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# **Wellbeing of Transnational Muslim Families**

## **Marriage, Law and Gender**

**Edited by**  
**Marja Tiilikainen, Mulki Al-Sharmani and Sanna Mustasaari**

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## 2 Converts, marriage, and the Dutch nation-state

### Contestations about Muslim women's wellbeing

*Annelies Moors and Vanessa Vroon-Najem*

#### Introduction

In the Netherlands, in the course of the previous decades, new legislation has been tabled and older laws have been revived in order to restrict particular kinds of transnational and/or Muslim marriages. An often-used argument in the ensuing public debates is how such restrictions will strengthen Muslim women's position and hence will be beneficial to their wellbeing. This then raises the question of how Muslim women who engage in these marriages evaluate such unions and their impact on them. In line with the introduction of this volume, we focus on wellbeing in a broad sense, that is, including women's ethical, relational, and material wellbeing. In addressing possible tensions between public debate and policy making, on the one hand, and the perspectives of Muslim women, on the other, we focus on one particular category of Muslim women, that is, converts to Islam. We do so as this category is particularly well positioned to highlight the tensions between legal citizenship and national belonging inherent to the hyphenated concept of the secular nation-state. Finally, we analyse the effects of the criminalization of particular forms of marriage and how the notion of the 'freedom to choose whom to marry' is politically instrumentalized to enable and disable particular kinds of marriages.

For this chapter we draw on insights gained from the long-term fieldwork of Vanessa Vroon-Najem on women's conversion to Islam in the Netherlands (Vroon-Najem, 2014) and from Annelies Moors' work on concluding marriages in Muslim majority countries and the Netherlands (Moors, 2013; Moors, 1995). Starting in the autumn of 2014 we engaged in joint fieldwork that focused more explicitly on how converts marry. This included extended conversations with over 35 female converts about how to find a marriage partner and how and when to enter into an Islamic marriage.<sup>1</sup>

The converts we talked with are white Dutch women, as well as women from various migrant backgrounds. Previous research indicates that the former most strongly experience how their conversion produces tensions between juridical citizenship and national belonging. Becoming recognizably Muslim, particularly through wearing a headscarf, puts their *self-evident*

belonging to the nation into question and turns them into symbolic migrants. Many of them reported that after their conversion they were asked whether they had 'turned Turk or Moroccan'. Non-white women did not experience such a sharp shift in how the majority society viewed them after conversion, as even prior to their conversion they were already considered as falling outside the national fold (Galonnier, 2015; Özyürek, 2015; Moosavi, 2015; Vroon-Najem, 2014; Jensen, 2008). In this contribution, however, we do not spell out the particular backgrounds of the converts because, for the issue we address, that is, the tensions between the problematization of Muslim marriages and the experiences of converts themselves, our research indicates that it is their positionality as *converts* that affects them most strongly.

In the following we start with an analysis of how transnational and Muslim marriages have become problematized and the lines of argumentation used. We then turn to the converts themselves. After presenting their marriage trajectories, from finding a spouse or turning an already existing relationship into a marriage to decisions regarding how to conclude their marriage and in which order, we analyse how they evaluate such marriages in terms of their ethical, relational, and material wellbeing. Finally, we point to the effects of the criminalization of particular forms of marriage and how the notion of the 'freedom to choose whom to marry' is politically instrumentalized to enable and disable particular kinds of marriages.

#### Transnational Muslim marriages: regulations and debates

Often the term 'transnational marriages' is used for a particular category of migration marriages that brings together people who have grown up in different countries with which they continue to keep ties (a more precise term would be 'trans-state' marriages). This term is also often used for migration marriages that involve people from the same national or ethnic origin, such as when Moroccan-Dutch men or women marry a partner from Morocco (Hooghiemstra, 2003).

In our research project, we broaden the notion of transnational marriages to also include marriages in which spouses are considered as, or see themselves as, of different national origin, even if they are citizens or long-term residents of the same country, such as when white Dutch men or women marry a partner of Moroccan origin, or when people from a different national origin, say Morocco and Suriname, marry. Such forms of identification are not stable; in due course people may feel more Dutch (or less), in interaction with how they are interpellated by the majority population. In other words, identification and the production of particular forms of subjectivity are always in process.

Using such a broad notion of transnational marriages enables us to address the tensions inherent in the concept of the nation-state between the rights and obligations of juridical citizenship on the one hand and the subjective notion of national belonging on the other (Baumann, 1999, pp.18ff; Hage, 1998, p.52). Focusing on the latter, we foreground in this contribution the subjective element in the hyphenated concept of the nation-state. We use the term

'transnational marriages' then as a floating signifier, as a blurred rather than as a sharply delineated category. Taking subjective feelings into account, marriages are not simply either transnational or not, but they are transnational in different ways, and to a greater or lesser extent.

