

# Trapped in a religious marriage

## Citation for published version (APA):

Deogratias, B. (2019). *Trapped in a religious marriage: A human rights perspective on the phenomenon of marital captivity*. Intersentia. <https://doi.org/10.26481/dis.20190404bd>

## Document status and date:

Published: 01/01/2019

## DOI:

[10.26481/dis.20190404bd](https://doi.org/10.26481/dis.20190404bd)

## Document Version:

Publisher's PDF, also known as Version of record

## Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

## General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

[www.umlib.nl/taverne-license](http://www.umlib.nl/taverne-license)

## Take down policy

If you believe that this document breaches copyright please contact us at:

[repository@maastrichtuniversity.nl](mailto:repository@maastrichtuniversity.nl)

providing details and we will investigate your claim.

# APPENDIX

## VALORISATION

This study is a sub-project of a larger project that is funded by the Netherlands Organisation of Scientific Research (NWO): ‘Marital Captivity- Bridging the gap between religion and law’. This project on marital captivity has been conducted by Maastricht University under the supervision of Professor Susan Rutten. The aim of this project has been to study marital captivity within the context of the Netherlands and to produce realisable and implementable legal and non-legal solutions for ending and preventing situations of marital captivity.<sup>1569</sup> In order to ensure wide reach and a high impact of the research results within the social field, partner civil society organisations were involved in the set-up, execution and dissemination of the research results. In respect of the latter, a thorough dissemination plan was developed in order to ensure that the research results reach the relevant stakeholders (*inter alia*, civil society organisations, politicians, judiciary, law and policy makers, public officers, lawyers, religious communities and authorities, social workers and trapped spouses) and also to ensure that the research has a lasting social impact. The ultimate aim is to generate and ensure that research results and the recommended solutions deriving from this research project are followed-up and implemented within society. As the project is slowly coming to an end, the impact of the research results arising therefrom are already visible within the relevant social and political spheres.<sup>1570</sup> The present study, therefore, advances the NWO project by presenting a human rights approach and addressing the human rights implications of marital captivity. Thus far, marital captivity has not been addressed from this perspective.

---

<sup>1569</sup> For more on this project, see the webpage of this project at <<https://www.maastrichtuniversity.nl/nl/over-de-um/faculteiten/rechtsgeleerdheid/capaciteitsgroepen/privaatrecht/projecten/echtscheiding-en>> last accessed 22 September 2018.

<sup>1570</sup> See for example *Netherlands Institute for Human Rights – Written Contribution to the 65<sup>th</sup> session of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) on behalf of the consideration of the sixth periodic report of the Netherlands*, (College voor de Rechten van de Mens, 2016), p. 2; ‘Brief van de minister voor Rechtsbescherming, Kammerstukken II, 2017/2018, 34 775 VI nr. 101’. ‘Wet van xxxx tot wijziging van met name het Wetboek van Burgerlijke Rechtsvordering en het Burgerlijk Wetboek (tegenaan huwelijkse gevangenschap) – Memorie van Toelichting’, 18 October 2018 at <<https://www.internetconsultatie.nl/huwelijksegevangenschaptegenaan>> last accessed 23 January 2019.

## THE SOCIAL (AND/OR ECONOMIC) RELEVANCE

Marital captivity to a religious marriage is an old social phenomenon that predominantly affects women. Effective solutions to prevent and end existing situations of marital captivity to a religious marriage have yet to be developed. In the past decades, this phenomenon has received increased attention in several countries, as well as in the international arena. More and more regional and international agencies, such as human rights monitoring bodies and expert agencies (e.g. UN special rapporteurs), are raising concerns about marital captivity and the unequal divorce practices which contribute to the creation and maintenance of situations of marital captivity. The increased attention that has been given to this issue reflects the existing need to find solutions for preventing and ending situations of marital captivity. This study has social relevance as it contributes to the ongoing dialogue and process for reaching solutions to an old social problem and offers a perspective on this issue, that has thus far been scarcely addressed.

This thesis does so by producing an analysis of the involved human rights and by taking into account the country specificities of the Netherlands. Consequently, the research results are tailored to the Netherlands and are relevant with regards to the ongoing efforts to address marital captivity. On top of that, this study goes beyond the geographical scope of the NWO project by including a global perspective of marital captivity. This is done by taking into account the existing differences in States' specificities and organisational structures. More specifically, this includes an analysis of the affected human rights and implied obligations both for secular and non-secular countries, as well as situations of marital captivity which have transnational elements. The global perspective enriches this study's results insofar as it enables the author to develop an overview and generate a greater understanding of how these differences affect, *inter alia*, States' responsibility to protect the affected human rights, States' compliance with their human rights obligations and States' responses to marital captivity. As a result, the research results are not only relevant for the Netherlands but they are also useful, relevant and applicable within other national contexts, and for both secular and non-secular States Parties to the human rights treaties under investigation in this study.

