiselijk Geweld*). The information gathered provided the basis for a working conference. The findings on the scope of a possible (legal) approach to tackling forced marriages were fed back at this conference.

What is meant by 'forced marriage'?

The phenomenon of forced marriage is still almost uncharted territory for Dutch professionals, both in social work and in the legal domain. One of the reasons is that these marriages are frequently conducted abroad, another, that various legal areas can be involved in dealing with this issue. This complexity is difficult to capture in a working definition. As far as the 2005 working definition is concerned, the experts consulted considered it did not fully cover the content. Based on these expert opinions we would therefore suggest the following alternative working definition:

A religious or legal marriage in which the (preparatory) act(s) of marriage have been carried out against the free will of at least one of the marriage candidates and to which consent has been given under a certain kind of force.'

We would like to emphasize that this suggestion for a definition is intended merely as an initial stepping stone towards a universally accepted definition of forced marriage. The phenomenon of forced marriage is indeed complex; an appropriate definition could be the starting point for a thorough operationalisation, and subsequently, an adequate approach to tackling this issue.

Which forms do forced marriages take in the Netherlands?

Our research has shed some light on the following manifestations of a forced marriage:

- marriages between (first) cousins;
- abduction marriages;
- marriages of convenience;
- arranged marriages;
- birth marriages;
- shotgun marriages;
- exchange marriages;
- reconciliation marriages;
- levirate marriages;
- financial marriages;
- child marriages.

Are there sufficient (criminal law) instruments to act against forced marriages?

In this study a distinction has been made between legal and non-legal measures. Despite the political preference for instruments of criminal law, it is important to develop not just repressive measures but also preventive and curative ones. Much can be gained, not only with respect to prevention and cure, but also in the area of early detection. Some important partners that can play a crucial role in these three areas include schools, self-organizations, national knowledge centres and imams. Therefore, the approach to tackling forced marriages should cover the entire spectrum of partners that have some knowledge of marriage under duress.

The package of measures currently available can be complemented in certain aspects to create a more complete approach. Our research provides insight into the measures taken and additional measures that are desirable/feasible. Some measures are too far-reaching to be implemented (yet), because:

- the intention of the law would be affected too much by the adjustments required in these measures;
- it would be difficult and time consuming to implement the adjustments;
- in the past it turned out that adjustments to related phenomena have not been implemented either.

Current options	
Non-legal	- Still very few options
Private law	- Annulment/dissolution of the marriage is possible - On an international level: through the Conflict of Laws Marriage Act (<i>Wet Conflictenrecht Huwelijken</i>)
Immigration law	- Through international private law: no valid marriage, no residence permit - Raising the age and income barriers - Appeal to prolonged residence because of demonstrable (sexual) violence within the family - <i>Persona non grata</i> declaration because of a crime punishable with more than three years' imprisonment
Criminal law	- In particular, sections of the law on threat or intimidation in particular (sections 284 ff of the Dutch Criminal Code)
Desirable/feasible adaptations to the current options	
Non-legal	- Link up with projects on honour-based violence - Establish a system of early detection - Education by experts and through the Internet - Acknowledge and streamline the role of imams
Private law	- Complement the Civil Code with the marriage requirement that 'free consent of both partners is required' and 'only the person whose consent was not freely given' can lay claim to this condition - Instruct government staff concerning the detection and check for (marriages entered into under) duress
Immigration law	- Add aspect of force/honour to the appeal for prolonged residence on the grounds of urgent humanitarian reasons
Criminal law	- Abolition of double liability to punishment - Development of a Public Prosecution Service decree on forced marriages
Adaptations that may be too far-reaching (as yet)	
Non-legal	- None
Private law	- Grant the Public Prosecution Service the initiative to demand annulment /dissolution of forced marriages
Immigration law	- Include 'forced marriage' as a ground for refusal in the Aliens Act Implementation Guidelines - Lower the minimum requirement for a residence permit
Criminal law	- Specific criminal law - Increase maximum penalty - Reduce the burden of proof - Simplify prosecution

Finally, it is important to put the phenomenon of forced marriage in the right perspective. Are additional measures indeed necessary if the number of incidents is low? Developments concerning honour-based violence and domestic violence show that the police have not created a project code for the first type of violence, in contrast to the second. These decisions were partly based on the extent to which these forms of violence manifest themselves.

To date, it is impossible to get a clear picture of the frequency of forced marriages in the Netherlands through the police or the social institutions. The lack of registration of this phenomenon is the main reason behind this. As such, the cases that come to the notice of the police or the social institutions on occasion cannot give any real insight into the barriers that victims may experience to report their forced marriage to the police. Nor was any insight gained about a changed willingness to report or a changed attitude with respect to the problems concerning forced marriages.