Our research indicates that marriages of converts to Islam in the Netherlands are often transnational. Some of these converts themselves have a migrant background, and still feel connected to their or their parents' countries of origin. In other cases, their marriages turn out to be transnational because they marry someone who is either a post-migrant or a new migrant from a Muslim majority country. Hence, many converts are not only affected by the discourse on Islamic marriages but also by that on transnational marriages.

### *Debates and law-making: transnational marriages and Islam*

In the Netherlands, both transnational marriages and, more recently, 'Islamic marriages' have, again, become the topic of public debate and law-making.<sup>2</sup> In the 1970s migration marriages were considered as having a negative impact on the wellbeing of white Dutch women who were allegedly tricked into fraudulent marriages by migrant men, while by the 1980s and 1990s post-migrant women were seen as victims of their families, marrying them off for a high dowry to men from the country of origin who were eager to migrate and gain residency rights. In the subsequent decades, women who were brought as 'import' brides to the Netherlands from the male (post-)migrants' countries of origin were similarly considered as victims of forced marriages (Bonjour and de Hart, 2013, pp.67–68).

In order to counter migration marriages, policy makers have taken a host of measures, varying from the Act of Prevention of Fraudulent Marriages (1994), increasingly high income and age requirements (starting in the early 2000s), introduction of pre-departure integration requirements (2006), extension to five years of spouse-dependent residency permit (2012), special requirements for consanguineous (cousin) marriages (2014), and the non-recognition of all marriages under 18 years of age (2015). In all of these cases, migrant women's wellbeing (i.e., avoiding 'arranged and forced marriages') has been a strong legitimizing argument, with polygamous marriages, cousin marriages, child marriages, and more generally arranged marriages all considered as an indication of forced marriage (Bonjour and Kraler, 2015; Sterckx, et al., 2014; De Koning, Storms and Bartels, 2014).

Whereas these issues have been extensively discussed in the literature about transnational marriages, one element that has remained undertheorized is how the problematic side of these marriages has increasingly become linked to 'Islam', implicitly or explicitly. This was the case already in the early 1990s when polygamy became a topic of discussion, while the dowry (*mahr*) marriages refer to a central element of the Muslim marriage contract. Also, cousin marriages and underage marriages (the former emerging in debates about marriage migration from Turkey and Morocco, and the latter in the

case of the recent Syrian refugees) have first and foremost become associated with Muslims.

These debates and policy measures need to be seen in a context in which the presence of labour migrants from Muslim-majority countries has been redefined and problematized in the course of the last 50 years. Already by the 1980s the presence of these migrants and their families was no longer seen as a welcome solution to labour shortages but had become defined as a societal problem. (Post-)migrants from Muslim-majority countries such as Turkey and Morocco, at first labelled as foreign guest workers and then as ethnic minorities, were now increasingly addressed as Muslims, with some also self-defining as such.<sup>3</sup>

By the 1990s, mainstream politicians in the Netherlands had already started to speak about Islam as incompatible with European values, and by the end of the 20<sup>th</sup> century a populist, neo-nationalist, anti-Islam movement, that claimed to express the emotions and sentiments of 'ordinary autochthonous (white Dutch) people', started to gain ground, arguing that the way of life of the majority population was under threat of Islamization (Geschiere, 2009). The terrorist attacks of 9/11, the murder of Pim Fortuyn in 2002 (by an animal rights activist), and of Theo van Gogh in 2004 (by a Dutch-Moroccan, who claimed to have done so on religious grounds) and the emergence of Wilders' anti-Islam *Party for Freedom* have strongly contributed to an Islam-unfriendly climate.

Dutch policy makers on the right and on the left have increasingly agreed with the position that (post-)migrants will only integrate into Dutch society if the Dutch national identity is more firmly established. This entails that both public debate and policy making have become more explicitly assimilationist, placing increasingly high demands on Muslims in particular to prove their belonging to the nation and their loyalty to the state. With citizenship increasingly defined in terms of shared values rather than with respect to legal rights and obligations, this political discourse produces the differences it seeks to control (Moors, 2009).

### *Problematizing 'Islamic marriages'*

In the above we have argued that transnational marriages as a problem-space have become intimately linked with Islam. In the 2000s, however, we also witness the emergence of 'Islamic marriages' as a topic of debate in itself. The first instance emerged in 2005 in the context of the trial of the members of the Hofstad network (an alleged terrorist organization) when journalists reported about 'Islamic marriages' that were concluded in the circles around this network. These marriages were not preceded by a civil marriage, and they were concluded in a highly informal manner, without the knowledge, let alone the involvement, of the parents of the young women. In early 2006, one of the Dutch security services even published a report asserting that Islamic marriages formed a threat to national security. The main arguments were that these marriages may function as a means of recruiting women for violent jihad, that they can be

considered as an indication of a man entering the last phase prior to becoming a martyr in a terrorist attack, and that they may in time be a threat to the democratic rule of law as ultra-orthodox Muslims supposedly refuse to register a civil marriage on ideological grounds (NCTb, 2006, pp.26–27).

