



“Please Give Me My Voice”: Women’s Out-of-Court Divorce in a Secondary City in Senegal

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Abstract

Divorce is not uncommon among Muslims in Senegal and tends to take place outside of court, even if the Senegalese Family Code has made out-of-court divorce illegal. Yet little is known about how women in particular may obtain divorce outside of the court. This article provides ethnographic material on the way women divorce out-of-court, and the repertoires of justification they draw on. In line with scholarly work on women’s use of Islamic courts in other countries the article foregrounds women’s agency, yet in a different out-of-court context. First, it is shown that women draw on multiple, gendered, repertoires. Second, it is argued that because family members play a central role in the divorces studied, the analysis of women’s agency requires an attentiveness to kin and women’s “kinwork”.

Keywords

Senegal – family law – divorce – women – gender – Islamic law – kinship – tradition – custom

1 Introduction

I went with my family to ask for a divorce. With my older brother, my sister-in-law, and a driver so that we could take my stuff back. And an older man, who is a local notable, who lives there. My dad told us to go find him; luckily, he was there. He and my husband’s father were friends, and he is also an uncle of my father. [...] My older brother told my husband,

the local notable and another older man were also present, that we were there to ask for a divorce. My husband accepted, but he took my things.

...

They [her father and brother] married me, and they wanted to divorce this way, religiously. So it's ok. (Interview with Sokhna, November 2017)

In 1972, the Senegalese government introduced a Family Code that restricts divorce to the court. The uniform code made an end to the legal plurality inherited from the colonial administration, and scholars have both hailed and criticized it as “compromise,” as it synthesizes what is referred to as custom and Muslim law with French civil law.¹ For President Senghor, the abolition of repudiation – a unilateral divorce at the initiative of the man that is based on an understanding of Islamic law – seems to have been a particularly central concern in drafting the code.² As a consequence, today, men and women can only obtain legal divorce at court, where a plaintiff's will to divorce is sufficient to establish the dissolution.³ Yet, in practice the code is largely ignored. Few divorces take place in court.⁴

Out-of-court divorces are the social standard, and are not usually referred to as “religious”; yet people sometimes use the qualifier to signal a distinction

- 1 Isaac Yanhaba N'diaye, “L'envers du droit traditionnel dans le Code de la famille”, *Revue burkinabè de droit*, 29 (1996), 58–72. Amsatou Sow-Sidibé, “Senegal's Evolving Family Law”, *University of Louisville Journal of Family Law*, 32 (1993), p. 421–229. Youssoupha N'diaye, “Le nouveau droit africain de la famille”, *Ethiopiennes*, 14 (1978). In content, the Family Code combines the codification of a number of inequalities between husband and wife, with the inclusion of safeguards for women, as well as the outlawing of repudiation.
- 2 Fatou Kiné Camara, “Women and the Law: A Critique of Senegalese Family Law”, *Social Identities* 13/6 (2007), p. 787–800.
- 3 The Family Code (Article 157) sets two procedures for divorce: (1) divorce by mutual consent, and (2) contentious divorce. In court, a plaintiff's will to divorce is sufficient for a judge to pronounce contentious divorce. See also Stéphanie Lagoutte and Papa Talla Fall, “Part 3: Senegal”, in *Dissolution of Marriage, Legal Pluralism, and Women's Rights in Francophone West Africa*, ed. Stéphanie Lagoutte, Copenhagen, Danish Institute for Human Rights, 61–83. <https://www.humanrights.dk/publications/women-divorce-west-africa>.
- 4 Lucy Creevey, “Islam, Women and the Role of the State in Senegal”, *Journal of Religion in Africa*, 26/3 (1996), p. 268–307. Barbara Cooper “Secular States, Muslim Law, and Islamic Religious Culture: Gender Implications of Legal Struggles in Hybrid Legal Systems in Contemporary West Africa”, *Revue Droit et Cultures*, 59/1 (2010), p. 97–120. Gretchen LeVan, “The Codification of Marriage & Polygamy in Senegal”, *Pangea – International Law Students Association (Now: Oregon Review of International Law)* 1 (1999), p. 1–14. Penda M'bow, “L'Islam et la femme sénégalaise”, *Ethiopiennes – Revue socialiste de culture négro-africaine*, 66–67 (2001), p. 1–7.

with “court divorce”, as in the interview excerpt above. This article is concerned with these out-of-court divorces, and focusses on women-initiated out-of-court divorce in the secondary city of Tivaouane. In Wolof these are referred to as *ñaan baat*, or asking for (one’s) voice. In an effort to foreground the experiences of divorcing women, and building on earlier work on Muslim women, marital dispute and divorce, I ask how Tivaouane women obtain divorce out-of-court, and what repertoires of justification they draw on in their divorce processes.⁵ Several scholars on family law in Senegal have remarked that *men* continue to unilaterally pronounce divorce, even if the exact ways in which these repudiations take place are not detailed.⁶ Less is known about the way *women* may obtain divorce. Moreover, Cooper’s and Camara and Seck’s suggestion that the court’s restricted role in family matters stems from a limited popular legitimacy of the Family Code raises questions about which norms divorcing women draw on.⁷

Divorce, both legal and extra-legal, is not uncommon in Senegal. Because the majority of divorces take place outside of the purview of the Senegalese state it has proven difficult to count the number of divorces; yet, the existing statistical studies show that in many cases marriage ends in divorce. In his 1964 survey of marriage and divorce practices in the Dakar suburb Pikine, Thoré showed that a third of marriages lasted no more than five years.⁸ More recently, Antoine