Furthermore, the ongoing debate in the Netherlands reveals a number of intricacies that need to be taken into account when addressing the phenomenon of marital captivity. This primarily concerns the conceptualisation of marital captivity in the public debate and the need to resolve the perceived State-religion dichotomy. These issues undeniably affect the process of building capacity and cooperation between all the relevant stakeholders, as well as the processes of developing effective solutions to end and prevent situations of marital captivity from occurring in the first place. The present study engages with these issues and provides relevant considerations and arguments on how to resolve these.

To begin with, this study reveals that the presentation of marital captivity within social, political and academic dialogues warrants a judicious approach. The

phenomenon has, at times, been presented in a way that makes it appear as an issue that only affects certain groups within society.<sup>1571</sup> However, presenting marital captivity, as solely a religious or private matter or an issue that is specific to certain groups within society not only leads to an inaccurate and limited understanding of the phenomenon, but it also risks misrepresenting these groups and may impact the process of finding effective and sustainable solutions to end and prevent marital captivity negatively. Marital captivity is neither a country or community-specific issue nor is it only limited to certain migrant or religious groups. As this study shows, it is predominately a human rights issue and it's important that it presented and perceived as such. A human rights centred approach benefits the conceptualisation and understanding of marital captivity within the ongoing dialogue. It allows an approach to marital captivity that instead centralises upon the affected individuals and their rights, and it also benefits the process of finding solutions by indicating the duties and responsibilities of all stakeholders to protect the rights of those affected. As for the raised concerns of intervention in a matter that is perceived as a religious affair, the human rights analysis adopted in this study reveals that secular arguments are outweighed by the human rights of the trapped spouses.<sup>1572</sup> In fact, practice shows that secular States, even the strictest (e.g. France) can and do intervene in order to resolve situations of marital captivity without jeopardising their secular character or encroaching upon the freedom of religion. Irrespective of their organisational structure, States Parties to human rights treaties remain obliged to comply with their human rights obligations.

## TARGET GROUPS

As States are the main subjects of human rights law, identifying the role of States to address marital captivity is central to this study. It is the State authorities that are primarily obliged to ensure the protection of trapped spouses' human rights, to address marital captivity and to eradicate its root causes. Thus, the research results are primarily aimed at all State representatives and agencies, which includes law and policymakers, judges, public officials, parliamentarians and the executive branch. In developing laws, policies and strategies to address marital captivity and in adjudicating over cases of marital captivity, State authorities can use the research results when assessing the human rights implications for trapped spouses and the implied human

<sup>1571</sup> For example, in the Netherlands, marital captivity is often discussed in connection to the religious or ethnic groups (mostly migrant groups) wherein it has been observed. The risk is that marital captivity can then come across as a religious or migrant issue. For more on this subject, see sub-chapter 2.3.

<sup>1572</sup> At times, national authorities in the Netherlands have provided secular considerations as an argument for limited State intervention and their refusal to adopt the progressive measures that have been proposed by experts and civil society. For more on this subject, see sub-chapter 2.3. See also the most recent reactions of the Minister of legal protection to the recommendations made by Pauline Kruiniger in the report '*Niet langer geketend aan het huwelijk! Juridische instrumenten die huwelijkse gevangenschap kunnen voorkomen of oplossen*'. Brief van de minister voor Rechtsbescherming, Kamerstukken II, 2017/2018, 34 775 VI nr. 101', p. 4–5.

rights obligations that rest on the State. Furthermore, the human rights legal framework adopted in this study provides guidance on how to weigh the competing interests and what the outcome of such an exercise should be.

Besides States and State authorities, the research results are also intended for civil society and trapped spouses. The revision of the rights that are at stake in a situation of marital captivity aim to translate the lived experiences in human rights language, to generate awareness of the affected rights and to empower the victims to claim the protection of their rights. Likewise, civil society organisations that encounter and/or address marital captivity can use the research results in their interactions with State authorities to demand the State to comply with its human rights obligations to protect trapped spouses and to address the root causes of marital captivity. Lawyers, too, can benefit from the research results when handling marital captivity cases. Besides the strategic use of available legal tools, a human rights discourse adds weight on the demand for judicial intervention and it ensures that the rights of trapped spouses are fully considered by the judiciary. Finally, the study reveals a new perspective of marital captivity that is relevant for society at large and even more so for religious communities and religious authorities. These are views that are intended to spark a dialogue within society and within religious communities. The objective of such a dialogue is to generate a greater understanding of the human rights of the trapped spouse, challenge the prevailing cultural and religious views and practices which enable situations of marital captivity to arise and encourage all efforts to find solutions within the communities.