In 2008, Islamic marriages again became a topic of extensive public and parliamentary debate. This time the target was imams attached to salafi-oriented mosques; they were accused of concluding Islamic marriages between partners who had not yet performed a civil marriage. Until then the regulation prohibiting religious functionaries from concluding such religious marriages had largely remained dormant.<sup>4</sup> Members of parliament, from the left to the right, played a pivotal role in turning Islamic marriages into a matter of public concern. This time, Islamic marriages were considered as evidence of and as an instrument for the development of a strictly orthodox Islamic ‘parallel society’ that purposely distanced itself from Dutch society. As had been the case with the newspaper articles in 2005, the arguments presented by members of parliament resonated strongly with those of the reports produced by the Dutch security services (especially AIVD, 2007).

Whereas two different categories of Muslims were the target of these two rounds of media hype, namely violent jihadists and salafi-oriented imams, in both cases the women entering into these marriages were by and large defined as victims. During the first of these, it was argued that the women were recruited by male extremists, who employed ‘loverboy-like’ practices in order to mobilize them for jihad (NCTb, 2006, p.22). In the case of salafi-oriented imams, the women were considered as the victims of those who wanted to institutionalize *shari’a* with its gender inequality, also enabling polygamous and underage marriages (AIVD, 2007, p.68).

More recently, since 2014, public interest in ‘Islamic marriages’ has centred on the women travelling to areas held in Syria by ISIS and similar jihadist groups. At first, these women were considered naïve victims of male recruiters, as had been the case with the women in the circles around the Hofstad network. By early 2016, however, the Dutch security services expressed a different point of view (Navest, de Koning and Moors, 2016). Its 2016 report explicitly stated that anyone travelling to ISIS territory consciously chooses to join a group that is involved in terrorist activities, in Europe as well. “In practice this means that both male and female travellers, armed or otherwise, are participants in the struggle of ISIS”, the report concluded (AIVD, 2016, p.15).

The most recent focus on ‘Islamic marriages’ occurred when the right-wing liberal party (VVD) presented a written plea to further criminalize ‘Islamic marriages’. Somewhat ironically, the plea starts with the statement that “In the Netherlands you decide for yourself with whom you fall in love, with whom you marry or not, and in which order you choose to do so.” The central argument is again that ignoring Dutch civil marriage law is a “rejection of the equality between men and women, the Dutch way of life and the history of emancipation of Dutch marriage law”. The plea proposes to further enforce the prohibition against concluding a religious marriage prior to a

civil marriage and extend prosecution from the religious functionary involved, “to all parties directly and voluntarily involved in concluding an illegal (religious) marriage” with a maximum sentence of 7 months in prison or a maximum fine of 20,500 euros (Kamerstukken II, 2016/17, 53465–2, p.1).<sup>5</sup>

We have witnessed here a partial shift from attempts to prevent the misuse of civil marriage towards the criminalization and the rendering immoral of ‘Islamic marriages’. Policy measures and law-making for transnational marriages sought to limit the access of undesirable migrants to rights of residency and framed these marriages as fraudulent. The argument that naïve Dutch women needed to be protected from foreigners soon gave way to that of post-migrant Muslim women being forced into marriages not of their own choosing. These debates centred on the misuse by Muslim men (husbands, male kin) of *civil* marriages. The more recent discussions about ‘Islamic marriages’, in contrast, focus on relationships that have become associated with a host of negative characteristics, varying from radicalization to refusal to integrate and to women’s subordination.

### **Muslim marriages and women’s wellbeing: the voices of converts**

As evident from the above, much literature on transnational Muslim marriages starts from a state-centric point of view, considering such marriage as a threat to the integrity of the nation-state (Bonjour and Kraier, 2015). These marriages are considered fake marriages (only for papers) that bring in the ‘wrong’ kinds of migrants (poorly educated), and in the case of Muslims, with the wrong values, especially with respect to gender relations. Such marriages then are often framed in terms of current hegemonic discourses on integration and assimilation.

A focus instead on the concept of wellbeing, in its ethical, relational, and material sense, as proposed in the introduction of this edited volume, provides a helpful alternative approach. Whereas policy makers use Muslim women’s wellbeing to argue for the restriction of transnational Muslim marriages, listening to how Muslim women themselves voice their needs, aspirations, goals, and strategies with respect to marriage provides a very different perspective.

