

SUMMARY

Title: International exploration on forced marriages – a literature study on legal measures, policy and public debates in Belgium, France, Germany, United Kingdom and Switzerland

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This study was conducted in assignment of the WODC and provides a reaction to the promise of the Dutch Minister of Justice, Ernst Hirsch Ballín, made to the parliament to state an inquiry into how forced marriages are dealt with in a number of West-European countries. The aim of the study was to provide an international and actual overview on the policy and the debates on forced marriages in Belgium, France, Germany, United Kingdom, and Switzerland. The main question on policy and debates is divided into four research questions:

- 1) How is forced marriage defined in public debates on the subject?
- 2) Which policies and legal initiatives exist with regard to forced marriages?
- 3) Which numbers are available on forced marriages and what can be said about the scale and the nature of the phenomenon based on these numbers?
- 4) Are there public debates on forced marriages, and if so, what are some of the points in these debates?

The study was carried out by analysing scientific articles, newspaper articles, specific law texts, materials on the Internet, and by making use of the knowledge of legal experts who were consulted in an interview. With regard to research question 1 (definitions of forced marriage) and 4 (public debates) it must be noted that the analysis relies heavily on the interpretations presented in scientific articles. Therefore, the analysis is not based on empirical material only. Besides, it is difficult to define what exactly is a “public debate” and where does it take place, in part because some opinions are more likely to gain attention in the public domain than others. The greatest difficulty in examining the laws and policy on forced marriages was finding information about the implementation of the sometimes very recent policies, and often the researchers did not succeed in obtaining such information. The analysis and interpretation of the numbers on forced marriages was hindered by a lack of information on how these numbers had come about.

The definitions of forced marriage in the countries under study illustrate, above all, how difficult it is to define the phenomenon. A part of the problem lies in the nature of the problem: forced marriages are difficult and complex to signify for an outsider. Whereas the term ‘forced marriage’ does not have any explicit legal content, in the debates and policy there are pronounced ideas on what a forced marriage is. Some definitions are scientific, some legal and some social of nature. In Belgium, forced marriage is seen mainly as a migration and migrant issue. Considering forced marriages are often named together in one sentence with marriages of convenience, which are marriages that take place in order to obtain right of residence or nationality, the impression cannot be avoided that these two phenomena are intimately linked. Furthermore, forced marriages are more generally linked to marriage migration so that it is assumed that marriage migration is always about forcing someone to marry where the victims are always women and the perpetrators men. In Belgian debates on forced marriage, the topic is mainly brought up as way of problematising the presence of migrants and pleading for restrictions on immigration. Private organizations have not been very actively involved in public debates but they have made their opposition to forced marriages heard and they have gained publicity for the issue. In France, forced marriage is defined as a threat to *laïcité*, the notion of a strict separation between church and state. Especially the Islam and Muslims are problematised in French debates on the multicultural society. Forced marriages are perceived to be a custom of Muslims and, consequently, they are connected to Islam and also seen as a threat to *laïcité*. As a result, forced marriages are perceived to be a problematic cultural custom which threatens the secular character of the Republic. In addition to the cultural definition, forced marriages are defined as a question of gender because they are perceived to be a problem that especially touches young girls. In Germany, forced marriages are seen as a violation of human rights. They are also perceived of as a cultural matter. Here there is a tension between the notion of multiculturalism and the

popular idea of *Leitkultur*. This view implies that there is a German culture that is higher in the hierarchy, and should function as a guideline for migrants in their process of integration so that they leave other cultural customs, such as forced marriages, behind them. Explicit discussion on the definition of forced marriage takes place in Germany. Especially women's rights advocates consider both forced and arranged marriages as problematic because both are expressions of the same patriarchal mentality. Others, such as intellectuals, emphasize the difference between the two types of marriages and do not regard arranged marriages as problematic. In United Kingdom the "overseas dimension" of forced marriages is crucial in defining the phenomenon. The term 'overseas' refers to 'abroad' or 'foreign countries' and authorities see forced marriages as an issue that involves other countries, hence, has an overseas dimension. Possibly, this emphasis on abroad has something to do with the colonial past of the country. Just as in Germany, in the United Kingdom there has been explicit discussion on the definition of forced marriage. Representatives of Asian and Muslim organizations, the government, and the media make a strict distinction between arranged and forced marriages whereas women's rights organizations see both types of marriages as expressions of the same problematic patriarchal mentality. Women's rights organizations have pleaded for considering forced marriages a form of domestic violence in order not to culturalise the problem or to ignore the domestic violence that takes place in all kinds of families. Private organizations have played a very active and influential role in the debates on forced marriages. In Switzerland, forced marriage is seen first and foremost as a legal problem. It is a problem for the state which has to make choices regarding how to deal with it. Additionally, many participants in debates connect forced marriages to the culture of migrants that they do not regard as compatible with the Western values of Switzerland. There has been very little public debate on forced marriages and private organizations have not played a major role in the little debate that has taken place, mainly in the parliament.