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- 5 The term “repertoire of justification” is taken from John Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, Cambridge, Cambridge University Press, 2003. Broadly it draws on the sociology of justification, a strand of social theory that presumes a normative plurality and reconciles an emphasis on individual strategy with moral worth and cultural meaning. See Luc Boltanski and Laurent Thévenot, *On Justification: Economies of Worth*, Princeton, Princeton University Press, 2006. See also Paul Blokker, “Pragmatic sociology: Theoretical evolvment and empirical application”, *European Journal of Social Theory* 14/3 (2011), p. 251–261.
- 6 For a description of court divorces see Lagoutte and Fall, *Senegal*. For women’s motives for divorce see Fatou Binetou Dial, *Mariage et divorce à Dakar: Itinéraires féminins*, Paris, Karthala – Crepos, 2008. For historical work on divorce in Senegal see Awa Yade, “Stratégies matrimoniales au Sénégal sous la colonisation: L’apport des archives juridiques”, *Cahiers d’études africaines* 187–188 (2007), p. 1–17 and Ghislaine Lydon, “Obtaining Freedom at the Muslims’ Tribunal: Colonial Kadijustiz and Women’s Divorce Litigation in Ndar (Senegal)”, in *Muslim Family Law in Sub-Saharan Africa Colonial Legacies and Post-Colonial Challenges*, ed. Ebrahim Moosa, Shamil Jeppie, Amsterdam, Amsterdam University Press, 2010, p. 135–165.
- 7 Cooper, “Secular States, Muslim Law, and Islamic Religious Culture” and Fatou Kiné Camara and Abdourahmane Seck, “Secularity and Freedom of Religion in Senegal: Between a Constitutional Rock and a Hard Reality”, *Brigham Young University Law Review* (2010), p. 859–884.
- 8 Luc Thoré, “Mariage et divorce dans la banlieue de Dakar”, *Cahiers d’études africaines* 4/16 (1964), p. 479–551, p. 530.

and Dial's 2004 study of marriage and divorce in Dakar similarly revealed that nearly one in three marriages ends in divorce and that divorce is increasingly quick.⁹ Dial's research also showed that the majority of divorces takes place out-of-court; more than 80% of the divorced women she surveyed had not been to court.¹⁰ Diop studied divorce across a number of Wolof dominated areas in the Senegalese hinterland, including Tivaouane.¹¹ His data reveal that, while the marital instability is more significant in the capital, divorce is also common in more rural settings. He shows that one in three men (who may have up to four wives at once) will have known a divorce.¹² The regularity of divorce is also echoed in the Senegalese press, which reveals stories about celebrities caught up in divorce. Although I did not survey the frequency of marriage and divorce in Tivaouane, divorce – primarily out-of-court – is clearly a common feature of social life.

Nevertheless, divorce is criticized.¹³ Some cite a hadith that depicts the Prophet Muhammad describing divorce as the most despised of licit things. Divorce is disapproved of, even if it is sometimes unavoidable. Related to these criticisms is a more general condemnation of a perceived growth of the number of women willing to leave their unsatisfactory marriages. Friends, acquaintances and others in Tivaouane with whom I discussed the topic of my research would often comment that, nowadays, women divorce easily and for the wrong reasons. They perceived a growth in the number of divorces, particularly on the initiative of women. However, at this point there are no data to substantiate this; in fact, the research discussed above would suggest that the divorce rate has remained relatively stable. Nonetheless, the remarks signal an important point: despite its relative frequency there exists moral anxiety

9 Philippe Antoine and Fatou Binetou Dial, "Le divorce et l'après divorce", in *Crise, passage à l'âge adulte et devenir de la famille dans les classes moyennes et pauvres à Dakar (seconde phase)*, ed. Philippe Antoine, Abdou Salam Fall, Dakar, Codesria, 2004, p. 42–61.

10 Dial, *Mariage et Divorce*, p. 104. In addition, while the Senegalese Family Code prescribes the registration of marriage at the civil registrar, a large number of marriages are never registered. A 2001 survey found a significant decline in the registration of marriage in Dakar, and reports that only "25% of first unions of men born between 1967–1976 and 33% of women born between 1967–76" were registered, Philippe Antoine, "La société dakaroise et le mariage civil: un compromis entre droit de la famille et religion", in *Démographie et cultures: XV^e Colloque de l'AIDELF*, AIDELF, 2008, p. 1105–1118.

11 His research was carried out in the administrative regions of Dagana, Louga, Thies and Diourbell. Abdoulaye-Bara Diop, *La Famille Wolof*, Paris, Karthala – Crepos, 1985, p. 6, note 3.

12 *ibid.*, p. 213. While the majority of Senegalese marital unions is monogamous, polygyny is common. In 2012, 35% of married Senegalese women were in a polygynous marriage, Agence Nationale de la Statistique et de la Démographie (ANSD), *Enquête Démographique et de Santé à Indicateurs Multiples Sénégal (EDS-MICS) 2010–11*, Dakar, ANSD, p. 59.

13 See also Dial, *Mariage et Divorce*.

over divorce, particularly if a woman takes the first steps toward dissolving the union.

This article provides an ethnography of the experiences of Muslim women wanting to divorce their husbands and sets out the different repertoires of justification they draw on in their out-of-court divorce processes.¹⁴ Showing that women justify their claims for divorce largely on the basis of a repertoire of norms relating to the values obedience, perseverance and discretion, and also insist on their right to be provided for, I suggest that the use of these repertoires is gendered and that Islam plays a multiplex role in women-initiated divorce processes. This builds on studies on marital disputes and divorce in other Muslim contexts that have analysed the norms women draw on and have shown these women to be active agents in shaping their marital lives. Yet, while these studies have tended to focus on Islamic courts and the way women use these institutions, the cases of the women I studied tell a somewhat different story of *out-of-court* divorce. As I describe below, family members play an important and often central role in these women-initiated divorce processes. This, I suggest, requires a rethinking of women’s agency and the way their actions take shape from within kin relations.

The ethnography presented draws from twelve months of ethnographic fieldwork carried out between April 2016 and December 2017 in the Senegalese secondary city of Tivaouane (75,000 inhabitants),¹⁵ in the framework of a research project on women and marital dispute and divorce. In particular, I rely on interviews with twenty-seven women about their personal out-of-court divorces and a large number of interviews about marriage and divorce with other men and women, as well as Imams, other religious scholars, and neighbourhood chiefs.¹⁶ The women I spoke to about their marital conflicts often preferred I did not talk to their kin; their divorce was a confidential matter, meaning that sometimes they did not want their family members to know that they had talked to me and that, in other situations, they did not want me to ask their kin to go over the events again. Nonetheless, I was able to contextualize the stories women had shared, i.e. by a number of interviews with elder men and women, whom I asked to reflect on their role in the marriages of their younger kin. Finally, long-term fieldwork in Tivaouane gave me an insight

14 94% of the Senegalese population is Muslim, ANSD *Enquête Démographique*, p. 2.

