



Dear members of the States General,

Please allow us to introduce ourselves - we are Femmes for Freedom (FFF), an NGO that defends women's rights and has been working on behalf of women in marital captivity for over six years. We have placed the subject on the agenda in The Netherlands, lobbied successfully towards making marital captivity a criminal offence in The Netherlands, established the National Centre Forced Marriages, raised funds for airline tickets for Dutch victims of forced marriages and abandonment abroad, we discussed and set the agenda at the UN Committee for Women's Rights<sup>1</sup>, attended hearings at the European Parliament<sup>2</sup> and we have brought several successful trial court cases. Our expertise concerning this subject arises from the source: we have been established by women who know the subject from their own experience and we provide support and assistance to women in marital captivity (who frequently are referred to us by regular health and social welfare services).

Therefore FFF is grateful to all members of Parliament for their efforts and contributions during general consultations and plenary debates about contravening marital captivity. Due to your cross-party efforts since 2011 legislation, assistance and educational activities have been initiated. In 2012<sup>3</sup>, 2014<sup>4</sup> and in 2017<sup>5</sup> FFF made proposals to have included in the civil code a provision providing that both partners cooperate towards the dissolution of their religious marriage. We are happy that these proposals currently have been included in the report 'Niet langer geketend aan het huwelijk! Juridische instrumenten die huwelijksgevangenschap kunnen voorkomen of oplossen' [No longer chained to the marriage! Legal instruments that can prevent or resolve marital captivity], issued by Maastricht University [UM] (which you can consult at UM's website) as well as in Minister Dekker's letter, which was based on this report.

We are delighted that Minister Dekker of Legal Protection wrote a letter<sup>6</sup> on 24 April 2018 with the subject 'marital captivity'; in this letter he expressed the wish to develop legislation with a view to making it less complicated to obtain a religious divorce and to raising awareness concerning this subject, a topic to which FFF has been committed for quite some time. This legislation is of great importance. Leaders of patriarchal communities (and therefore many men and even women from these communities) have hardly any notion of the injustice that marital captivity entails for women. A clear signal that marital captivity is not accepted in The Netherlands will provide women with instruments to combat this injustice.

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1 Newspaper Trouw 10 November 2016 Too many girls are still fighting for their rights [Nog te veel meisjes vechten voor hun rechten]

2 In cooperation with ALDE on 25 June 2018.

3 <https://zoek.officielebekendmakingen.nl/kst-32175-31.html> (letter Minister Opstelten) and <https://zoek.officielebekendmakingen.nl/h-tk-2012013-118.html>.

4 Magazine Asiel & Migrantenrecht, nr 2 2014, Vraag het de migrantenvrouwen! [Ask the migrant women!] <https://zoek.officielebekendmakingen.nl/h-tk-20132014-65-4.html>

5 <https://eenvandaag-avrotros.nl/item/cda-en-groenlinks-willen-boete-voor-mannen-die-vrouwen-gevangen-houden-in-islamitisch-huwelijk>

6 Letter to Parliament about marital captivity.

At the same time FFF is convinced of the fact that UM's research has left many questions unanswered. Conclusions have been drawn that, although not intentionally, are harmful for women who find themselves in marital captivity, because the research is far from complete. We would like to elucidate this in the following:

### **1. Marital captivity and divorces in open conflict**

In the UM report marital captivity is defined as both a religious and a legal problem. However, there is another side to marital captivity: it is being used as a weapon in divorces in open conflict; this weapon is effective because of the vulnerability of women. It is a missed opportunity that this aspect has not been mentioned. The government has included the fight against divorces in open conflict in its coalition agreement<sup>7</sup>. In our opinion it would be very helpful if the activities undertaken in this context were to take into account the use of marital captivity as a weapon in divorces as well. The phrase 'divorce challenge', formulated in this context, does, however, not include one single project aimed at divorces in open conflict in migrant communities.