Forced marriages are usually conceptualized within one or more of the following themes: gender, culture, migration or human rights. These themes are also apparent in the terminology and how it is utilized. That not everyone speaking about forced marriages means the same blurs the discussions on the subject. Besides, it seems as if debates on forced marriages are not so much about forced marriages as they are about problematising the presence of migrants in a country. In all of the countries under study, there is an apparent link between the definitions applied and the actual policy carried out. All definitions of forced marriage presented in this report are problematic because forced marriages are not seen as a separate phenomenon anywhere. They are always connected to and blurred by other social questions which is why a discussion on the topic itself is not getting anywhere.

Policy and law were analysed from the perspective of three areas of law: criminal, civil and migration law because all of these are relevant in dealing with forced marriages in the countries under study. In Belgium, forcing someone to marry is a criminal offence since 2007 and can be punished by a prison sentence ranging from one month to two years. In civil law, the minimum marital age of 18 years for both spouses is of importance, even though exceptions are possible. The law on marriages of convenience can also be significant. It obliges registrars to notify the prosecution if there are doubts about the intentions of (one of) the spouses. If applied properly by the registrar, this law can be a means of preventing forced marriages. In civil law, the conditions for annulment of marriage were altered in 2007. Contrary to before, 'reverential fear' of one's parents is now an accepted reason for annulment. The most changes have taken place in the area of migration law. Especially the rules concerning family reunification and - forming were made stricter in 2006 when the minimum marital age was lifted to 21 and the extra requirements, such as minimum income were once more made stricter. The stricter migration policy aims at preventing forced marriages and the acquisition of rights of residence by partners in a marriage of convenience. These limitations do not concern family reunification and forming with Belgian citizens and, after a liberalization of the nationality law, some 80% of the cases of family reunification and forming actually involve Belgian citizens. The influence of other countries is observable in migration law. Its further restriction took place without Belgium being obliged to it. The country made use of the leeway provided by the European Family Reunification Directive. No information was available on the implementation of these rules.

In France, changes have mostly been made in civil and migration law. Migrants, especially young African girls, are named as a specific target group in the policy on forced marriages. In the French criminal law there is no specific offence of 'forcing someone to marry'. Rape and other violent crimes that might be involved in forced marriages are of course punishable by criminal law. In civil law, the minimum marital age was lifted to 18 years for women, the limit which already was applied to men. This move was motivated as a measure to prevent forced marriages. Additionally, measures to make the recognition of foreign (outside EU) marriages more difficult were undertaken. In order to obtain the notification needed for the recognition, an interview is required in the consulate of the country where the marriage has been registered. During the interview the consular agent tries to assess whether this is a case of forced marriage. Changes also took place in the regulations concerning the annulment of a marriage. Before 2006, 'reverential fear' of one's parents or other persons was not considered an acceptable reason for annulment because 'fear' as such is explicitly excluded as basis for annulment in the French contract law. Prior to 2006, this provision was also applied to marriages which are a form of contract. Diverse protective measures for minors are also possible in civil law. The migration law has been made stricter especially since the year 2002 in order to (among other motives) tackle forced marriages. In 2003 and 2006, marriage migration and migration as part of family reunification were further limited. In 2007, integration courses in the country of origin were introduced as a pre-condition for spouses of French citizens and third-country-nationals. Failing to complete the course, the alternative is to sign a so-called integration contract which obliges the migrant to integrate in the French society. The introduction of these integration contracts was motivated as a means of encouraging especially vulnerable women to integrate in the society. Moreover, integration contracts are also expected to protect them from forced marriages. This policy of integration was introduced under reference to other European countries which already had a similar policy. The arguments that were used to justify these measures resembled those presented in other countries, especially in the Netherlands and Germany. No information was available on the implementation of these measures.