## FOLLOW-UP AND IMPLEMENTATION OF RESEARCH RESULTS

As aforementioned, the intention is to widely disseminate the research results. Active steps have been undertaken to reach a wider audience and all stakeholders who encounter the phenomenon of marital captivity (e.g. judges, politicians, civil society, religious leaders, victims, religious communities, academics, social workers, public officials etc.). In this respect, a final conference of the larger NWO project took place on 13 September 2018.<sup>1573</sup> The objective of this conference was to bring together all of the relevant stakeholders and to discuss what measures are needed and attainable. The results of this study were presented at this conference. The recommendations and suggestions adopted in this study, as well as those deriving from the other three sub-projects, were discussed with a view to generating follow-up measures.

Additionally, as part of the dissemination plan of the NWO project, the findings of this study will be transformed into web pages which will be presented in English and Dutch on the website of the Atria Institute of gender equality and women's history,

---

<sup>1573</sup> Conference 'Gevangen in het Huwelijk: Recht, religie en praktijk', 13 September 2018, Utrecht.

which is one of the partner organisations of the NWO project.<sup>1574</sup> This ensures that the results of this study will reach a wider public and are also easily accessible. Furthermore, the author of this study has also undertaken to produce a short documentary on the phenomenon of marital captivity in the Netherlands.<sup>1575</sup> This documentary aims to reinforce the narrative of marital captivity as a human rights issue, to raise awareness of this issue and to further engage and mobilise stakeholders to actively pursue the eradication of this phenomenon.

Noteworthy, this study has also indirectly contributed to bringing marital captivity to the attention of the CEDAW committee.<sup>1576</sup> This has been achieved by providing expertise on the issue in the Shadow report of the Netherlands Institute of Human Rights to the sixth periodic report of the Netherlands. The inclusion of this subject in the shadow report has led to specific recommendations by the CEDAW Committee for the Netherlands to adopt in order to address the phenomenon of marital captivity.

## INNOVATION

Thus far, the inclusion of a human rights discourse remains limited. Where this is done, human rights law tends to be invoked as an additional argument in the ongoing debate.<sup>1577</sup> In this respect, the presented study is the first to fully adopt and develop a human rights perspective on the issue of marital captivity and to adopt a global perspective in relation thereto.

Adopting a human rights discourse is, as this study reveals, an important endeavour. It adds weight to the seriousness of the phenomenon. Being forced to remain married against one's will is in clear violation of fundamental rights. States parties to human rights treaties are, in international law, the main duty bearers of human rights. States parties to human rights treaties have to look into all available options so as to bring an end to these practices, irrespective of their State-structure. Additionally, a human rights discourse also allows to identify the human rights of the trapped spouse which are impaired by a situation of marital captivity. This essentially allows to centralise the discussion around the victims' suffering and actual needs, the obligations that the States have and the role that religious communities have in ensuring that spouses can enjoy and exercise their fundamental rights.

At the same time, a human rights approach allows to objectively take into account the trapped rights *vis-à-vis* the rights of religious communities, without undermining

<sup>1574</sup> See <<https://www.atria.nl/en>> last accessed 22 July 2018.

<sup>1575</sup> The short documentary can be accessed at <<https://youtu.be/ua2keyvIFBA>>.

<sup>1576</sup> *Netherlands Institute for Human Rights – Written Contribution to the 65<sup>th</sup> session of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) on behalf of the consideration of the sixth periodic report of the Netherlands*, (College voor de Rechten van de Mens, 2016), p. 2.

<sup>1577</sup> See also sub-chapter 1.4.

the rights of each sides. Furthermore, a human rights discourse enables to fully consider all of the competing interests and it also provides a recognised legal framework from which to measure and weigh the competing human rights, States' interests and State's obligations that are implied within situations of marital captivity. Most importantly the adopted human rights discourse has shown that States are obliged to address the root causes of marital captivity. This means that States are not only accountable for the violation or failure to prevent and protect against human rights violations, but they are also accountable for fostering and ensuring that social and cultural attitudes, practices, views and customs are compliant with human rights.

