

PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is a publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/93453>

Please be advised that this information was generated on 2018-08-19 and may be subject to change.

Transnational Divorce in Dutch-Moroccan Families

The Semi-Autonomous Social Field of Legal Aid*

Iris Sportel

Girls who have been born here [in the Netherlands] come into contact with two governments. We are married under two laws. In case of divorce, we therefore also need to arrange it under two laws.¹

Partners in transnational Dutch-Moroccan marriages living in the Netherlands or Morocco potentially come into contact with two different legal systems when arranging family law matters like marriage and divorce. During a transnational divorce process they can receive social and legal aid from a variety of interconnected organisations in both countries. Moroccans are among the largest groups of migrants in the Netherlands.² In comparison, the number of Dutch migrants living in Morocco is small.³ In the past, many people of Moroccan descent living in the Netherlands married partners from Morocco. However, measures taken to limit migration for the purpose of creating a family have made it increasingly difficult for these transnational couples to choose residence in the Netherlands, so the number of transnational marriages in this group has diminished greatly.⁴ Following migration streams from Morocco to the Netherlands in the 1960s and 1970s and re-migration streams starting from the 1980s, organisations in both countries began offering social and legal aid to these migrants. As the number of Dutch-Moroccan marriages and divorces grew, so did the number and diversity of organisations in the Netherlands and Morocco involved in these. Nowadays, a wide variety of organisations are involved, offering social and legal advice, and aid in case of transnational Dutch-Moroccan divorces. These organisations include non-profit organisations, such as migrant organisations and other NGOs, as well as small businesses that arrange the recognition of Dutch divorces in Morocco for

* I would like to thank my supervisors Betty De Hart, Willy Jansen and Ashley Terlouw for their support and advice during the gathering of data and the writing of this article.

1 Board member of Stichting Vrouw en Welzijn, 2-7-2009.

2 In 2009 341,528 people of Moroccan descent were living in the Netherlands. Of these, 166,774 were born in Morocco, and are called first-generation migrants, while 174,754 are classified as second-generation migrants, having at least one Moroccan-born parent (CBS Statline, the Dutch statistics Bureau).

3 According to the Dutch embassy in Rabat, approximately 600 people with Dutch nationality are living in Morocco.

4 De Hart 2003, p.99-119; Hooghiemstra 2003, p.3-5, 11-19; Wilkinson, Goedvolk, & Dieten 2008, p.17.

Iris Sportel

a fee. In this article, I consider the usefulness of analyzing these interconnected organisations as a transnational, semi-autonomous social field of legal aid.⁵ On the one hand, such an analysis brings a transnational and migration dimension to Moore's concept of the semi-autonomous social field. As Levitt and Jaworsky write:

Migration has never been a one-way process of assimilation into a melting pot or a multicultural salad bowl but one in which migrants, to varying degrees, are simultaneously embedded in the multiple sites and layers of the transnational social fields in which they live. More and more aspects of social life take place across borders, even as the political and cultural salience of nation state boundaries remains clear.⁶

Moore's concept of semi-autonomous social field (SASF) was originally designed for a local or national context. More recently, Pool used the SASF concept in the context of Polish labour migration to the Netherlands.⁷ My own study of legal aid for Dutch-Moroccan divorce cases, by organisations from both the Netherlands and Morocco, introduces a transnational dimension to the concept of the SASF in the field of family law.

Moreover, this study can add a legal dimension to studies of Moroccan migrant transnationalism that mostly focus on economic, social and cultural links that migrants maintain with their country of origin. De Haas, for example, writes about the influence of migrant remittances on regional development in Morocco, whereas Lacroix focuses on transnational development networks including projects undertaken by migrants in their home villages.⁸ Salih describes how Moroccan women living in Italy maintain social links with Morocco and move between the two countries.⁹ On a macro level, in the context of political debates about migration, the assumption that strong transnational ties are impeding integration in the country of residence has been studied extensively.¹⁰ In this analysis of the transnational field of legal aid in Dutch-Moroccan divorces, I intend to extend the debate on migrant transnationalism, supplementing it with the links and interactions of migrants with the legal systems both in their countries of origin and residence. Furthermore, the article shifts the focus from individual migrants or governments to professionally involved organisations, including what Pries has called the 'meso-link of organisations'.¹¹

