

# Verboden huwelijken

**Onderzoek naar de werking van de Wet  
tegengaan huwelijksdwang in de praktijk**

***Research into the functioning of the Act  
Combating Forced Marriages in Practice***

Onderzoek in opdracht van het Ministerie van Justitie en Veiligheid, Wetenschappelijk  
Onderzoek- en Documentatiecentrum, WODC



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25 november 2019

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# Management Summary

## Introduction

On 5 December 2015 the Act Combatting Forced Marriages (referred to hereafter as: the Act), entered into force in the Netherlands. From June 2019 until November 2019 Maastricht University and the Verwey-Jonker Institute carried out research to investigate how this Act works in practice. The Act aims, on the one hand, to further reduce the number of forced marriages that are celebrated in the Netherlands and, on the other, to limit the recognition of foreign marriages in the Netherlands to those marriages which reflect generally accepted forms of marriage in the Netherlands. Accordingly, the Act has produced a number of changes in Dutch marriage law and in the regulation of the recognition of foreign marriages. Dutch marriage law has been amended to ensure that aspirant spouses must have attained the age of eighteen and stricter requirements have been applied to marriages between blood relatives in the collateral line in the third and fourth degree. Furthermore, mechanisms to combat forced marriages, child marriages and polygamous marriages have been extended.

The Act has promulgated the rule that foreign forced marriages, foreign child marriages and polygamous marriages connected to the Netherlands can no longer be recognised in the Netherlands.<sup>1</sup> Recognition of all these types of marriage has become subject to the condition that grounds of public policy opposed to their recognition have been removed.<sup>2</sup> The research project focused on the functioning of the Act and did *not* aim at presenting an overview of the effectiveness of the Act. As the Act has only been in force for a relatively short period of time, coupled with the fact that forced marriages are not registered and often go unnoticed (as well as the short time-frame within which the research had to be executed), it was deemed unfeasible to reach conclusions regarding the effectiveness of the Act. Informal marriages were also excluded from the research.<sup>3</sup>

Two categories of research questions were distinguished: (quantitative) research questions regarding the numbers and characteristics of marriages falling within the scope of the Act and (qualitative) research questions regarding the use and application of the Act. The latter category involved the *application* of the Act by those persons charged with enforcing the Act (i.e. judges, civil status registrars and officials of the Immigration and Naturalisation Service (IND)), as well as the *use* of the Act, alongside factors which influence its use by the target groups.

In order to analyse the implementation of the Act in practice, the following research methods were employed:

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<sup>1</sup> On the grounds that one of the spouses at the time of the marriage held Dutch nationality or had habitual residence in the Netherlands.

<sup>2</sup> In the case of child marriages, from the moment that both spouses have reached the age of eighteen years and have themselves requested recognition of their marriage; in the case of forced marriage, from the moment the spouse who was forced to marry, consents to the recognition of the marriage; in the case of polygamous marriages, when the first marriage has been dissolved and the initially polygamous marriage has become monogamous.

<sup>3</sup> The Act only provides general rules for formal marriages. The Dutch marriage legislation in the Dutch Civil Code only applies to civil marriages. Moreover, a foreign marriage that was not concluded in accordance with the rules of the applicable foreign law, cannot be recognised for this reason.

1. Requests of registered data at the IND of numbers and characteristics concerning child marriages.
2. A *quick-scan* of the Parliamentary Documents to gain an overview of the background of the Act and the anticipated stumbling blocks in its implementation.
3. Analysis of the case-law, with a view to gaining an overview of the (published) case law in which the Act has been applied.
4. Digital enquiries (surveys), in particular with a view to assembling quantitative data. The surveys were forwarded to civil status registrars, legal practitioners and social workers and key figures in this field, such as employees of the Secure Home-networks and to various locations of the Central Agency for the Reception of Asylum-Seekers (COA), and distributed among officials of the Public Ministry charged with civil administration duties.
5. Extensive interviews in order to assemble qualitative information. Interviews were held with professionals and key figures active in the social arena, attorneys-at-law, Nidos (Dutch guardianship agency for unaccompanied refugee children), civil status registrars and to officials of the IND.
6. An assessment of the *estimated guess* by experts.

## Research findings

The main research findings are presented below.