In Germany, since 2005 'forcing someone to marry' forms a particularly serious case of coercion in the criminal law. It can be punished with a prison sentence ranging from two months to five years. However, until 2008 there had as of yet not been any court cases dealing with this offence. In civil law, the use of force in the case of marriage forms a valid reason for annulment of a marriage but in the end the possibilities to have a marriage annulled are limited. In the practice annulment has little relevance in cases of forced marriage because a divorce is much easier to obtain. Two changes have been planned in the rules on annulment. Firstly, the period within which the annulment has to take place is to be extended. Secondly, more financial aid is to be provided for the person being forced and less for the other spouse. Just as in most countries, most changes relevant to forced marriages have taken place in migration law. Especially the possibilities to family reunification were limited further with the explicit aim to prevent forced marriages. If there is coercion involved, family reunification cannot take place. In addition, the minimum age for entrance to Germany was elevated to 18 years for both spouses and basic knowledge of German language was introduced as a pre-entry requirement. Critics of these changes in migration law have proposed diverse protective measures in the area of migration law. The influence of other countries is observable especially in migration law: the restrictive migration measures were introduced under reference to the European Family Reunification Directive that does not make these changes mandatory, but creates room for them. Private organizations have recently become active in developing policy. The NIP, the German *Nationaler Integrationsplan*, the national integration plan which deals with a number of integration problems such as forced marriages includes also private organizations in addition to government bodies.

In United Kingdom, there has been a lot of discussion on criminalization but in the end any plans to that end were abandoned, partially under the pressure of NGO's. These organizations have also played a central role in the development of the British policy on forced marriages. In criminal law, 'forcing someone to marry' is not a separate offence but some actions that can be involved in forcing someone to marry, such as rape, are punishable under the criminal law. The most important instrument in the civil law is the *Forced Marriage Civil Protection Act* which came into force in 2008. This instrument is a combination of different measures that can be undertaken on diverse levels and which all aim at protecting the victims. The most

important tool of the Act is formed by the so-called *Forced Marriage Protection Orders*. These FMPO's are both preventive and protective. They give the courts wide powers to include such prohibitions, restrictions or requirements or other terms that are considered appropriate in an individual case. These can even involve action in a foreign country even though FMPO's do not have legal power abroad; their application depends on the local authorities. An FMPO can be applied by the person to be protected, but also by others in the social environment, such as friends and social workers. Not complying with the terms of the FMPO is not a criminal offence but will constitute a *contempt of court*. Since its introduction, the Act has been applied at least six times. In migration law the minimum marital age in case of immigration into the UK has been elevated twice so that from 2008 on the age limit is for both partners 21 years. This elevation was justified explicitly as a measure to prevent forced marriages. In migration law the rights of residency have been extended in cases of forced marriage. Additionally, the conditional period after marriage migration until the migrant obtains a residency permit was extended from one to two years. Proposals have been put forward to introduce English language skills as a requirement for entry in the UK. Especially the changes in migration law demonstrate an influence of other EU countries. The elevation of minimum marital age and the plan to introduce language skills as an entry requirement were done under reference to Denmark, Netherlands and Germany.

In Switzerland, the law and policy are partly protective (civil and migration law), partly sanctioning (criminal and migration law) and partly preventive (new civil law). Two initiatives were introduced in the Swiss parliament to criminalise forced marriages after the example of Germany but both proposals were turned down. Important argument to do so was that the existing laws were sufficient to deal with forced marriages and that the problem is not so much on being able to punish the perpetrators as it is finding both them and their victims. In civil law a minimum marital age of 18 for both spouses is of importance with regard to forced marriages even though it has not been proven that this minimum age actually helps to prevent forced marriages. As in Germany, it is possible to annul a marriage when conducted under duress but this possibility has little practical relevance because a divorce is easier to obtain. The most changes have been introduced in migration law where the right to family reunification no more applies in cases of forced marriage even though it is difficult to prove that a marriage is forced. As a protective measure, the right of residence was extended for victims of forced marriage. After the dissolution of the marriage or other family bond, the victim of a forced marriage maintains his or her right to extend the residency permit under certain conditions or if there are significant personal reasons. If a person leaves Switzerland for a period longer than six months, even if the stay abroad is connected to being forced to marry, he or she loses the right to extend the permit. Some proposals have been put forward to make the safe return of such persons easier. Together with the changes in migration law, new civil law provisions came into force with the purpose of combating marriages of convenience. Registrars can oppose or invalidate such marriages. Both the changes in migration and civil law aim at preventing forced marriages from taking place, even when primarily targeted at marriages of convenience. Furthermore, a policy of integration in the form integration contracts was introduced for the same purpose. Migrants who come to Switzerland as part of the process of family reunification with third-country-nationals are obligated to sign such a contract that obliges them to improving their language skills and to acquiring knowledge about the Swiss society. The influence of other countries is observable in the proposals for criminalization of forced marriages which occurred with explicit reference to Germany and in the end. The proposal to elevate the minimum marital age for marriage migration to 24 years after the example of Denmark was not accepted. Private organizations have not played a major role in developing the policy but they have been active in providing expertise, advice and protection for both the general public and those involved in forced marriages.