### **2. Continuation of marital captivity because fair trials are not conducted**

The report pays no attention to an important cause of the continuation of marital captivity, notably the absence of fair trials in several Islam-oriented countries. An example of this is the case concerning 'Sumo'<sup>8</sup>: she married in Pakistan, the marriage was acknowledged as well as dissolved in The Netherlands. The Dutch divorce decree has not been recognised in Pakistan, therefore she had to go to Pakistan for the dissolution of her marriage. In Pakistan her file was not treated in court, because the jurisdiction is rather corrupt. Pakistan is nr 105 of the 113 countries that are mentioned in the rule of law index<sup>9</sup>. For women in situations similar to Sumo's a motion was carried in the Dutch Lower House. This motion had been submitted by the members of Parliament Keklik Yucel and Jasper van Dijk on 14 November 2013; in this motion government was asked to explain in which way women faced with marital captivity and abandonment can count on consular help and proposals for improvement were made<sup>10</sup>. The government has not replied to questions about the way in which consular help for women in marital captivity can be improved. According to the report the researcher has read several Parliamentary Papers and motions, but this motion was not mentioned; in addition to this possible solutions remained unmentioned. FFF regrets this, because we are of the opinion that options do exist to advance the conduct of fair legal proceedings from within The Netherlands. In compelling/hopeless cases of marital captivity such as Sumo's it should be investigated in which way Dutch embassies abroad can monitor the principle of 'fair trial' and raise awareness among the authorities in the countries concerned. FFF is in contact with various legal NGOs abroad. We would very much like to be facilitated by the authorities towards investigating and initiating help and assistance abroad. The government could be asked to develop an action plan for consular, legal and political support of women who depend on a divorce in a different country in order to be able to escape their situation of marital captivity. The Netherlands should hold policy consultations with the countries in which these problems are most prevalent so that agreements can be established as to the way in which these problems could be dealt with. The mere fact that the Dutch government raise this topic with high officials and at a political level with these countries would contribute tremendous practical and moral support for these women. This has been asked several times by members of Parliament during debates in Parliamentary Proceedings; recently by Kathalijne Buitenweg during the budget debates of Justice and Security and in the motion submitted by Keklik Yucel and Jasper van Dijk. This part of the motion has not been discussed<sup>11</sup> by government.

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7 Most important topics from the coalition agreement with respect to divorce:

- there will be a national policy in order to prevent divorces in open conflict;
- the interests of the children should come first, and
- contact with parents and grandparents will be enhanced.

8 Opzij September 2012 Zelfs na scheiding nog geketend [Chained, even after divorce]

9 worldjusticeproject.org informatie Pakistan

10 Motion members Keklik Yucel and Jasper van Dijk 14 November 2013

11 <https://zoek.officielebekendmakingen.nl/kst-3284-53.html>

### 3. Consequences of marital captivity

The research report does not address an important consequence of marital captivity, notably that a man can have several women: he keeps woman A in marital captivity or she has resigned herself to her fate while he concludes a formal or an informal marriage with woman B. The former member of Parliament Jeroen van Wijngaarden (VVD) submitted an initiative note<sup>12</sup> to deal with this form of continuation of marital captivity in which he included the following items:

- Intensifying the enforcement of Section 1:68 of the Civil Code and Section 449 of the Criminal Code has been proposed.
- Extending the scope of the existing Section 449 of the Criminal Code from just the 'religious cleric' to include everyone who is involved directly and of his own volition in concluding an illegal (religious) marriage.
- The process of reporting this crime will be designed in such a way that this can be concluded digitally and from abroad. From now on all criminal offences should be included in one official report including the illegal sharia marriage. A woman who is a victim of rape within the marriage, of an illegal marriage and who lives in forced isolation has to report three separate crimes. The simplification proposed here would render this unnecessary.

FFF is of the opinion that Van Wijngaarden's proposals and proposed legal instruments for the prevention and solution of marital captivity deserve at least further study/elaboration.

