

Concluding Statements and Recommendations

Resulting from the Maricap-Conference: Marital Captivity; Divorce, Religion and Human Rights

Maastricht, 24 & 25 November 2016

Statements

- On the occasion of the Conference on marital captivity, marital captivity refers to a situation wherein someone (usually a woman) is unable to terminate his or her religious marriage, i.e. keeping a spouse trapped in a marriage against his or her will. This situation may, for example, arise because the religious doctrine does not acknowledge divorce or because the co-operation of the other spouse is lacking.
- Marital captivity is prevalent on different social levels and within different religions, including Islam, Judaism, Catholicism and Hinduism. It is a global issue that primarily and disproportionately affects women.
- With creative interpretation of human rights instruments to current times, a right to divorce, that ensures equality of women and men at the dissolution of a civil and religious marriage, can and should be recognized.
- Marital captivity is a violation of human rights. It is a form of violence against women and constitutes discrimination against women. No culture, custom, religion, tradition or so-called "honour" can be considered as a justification.
- Marital captivity is not only a form of violence against women, but can also result in a form of violence against their children.
- The religious rules on divorce that provide a privileged and veto position for the husband are reflective of patriarchal systems and put women in unacceptable and terrible situations.

- In states where specific religious family law is not part of the official legal systems, religious people in fact do resort to their religious authorities (imams, rabbi, priests, mufti's, religious councils etc.) for family dispute settlement and advice.
- The rights women have under civil law should never be taken away, rather, they should be strengthened where needed. Sharia councils, for example, can be complementary to state courts, not just an alternative. In this regard, culture and religion are not (just) obstacles, but can function as resources for women, as tools that can help achieve women's human rights.
- Support of respected and recognized expert-authorities will contribute to the efforts of professionals and practitioners who are in the position to encourage and empower women.
- Marital captivity requires a holistic and context specific approach.
- Women's voices are often missing and are needed to address male-dominated hegemonic practices.

Recommendations

- Human rights standards should attain a greater role and involvement in addressing marital captivity. In the fight against marital captivity reference should be made to all human rights instruments and principles, on all levels (international, European, regional etc.) and in all forms (conventions, directives, soft-law, non-binding instruments etc.), that guarantee human rights.
- Situations of marital captivity have to be classified and framed in human rights terms (violence, deprivation of freedom, physical and mental harm, health-risks, personal autonomy, right to marry, access to justice, non-discrimination etc.).
- A holistic approach requires that the implications of marital captivity in other than legal domains (e.g. socio-economic, health etc.) are taken into account. This also requires reflection of the interdependence of human rights and social rights when framing marital captivity in the human rights discourse, as well as taking into account the intersectional differences between the (trapped) spouses and how these shape their lived experiences in situations of marital captivity.

- Adequate responses to marital captivity, both in individual cases and at an institutional level, should be encouraged. Cases of marital captivity that occur have to be used to demand from states that they take their responsibilities to fulfill their obligations and demand accountability where they fail to do so.
- Where private contractual arrangements suffice and offer sufficient protection to both spouses, party autonomy can or should be encouraged.
- Current solutions should be reevaluated.
 - The way the Dutch Supreme Court has assessed the tort-action cases concerning marital captivity can be criticized. A situation of marital captivity infringes on the human rights of the woman, therefore harm and damage is done. Tort actions that involve marital captivity should be linked to the already caused harm and damages and seek to remedy these human rights violations.
 - Attention should be given to the unequal power relations between the spouses. Taking into account the power and privileged position the husband entertains, *vis a vis* the dependent position of the wife, refusing to cooperate on a religious divorce may be concluded to form an abuse of rights (under Dutch law: art 3:13 Dutch Civil Code).
- Marital captivity has gained public attention because people have become more vocal in demanding their rights. Further engagement with these voices is necessary to gain information on, for example, how sharia councils function, what instruments or approaches work and which do not, how women navigate through a situation of marital captivity and their lived social realities.
- Reassess how radicalization, particularly since the 9/11 attacks, and how the responses thereto have shaped public debate, discourses and approaches to marital captivity and related topics is necessary. Framing these issues as problems that only exist within minority (particularly Muslim) cultures or as cultural or integration problems is worrisome and diverts the focus away from the larger context and underlying factors of marital captivity. Marital captivity is a social inequality problem, not an integration problem.
- As there are currently no sustainable solutions available to tackle marital captivity, all individuals and institutions that are involved in resolving or addressing marital captivity issues (e.g. victims, religious authorities, professionals, State-authorities, the judiciary)

have to be encouraged to be creative in finding ways to end situations of marital captivity.

Initiatives for the future; a selection of first ideas

- Continuation of the dialogue and academic discourse as long as there are no satisfying and suitable solutions. To this end, a platform should be created (e.g. via linked-in or Facebook), that would enable experts and professionals to connect with each other, exchange ideas and remain updated on the current developments.
- Setting up of a professional database that would facilitate the disclosure and exchange of knowledge, experience, case law, different country experiences and increase the accessibility of such information between professionals.
- Follow up conference once every two years.
- Raise awareness among and train all actors and professionals involved to familiarize them with the features, causes and consequences of marital captivity.
- Next to remedies for women in situations of marital captivity, preventive solutions are also necessary. States should take appropriate measures to create further awareness about gender stereotypes, biases and discriminations embedded in culture and religious interpretations. Concrete examples of preventive measures are:
 - Legal literacy & legal empowerment initiatives for individuals potentially subject to marital captivity, in dialogue and collaboration with women.
 - Training for legal professions/professionals.
 - Mediation training for actors involved in religious dispute settlements. Initiatives that may help and contribute to the empowerment of religious women, such offering a mediation training for family dispute settlements in Muslim families) have to be welcomed and encouraged.
- Further research and research-projects on *inter alia*.:
 - Various kinds of alternative dispute resolution that occur in different religious communities in Europe, taking into account the country's specificities (e.g . the legal systems, the place of religious communities and alternative/religious dispute resolution mechanisms etc.)

- Possible methods for bridging and unbridging religious systems and national legal systems, as marital captivity often occurs in societies where normative pluralism exists. (i.e. religious legal system either as unofficial law or as part of a 'millet system')
- The various possible measures that may prevent or resolve situations of marital captivity. In terms of legal measures, legislative measures, tort actions, and contract/agreement /party autonomy have been explicitly mentioned.
- The implications of marital captivity in other areas, for example, socio-economic implications, health implications and access to justice.