On the basis of our research, we feel confident in stating that converts often prefer to start with an Islamic marriage prior to a civil marriage. They are aware that religious marriages have no legal consequences but value the existential security such marriages provide, as it helps them adhere to new religious norms such as engaging in sexual relationships only within a marital framework. To highlight their perspectives, we first present the different trajectories towards marriage these women follow and then zone in on their arguments to first conclude an Islamic marriage.

*Already in a relationship*

In order to understand how women who convert to Islam deal with marriage, their 'point of departure' matters. Some converts are already in a relationship with a Muslim man when they become interested in Islam.<sup>6</sup> Indeed, it is usually their increased familiarity with Muslims more generally that triggers an interest in Islam. This, however, does not mean that women convert for the sake of their partner. On the contrary, narratives often point to the tensions that may well emerge when a non-Muslim woman starts to express her interest in Islam. Some of them actually hide their growing interest from their partner. They first want to figure out for themselves if they want to become Muslim and be certain it is their decision alone, without raising expectations too soon or inviting outside pressure.

Quite regularly such a relationship ends because their partner is not ready for the idea that his non-Muslim girlfriend may convert to Islam. When women become increasingly close to conversion, their partners may feel that they need to consider a more serious commitment that would include introducing her to his family and preparing for a marital relationship, which they may not be ready for. As a young single convert explained:

For about three years I had a Moroccan[-Dutch] boyfriend. Then I started to read about Islam, he never told me anything about it, really never. He was not interested at all. After I had converted, I told him this with a lot of hesitation. He said something like, "if that is what you want to do, you should do it." But he knew of course that relations [outside of marriage] are not allowed, they all know very well that that is not allowed. He started to feel guilty, he said "you are now engaged in Islam, and I am not". So the relationship came to an end.

Such a response was very common. In other cases, the woman concerned may herself experience that she no longer is able to continue a relationship. A woman who was in her late forties at the time of the interview told us about her relationship, which forms in some ways an interesting contrast to the narrative presented above. When she was still a student she had met a Muslim man and they became involved in a relationship. He was a marginally practising Muslim, observing Ramadan, but also involved in selling non-halal food and alcohol. Once the relationship became more serious, he suggested marrying Islamically, so he could properly introduce her to his parents. Without much ado they quickly married, with an imam and witnesses she would never see again. At the time, such a marriage was a means to an end, a prerequisite in order to be able to meet his parents. Visiting Egypt, and subsequently studying videos and books about Islam on her own, however, she became seriously interested in Islam and started to consider conversion. But once she had done so, this caused a conflict about how her husband was earning his living:

The problem was that he continued to live his life the way he did before. I suggested he sell only halal food, but without consulting me, he bought another store, selling the same items. I realized he didn't take my objections into consideration, and since I wanted to thoroughly rid my life of anything *haram*, and he did not want to come along, I decided we could not go on. Now that I'm older, I realize it might have taken time for him to come around, but back then, I just didn't want that in my life anymore, so we ended the relationship.

In other words, in this case conversion actually meant the end of an Islamic marriage, which had only been concluded for practical reasons, as the woman herself no longer wanted to continue this relationship. Later the very same woman would again conclude an Islamic marriage, but in that case it was out of conviction.

When partners intend to continue their relationship after conversion, there is often a sharp break. Women who convert to Islam, not just for the sake of pleasing their in-laws, but also because they themselves are convinced of the value of becoming a Muslim, quickly realize that a sexual relationship outside of marriage is considered sinful. As conversion in itself is believed to enable them to start with a 'clean slate', with their previous transgressions forgiven, they do not want to start their Muslim life living 'in sin'. The following story of a woman in an Islamic marriage for over a decade and a half, highlights the existential and relational considerations a conversion may entail:

We aren't married [in accordance with Dutch law]. It was not obligatory [in order for her partner to be eligible for a Dutch residence permit] and it was difficult to obtain the paperwork from Algeria. We both agreed that we don't have to marry [before the Dutch law]. We know we can depend on each other. However, when I became Muslim, I asked [a volunteer of a local Muslim women's group, married to an imam], "What does Islam advise in such a circumstance?" She said that we needed a period of separation. Not as a penance but that way you can be certain in case children are born [who the father is]. Then you are clean when you marry. I liked that very much.

She stayed at her mother's house for two and a half months, and then they got married at the mosque. "He is my husband, you know", she said, "and if we ever get the paperwork in order, then we will marry here [according to Dutch law] too".