Thus, the innovative aspects of this study lie in the in-depth analysis of the specific human rights that are affected and their corresponding State's obligations. This allows the author to provide a new perspective on an old problem, to influence the dialogue on this issue and to demand effective actions by States Parties.

On top of that, the presented study also contributes to new perspectives concerning the subject of divorce in human rights law and violence against women. It advocates for the recognition of a right to divorce in contemporary times in order to empower trapped women and to give them a base to claim their freedom. Furthermore, instead of merely naming it as a form of violence against women, as has thus far been done, this study methodologically provides an analysis of what violence against women is and identifies its core components. This exercise allows the author to establish that certain situations of marital captivity constitute violence against women. Furthermore, the classification of certain situations of marital captivity as violence against women also helps to place emphasis on the insidious nature of the issue. It has far-reaching implications, not only for the trapped women, but also in the family, the religious communities and society at large. This is why it is crucial to address marital captivity on all levels. Samenvatting

Dit boek geeft vanuit een mensenrechten perspectief het fenomeen "huwelijkse gevangenschap" weer binnen de christelijke, joodse, hindoe-, en moslimgemeenschappen in zowel seculiere als niet-seculiere Staten. Huwelijkse gevangenschap is een complex sociaal fenomeen. Het gaat om een situatie waarin de ontbinding van een religieus en/of juridisch huwelijk om religieuze redenen niet mogelijk is of niet verkregen kan worden. Vrouwen worden onevenredig getroffen door situaties van huwelijkse gevangenschap. Het gevolg is dan dat één (meestal de vrouw) of beide echtgenoten vast komen te zitten in een huwelijk tegen hun wil. Iemand zit dat als het ware gevangen in een (religieus) huwelijk.

Naast echtgenoten zijn er ook andere partijen die betrokken zijn bij een situatie van huwelijkse gevangenschap. Zo zijn er de religieuze gezagsdragers, de religieuze gemeenschappen, de families en de Staat die allemaal een belang hebben bij de voortgang van het huwelijk dan wel de beëindiging ervan. De tegenstrijdige belangen en betrokkenheid van meerdere actoren maken het moeilijk om effectieve oplossingen te vinden om nieuwe gevallen van huwelijkse gevangenschap te voorkomen en bestaande

gevallen te beëindigen. Holistische en effectieve oplossingen om gevallen van huwelijkse gevangenschap te voorkomen of te beëindigen moeten nog ontwikkeld worden.

Dit boek beoogt de voordelen van een mensenrechtengerichte aanpak van huwelijkse gevangenschap te belichten en aan te tonen hoe mensenrechten-wetgeving ingezet kan worden bij het zoeken en ontwikkelen van effectieve middelen. Hiervoor wordt allereerst een grondige analyse gemaakt van de mensenrechten die getroffen worden door een aanhoudende situatie van huwelijkse gevangenschap. Een aantal mensenrechten die in het geding zijn in bijna alle gevallen van huwelijkse gevangenschap zijn hiervoor geselecteerd. Dit zijn: het recht op vrijheid van godsdienst, het recht om te (her) trouwen, het recht op privéleven, het recht op gezondheid, het recht op bewegingsvrijheid en het recht om vrij te zijn van geweld tegen vrouwen. Daarnaast worden in dit boek, mede door de focus op zowel seculiere als niet seculier Staten, de begrippen ‘secularisme en ‘verhouding tussen kerk en Staat’, toegelicht. De bespreking van deze begrippen maakt het mogelijk om te demonstreren hoe de structuur van een Staat de reikwijdte van mensenrechtenbescherming kunnen beïnvloeden.

De discussie over en analyse van deze onderwerpen en rechten laat dan zien wat de voordelen zijn van een mensenrechten-aanpak van huwelijkse gevangenschap. Uit deze analyse volgt, of en in hoeverre de belangen en rechten van alle betrokken partijen door mensenrechten wetgeving gegarandeerd en beschermd worden. Door alle tegenstrijdige belangen en rechten binnen het mensenrechtenkader te bestuderen, kan de conclusie getrokken worden waar de balans gevonden moet worden en welke belangen en rechten voorrang moeten krijgen in gevallen van huwelijkse gevangenschap. Daarnaast worden de mensenrechtenverplichtingen die op Staten rusten, binnen de context van huwelijkse gevangenschap, geïdentificeerd en wordt de handelingsmarge van Staten om in te grijpen in religieuze aangelegenheden uitvoerig besproken. Hierbij wordt rekening gehouden met het seculiere dan wel niet-seculiere karakter van Staten.