In addition to the initiative note by former member of Parliament Jeroen van Wijngaarden a ban on remarrying at home and abroad for the duration of the marital captivity of the partner can be an instrument to prevent marital captivity and bigamy/polygamy. Currently the man can remarry, which exacerbates the distress of the woman in marital captivity. It remains to be seen whether the ban on polygamy<sup>13</sup> can be extended to be applicable to religious marriages concluded by clerics in The Netherlands. Title XIII of the Criminal Code applies to crimes against the civil status. In accordance with Dutch legislation polygamy implies that the marital status of the second spouse and that of children born from the illegal union are illegal. Based on international treaties and declarations given by international organisations there is also consensus that polygamy contravenes the principle of equality. Most countries that allow polygamy limit this privilege to men. As a consequence women can exert their civil and political rights only to a very limited extent. Because polygamy is discriminatory, countries are bound to ban polygamy by international law. The UN Women's Treaty (CEDAW) concerning banning all forms of discrimination of women is an important treaty in the fight against polygamy. The CEDAW Committee explicitly referred to the discriminatory effect of polygamy in their general recommendations from 1993 concerning this Treaty. The Committee stated: 'Concluding polygamous marriages contravenes the right of women to equality with men and it can lead to such serious emotional and financial consequences for her and her offspring that such marriages should be discouraged and banned.' The Committee on the Elimination of Discrimination Against Women (CEDAW), the Human Rights Council (HRC), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) have all concluded that polygamy infringes upon the principle of equality and the interests of the child.

### 4. Suggestions made by Dutch politicians

In chapter 3.9.3 'Developments in The Netherlands' the proposals of the former member of Parliament Nine Kooiman are discussed; in these proposals during the debate<sup>14</sup> and in a motion<sup>15</sup> she asked the

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<sup>12</sup> <https://zoek.officielebekendmakingen.nl/kst-34565-2.html>

<sup>13</sup> Apart from the civil ban on polygamy in Article 1:30 section 1 Civil Code and Article 1:33 Civil code, in Dutch law a criminal ban on polygamy has been included under Title XIII of the Criminal Code.

<sup>14</sup> <https://zoek.officielebekendmakingen.nl/h-tk-20122014-11-8.html>

<sup>15</sup> <https://zoek.officielebekendmakingen.nl/kst-32840-13.html>

government to investigate in which way the legal position of these women can be improved, and to investigate which role a possible extension of the Dutch divorce act can play in this respect. A referral is made to the application for legislation by Kathalijne Buitenweg and Madeleine van Toorenborg of 29 November 2017 for a generic rule in the Civil Code. FFF is pleased that Minister Dekker responded positively in his letter. Still FFF was surprised to learn that the UM researcher had not studied these questions nor the suggestions made by the former members of Parliament Nine Kooiman and Cora van Nieuwenhuizen-Wijbenga as to including marital captivity as a separate element in the Criminal Code.

### **Concrete suggestions and questions during Parliamentary debate 2014 that have not been studied**

During the debate of 20 March 2014<sup>16</sup> members of Parliament made concrete suggestions and posed questions to the then Secretary of State, Teeven. Foort van Oosten, member of Parliament, had previously made reference to the 'New-York Get laws' for the prevention of marital captivity - the other questions and suggestions were neither mentioned nor studied by the researcher. Members of Parliament Gerard Schouw, Foort van Oosten, Jan de Wit and Marit Rebel suggested foreign policy should try to realise the mutual recognition of divorce decrees as a solution for marital captivity. They also asked whether this can be addressed at the Conference of the Hague. The Minister has been asked to investigate further, together with Femmes for Freedom, in which countries of origin the possibility of marital captivity can arise. The importance of an international dialogue with countries outside of the EU to facilitate the recognition of Dutch divorces in these countries is mentioned as well. These suggestions and questions can also result in a long-term prevention of and solution to the problem of marital captivity but they have not been examined by the researcher of UM.