15 Agence Nationale De La Statistique Et De La Démographie (ANSD) *Rapport Projection de la population du Sénégal : 2013–2063*, ANSD, Dakar, 2015. Notably, the sex-ratio in Tivaouane is 92 men for 100 women. Commune de Tivaouane, *Présentation de la commune de Tivaouane, Commune de Tivaouane*, Tivaouane, 2017, p. 3.

16 Because my Wolof is intermediate, the interviews were conducted with a research assistant, Fatou Coly, who helped translate Wolof-French. Most interviews were taped and later transcribed. All names are pseudonyms.

into the roles that friends and acquaintances and their family played in the marriages and divorces of their kin and close friends. Tivaouane is a city with an historically strong religious and state presence; its population is predominantly Wolof.¹⁷ The city is an important capital for the Tijāniyya brotherhood in Senegal, which plays an important norm-setting role in both marriage and divorce across the country. However, Tijāniyya religious leaders, or marabouts, rarely become involved with specific divorce processes.

After discussing the broader scholarship on marital disputes and divorce in Muslim contexts I draw the contours of women-initiated out-of-court divorce practice in Tivaouane, shaped both by tradition and Islamic jurisprudence. Next, I shift focus to the experiences of Tivaouane women who initiate out-of-court divorce, the claims they make and the repertoires they draw on to justify these claims. I introduce and detail the divorce process of one Tivaouane woman, Khady, and draw out the different repertoires she and other women draw on in their attempts to obtain divorce. Finally, I discuss how the way women make claims in these out-of-court divorce processes is shaped by their kin how women work on, and maneuver, their family to reconfigure their lives and obtain divorce.

2 Marital Disputes and Divorce: the Lived Experiences of Muslim Women

Countering popular beliefs about the oppressive and monolithic nature of Islamic law, over the past three decades a number of scholars have examined the way Muslim women *use* Islamic law, showing how they are active agents.¹⁸ Mir Hosseini studied Islamic law in Morocco and Iran and examined women's use of Islamic courts in these countries.¹⁹ Hirsch similarly foregrounds the ways women draw on Islamic courts and details their experiences in these institutions. From her work on Swahili women on the Kenyan coast it is clear that women take an active role in reconfiguring their marital lives.²⁰

17 Wolof represent 80% of the population, Peul 9% and Serer 8%. Commune de Tivaouane, *Présentation de la commune*, p. 3.

18 Susan Hirsch, *Pronouncing & Persevering: Gender and the Discourses of Disputing in an African Islamic Court*, Chicago, University of Chicago Press, 1998. Erin E. Stiles, *An Islamic Court in Context: An Ethnographic Study of Judicial Reasoning*, New York, Palgrave Macmillan, 2009. Ziba Mir-Hosseini, *Marriage on Trial. A study of Islamic Family Law*, London, IB Tauris, 2000. Nadia Sonneveld, *Khul' divorce in Egypt: Public debates, judicial practices, and everyday life*, Cairo, The American University in Cairo Press.

19 Mir-Hosseini, *Marriage on Trial*.

20 Hirsch, *Pronouncing and Persevering*.

In marital dispute, men and women often draw on gendered legal and social norms; that is, the repertoires of justification they draw on differ.²¹ This also appears from Hirsch’s work; she shows how Swahili men freely talk about Islamic rights and duties, while women more readily refer to Swahili ethics and spiritual health.²² As Hirsch explains, these differences connect to ideas about masculinity and femininity, as well as to related notions about religious authority and the importance of religious education for boys vis-a-vis girls. It is thus worth noting that, while female preachers and female religious teachers have become increasingly common in Senegal,²³ women still receive little religious education compared to men, and women’s religious “engagement” tends to center around the organization of religious events and participation in Sufi religious associations.²⁴

Together, studies of marital disputing and divorce in Muslim contexts provide a rich picture of Muslim women’s lived experiences and the heterogeneity of Islamic law in action. However, researchers tend to focus on Islamic courts; as a consequence, their analysis centers on the wife, the husband and the judge.²⁵ In the Senegalese context of Tivaouane, by contrast, there are no Islamic courts, and it is quickly apparent that kin play a central role in women’s divorce processes. In what follows I therefore pay particular attention to the way women engage with family members. Doing so, I draw on the notion of kinwork, used by Katherine Lemons in her analysis of New Delhi’s Women’s Arbitration Centers, and the feminists critiques this term builds on that have foregrounded the reiterative labour involved in kinship.²⁶

This article then foregrounds the lived experience of divorcing women and the multiplicity inherent in these processes.²⁷ I show that Islam and Islamic

21 Anne Griffiths, “Reconfiguring Law: An Ethnographic Perspective from Botswana”, *Law and Social Inquiry* 23(3) (1998), p. 587–620.

22 Hirsch, *Pronouncing and Persevering*.

23 Joseph Hill, *Wrapping Authority: Women Islamic Leaders in a Sufi Movement in Dakar, Senegal*. Toronto, University of Toronto Press, 2018. Selly Ba and Muriel Perez-Gomez, “Les prédicatrices au Sénégal : de la visibilité à la légitimité religieuse et social (des années 1980 à nos jours)”, in *État, Société et Islam au Sénégal: Un air de nouveau temps?*, ed. Abdourahmane Seck, Mayke Kaag, Cheikh Guèye, Abdou Salam Fall, Dakar, Karthala, 2015.

24 M’bow, “L’Islam et a femme sénégalaise.”

25 Kin does figure in the ethnographies of Stiles and Hirsch, but, largely because of a focus on Islamic courts, the analysis centres on the litigants, the husband and wife.

26 Katherine Lemons, “The Politics of Livability: Tutoring ‘Kinwork’ in a New Delhi Women’s Arbitration Center”, *Political and Legal Anthropology Review* 39/2 (2016), p. 244–260.