### 1. Awareness of and familiarity with the Act

From the enquiry and interviews it can be gathered that a large majority of the respondents are aware of the existence of the Act.<sup>4</sup> The majority seemed to be aware of the prohibition of child marriages and forced marriages, followed by polygamous marriages. The respondents were least aware of the prohibition of marriages among blood-relatives in the collateral line in the third or fourth degree. Approximately half of the respondents were aware of and familiar with the provisions and competences included in the Act (including the declaration of voluntariness, annulment of marriage, enunciation of impediments to an intended marriage), but they were not fully aware and acquainted with the Act. This was also the case to those legal practitioners who were approached in the context of this research. According to half of the professionals among the primary target group the existence of the Act was relatively well known, in particular the prohibition of child marriages, and especially among those born and raised in the Netherlands. The prohibition of child marriages, forced marriages and polygamous marriages was unknown by the primary target group according to the other half of the respondents, especially if the persons concerned had not resident in the Netherlands for long, for example refugees. Accordingly, awareness of the (marital) norm was greater than awareness of the instruments included in the Act and the rule that child marriages are not permitted was the best-known rule among professionals and established members of the target group.

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<sup>4</sup> Par. 5.2.

## **2. Lack of experience with the Act**

Not a lot of experience has been gathered with the Act so far. This can be accounted for by the short period of time that the Act has been in force, and with reference to the nature and specificity of the issues that the Act addresses as well as the lack of connections between the Act and its target groups.

## **3. Numbers and characteristics**

### ***Marriages concluded in the Netherlands***

To those *implementing* the Act (referred to hereafter as ‘implementers’) the question was put how many marriages, polygamous marriages and marriages between blood-relatives in the collateral line to the third or fourth degree have been celebrated since the entry into force of the Act. The respondents affirmed that they had not celebrated any polygamous marriages; in addition all respondents, bar one, stated that they had not celebrated any child marriages. As for marriages between blood-relatives in the collateral line in the third or fourth degree this number is higher, as 17% of the respondents affirmed that they had celebrated 1-5 such marriages. When the question was put to the same group of respondents whether they could *estimate* the number of marriages in their municipality the numbers given were higher than the aforementioned figures. A group of the implementers (11%) presumed that child marriages had been celebrated within their municipality. In instances where implementers in their municipality indicated that a polygamous marriage had been celebrated, 12% suspected that this could sometimes occur within their municipality. With regard to marriages between blood-relatives in the collateral line in the third or fourth degree, fewer than half of the implementers (47%) believed that this did not occur. Some of the respondents (14%) alleged that they were not aware as consanguinity between the prospective spouses is not always known. In conclusion: no polygamous marriages were celebrated and only one child marriage, while the estimation that these marriages do occur in the Netherlands varies between eleven to twelve per cent. Marriages between relatives in the collateral line to the third or fourth remove show a different picture: the actual celebration and the estimation rates were significantly higher. The fact that the blood relationship is an unknown factor may offer an explanation.

### ***Interruption of intended marriages and annulment of marriage***

Little use is made of the possibilities envisaged by the Act to enunciate impediments to an intended marriage or to annul a marriage. Two public prosecutors who had been approached for the purposes of the enquiry affirmed that they had submitted a request to court fewer than five times to annul a marriage on the grounds that one of the spouses was under the age of eighteen. From the analysis of the case law only a select number of cases indicate that the spouses had sought annulment of the marriage by the court. With the exception of one respondent, all civil status registrars and public prosecutors approached for the purposes of the enquiry declared that they had not dealt with any cases involving an interruption of an intended marriage under the Act. The analysis of the case law has not revealed any such case either.

### ***Foreign marriages***

The *users* of the Act (the target group) were asked in the enquiry how many foreign marriages has been registered in the Netherlands after 5 December 2015. Most users (64%) declared that they were not aware of any forced marriages. However, a small number of users among that group (10%) gave an estimate of over fifteen marriages. It is remarkable that the estimation of child marriages, polygamous marriages and marriages in the collateral line between blood-relatives in the third or fourth degree is relatively high.

Most users provided as an estimate that in over thirty of these marriages celebrated in the Netherlands or abroad their legal validity had to be determined in the Netherlands.<sup>5</sup>

*Implementers* of the Act were asked how many foreign child marriages they had or had not recognised since the entry into force of the Act, after those involved had reached the age of eighteen. Among implementers 63% affirmed that they had recognised such marriages. Approximately 25% of them declared that they had recognised one or two child marriages.

The registered data at the IND show that the majority of asylum applications for residence of child brides from abroad concern persons from Syria. Just as in the survey, Syria was also mentioned most frequently in interviews with civil status officials and IND officials. The countries of origin that were further mentioned were Afghanistan, Somalia and Eritrea. Users also mention Syria most often, followed by Somalia, Afghanistan and Pakistan. According to them, the youngest marriage candidate was between 8 and 17 years old and the oldest marriage candidate between 21 and 67 years old.