The last four years, both specific criminal and civil laws have been introduced as measures against forced marriages in the countries under examination here. In all of these countries, criminalising the act of 'forcing someone to marry' has been a topic of discussion but only Belgium and Germany have, in the end, chosen for this path. The most prominent argument used in favour of criminalization is the expected symbolic effect: criminalisation shows that forced marriages are disapproved of and possibly also functions as a deterrent. The most important arguments against criminalization are the minimal added value of it since the act of forcing usually is forbidden under the existing provisions and that criminalization will work as a deterrent

on the victims who will not dare to come forward and it will prevent them from reporting the perpetrators because doing so could result in their parents or family members being punished. Both arguments in favour and against have been used in the countries where criminalization has been abandoned but especially in the United Kingdom the protection of the victims was an important consideration in the decision not to criminalise forced marriages. Most countries have chosen a civil law approach in order to protect the victims.

Nevertheless, the most changes have taken place in the area of migration law. A stricter migration law is often defended as a measure to combat forced marriages but there is little evidence to suggest that migration law can meet this end. Both the low total number of protective measures and the popularity of migration measures is somewhat curious considering the 2005 recommendations of the Council of Europe. The Council emphasized the necessity of protective measures and providing information for the general public. Measures to restrict migration were not recommended by the Council. This conclusion corroborates the finding that discussions on forced marriages are often really about problematising the presence of migrants.

In the end, it is difficult to say anything about the effectiveness of legal measures in dealing with forced marriages because there is little information available on the implementation. Besides, many of the measures discussed in this report were only introduced in the last couple of years, so that there is still little experience on their implementation. And yet, a consensus seems to be emerging among the participants in policy discussions that a coordinated approach with measures on different levels is required to tackle the issue.

Even though numbers are often mentioned in political and other debates on forced marriages, these are of little value in trying to say something about the total number of forced marriages. It is hard to say anything more about the total number of forced marriages than that forced marriages do exist. The gender dimension of the problem of definition is clearly observable in the figures: in most countries male victims are simply excluded from the numbers or not even studied in the first place. For each country, a number of studies was examined and analysed. This analysis shows that, due to various definitional problems in determining what a forced marriage is, it is not clear what is being measured and when the forced marriages in question took place. Six factors contribute to blurring what exactly is being measured. 1) The object of the study is not clear because the boundaries between arranged, forced and other marriages can be fluid. 2) The results are closely linked to the population under study which often consists of migrant women. Men are excluded and it is not always clear what is exactly meant by designations such as "Turkish". 3) Research into the total number of "cases" of forced marriage often produces obscure results because it is not clear what constitutes a case. 4) When the total number of forced marriages is measured by looking at the contacts with NGO's, one does not come to know anything about the number of unique cases because more than one organization can be approached by the same persons and more persons can be concerned with the same case. 5) The total number of forced marriages is derived from figures on another subject where it is not clear what the exact relationship is between that other subject and forced marriages. 6) Numbers are derived from another population where it is not clear whether the numbers on the one population are relevant or representative for the other population. In addition, it is difficult to specify the period in time that the numbers deal with. Survey statistics, for example, often deal with the total life course of the respondent so that the forced marriages being measured all occurred at different points in time and possibly in different countries. The only solid conclusion one can draw is that forced marriages do take place.

With regard to all the research questions together, it is clear that the definition of what is a forced marriage is the key problem. A large part of the problem has to do with the complexity of forced marriages since the boundaries between forced and arranged marriages can be fluid. Forced marriages are difficult to observe for an outsider. But part of the problem also lies in the way forced marriages are perceived of. The different terms such as forced marriage, marriage of convenience or arranged marriage are all utilized more or less synonymously which makes a well-focused discussion on forced marriages alone impossible. We also acknowledge that in public discussions forced marriages are often associated with a number of theme's, such as migrants, culture, gender inequality and human rights. In the case gender inequality, for example, it is usually assumed that the victims are women and that men are not forced into marriages. This way, the discussion and the resulting policies do not succeed in actually addressing the issue of forced marriages and

designing measures against it. In the policy, the problem of definition is apparent in four ways. Firstly, the choice of policy instrument is connected to how forced marriages and marriages in general are defined. The popularity of migration measures as an instrument to tackle the issue is clearly linked to the definition of forced marriages as a migration issue. Marriage is usually considered a legal contract and as a result, customary marriages are left outside the definition of possible forced marriage because they are not considered marriages in the first place. Secondly, the inherent complexity of the phenomenon makes it difficult to construct restricted and specific definitions which are essential for legal and other measures. Thirdly, the implementation of policy requires knowledge about when to implement and when not to implement, hence clear definitions which are difficult to construct. And finally, the policy lacks reliable numbers on forced marriages because also the numbers are affected by problems of definition which make the measurement difficult.