27 Cooper and Hiden, writing about divorce in Niger and Hindu divorce respectively, also how local divorce practice is fluid and how people draw on a range of repertoires about marriage and its dissolution. Barbara M. Cooper, *Marriage in Maradi. Gender and Culture in a Hausa*

jurisprudence and its attendant ethics and norms play an important but diverse role in these processes. Recently, important extensions have been offered to Asad's call to study Islam as a discursive tradition.²⁸ Common to these efforts of rethinking are attention to the "motivations, experiences, complexities and ambiguities" of everyday life and attention to the political, religious and cultural contexts in which people live – including competing concerns and commitments people may have.²⁹ This line of work has also opened up attention for the way people's entanglements with Islam are manifold, and here I connect to this scholarship.

3 Untying the Knot

As in other Muslim contexts, in Senegal divorce practice is shaped both by Islamic jurisprudence and tradition. Scholars have tended to collapse these categories to "custom", and wittingly or unwittingly perpetuated colonial understandings and policies. As a result, they minimize the role of Islam, or portray Senegalese practice as a localized and inauthentic version of Islam.³⁰ This approach ignores the basic heterogeneity of Islam as well as Senegal's historical and contemporary links with global Islamic scriptural traditions.³¹ First, classical Islamic jurisprudence is a diverse body of sources with a multiplicity of interpretations. Scholars have moreover shown that there is remarkable diversity in contemporary divorce practices in Muslim contexts, including

Society in Niger, 1900–1989, Portsmouth, Heinemann, 1997 and Livia Holden, *Hindu Divorce: A Legal Anthropology*, Aldershot, Ashgate, 2008.

- 28 Talal Asad, "The Idea of An Anthropology of Islam," Occasional Papers Series, Washington, DC, Center for Contemporary Arab Studies, Georgetown University, 1986.
- 29 Samuli Schielke, "Second Thoughts about the Anthropology of Islam, or How to Make Sense of Grand Schemes in Everyday Life," *Zentrum Moderner Orient Working Papers* 2 (2010), p. 3. See also Magnus Marsden, *Living Islam: Muslim Religious Experience in Pakistan's North-West Frontier*, Cambridge, Cambridge University Press, 2005; Benjamin Soares and Filippo Osella, "Islam, Politics, Anthropology", in *Islam, Politics, Anthropology*, ed. Benjamin Soares, Filippo Osella, London, Wiley-Blackwell, 2010, p. 1–22; Benedikt Pontzen, *Islam in a Zongo: Muslim Lifeworlds in Assante, Ghana*, Cambridge, Cambridge University Press, 2021.
- 30 See Chabas, "Le mariage et le divorce dans les coutumes des Ouolofs habitant les grands centres du Sénégal", *Revue juridique et politique de l'Union française*, 4 (1952), p. 1–59; David Ames, "Plural Marriage among the Wolof in the Gambia: With a Consideration of the Problems of Marital Adjustment and the Patterned Ways of Resolving Tensions", Northwestern University, 1953.
- 31 Soares makes a comparative argument for contemporary scholarship on Mali. Benjamin F. Soares, "The attempt to reform family law in Mali, *Welt des Islams*, 49/3–4 (2009), p. 398–428, p. 401.

approaches to a situation in which the wife requests release by her husband in turn for some form of compensation, a situation often referred to as *khul'*.³² Second, in Senegal, Islamic jurisprudence of the Maliki school has long been studied in schools of Arabic learning throughout the country, and religious specialists commonly refer to this body of knowledge when they comment on marriage and divorce.³³ Men and women without religious schooling will at times also distinguish between religion (Wolof: *diine*, Ar.: *dīn*) and custom (Wol: *aada*, Ar.: *āda*). Even if they may sometimes blur into one another, interactions between Islamic jurisprudence and indigenous practice in Senegal are unresolved, and may ultimately be unresolvable.³⁴

In Tivaouane, local divorce (*tas*) practice is fluid, but the broad contours of women-initiated out-of-court divorces are clear. Women ask to be released, but men do not necessarily comply, at least not immediately, and the process may take years. Sometimes a husband's refusal is guided by the true wish to retain his wife, at other times, it primarily seems to serve to frustrate or humiliate her. Multiple formulas are used to request release. A common way is to say “give

32 For the founding hadith for *khul'* divorce, see Mida R. Zantout, “Khul': between Past and Present”, *Islamic Law and Law of the Muslim World Research Paper Series*, 8/14 (2009), 1–47. In classical jurisprudence compensation in *khul'* divorce is common, however, there was no dominant position among classical jurists on this issue. Among Maliki jurists too there was disagreement about compensation, and whether “a husband can take anything at all back from his wife”, see Judith E. Tucker, *Women, Family, and Gender in Islamic Law*, Cambridge, Cambridge University Press, 2008, p. 97. For an overview of diversity in contemporary *khul'* practices see Nadia Sonneveld and Erin E. Stiles, “Khul': Local Contours of a Global Phenomenon”, *Islamic Law and Society*, 26, 1–2 (2019) p. 3. For contemporary *khul'* practices in Mauritania see Corinne Fortier, “The Right to Divorce for Women (Khul') in Islam: Comparative Practices in Mauritania and Egypt”, in *Interpreting Divorce Laws in Islam*, ed. Rubya Mehdi, Werner Menski, and Jørgen S. Nielsen, Copenhagen, Djøf, 2012, 155–75, p. 162–63.

33 Mamadou Diouf, *Histoire du Sénégal : Le modèle islamo-wolof et ses périphéries*, Paris, Maisonneuve & Larose, 2001, chapter 8. Particularly Khalil Ibn al-Ishaq's *Al-Mukhtasar fi al-fiqh 'ala madhhab al-Imam Malik* and Abu Muhammad 'Abdallah Ibn Abi Zayd al-Qayrawani's *Risala al-fiqhiya* have long been two commonly referred to works of Maliki jurisprudence in Senegal, and were, during the colonial period, also used at the Muslim tribunals and customary courts. Note that in 2002, Islamic reformists and representatives of the main Sufi maraboutic families presented a full-fledged Islamic alternative to the Family Code, but that the initiative was never seriously considered by the Senegalese government, see for instance Marième N'diaye, *La réforme du droit de la famille: Une comparaison Sénégal-Maroc*, Montréal, Les Presses de l'Université de Montréal, 2016.