This article is based on data collected during fieldwork in Morocco and the Netherlands between 2008 and 2011 as part of a study on transnational divorce in Dutch-Moroccan and Dutch-Egyptian families. Formal, semi-structured inter-

5 Moore 1973.

6 Levitt & Jaworsky 2007, p.130.

7 Pool 2011.

8 De Haas 2006, Lacroix 2009.

9 Salih 2001, p.668.

10 Snel, Engbersen & Leerkes, for example, could not find a correlation between transnational activities and integration of, inter alia, Moroccan migrants in Dutch society. Snel et al. 2004.

11 Pries 2008.

views were held with representatives of seventeen organisations involved in transnational divorce, such as migrant organisations, NGOs, translators, law firms and the Dutch embassy in Rabat.¹² Further information was gathered through participant observation and informal interviews at meetings related to the topic in both the Netherlands and Morocco.

The Semi-autonomous Social Field

In 1973, Moore introduced the semi-autonomous social field concept as a means to study law and social change in complex societies. According to Moore, a SASF is identified 'not by its organisation ... but by a processual (sic) characteristic, the fact that it can generate rules and coerce or induce compliance to them', mostly by way of exclusion.¹³ An SASF is semi-autonomous, being 'simultaneously set in a larger social matrix which can, and does, affect and invade it'.¹⁴ The most obvious source of such rules are governments that 'invade' semi-autonomous social fields with legislation, thrusting new laws upon social arrangements already in use.¹⁵ Moore therefore emphasizes in her article the possibilities of studying SASFs when assessing the effectiveness of state laws as a form of social engineering.

In this article my aim is to carry the concept of SASF into a slightly different context, away from the question of effectiveness of legalisation, to study a network, or field, of organisations providing social and legal aid in transnational Dutch-Moroccan divorce cases. The rules that apply may influence the way law is treated by people involved in Dutch-Moroccan divorce cases. Does this field fit Moore's description of an SASF? And what insights can such an analysis provide?

Below, I set out to describe some of the organisations active in providing social and legal aid in transnational Dutch-Moroccan divorce cases, dividing them into four categories. Thereafter I describe how different actors engage in shared activities such as lobbying and education. Finally I show how several shared norms regarding transnational divorce are central to the field, returning to Moore's definition of the SASF as generating and inducing rules.

Mapping the Field

NGOs

Many NGOs provide transnational legal aid, both in the Netherlands and Morocco. *Stichting Steun Remigranten* (Foundation for Support of Returning Migrants, SSR) is one of the most well-connected and well-known NGOs active in the field. SSR operates in both Morocco and the Netherlands. Their main office in Berkane employs several Dutch-Moroccan employees who handle over 8,000 requests for help and advice annually. The majority of these requests deal with

12 In some cases, more than one representative from an organisation was interviewed, bringing the total number of interviews to 22.

13 Moore 1973, p.722.

14 Ibid, p.720.

15 Ibid, p.723.

Iris Sportel

social security issues of Moroccans who have returned to Morocco after a period of residence in the Netherlands. The SSR office also handles questions about Dutch and Moroccan family law and has specific projects for women and children who are forced to 'stay behind' in Morocco by the husband or father. In this, they cooperate closely with the Dutch embassy in Rabat.¹⁶

NGOs working in the Netherlands have a variety of backgrounds. Some are called 'self-organisations', initiated by Moroccan migrants living in the Netherlands. Other migrant NGOs represent various nationalities. Several organisations have their origin in the Dutch women's rights movement, having shifted their focus from native Dutch to migrant women. Finally, a broad range of other NGOs have become involved in providing information about Moroccan family law and legal aid to transnational divorcees on a subsidised project basis. A regional office of Development NGO COS, for example, together with the Dona Daria centre for women and emancipation, organised the project 'Moudawana, choices and opportunities', with the aim of educating both local Moroccan communities and legal professionals about the new Moroccan family code.