*Finding a spouse*

Women who are not in a relationship when they convert often show a strong interest in marriage. This is so because marriage in itself is considered to be a form of worship ('half the *deen*' meaning 'half the religion'). In addition, new

converts may well experience a sense of pressure from fellow Muslims, as they regularly face questions about when they are planning to get married. These women themselves also quickly realize that their appearance as recognizably Muslim (wearing a headscarf) and their changed interests often put existing family relations and friendships in jeopardy. While most of the time they are warmly welcomed by local mosque communities, especially when they publicly convert after Friday prayer, it still takes time to build a new network of Muslim friends. Contrary to their oftentimes high expectations, conversion does not automatically engender a feeling of belonging to and inclusion in a Muslim community. Especially at moments of heightened religious awareness, such as during the month of Ramadan, they may well be overcome by a strong sense of loneliness. For even if their own family accepts their conversion, they will not be able to provide the same forms of sociality as a Muslim family would.

It does not come as a surprise then that converts consider marriage as a solution to the multiple problems they may be facing. They expect that marrying a practising Muslim will enable them to live a more fully Muslim life, with both partners supporting each other in their religious commitment (such as praying and fasting). At the same time, they also hope that such a relationship would provide them with a family of their own, and perhaps even with supportive in-laws.

As many converts take religion quite seriously, they may express considerable hesitation about anything similar to Dutch dating practices, and avoid public dating sites such as bars and discotheques. However, as they do not have a Muslim family that can help them, they may either ask around amongst their friends or at the mosque, or try online Muslim dating platforms such as muslima.com. Whatever the trajectory they opt for, once they find someone they consider a possible partner, they often prefer to only meet a limited number of times, sometimes only in public venues, or/and with others present. It is not simply that they will not have sexual intercourse before marriage, but they also try to avoid other forms of pre-marital intimacies.

This is illustrated in the following narrative of a convert who was in her early twenties when she got acquainted with her husband. This young woman had already been close to Moroccan-Dutch girls while still in school, and when she then went to work in a factory, she joined the women there when they fasted during Ramadan. They could not tell her much about Islam, but one of them had a sister who went to a mosque and she went with her. To her surprise, there were many converts of her own age and within two weeks she said the *shahada*, and quite rapidly started to wear a headscarf and covering dress. Some months later she told a girlfriend that she wanted to marry, who then quickly found a possible husband:

“But I do not know him at all” I said [to my girlfriend]. She said she was going to call him, but I thought it was a joke. But then she did call him and told me, “He’ll think it over and he’ll call you after Ramadan”. And

so it happened. We talked for a very long time, mobile to mobile, that must have cost him a mint. But it did not work out. His father is a Berber, very traditional and he said, “There are unmarried cousins in Morocco, it won’t work”.

I did not really mind, but we kept in contact. He was very active in the mosque and gave me a lot of information, as I was still new in Islam. In the meantime, I had some other marriage offers, but nothing came of that. Then he called me again, “Do you still want to marry?” I thought that he had a candidate. But he asked me to do the *istikhara* prayer [a prayer conducted for the purpose of asking for God’s guidance when a Muslim needs to make an important decision and is unsure which path to take] for him. I said, “For you? But your father does not want us to marry”. He said, “That is my problem”. Three days straight, I prayed and it felt good, so I said, “Go to the imam and arrange it”. He was surprised. We had seen each other before on the train when we were both following lessons in another town, but we had not sat together. He asked whether I wanted to meet, in a mosque, because neither of us had family to accompany us, and you cannot be alone as man and woman if you are not married. I said, “For me it is not necessary, I know what you look like and we can talk by phone”. We are both God-fearing, we kept it businesslike, talking about all kinds of things, but nothing intimate. Some people say it is not allowed to talk by phone. But I am not going to marry someone I do not know anything about, I have no one I can ask for information about how he is and what he likes, I have to do it myself. I feel we did it as Islamically sound as possible, we kept it decent and we did not fall into sin.

In this case it took the couple about half a year to get married, but we have often encountered far shorter time spans between the first acquaintance and the Islamic marriage. Their reluctance to engage in longer-term dating pushes these converts to marry quickly, as they try to avoid committing the sin of *zina*, that is, engaging in a sexual relationship outside of an Islamic marriage.

### *Concluding a civil marriage?*

Dutch policy makers do not object to people concluding a religious marriage, Islamic or otherwise, but rather insist that such a marriage ought to be preceded by a civil marriage. The question is then, why do the women concerned opt for an Islamic marriage first?

To start with, many converts are not aware of the legal requirement to first conclude a civil marriage. It is true that with the negative publicity about Islamic marriages, there is a growing uncertainty or concern about this issue, yet few converts seem to be aware of this prohibition. A main reason for this is that they find it hard to understand the motivations behind such a prohibition, as they are generally aware of the fact that an Islamic marriage is only

a religious act, which does not entail juridical rights and obligations. That is, since their Islamic marriage has no legal effects, their relation is only a form of cohabitation in the eyes of the Dutch law. Thus, why would there be such a prohibition?