#### **4. Foreign child and polygamous marriages in Dutch case-law**

In almost every case in the examined case law the question whether a foreign child marriage or polygamous marriage could be recognised in the Netherlands was not dealt with on the basis of its own merits but rather as part of another legal question.<sup>6</sup> The recognition of foreign marriages plays an important part in immigration law in the area of admission of (foreign) spouses to the Netherlands for the purpose of residing with their spouse.<sup>7</sup> This can involve both applications for a regular residence permit or a residence permit as an asylum seeker. Due to a stricter policy regarding recognition of foreign marriages the incidence of recognition has decreased. The non-recognition of a foreign marriage due to it being contrary to Dutch public policy has, following the line of reasoning in a judgment of the Dutch Supreme Court, also meant that the (legal) paternity of the husband is not accepted; children do not derive Dutch nationality from their father by operation of law. If a marriage is not recognised, this means that divorce cannot be petitioned in the Netherlands either, nor can maintenance be determined or matrimonial property be divided. The Act, which only regulates the marriage itself, therefore permeates and affects many other areas of law.<sup>8</sup>

#### **5. Child marriages and immigration law**

The functioning of the Act Combatting Forced Marriages has most clearly exerted its influence on migration policy in the area of child marriages.<sup>9</sup> Prior to 5 December 2015 it was possible under certain circumstances to recognise foreign child marriages and child brides were admitted to stay with their husbands in the Netherlands. As from the entry into force of the new Act foreign child marriages are no longer recognised if both spouses have not yet attained the age of eighteen years and a dependent or derivative status as a spouse is no longer granted. This reflects the current practice of the IND and is also accepted in case law. From data obtained from the IND, it can be deduced that the number of child marriages in which one of the spouses at the moment of application for residence of the other spouse has not yet reached the age of eighteen years, since the entry into force of the Act is approximately 150: in

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<sup>5</sup> The question was put in a general way without drawing a distinction between marriages in the Netherlands and foreign marriages. It is probable that the relatively high numbers can be accounted for by foreign marriages.

<sup>6</sup> Par. 4.2.

<sup>7</sup> Par. 4.3.

<sup>8</sup> Par. 4.2.

<sup>9</sup> Par. 4.3.3.1.

2015 (from 5 December) fewer than ten, in 2016 one hundred, in 2017 twenty, in 2018 ten and in 2019<sup>10</sup> ten.<sup>11</sup> This concerns figures from family members of asylum seeker (*asiel nareis*) and, to a limited extent, regular residence. However, the number of situations in which there was a child marriage in which one or both spouses were younger than eighteen at the time that one of the spouses applies for asylum in the Netherlands, is higher at 450.<sup>12</sup> As a child marriage is not recognised, brides who are still of minor age in practice are placed, as single minor migrants, under the protective regime of child custody authority Nidos. If the spouses at the time the marriage was celebrated, had not reached the age of eighteen, but had reached this age by the time of the residence application, the marriage can be recognised in the Netherlands and permission to stay with the spouse can be granted. It is worth mentioning that decision-making immigration officers adhere to the rules of migration and do not apply the Marital Coercion Act directly with regard to this issue.

### ***Negative consequences and human rights***

Migration policy with regard to child marriages has had a number of consequences which could have been avoided previously. Firstly, child brides, whose residence application is declined because the marriage is not recognised in the Netherlands, are left to their own devices and unprotected abroad. This affects girls in the refugee context in particular. They have to do without the protection by their spouse, parents or other relatives in the Netherlands. Both the right to family life and children's rights can then be at stake.

Secondly, non-recognition as a spouse can in migration law result in a separation of the married couple. As the research analysis shows it can be deduced that this can occur in at least two instances. Married couples can become estranged from each other because one of both spouses cannot be permitted to stay with the other spouse in the context of family reunification (for the purpose of a regular residence permit or admission as an asylum seeker). Moreover, it sometimes happens that spouses become separated from each other as an outcome of the Dublin procedure. This is often something which the spouses involved do not want and is something which becomes especially problematic if children are involved. The right to family life can also be at stake.

These issues actually do not only occur in case of child marriages but also in case of polygamous marriages. In case of child marriages, however, the link to the Act is easier to identify than in case of polygamous marriages. Although the Act has further defined the grounds for refusal in private international law and set clear criteria to this end, this has not led to a change in migration policy.

## **6. Evidence of forced marriage remains difficult**

Evidence of forced marriage remains difficult. The problem of recognising and determining the existence of forced marriages is considered to be one of the major stumbling blocks in the Act Combatting Forced Marriages. Not only do professionals (users) identify this as a stumbling block<sup>13</sup>, but so do officials at the municipalities<sup>14</sup> as do officials of the IND<sup>15</sup> who have to determine whether a forced marriage is at issue. The reasons why forced marriages remain unnoticed are diverse. They are not reported by those involved (e.g. because they fear the repercussions this may have, and those involved may not experience it as a form of coercion on the basis of their own cultural perspective), there is a lack of contact between

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<sup>10</sup> Figures up to 1 September 2019.