In Morocco, many organisations, ranging from women's rights organisations to environmental protection NGOs, are active in projects on family law. Some of these, especially in regions where many Moroccans have migrated abroad, are also actively involved in Moroccan family law, aiming at Moroccans living in Europe. None of them, however, focuses specifically on the Netherlands.

Market-level Actors: Private Offices

The market is also involved in transnational divorce cases. There are many private offices, often run by translators, offering services related to transnational divorce. Most of these offices are located in the Netherlands, making a business out of arranging for the recognition of Dutch divorces in Morocco. They can assist during the Dutch divorce case, arrange the translation and legalisation of documents and take over the procedure for recognition of the Dutch divorce in Morocco. If recognition fails, they can arrange a full Moroccan divorce procedure. Fees for this service can be quite substantial, running into several thousand Euros. However, this market is not limited to commercial businesses as some NGOs also run some kind of private office. The differences between the profit and non-profit offices are fluid and not always clear.

Stichting Vrouw en Welzijn is an example of such a private office. This organisation is actually an NGO that organises projects for migrant women and children in the south of the Netherlands. Besides these activities, most of them subsidised by local government, the board of the Stichting privately arranges for the recognition of Dutch divorces in Morocco for a fee of €1,500. A Moroccan example of a private office is *NL Services*, run by a Dutch translator who lives in Tétouan, in the north of Morocco. The socio-legal services she offers are similar to those of the SSR, handling questions, translations and Dutch legal procedures. Although *NL Services* is a commercial business, fees are adjusted to the client's financial situation, sometimes handling cases of people in need *pro bono*. *NL Services* is well-

16 Annual report (Jaarverslag) SSR 2008.

connected to other organisations working in the transnational Dutch-Moroccan divorce area, especially the SSR.

Lawyers

Lawyers form a third category of actors, since they obviously play a part in Dutch-Moroccan divorce proceedings. In the Netherlands, legal representation by a lawyer is mandatory during a divorce, but not for the recognition of a foreign divorce. In Morocco, a lawyer is needed both during divorce proceedings and in proceedings for the recognition of a foreign divorce. Some lawyers specialise in Dutch-Moroccan divorce cases, often working together directly with colleagues in the other country or indirectly through NGOs. Some Dutch lawyers can therefore handle both Dutch and the Moroccan divorce cases. However, it is not mandatory that the lawyers consulted must specialise in Dutch-Moroccan cases and not all lawyers in the Netherlands or Morocco who handle transnational cases are part of or connected to the transnational field of legal aid. These lawyers may not be familiar with the specific complexities of Dutch-Moroccan divorces, and having a divorce arranged by a non-specialist lawyer recognised in the other country may be complicated.

Although lawyers are technically also market-level actors, their position in the field is more complicated than the position of private offices. First of all, in many divorce cases in the Netherlands the lawyer is subsidised by the government, meaning that people with an income below a certain level only need to pay a nominal amount. Lawyers are generally be paid by the Dutch government, especially when handling cases from transnational couples living in Morocco where income levels are lower than in the Netherlands. However, many lawyers feel that the compensation they receive in these cases is inadequate and not all lawyers are prepared to handle complicated cases like transnational divorces on a subsidised basis.¹⁷ In Morocco, on the other hand, people must pay for their lawyers themselves. This means that for many transnational couples it is actually cheaper to arrange their divorce in the Netherlands, even though the average fee of a Moroccan lawyer is far lower than that of a Dutch lawyer. Secondly, while some lawyers also function as private offices, arranging the transnational divorce in two countries for a fee, others are also involved in non-profit activities, often together with NGOs.