### **5. Role of Criminal Law (page 93 of the research report) against Civil Law and civil imprisonment**

Based on two respondents who have not been in direct contact with victims of marital captivity and no studies of criminal cases the UM has concluded that there are no experiences with the application of Article 284 Criminal Code (compulsory article) to contravene marital captivity. This is utter nonsense. As you well know FFF disposes of a legal help desk and is annually faced with an average of 50-60 notifications; these notifications concern forms of domestic violence, lack of marital freedom and marital captivity. A considerable part of the cases of marital captivity do not end in civil or criminal proceedings, because in the end husbands resigned themselves to cooperation towards dissolving the religious marriage after FFF had informed the women of their rights and the reluctant husbands had been informed about this through a lawyer. In some cases where men continue to refuse, in spite of impending civil and criminal proceedings, criminal justice and the intervention of the police has resulted in a solution. Appendix A contains a couple of case studies by FFF that prove that criminal justice is an effective last resort. After all it is not in the interest of spouses to be issued a criminal record.

On request of Parliament and the Public Prosecutions Department, the Police and the Justice Department in 2011 the government promised to provide information and trainings concerning marital captivity<sup>17</sup>. In FFF's experience police officials know the concept of marital captivity by now, but they are often unable to provide concrete suggestions, because the cases are highly diverse. Several institutions including the police will discuss complex cases with FFF. It is evident that Criminal Law is an ultimum remedium in situations of marital captivity. But the conclusion that there are no examples of the application of Criminal Law is in fact inaccurate and too bold. For each individual case FFF will assess which legal remedies have to be applied. One remedy is not necessarily better suited than another.

#### **Civil imprisonment**

In addition the researcher from UM, on the basis of three case studies, concluded that she prefers to

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16 <https://zoek.officielebekendmakingen.nl/h-tk-20132014-65-4.html>

17 <https://zoek.officielebekendmakingen.nl/h-tk-20112012-6-13.html>

bring cases to Civil Court. Civil Court will summon the reluctant husband to cooperate towards the dissolution of the religious marriage. If the husband refuses to cooperate in spite of the penalty payment imposed she prefers civil imprisonment, imposed by the Civil Court over a Criminal Justice pathway. In Civil Law civil imprisonment is an ultimatum remedium. FFF is of the opinion that UM should have examined the costs for the claimants/victims, and should have performed in-depth interviews with victims, judges, perpetrators and lawyers before expressing bold statements. The researcher is unaware of the fact that a penalty payment is not useful if the husband has no money - it is impossible to squeeze blood out of a stone. In FFF's experience women with children are against civil imprisonment because this can escalate the case and it can have a significant impact on the children as well. Another good example of a disadvantage of civil imprisonment is provided by a well-off Iranian-Dutch woman who contacted FFF: she had taken the Civil-Justice pathway. The court summoned her husband to cooperate towards the dissolution of the Iranian marriage on pain of a penalty payment. Because the woman had to pay her husband alimony, imposing a penalty payment was futile. Civil imprisonment was no option either, because the claimant always has to pay the costs of civil imprisonment. The legislator has motivated the cost of civil imprisonment as follows: it is not the State but the Other Party of the convicted person who has an interest in the continuation of the imprisonment and therefore this Party is liable for the expenses thus incurred. Although it is possible to claim these costs from the convicted party in many cases these costs cannot be claimed from the debtor in cases where the application of civil imprisonment as ultimatum remedium would provide an option.

A conviction to paying litigation costs that arise from tort has been provided in Article 6:96 Civil Code and 237 and further legislation with respect to civil procedures, including 241 Rv [legislation with respect to civil procedures] in particular. However, in family court cases the rule applies that it is allowed to reimburse these costs (Article 237 Section 1 Rv). FFF is of the opinion that it is unreasonable to claim these costs from a claimant in cases of civil imprisonment. It would be reasonable to change the law in such a way that these costs can be claimed from the reluctant husband.

To FFF's knowledge so far civil imprisonment has not been imposed by the Court in cases concerning marital captivity of women without children. UM has not performed field research nor has it examined jurisprudence concerning the legal instrument of civil imprisonment for women who brought their case to the Civil Court.