<sup>11</sup> The figures are rounded to tens.

<sup>12</sup> Par. 3.8.

<sup>13</sup> Par. 5.3.1.

<sup>14</sup> Par. 4.1.2.3.

<sup>15</sup> Par. 4.3.3.2.

registrars and prospective spouses as a result of digitalisation and officials do not consider it to be their duty to investigate coercion further, while the municipal counter is not considered a suitable environment to discuss confidential matters regarding forced marriage, while officials consider themselves lacking in experience to recognise forms of coercion to marry. In various municipalities use is made of aids to recognise coercion to marry more easily, such as a list with criteria. Civil status registrars indicated that there is a risk, however, that some criteria could be considered to be generalisations and thus rather stigmatising.<sup>16</sup>

To combat forced marriages in the Netherlands, the legislature has introduced a ban on marriages between blood relatives in the collateral line in the third and fourth degree. They can only marry if they submit a voluntary declaration. However, consanguinity between prospective spouses does not always emerge. Since the notification of intent to marry can be filed electronically, contact with the prospective spouses is sometimes absent; prospective spouses are not required to submit a declaration under oath regarding consanguinity; no provision has been made to further control mechanisms by civil servants; and there may be linguistic or cultural communication barriers.<sup>17</sup> Accordingly the referred voluntary declaration is not always considered to be effective; the blood relationship is not always established and the declaration does not always say much about the use of coercion.

## **7. Social factors opposed to the use of the Act**

Social pressure, loyalty to one's family and/or the social environment, the fact that the honour of the family may be at stake coupled with fear of honour killings, as well as concern about the loss of dependent or derivative residence rights, may influence the use of the Act by the affected parties in the target group and the application of the Act by professionals in various ways. Professionals have declared that the safety of those involved can be at risk, whereas nothing has been put in place in order to protect those affected when they should wish to avail themselves of the Act.<sup>18</sup>

## **8. What goes unnoticed**

Apart from the difficult visibility of possible coercion to marry, authorities realise that they may not always be aware of a marriage's existence. They do not exclude the possibility that minor daughters may enter the Netherlands although they are, in fact, already married. As far as polygamous marriages are concerned the parties can remain silent with regard to the first marriage; especially if this marriage is not registered in the Netherlands. In these cases, decision-making officers lack sufficient evidence of the existence of a child marriage or polygamous marriage.<sup>19</sup>

Circumvention of the Act can also be perceived by those involved as an alternative route to be taken. If not all of the requirements of the Act can be complied with people may resort to alternative solutions. An informal marriage may be chosen instead or a marriage abroad. If the spouse has not yet attained the age of majority, this person may sometimes be taken to the Netherlands with the assistance of the family or at another age, according to respondents. The Act in itself will, as respondents suspect, not prevent those who wish to marry from marrying.<sup>20</sup>

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<sup>16</sup> Par. 4.1.2.3.

<sup>17</sup> Par. 4.1.2.2 en 5.3.2.

<sup>18</sup> Par. 5.4.1.

<sup>19</sup> Par. 4.1 en 4.3.

<sup>20</sup> Par. 3.3.



Both implementers of the Act and professionals as well as key figures from the field have expressed their concern about the situations this may produce. Those who are affected by coercion to marry may find themselves in situations which remain out of the public eye and which have not been addressed by the law and not by the Act either.

## **9. Conclusion**

The picture that emerges from the research findings is that the implementers of the Act by and large apply the Act, and that they do so while bearing in mind the criteria as set forth by the Act. Civil marriages under the age of eighteen are no longer celebrated in the Netherlands; a conclusion which is different with respect to marriages between blood-relatives in the collateral line in the third and fourth degree. Foreign marriages are no longer recognised as long as both parents are under the age of eighteen years and foreign polygamous marriages that have a connection to the Netherlands are not recognised. However, coercion to marry, as the primary target of the Act, still seems to elude the legislative framework that has been put in place in the vast majority of cases mainly because such coercion cannot always be verified. As the Act no longer leaves room for a discretionary assessment of the circumstances and interests in concrete cases, the negative implications of the application of the Act are accepted 'for what they are'. For target audiences (the *users* of the Act) the research findings convey the idea that, where the Act has set obstacles to the celebration of marriage or the recognition of certain types of marriage, other options remain open to attain their goal.