State-level Actors: Embassies and Consulates

Finally, the oldest and most obvious source of information and advice on transnational divorce consists of the embassies and consulates of both countries. Because embassies and consulates handle the legalisation of documents for use in other countries, almost all people in a transnational divorce will at some point during the divorce process come into contact with an embassy or consulate. Moreover, they may also need to deal with local authorities when registering marriage and divorce, or the ministries of foreign and internal affairs involved in the legalisa-

¹⁷ See for example Harm Gelderloos in the 2008 annual report of the *Raad voor de Rechtsbijstand* (legal aid council), p.20.

Iris Sportel

tion of documents. The Dutch embassy in Morocco is mostly concerned with divorce from the perspective of Dutch nationality and residence rights. They sometimes answer questions, but will not of their own accord provide information about Moroccan or Dutch family law. Problems with regard to marital status therefore often only arise during passport applications.¹⁸ The four Moroccan consulates in the Netherlands, located in different cities, do provide information on request on Moroccan family law and transnational marriages and divorces. The consulates share a legal representative, who can arrange some family law affairs directly at the consulate.¹⁹

The inclusion of such government bodies as consulates and embassies in this field does not seem to concur with Moore's analysis of SASFs as being 'between the body politic and the individual', in as much as she describes governments as 'invading' semi-autonomous social fields through legislation, and thrusting new laws upon social arrangements already in practice.²⁰ A similar approach to governments and social fields can be found in studies on transnationalism. According to Lacroix:

... the transnational approach remained deeply entrenched in the assumption of a strong opposition between states and transnational fields. Transnationalism had been more frequently used to characterise social systems that were closed around themselves, finding the resources to reproduce themselves in the areas of informality, dubious legality and avoidance of national legislations.²¹

However, as transnational divorce is also a legal issue, collaboration with the Dutch and Moroccan authorities and legal systems is important to organisations in the field. Moreover, 'the body politic' is not a monolithic, single institution; rather, it consists of many institutions and localities, including some outside its own territory, such as the embassies and consulates. These different elements of the body politic may very well be part of other semi-autonomous social fields as well, including the transnational field of legal aid. Even though they are state institutions, I consider the embassies and consulates to be an important part of the transnational field of legal aid.

As described above, the actors involved in providing social and legal aid in case of divorce are many and various. Although the subject of this field – legal aid in transnational Dutch-Moroccan divorces – is transnational, being part of a transnational field does not necessarily mean that all these organisations are them-

18 Head of Consular Affairs, 8-10-2009 Rabat, Morocco.

19 This legal representative is often described as a 'judge'. This does not, however, mean that court cases are held in the embassy, as in Morocco the concept 'judge' has a broader meaning than in the Netherlands. This information is based on data gathered during meetings at which the embassy or consulates were represented and interviews with divorcees who have had contact with the embassy during their divorce.

20 Moore 1973, p.723.

21 Lacroix 2009, p.1666.

selves transnational. Pries has defined transnational organisations as being 'highly decentralized and border-crossing pluri-locally distributed and, at the same time, intensely coordinated, stable and dense cooperation frameworks with membership rules, deliberately established and variable structures, as well as more or less implicit goals and intentions'.²² Most of the organisations in the field described above do not fit this definition. Embassies and consulates, for example, are intensely coordinated, stable and have established structures with clearly defined goals, but they are centrally coordinated by a government. Private offices may be active in two countries, but most have a main office located in either Morocco or the Netherlands. Some NGOs may only be active locally, even though they have contacts with other organisations. Therefore, even though the field of legal aid in Dutch-Moroccan divorce cases is transnational, it comprises mainly national or local organisations with transnational ties.

Shared Activities

In October 2009, the Dutch NGO SSR organised an expert meeting in Rabat on the issue of 'the legal position of Moroccan migrant women in the Netherlands and the application of Dutch and Moroccan family law'. The meeting was part of a project on 'left behind' women, financed by the Dutch Ministry of Justice and the Ministry of Housing, Spatial Planning and the Environment. Oxfam Novib also provided financial support for the expert meeting. The opening speech was given by the Moroccan Minister for the Moroccan Community Residing Abroad. He stressed the importance of improving the position of Moroccan women and children residing abroad and of informing them about the new Moroccan family law that has improved their legal position. Further speeches were delivered by Dutch and Moroccan lawyers, NGO representatives and academics. Besides lawyers and NGO representatives from both countries, representatives of private offices, government officials, representatives of the Dutch embassy and legal scholars were present to discuss several issues related to transnational divorce in roundtable sessions.