34 The idea that these interactions are unresolved and unresolvable is taken from Cooper who parses Brenner. Cooper “Secular States, Muslim Law, and Islamic Religious Culture”; see also Louis Brenner, “Histories of Religion in Africa”, *Journal of Religion in Africa* XXX/2 (2000), p. 143–167.

me my voice" (*may ma sama baat*).³⁵ Women, or someone else for them, thus ask the husband to "return" her voice or autonomy.³⁶ Divorce may be asked in person, but the phone is also a regular medium. Because a husband may potentially revoke the divorce, witnesses often play a crucial role in divorce processes. They lend social validity to the dissolution of a marriage and when women recounted to me their divorces, they often enumerated the people who were present when the divorce was accorded. That it is the husband who decides on the divorce is a norm that is widely recognized and is justified as Islamic.³⁷ Even so, the notion that a wife's male kin may dissolve the marriage is sometimes drawn-on, often to exert pressure on the husband. Moreover, a husband's refusal of his wife's divorce request is not always socially approved of and this disapproval may serve to compel a husband to grant divorce. If the husband's consent is necessary for a divorce at the wife's request, people often think it wrong for husbands to abuse this power, especially if they treated their wives badly in marriage.

The family members involved in divorce processes often had a role in tying the marriage, one way in which the divorce process mirrors that of marriage. The people who were present when the marriage was contracted, a ceremony attended by men only, are felt to have a special responsibility for its success. In case of marital conflict spouses may thus directly consult the mandataries, persons who, during the tying of the marriage stand in for the father of the groom and the bride respectively and ask and offer the bride in marriage and act as witnesses. These are often brothers or close friends of the fathers. Spouses may also be redirected to the mandatory by their father. The wife's father himself, acting as the responsible (*kilifa*) or moral authority of the family and household, may likewise play a role. Thus, male kin often have an important part in women-initiated divorce. Older women may play a similar role; indeed, as scholars working across African contexts have noted, it is often inadequate to analyze patterns of authority only in terms of gender.³⁸ Aby, thirty-two, whose husband had taken a second wife and proceeded to neglect her financially and sexually, recounted to me her divorce thus: "I talked to my responsible [*kilifa*], as I had returned to the house of my mother. My mother and older brother called my husband. My husband thought it was to reconcile, but it was to ask

35 The Wolof word *baat* literally means neck or throat, but here is understood to mean voice.

36 Liberate me (*yewwi ma*) is also used, and is similar in meaning. Alternatively, the request is formulated more implicitly.

37 Diop argues that divorce was traditionally an affair of the couple's family members; that is, that it was them who dissolved marriages. This is not currently the case in Tivaouane. Diop, *La Famille Wolof*.

38 Cooper *Marriage in Maradi*, p. xxix.

divorce”. Notably, when spouses are related, elderly family members who have a position in both families will play an important role.

It is common for kin to be involved in marital mediation, as a consequence, their involvement in divorce often flows from their involvement in earlier attempts to “save” the marriage and reconcile the spouses. Kin can also be at the origin of conflict or can quickly become embroiled in it. While not all women immediately move in with their husband, most do at some point, and in many instances, the engagement of the wife’s kin in particular is preceded by her return to her parental home, as was the case for Aby who had returned to the house of her mother and older brother, a practice called *fay* or *fayle* in Wolof. Cooper notes that in Maradi, Niger, this is common way for women to provoke a divorce, and the practice is also described in Dial’s study of marriage and divorce in Dakar.³⁹ *Fay* – neither understood as Islamic nor denounced as un-Islamic – does not necessarily lead to divorce but often precedes it. In other instances, it is used to provoke the husband to make concessions in marital conflict. Sokhna May left the house twice during her marriage of twenty-seven years. The last time was two years ago to stay with her family in one of Dakar’s suburbs. She stayed one month. She told me: “After that, it was him who came find me and told me he would not do it again. He stopped hitting me.” Things improved for Sokhna May, even if her husband still hardly contributed to the household finances because he could not hold a job. The two-stepped process of *fay* and divorce (*tas*) in some ways mirrors that of marriage: after contracting and celebrating the marriage (*takk*), the wife is presumed to move in with the husband, sometimes several months or potentially even years later, a step that is accompanied by its own celebration (*céyt*).

Religious scholars and Imams are sometimes involved in divorces, as well as in marital disputes. Like the family members that were involved in tying the marriage, the Imam that officiated the marriage is also seen to carry a special responsibility for the union. Notably, when these authorities become involved, they are frequently likened to kin; in recounting their involvement, both male and female respondents regularly referred to them as father or uncle. Other local notables like the neighbourhood chief may also become involved. Often, they are solicited as a “next step”, when the interventions of family members are without success. Whether or not they intervene depends significantly on how active they are and on whether they have personal ties with the spouses or their family members.

39 Cooper, *Mariage in Maradi*; Dial, *Mariage et Divorce*.

Women who take the initiative to divorce often are required to leave behind much or all of the bedroom furniture, clothing, and kitchen utensils gifted to her by her husband before or during the *céyt*.⁴⁰ If their husband initiates divorce, these are still considered the woman's property. Yet compensation of other marriage gifts is highly occasional.⁴¹ Next to marriage gifts given upon the *céyt*, the most important marriage gifts of the husband are the first present (*may bu njëkk*), obligation (*warugar*), and the *can*. The first present is paid before the marriage is tied, ranges between 50,000 CFA and 500,000,⁴² and is often accompanied by luxury products. In principle it is destined for the bride to be. The obligation, often paid in conjunction with the first present, is generally for the mother of the bride. It becomes part of complex networks of gifts and financial solidarity, and is ultimately used by the bride's family to pay for part of the costs of the marriage celebrations.⁴³ The *can*, paid when the Islamic marriage is tied, is of symbolic value only, and belongs to the wife.

One exceptional case in which a husband requested to be compensated the *may bu njëkk* and *warugar* was that of Mariam. Her husband had refused to accord a divorce for over a year and, in the meantime, Mariam, who had moved back to her parents, had gotten pregnant from another man. Given her pregnancy, Mariam's husband started taking steps to bring her to court for bigamy. In the end, Mariam's uncle was able to convince her husband to revoke his complaint, but under the condition that Mariam's family paid him a sum of around 200,000 CFA.⁴⁴ Mariam's husband had estimated having spent around 1,000,000 CFA on the marriage,⁴⁵ but agreed to be reimbursed only in part. Here, the restitution of part of the marriage gifts thus served two purposes: to obtain a divorce, but also to incite the husband to revoke his bigamy complaint.