For many, concluding a civil marriage right away is impractical for a number of reasons.<sup>7</sup> Some are too young to marry, when they convert as teenagers and want to engage in sexual activity, which is not prohibited in the Netherlands. Some are of legal marital age but still in the midst of completing their education, living at home with their parents or at student facilities, not yet earning enough income to be completely independent. Some converts simply cannot conclude a civil marriage, even if they wanted to. Perhaps their future spouse does not have a legal status (yet) in the Netherlands, or cannot gain access to the documents required (such as a birth certificate). In other cases, the husband is already married. Some converts consider it too disadvantageous to enter into a civil marriage, as this would mean the loss of particular benefits such as welfare or alimony. Particularly for older converts, who may have accumulated some wealth, for instance owning their own home, it can be too risky as the default option in Dutch marriage law is marriage in community of goods, with spouses sharing assets as well as debts.

Converts may also have emotional considerations for postponing their civil marriage, that is, some do so in order not to alienate their family of origin. Often their parents are not happy with the fact that their daughter is going to marry a 'foreigner' and find it even more problematic if this person is a Muslim. Some converts then either do not mention that they concluded an Islamic marriage or present their husband as a boyfriend or a fiancé. In due course, when their family has started to accept the idea of a lasting relationship, they will start preparing them for a civil marriage.

In contrast to what politicians and policy makers often assume, our interlocutors hardly ever expressed a principled stance against a civil marriage. In the words of a divorced mother of one, in her late twenties, looking for a Muslim husband after her recent conversion:

What I would consider most important, if I marry again, is that we get the blessing from Allah, and that our union is *halal*. Whether the marriage is registered with the state, or how we will work it out financially, or whether we will throw a big party, or not, these are not my priorities. All of that is very unimportant to me. As a matter of speech, tomorrow, I could put on a nice dress, go to the mosque, and marry before the imam. There is no need for hundreds of people to be there, primarily it is something between me and Allah, between him and Allah, and that it is done the right way. ... Civil marriage is important when you want to buy a house, or if you have children. Then, it can be complicated if you are not partners before the law. But for the moment, my priority is an Islamic marriage. Of course, *insha'Allah*, in the future, I would like to make it official with a civil marriage. If you have children [without a civil

marriage], the father has to recognize them, that is impractical and unpleasant, and eventually it would also be fun to adopt his last name, and that it is registered in official documents. Civil marriage is fun, too, but it is the icing on the cake, not a goal in itself.

In other words, these women use the same pragmatic arguments as other cohabiting couples to conclude a civil marriage, at least in those cases where there are no legal impediments. They first opt for an Islamic marriage, which is then comparable to cohabitation, and in due course when there is a good reason to do so, they also conclude a civil marriage. Often when children are born or when property rights in the country of origin or pension rights in the Netherlands are at stake, they decide that the time has come to conclude a civil marriage as that is the fastest and easiest way to arrange these matters. An alternative reason may be that their family of origin has accepted their partner and then considers a civil marriage as an expression of a now desirable commitment.

#### *Wellbeing revisited*

Are there no downsides to first, or only, marrying Islamically in the Netherlands? Of course there are. If women envision a life as a housewife, provided for by their husbands, being abandoned after a couple of months of marriage, as does happen sometimes, can be horrifying. Being pregnant or having a newborn baby adds to the hardships some women endure. Similar to cohabiting couples, there are no financial arrangements that can be legally enforced, nor can there be a claim on a rental lease or real estate property owned by their former spouse. In case of disease or death, there are no formal ties with the spouse, and no pension rights can be claimed. For men, it can be difficult to acknowledge children born from such a marriage. Besides the legal reasons, for these reasons too, nowadays imams are wary of performing an Islamic marriage without proof of at least the intention of a civil marriage.

Converts are in some cases also at a disadvantage compared to born Muslims in regard to their knowledge about how to conclude an Islamic marriage. Tracing their marriage trajectories, it is evident that they often lack both Islamic and experiential knowledge about how to go about such a marriage. In the absence of a Muslim family of their own to be of assistance in their path towards marriage, it is often a challenge for converts to properly vet a future spouse. They are frequently unfamiliar with the concept of the *wali* (guardian, ideally the protector of her interests), who will represent her in the marriage ceremony, and hence they easily accept that a close friend or relative of their husband will function as such. They feel uncomfortable about the dower (*mahr*). Instead of considering a substantial sum of money, they quite often only ask for a wedding ring, a Qur'an, or even an uneven number of dates. And most converts are completely unaware of the possibility of inserting conditions in the marital contract.