## **6. Information provided by government**

FFF regrets the fact that no use has been made of FFF's expertise for the planning of governmental information campaigns and that FFF has not been included in the list of contact addresses where people can be provided with more information/support. For example the guidelines 'Child marriages and informal marriages'<sup>18</sup> only refer to websites of Dutch organisations. These organisations merely have an advisory task. They do not provide legal services and support. FFF does offer this support. The publication issued by the Ministry of Social Affairs and Employment about all the aspects of the religious marriage does not mention FFF in the list of addresses to contact for further help and support.

## **7. Separate dialogue with religious communities and nominating clerics as civil registrars**

According to FFF's view, the recommendations 5 and 7 of the UM report, which advises the government to initiate a separate dialogue with religious communities and to nominate clerics as civil registrars is putting the cart before the horse. How many migrant women are part of the consultation forums that the government has established? How often have UM and other scientists advised to consult with women's rights organisations? In its report UM does not say a word about the role and the expertise of FFF and it has not contacted FFF. What is the value of expressing politically correct statements by male leaders of patriarchal communities who subsequently say something completely

different in their mosques or similar institutions? Authorities have even given these men roles in institutions for assistance and support. The government is of the opinion that imams should be involved in cases of honour violence. It is self-evident that government should be in contact with representatives of these communities. But why not include women from these communities? These consultations should be used to conclude agreements about verifiable progress of the community, not to consolidate the power of those who limit women's rights.

FFF is pleased that Minister Dekker has rejected recommendations 5 and 7 but we remain convinced that the Minister is excluding women from other issues, such as the publications about 'Child marriages and informal marriages' mentioned before and an article about aspects of religious marriage yet to be published.

#### **8. FFF sets agendas, lobbies and accomplishes results but is ignored when it comes to follow-up**

And finally the point that FFF finds most difficult to raise, but that needs to be mentioned nevertheless: although the majority of the changes concerning policy and legislation have been realised after lobbying by FFF, the authorities have rarely and even then only reluctantly involved FFF in further policy development. At best we are allowed to deliver input on a voluntary basis, while professional policy development is carried out at considerable costs by traditional, institutionalised organisations that have no active diversity policy and that are not familiar with the target group. Not only is this an injustice, it also leads to results of poor quality at higher costs. In our annual reports<sup>19</sup> you will find a survey of the results FFF has accomplished so far and what she is capable of accomplishing. There is no other organisation in The Netherlands that has a similar track record in this area. This track record is a result of the expertise of the target group. Without this expertise it is impossible to provide effective assistance and information. The target group is simply not reached. This is not a new problem. The UN Women's Rights Committee has already raised concerns about the shift of funds, which has resulted in poor financing of migrants, refugees and women's organisations<sup>20</sup>. Unfortunately FFF has reached the inevitable conclusion that the government does not even consider FFF to be a dialogue partner when the topic of marital captivity is being discussed. In Appendix 2 you will find a survey of the requests made by the Lower House to involve FFF in the policy development. We are still awaiting an invitation.

FFF does understand why government institutions are reluctant to involve her in the development and implementation of policies - after all FFF does not shy away from confrontation and can therefore be a difficult partner. In our opinion, however, it is not possible to bring about change whilst staying friends with everyone. The leaders of patriarchal communities may well be offended by a clear viewpoint in favour of fundamental rights for women and girls from these communities. This is, however, one of the conditions for realising change. However, as long as we do not take a clear stance in favour of the fundamental rights for women and girls, the majority of the leaders in these patriarchal communities will merely confine themselves to making a few politically correct statements while in practice nothing changes. And the people from these communities who do want change will shy away from opening their mouths because they know that the authorities will stop supporting them. As long as the authorities are predominantly wary of offending people, there will be no change. A clear stance on human rights is an essential condition for the start of a genuine discussion with the leaders of these communities and for the emancipation of the women in these communities. In short, according to us it is time to rally round these girls and women and to support their rights.

With kind regards, on behalf of FFF,

Shirin Musa  
The Hague, 14 May 2018

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<sup>19</sup> Annual reports Femmes for Freedom

<sup>20</sup> The conclusions of the UN Women's Rights Committee in 2016