40 Dial, *Marriage et Divorce*. Lagoutte and Fall, *Dissolution of Marriage*.

41 During much of the twentieth century, as several authors have argued, marriage gifts received upon marriage were generally reimbursed if a wife requested divorce, Chabas "Le mariage", Ames "Plural Marriage", Yade "Stratégies matrimoniales", Lydon "Obtaining Freedom". Thoré's research in Pikine constitutes an exception. He states that Wolof men specifically do not always ask to be reimbursed and that such requests for reimbursement of the marriage payments are often merely used as a threat, Thoré, "Mariage et Divorce Banlieue", p. 525–26. For more recent literature that mentions divorce and compensation: Beth A. Buggenhagen, *Muslim Families in Global Senegal: Money Takes Care of Shame*, Bloomington, Indiana University Press, 2012, p. 126.

42 €75.91–759.10.

43 See also Moya, *De l'argent aux valeurs*. By comparison, Dial notes an average of between 95,000 and 420,000 CFA for the *total* marriage gifts (€ 144.80–640.25). Dial, *Marriage et Divorce*, p. 57.

44 € 304.90.

45 € 1524.35.

When asked, religious scholars in Tivaouane referred to such reimbursement as “*simmiku*”, literally “to undress oneself,” which they seemed to be using a gloss for the Arabic term *khul'*, which has the same literal meaning.⁴⁶ They argued that if marriage gifts were to be reimbursed, it would be the first present which is given before the marriage is tied and not the “*can*” nor necessarily the gifts that accompany the *céyt*. They also stated that it was not a condition for a valid divorce at the initiative of a woman. Several even indicated that men who requested to be compensated lacked character, or that God preferred that they did not. The leaving behind of furniture, clothing and utensils, was likened to *simmiku* by some.⁴⁷ One religious scholar stated:

There is in there a religious aspect because if the wife has asked for divorce without legitimate criteria, if it is just that she does not want to [be married] anymore or it was a marriage for money, the woman will not bring anything apart from her personal luggage; even better she has to reimburse certain presents, not everything, but a part.

Other men and women, women in particular, described the leaving behind of furniture and other goods as *aada* to make the point that they are not bound by it. In his 1933 collection of civil customs in Senegal, the French colonial administrator Geismar states that the compensation of marriage gifts preceded Islam. Reimbursement depended on the person initiating the divorce; women only returned their marital gifts (all of them) when divorce was at their initiative, although among some ethnic groups marriage gifts were always restituted.⁴⁸ The expansion of Islam meant that these rules were nuanced. In cases of abandonment, impotency or serious illness on the part of the husband, and sometimes in cases of financial or sexual neglect, the wife requesting divorce did not have to repay her marital gifts.⁴⁹

Together, it is clear that divorce processes initiated by women take place with the involvement of family members and are shaped both by tradition and Islamic jurisprudence. *Fay*, a decidedly traditional practice, exists alongside the request for divorce, to which ultimately the husband needs to consent, a decidedly Islamic norm. And, while it may never be known exactly how the

46 See Mir-Hosseini, “*Marriage on Trial!*”, p. 38.

47 This form of compensation is reminiscent of *khul'* practices of Moorish women in Mauritania, as described by Fortier. Fortier, “Right to Divorce”.

48 Léon Geismar, *Recueil des coutumes civiles des races du Sénégal*, Saint-Louis, Imprimerie du gouvernement, 1933, p. 76–77.

49 Ibid, p. 78–89.

practice of leaving behind furniture and other goods arose, contemporary understandings of the practice are both shaped by tradition and by Islamic jurisprudence. How do women make claims in such divorce processes? What repertoires of justification do they draw on? And how do they convince a husband to accord divorce?

4 The Divorce of Khady

When I visit Khady, on a morning in June 2017 I am not alone. Fatou, my research assistant, is there with me, and so is our mutual friend Awa, whom Fatou and I regularly visit to chat and watch television and whom Fatou and I have both grown fond of for her warmth and humor. Awa does not usually join us for interviews, but it was she who introduced me to Khady. Like Awa, Khady was divorced and is now single, and Awa had called Khady to ask whether she would be able to share the details of her divorce with me.

Khady receives the three of us in her small and bright bedroom in her family household, a large household of multiple buildings and a great many bedrooms, simple, but well maintained and spotless. The three of us sit on Khady's mattress, together with Khady and her daughter. The television is on and shows a foreign soap opera.

Without much hesitation Khady explains she divorced about six months ago because she did not love her husband of nine years, with whom she has two kids, but with whom she never lived. She tells us she runs a small business from her home and is thirty-eight years old, then adds, "no, will turn thirty-eight, in October", meaning she is a little older than Awa, Fatou and me, who are all in our early thirties. Earlier she was married for five years to another man whom she did love, but, as she explains, her family did not approve of the marriage and they eventually divorced.

While Khady, Fatou and I talk, Awa plays with Khady's daughter, throwing her voluptuous body on the child, pretending she will smother her, and bursting out into laughter. Every so often, she intervenes in our conversation.

"You can get married without love and regret it after, and you cannot do anything about it," Khady explains.

Every day, we had problems. But my family did not want me to divorce him, particularly my grandmother, who was ill and old. Every time I would ask him for a divorce he would go and complain to my family, and they would cause trouble, criticizing me for wanting to break up a marriage. They said I just wanted to fool around.

Khady turns to Awa:

You are a witness. It was just a lack of love. Marriage is too complicated when you do not love someone. It is difficult to share a life with someone you do not love. There was no love, and on top of that he was old.

Finally, Khady was able to divorce when she was ill and had to stay in Dakar, the capital, for a few weeks.

I was ill and I lived in Dakar, and he did not come when they called him, even though I had fallen seriously ill. They had let him know that I had been prescribed medication but that there was no pharmacy where we were. But still he refused to come. My husband responded that he could not come, because he was working. And he did not visit me.