The point we want to make, however, is that imposing the civil-marriage-first rule causes existential, relational, and material problems for women who cannot, or do not wish to, civilly marry first. Whereas individual converts find themselves in a variety of positions and have different motivations for how and why to marry, common patterns have emerged from our conversations with them. Their decision to conclude an Islamic marriage and to do so quickly, without an extended period of dating, is first and foremost an effect of their ethical aspirations. It is their desire to avoid *zina* that pushes them towards concluding an Islamic marriage. They are generally well aware of the fact that this marriage is not the equivalent of a civil marriage, and consciously opt to start the formalization of their relationship with an Islamic marriage. This means that the ability to conclude an Islamic marriage is crucially important for their ethical wellbeing.

In addition to these ethical considerations, relational aspects also push them towards first concluding a Muslim marriage. In fact, ethical and relational considerations may reinforce each other, with Muslims not only valuing marriage in itself positively, but also considering it a means to further develop their religious commitment. As they often find themselves in an isolated position after conversion, they hope and expect that marriage will provide them with a Muslim family of their own. Simultaneously, they avoid concluding a civil marriage early in the courtship, as they fear that doing so may further alienate their family of origin, who would consider a rapid civil marriage a worrisome development in itself. Moreover, as they often conclude an Islamic marriage quite soon after getting to know each other, they may well feel the need to become more confident of the success of the relationship before signing a legally binding marriage contract.

Material dimensions of wellbeing may also make it attractive for converts to first conclude an Islamic marriage. This is the case because converts tend to be better educated, qualifying for better paying jobs, even though they may face discrimination in the labour market when they wear a headscarf. Entering into a civil marriage may, in fact, put them at risk of exploitation, be it because their spouse only intends the marriage to gain him residency rights or to profit him from the wife's income or assets.

### **Conclusion: Policy makers versus women converts**

As the above indicates, there are strong contrasts between the perspectives of politicians and policy makers and that of converts. Policy makers argue that they try to protect vulnerable women and protect Muslim women's freedom of partner choice by discouraging or prohibiting a wide range of marriages, such as Islamic marriages concluded prior to a civil marriage. Yet converts themselves consider these marriages crucially important for their ethical and relational wellbeing.

One aspect of this misrecognition of problems is that policy makers and politicians tend to automatically consider 'Islamic marriages' as a rejection of Dutch civil marriage and an indication of the desire to 'turn away' from

Dutch society. Yet, one could equally well consider an 'Islamic marriage' as a religiously sanctioned form of cohabitation. After all, converts themselves are generally aware of the fact that concluding an 'Islamic marriage' in the Netherlands is an ethical rather than a juridical act, as it does not provide legally enforceable rights and obligations. Many experience the criminalization of 'Islamic marriages' as a typical case of double standards. The Netherlands has witnessed, from the 1970s onwards, a rapid informalization of marriage, yet when Muslims decide not to conclude a civil marriage, but to engage in a non-state recognized religious ritual, this is turned into evidence of a lack of belonging to the Dutch nation.

The effect of such public debates and policy measures is twofold. It is yet another way in which Muslims are constructed as the other, while simultaneously, only in the case of Muslims, civil marriage becomes idealized and presented as a major mechanism to protect women's rights. This is particularly ironic, as feminists have often pointed out that women may well become entrapped in a marital relationship and that these relationships are a major site of violence against women. Moreover, using the argument of gender equality, the protections that marriage has offered women have also become increasingly eroded. In the case of converts, a civil marriage may actually put them at risk of exploitation, either materially (in the standard case of marriage in community of goods) or for the sake of acquiring residency rights (combined with automatic guardianship over children). And these risks are greater if the couple aspires to marry quickly for ethical reasons.

Criminalizing 'Islamic marriages' not only makes it harder for converts to live an ethical life, but also further contributes to a climate in which distrust of Muslims and Muslim institutions is encouraged. The risk is that converts will find themselves more isolated from their family and their previous circle of friends, which, in turn, places them in a more vulnerable position. An increasingly Muslim-unfriendly climate also makes it harder to engage with the real problems these women may experience. In hindsight, they regularly complain that they entered too quickly into an 'Islamic marriage', did not sufficiently check on their partner, and were unaware of the possibilities that the Islamic marriage contract offers.<sup>8</sup> In some cases they feel taken advantage of sexually, as their partner was only interested in a quick sexual relationship, but not in a longer-term stable relationship, or they may get stuck in their marriage as their partner refuses a divorce. Some of these problems may be prevented through a greater awareness of the possibilities that the Islamic marriage offers, such as a well-chosen *wali* who may support them, the registration of a dower (*mahr*), or the insertion of conditions in the marriage contract that may help to protect them from 'marital captivity'.

