

Summary of Joanne van der Leun & Avalon Leupen (2009) *Informele huwelijken in Nederland; een exploratieve studie*. Leiden: Universiteit Leiden, Leiden Law School.

Dutch law only recognizes civil marriage. This summary describes the results of the explorative research on the existence of informal marriages in the Netherlands. The project was conducted in spring 2009, following indications that this type of marriages frequently occurred. There were fears that these marriages were signs of resistance towards the state and that they might form a risk for national security. The research consisted of a literature study, and 24 additional interviews with key respondents.

The research questions are the following:

- What forms do informal marriage take in the Netherlands?
- What are the nature and the scope of this type of marriages? And what is known about the backgrounds of the people who engage in these marriages and servers or ministers involved?
- What motives underlie informal marriages, both for partners and servers or ministers?
- What is known about the consequences of informal marriages for the partners involved?
- What is the reach of the law? When does a violation of the law take place, and where and to what extent does the Penal Code come into play?

Literature en fieldwork

The report comprises an inventory of the existing literature. Available knowledge is fragmented and often comes to the fore only indirectly. Forms of informal marriages have been classified as religious marriages (Hindu , Islamic, and catholic), alternative marriages (humanist and wicca) and polygamous marriages. In the political and media debates of the last years attention goes primarily to Islamic marriages.

As limited information was available, 24 additional interviews have been held with key informants within women's organisations, student organisations, migrants associations, universities and other relevant instances, among which two municipal registers within large cities. Below, the findings from the literature review and the empirical part of the study will be summarized following the research questions. The study was a short –term explorative research project based on divergent sources which did not result in 'hard facts'. It does offer indications of the nature, extent and background of the phenomenon of informal marriages in the Netherlands which are underpinned with fieldwork.

What is the nature and the scope of this type of marriages? And what is known about the backgrounds of the people who engage in these marriages and the servers or ministers involved?

Reliable figures cannot be provided. Although the scope of the issue appears to be relatively limited, most respondents in the empirical part of the study were able to give examples at first or second hand. With informal marriages within the traditional religions in the Netherlands the scope appears very limited. As to alternative marriages no trend was observed. Hindu marriages among inhabitants with a Surinamese background appears to decreasing, as mainly older generations were involved. With respect to Islamic marriages the opposite trend is observed. Within divergent segments of society it is observed that informal Islamic marriages increase.

Some respondents associate this increase with the search for a pure Islam, mainly among second generation Moroccan youth and Dutch converts. It also mirrors the general trend of informalisation of relationships. The literature also relates this increase with fundamentalism. Respondents in the empirical study make very clear that Muslim marriages within mosques in the presence of an imam is decreasing.

What motives underlie informal marriages, both with partners and pastors or ministers?

The study provided indirect insight into motives of (prospective) partners. These motives strongly diverge and sometimes partially overlap. The most important reason named is that an informal marriage makes a relationship and sex possible, without having to marry by law. Living together without being married, which is widely accepted among the Dutch population, is mostly not accepted by the Muslim community. Religious marriage is also seen as an experimental period. If the partners are still with each other after a certain period, than they can take the next step to the municipality. Sometimes by way of reconciling the way of life with the conscience, sometimes to appease parents. Polygamy as a motive has not been found to be wide spread. A lack of knowledge on rules and regulations is sometimes mentioned with respect to migrants who have recently arrived in the country.

Other motives primarily played a role in the literature and in public debates, but hardly in the interviews. There can be a pragmatic motive when one the partners is unable to obtain a (copy of) a birth-certificate or other document which is needed. Moreover, some Muslims can value the Islamic marriages more than civil marriage according to Dutch law. A motive of resistance to the state is only found within sources about the The Hofstad Network (or *Hofstadgroep*), an alleged Islamist organization of young Muslims people. At the least the study makes clear that additionally to troubling motives there are many others, much less troubling.

What is known about the consequences of informal marriages for the partners involved?

With respect to the crucial question concerning the consequences of informal marriages, two perceptions arise. Some respondents emphasize that the people involved are well aware of the differences between civil and religious marriage with respect to rights. Notably, this is predominantly an issue for second generation migrants. First generation migrants were in most cases already married in the country origin.

Other respondents, mainly these working for women's organizations, underline that many women are not or not fully aware of the fact that they cannot fall back on rights (such as property rights and responsibility for raising children) in the Netherlands, if a civil marriage is lacking.

Written sources also point to other consequences such as polygamy, dependency, social isolation of women and forced marriages of underage women . The interviews do not confirm this. The fear that informal marriages could bring women under the sphere of influence of radical Muslim groups is mentioned in the media and political debates in the Second Chamber. This is based on the same sources as those on which a 2006 report of the National Coordinator for Counterterrorism (NCTb). The assumption that the correlation between informal marriages and radicalization would be causal is not corroborated. Several respondents emphasize that fact that there is no such a causality.

What is the reach of the law? When does a violation of the law take place, and where and to what extent does the Penal Code come into play?

Dutch law only recognizes civil marriage (section 1:30 BW, Civil Code) and states in section 1:68 BW that no religious ceremonies are allowed to take place, before the parties involved have proven to the server or minister (*bedienaar van de godsdienst*) that their civil wedding has taken place. This is sanctioned in section 449 Sr, Penal Code, which describes that the server or minister is punishable by fine of the second category if he conducts a religious marriage service beforehand.

An infraction of the law can only take place when a server or minister conducts the marriage service. In the present study, we have seen examples of religious ceremonies in which indeed a pastor, imam, pandit, or priest conducts the service. At first sight this seems to fall under the reach of the law. Jurisprudence is, however, lacking. The empirical research points to three complications. First, when is a religious ceremony a wedding ceremony or a marriage? Some ceremonies, for instance many of those among young Muslims, appear indeed to be meant as a marriage. However, some ceremonies can rather be seen as celebrating a relationship. Secondly, it is not clear who exactly is meant with a server or minister as mentioned in the law. Many Islamic marriages take place without an imam being present. A father who is able to recite the Koran, for instance, is also allowed to conduct the service. Wicca services (also dubbed 'witch' ceremonies) are lead by a high priestess sometimes together with a high priest. Are they server or minister as meant under the law? It is not clear how a judge would decide. In the third place, questions regarding what a religion is exactly are also still open. Is Wicca a religion, and what about a 'natural religion'?

Many of the examples mentioned in our interviews cannot unequivocally be seen as infractions of the law. Legally, the relationships of many Young Muslims and those of people in alternative religions do not fundamentally differ from unmarried cohabitation which is widely accepted in the Netherlands.

In view of potential further inquiries or research this report also took stock of gaps in available knowledge, and how these voids could be addressed. The authors question the added value of further research into informal marriages and do not think the necessity stems from the present findings. Yet, this remains a political and a policy choice.

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