Shortly after, Khady called her older brother and told him that she wanted to be set free by her husband, she recounts. She also called her father, asking him to tell her husband to accord a divorce:

I told my father that I want my husband to release me, because I am tired of him. He should release me because if I die, he would be responsible. I am ill and he did not take care of me, and, on top of that, I never loved him and I am still married to him. After nine years there is not any love between us, even though I have two children with him.

Now Khady directs her speech at me:

I wanted them to tell him to divorce me, to release me. It was me who revolted ... I did what is called a revolt, and they understood I was right to do so. That is how he released me, and the marriage ended.

The full story is that Khady's older brother convinced their father that Khady was ill because she was unhappy, and that, if her husband would grant her a divorce, they would all live in harmony. The brother contacted Khady's husband and asked him to give her a divorce, but he refused, saying it had not been the brother who had given Khady in marriage. Khady's brother then asked their father to make the call, which he did. But shortly after, Khady's husband happened to be in town and used the opportunity to visit her father. He then said he wanted to reconcile and made excuses for why he had not been able to visit Khady in Dakar.

Khady's father informed her of her husband's visit and his intention to reconcile, Khady tells Fatou and me. But in response Khady told her father that she had had enough, which Awa confirms. Khady continues:

I told him I had had enough, and that he should release me. Enough is enough. When I fell ill, he did not come. He leaves me there in Dakar and goes to Tivaouane for Mawlid and spends money and is being hypocritical, because he did not care for me

After this, Khady called her brother and asked him to convince their father to insist on a divorce.

Her husband, however, did not respond to Khady's father's request for a divorce, she explains. "My father asked him, but he did not do it." When her father visited Khady in Dakar, she therefore called her husband herself and asked for a divorce, using her father as a witness. On the phone, Khady's husband asked to pass her father to him and asked him if he had heard what his daughter had said. Khady's father responded that he had and that, because he – the father – would not take such a heavy responsibility so as to dissolve the marriage between Khady and her husband, the husband had better accord Khady the divorce himself. Finally, Khady's husband gave in:

It was me who took my own decision, but to get them [her family members] to break the marriage was difficult, and it is for that reason that it took nine years. Because they did not want to take their responsibility to terminate the marriage.

5 Justifying Divorce

Khady's divorce account reveals that she drew on multiple repertoires of values and rights. For Khady, it was central that she did not love her husband, as well as that he failed to maintain her. That she had the right to be maintained by her husband was a point she underscored most dramatically to her father: were she to die, it would be her husband's fault. With him she also shared that she had had enough, thus implying she had been patient and had tried to persevere, but that it had not helped, and that she still did not love her husband. If indirect, Khady thus responded to the disapproving comments of her grandmother, who, as Khady reported, said she was not serious about marriage and

just wanted to fool around. The argument of Khady’s brother centred around the value of harmony and the importance of living in peace.

I draw out these different statements and behaviours as well as the values and norms they convey to indicate that Khady, like her family members, referred to a variety of socially embedded repertoires relevant to marriage and divorce. In Tivaouane, I find that women give accounts of, and show, perseverance, while husbands and male kin more freely draw on the juristic repertoire of Islamic jurisprudence. This is likely related to the relatively little religious education that Senegalese women receive compared to men,⁵⁰ as well as to the central roles husbands and male kin play in divorce processes.

Women do invoke the juristic repertoire of Islamic jurisprudence. Their stories and behaviours tend to centre on the husband’s obligation to provide financially. Yet beyond maintenance, women rarely make statements about rights and duties pertaining to divorce procedure. And when I asked them why their divorce unfolded in a particular way, they tended to state that this was just how things are done, that their family member had told them to do so, or that they did not want to create problems.

At the heart of divorcing women’s statements and actions is instead a socio-cultural ethical register. In this repertoire, the value of people, women in particular, is based in part on their perseverance (*muñ*), as well as on their obedience and discretion (*sutura*). Married women need to “remain patient, stoic, self-composed and uncomplaining in the face of challenges”,⁵¹ as Hannaford and Foley explain. Wives are to maintain appearances vis-à-vis the outside world, and maintain composure despite indignities such as infidelity or financial inadequacy.⁵² Like Khady’s account, the following statements of a thirty-five year old woman who divorced her husband five months previously underscore perseverance in the face of hardship: “the lack of financial support lasted for too long, I endured it all that time for my father”; “it lasted a very long time, I endured it, I really endured it, until I could not do it anymore.”

In contrast to the decidedly Islamic repertoire of jurisprudence that comprises marital duties and marital obligations, as well as rules about how to dissolve a union, this ethical repertoire is strongly rooted in the Wolof socio-cultural repository that centres around honour.⁵³ Yet it resonates with notions in Islamic jurisprudence about marital rights and obligations. And for

50 M’bow, “Islam et Femme Sénégalaise”.

51 Hannaford and Foley, “Negotiating Love and Marriage”, p. 209.

52 *ibid.*

53 Assane Sylla, *La philosophie morale des Wolof*, Dakar, Sankoré, 1978. Boubakar Ly, *La morale de l’honneur dans les sociétés wolof et halpulaar traditionnelles: Une approche des valeurs et de la personnalité culturelles sénégalaises*, 2 volumes, Paris, L’Harmattan, 2016.

Senegalese women *muñ* is a central aspect of Islamic life. A respondent in her sixties related the following when asked what she would advise her daughter to do if her husband spent his money on a girlfriend: “Because she has children, she has to support, she has to support if she is a good woman, it is death that will make her leave there [implying that only her death will end her marriage and her membership of her husband’s household], you have to support because of God.”

The success of a child is believed to depend on its mother’s behavior in marriage – her submission toward her husband and ability to *muñ*. The salience of this belief is linked to the legendary status followers accord to the mothers of the founders of the different Sufi brotherhoods.⁵⁴ “A mother’s work is a child’s meal” (*liggeey u ndey añu doom*), and good, patient wives receive divine recompense in the form of successful children. Children of women who do not persevere in the face of hardship are not blessed. They moreover suffer the social consequences of having a mother who is seen to have behaved frivolously; people will talk negatively about them, or treat them disrespectfully; daughters may moreover be regarded as defective marriage partners.