In short, policy makers' strong stance against Islamic marriages may well be harmful for the wellbeing of converts, as it makes it more difficult for them to live an ethical life. It also puts them more at risk because it contributes to a general anti-Islam climate which may further converts' social isolation (and

rapid marriage) and it makes it harder to have an open discussion about the possibilities that an Islamic marriage contract offers women. Moreover, idealizing civil marriage disregards the possibility that entering rapidly into such a marriage may increase rather than decrease the risk of exploitation.

## Notes

- 1 This is part of a larger project for which we also interviewed male converts, imams, and men acting as *wali* (marriage guardian) on women's behalf, attended (mosque) lectures, seminars, and courses about the topic of (concluding a) marriage, and looked at online efforts and initiatives in the field of match-making and of providing guidance and advice to converts about how to find a suitable spouse. Research for this project is funded by the ERC advanced grant on 'Problematising "Muslim marriages": Ambiguities and contestations' (Grant number: 2013-AdG-324180).
- 2 In the Netherlands, policy documents far more often use the term migration marriages than transnational marriages (Sterckx, et al., 2014, p.12). Discussions about transnational marriages in the broad sense are not new. For debates about such marriages in colonial times, see de Hart (2015) and Stoler (1992).
- 3 By then, Islamic revivalist movements had emerged on a global scale. This was soon after the Netherlands witnessed a late, yet very rapid, process of deconfessionalization.
- 4 According to the Dutch Civil Code, 'religious functionaries' are only allowed to conclude a religious marriage after a civil marriage has been concluded (Article 68 Book 1 Civil Code). This regulation emerged in the course of contestations between state authorities and the Roman Catholic Church in the early 19<sup>th</sup> century. See van der Leun and Leupen (2009, p.8ff) for debates in the field of law about the relation between civil and religious marriages.
- 5 Simultaneously the TV programme *Undercover!* exposed an imam in the act of concluding such an Islamic polygamous marriage. <https://zoek.officielebekendmakingen.nl/dossier/34565/kst-34565-2?resultIndex=1&sorttype=1&sortorder=4>
- 6 As evident from earlier research, conversion is a process, rather than a sharply defined moment (Vroon-Najem, 2014).
- 7 See also Moors, 2013. Many of these motivations are not only valid for converts, but also for born Muslims.
- 8 It is in this context that sometimes the value of a civil marriage was mentioned. As it is more difficult to conclude, it may be an indication of a more serious commitment.

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### 3 Wellbeing, law, and marriage

#### Recognition of *Nikāh* in multicultural Britain and the Finnish welfare state

*Sanna Mustasaari<sup>1</sup> and Vishal Vora*

##### Introduction

Enhancing the wellbeing of individuals is currently understood as a central concern of contemporary family law in liberal European states (see e.g. Eekelaar, 2013). Previous studies on Muslim marriages and law (see e.g. Jänäterä-Jareborg, 2014b; Liversage, 2014; Bredal and Wærstad, 2014; Grillo, 2015; Vora, 2016a) took place within the broader framework of legal engineering in a welfare state. In this chapter we examine the legal recognition of *nikāh*, the religiously valid Muslim marriage, from the perspective of wellbeing – a concept which has received only scant attention in socio-legal literature. We study *nikāh* in England and Finland and draw on our earlier work on the legal recognition of *nikāh* in these two local contexts. We explore, in particular, if and how a multidimensional understanding of wellbeing – such as the heuristic model developed in this volume following White's (2009; 2010; 2015) approach – might help us better understand and map the complex outcomes of law for transnational Muslim families.

The marriages discussed in this chapter are 'transnational' to a varying extent and in different senses. On the one hand, the *nikāh*, an Islamic marriage, can be understood as a transnational institution in the sense that it is shaped by laws, norms, and cultural practices that transcend one nation-state (Bowen, 2004; Lecoyer, 2017). On the other hand, some – but not all – of the marriages that our analysis draws on are transnational in the sense that they were solemnized abroad or the spouses live in different states, which, depending on the particulars of the case, either results in a more straightforward recognition of the *nikāh* or in a more complex situation (Al-Sharmani, Tiilikainen and Mustasaari, 2017). The 'transnational-religious' and 'transnational-foreign' elements of these marriages contribute, in different ways, to how the issue of the *nikāh* comes to be framed as a minority issue.

We begin by introducing the research context and background informing our analysis. Then we describe the legal recognition of *nikāh* in England and Finland. These two contexts offer interesting insights as their family law systems have some significant differences regarding what happens if the legal