References to romantic love were not part of the accounts of many of the women I interviewed about their divorce. For Khady and some other women it was. It was clear that Khady had mentioned but not insisted on her lack of love for her husband with her father, yet, in the story she shared with me, it played a central role, much like love or its absence did in the telenovelas playing on her television. While mediatized representations of love no doubt help shape its contemporary meanings, historically, in Wolof society, considerations of love and expectations of emotional and sexual attachment have co-existed with material concerns and the wish to strengthen kinship ties.⁵⁵

It is clear that, for the women of Tivaouane, Islam informs the way they get divorced, as well as the steps they take to initiate and secure an out-of-court divorce. They draw on a juristic repertoire of marital duties and rights to underscore their right to be financially taken care of, and demonstrate their worth by stressing their perseverance in face of marital difficulty. Thus, the way Islam informs these divorces, I suggest, is both gendered and varied. Because religion plays an integral role in the lives of these women it therefore also does not constitute a sphere that is separate from the socio-cultural domain. The ethical order of *muñ* comprises a multitude of linked values and norms that are both central to Islamic life and to Wolof morality and ethics. Considerations like harmony and romantic love exist alongside these repertoires and may also

54 M’bow, “Islam et Femme Sénégalaise”.

55 Hannahford and Foley “Negotiating Love and Marriage”, p. 207.

be drawn on to justify divorce, showing how Islam is lived as one of multiple commitments.

6 Kinwork

For many Tivaouane women it is difficult to divorce without the support of family members. Men regularly refuse to release their wife at her request, and will only let her go after being pressured to do so by her family members. Moreover, some men insist on speaking to the wife's male kin directly. This also means that women who do not have family relations that run very deep may have difficulty obtaining a divorce.

Kin also play an important role in women-initiated divorce simply because family plays a central role in people's lives. This is particularly the case for couples that are related. More generally, people's social being is interwoven with that of their family members, and in marital dispute it is therefore not only the worth of the husband and wife that is at stake. If marriage is an important marker of social adulthood, people moreover remain under a certain responsibility of their older kin. Ndeye, a mother and grandmother in her early seventies explains “If a woman's husband has hurt her, she should go to his kin and say: he did something that really hurt me; I want you to intervene.” Likewise, she is expected to turn to her own kin when the dispute further escalates. The obligation of spouses to involve family members in their problems is paralleled by an obligation to offer assistance. Children need to be educated and guided in their marriages; if not they may run into problems and divorce may ensue.

Women have reason to seek and heed the advice of their kin when they divorce their husbands; in going against the wishes of their family, they risk losing their affective and financial support. This is regrettable, because it is often through them that she will find housing and financial security for her and her children. The lack of affective support may also come at great loss for women. The women that shared their stories with me experience the bonds and obligations of kinship both as constraining and as protective. For them, kin are an important source of social well-being.⁵⁶ More practically speaking, to alienate or to anger one's kin is also to put yourself at risk in a subsequent marriage.⁵⁷

⁵⁶ See also Michael Jackson, *Life within Limits: Well-being in a World of Want*. Durham, Duke University Press, 2011.

⁵⁷ See also Cooper, *Marriage in Maradi*, p. 35.

Together this suggests that much of what is involved for women who seek to divorce their husband centers around her kin, and not around him. Women need to convince their family members, build their support, and get them on their sides. They will need to make strategic choices about which family members to involve. Sometimes it is for instance easier to get one's siblings to convince an elder family member than for a woman to convince this person herself.

Thus, kin also constitute a central audience of the narratives and acts of *muñ* for women who seek divorce, as we saw in Khady's narrative above. In their stories, women tell of enduring because their family wanted them to.

In the different context of mediation centers in India, Katherine Lemons uses the notion of kinwork, or "the physical and emotional labour to pursue aims within the bounds of kin relations."⁵⁸ The term builds on feminist critiques that have foregrounded the reiterative labour involved in kinship. Here the term seems especially apt for its insistence on the setting where women's work takes place, as well as for how it helps unravel the agency of women and their kin.

A woman can often only obtain support for a divorce if she can show that her husband seriously maltreats her or does not provide for her materially. Of course, this also means that women wanting to find resonance with their family members may frame their motive for divorce in those terms. Whether or not a woman can easily find support for her wish to divorce also depends on the relations between her family and her spouse. In cases where family members disapprove of the marriage, they often more easily endorse her wish to divorce. In situations where a women's family members oppose a divorce, women may also choose to inform them only after having asked their husbands to release them. Women only do so exceptionally because the choice to do so is both morally and socially fragile.

7 Conclusion

Out-of-court divorce is common in Senegal. Yet little is known about how women may obtain such a divorce. This article has shown that in the secondary city of Tivaouane out-of-court divorces that are at the initiative of women tend to play out between the wife, the husband and their family members, even if the divorce is ultimately pronounced by the husband.

⁵⁸ Lemons, "The Politics of Livability", p. 245.

Islam plays an important role in women’s out-of-court divorce processes, but its role is multiplex. Women justify their claims for divorce largely on the basis of *muñ* as well as insist on their right to be provided for, thus drawing on the juristic repertoire of Islamic jurisprudence. The way they draw on this repertoire is gendered: women do not engage in juristic discussion about divorce procedure, which seems to be the prerogative of men. Next to these repertoires women and kin may also justify claims for divorce on the basis of love or harmony. Islam is of significance to women’s out-of-court divorce, and in part this is the case simply because Islam plays an important role in these women’s lives more generally, the point being that, as an integral part of their lives, Islam exists alongside other ideals and considerations, and also does not constitute a self-contained sphere.

The important role for family members revealed in this close examination of women-initiated out-of-court-divorce prompts a reconsideration of the ways women make claims and try to obtain divorce. In this Muslim context where there is no Islamic court, it appears that women – who tend to avoid state courts – primarily navigate and maneuver their family to obtain divorce. Their narratives and performances of *muñ* in the face of hardship are often directed at kin, not at their partner. The notion of kinwork underscores that it is from within kin relations that women act, as well as that obtaining a divorce requires work, and, at times, a great deal of stamina. Women are between a husband and his prerogative to pronounce divorce and their family, which both constrains and enables them.

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