As this example shows, the organisations participating in the field of legal aid in Dutch-Moroccan divorce cases regularly participate in shared activities. These activities can roughly be divided into three categories: advice and referring, education, and influencing policy.

Advising and Referring People in Transnational Marriages During the Divorce Process

On request, all organisations in the field provide advice, aid and information to people involved in transnational marriages. This can be done during formal office hours or by appointment, such as at the office of SSR in Berkane or at a Moroccan consulate in the Netherlands; more informally, advice can be given on the telephone, by e-mail or face-to-face. Though most organisations provide advice individually and independently, meaning that each organisation has its own clients

22 Pries 2008, p.16.

Iris Sportel

and employees or volunteers answering questions, organisations also work together. Many refer to one another in complex cases or for practical reasons. For example, the SSR refers clients who live in or near the city of Tétouan, several hundred kilometres from their office in Berkane, to the office of NL Services, and vice versa. Although all organisations can provide legal advice and limited legal aid, many legal actions are the reserve of lawyers registered with a certain court. Before documents from one country can be used in another, they need to be legalised by an embassy or consulate. Most organisations therefore have contacts with the embassies or consulates and specific lawyers to refer their clients to. Lawyers themselves also often need to refer their clients for legal proceedings in the other country or before other courts, either directly or through another organisation. Most organisations can provide advice and answer questions on legal issues other than family law and divorce alone. SSR and NL services handle mostly social security issues; translators handle all kinds of documents; and the embassies and consulates handle immigration law questions. Lawyers can specialise in Dutch-Moroccan family law cases, which are mainly divorce cases, but most lawyers have several specialisations, for example, combining family law with immigration law or social security law. Many Moroccan lawyers are not specialised in a specific field of law and handle all cases. This diversity means that providing advice, aid and information on transnational divorce is central to the activities of some organisations, such as some private offices and lawyers, while it is more marginal to others, such as some NGOs and the embassies and consulates.

Education

The second activity is education. Many organisations are involved in proactive educational activities aimed at persons potentially involved in transnational divorces, especially women, and professionals working with these groups. Different methods are used to provide these educational activities, such as information booklets, films and websites and special meetings.

Educational activities tend to be organised by NGOs involved in the field, often with the aid of subsidies from Dutch local or state governments. The Moroccan Ministry for the Moroccan Community Residing Abroad also intends to support projects to educate Moroccan women living abroad about the new Moroccan family law.²³ Lawyers, private offices and embassies and consulates tend to take a more passive role, and are generally not involved in organising meetings or distributing the information material, although they do sometimes contribute to the writing of booklets or provide speakers at meetings.

In the Netherlands, especially since the 2004 introduction of the new Moroccan family code or *Mudawwanah*, many activities have been organised to educate Moroccans living in the Netherlands about the reforms. Several NGOs in the Netherlands have formed a special working group, *landelijke werkgroep Mudawwanah*: 'promoting the legal position of Moroccan women, improving their self-reliance and emancipation through adequate assistance, pointing out bottlenecks,

23 Information from the opening speech by the Minister for the Moroccan community residing abroad at the SSR expert meeting in Rabat, 24-10-2009.

information and prevention'.²⁴ This working group has produced brochures and information booklets, in both Dutch and Arabic, about the new family code for Moroccan migrants living in the Netherlands. The working group has also trained volunteers to provide information about Dutch and Moroccan family law in meetings that often focus on Moroccan women living in the Netherlands. They are frequently held in community or women's centres.

In Morocco, similar initiatives are organised to educate Moroccans in different regions on Moroccan family law. The SSR office in Berkane organises educational activities, giving guest lectures at several language schools where Moroccans in the process of migrating to the Netherlands, mostly for marriage migration, prepare for the compulsory language test. These lectures are mostly about immigration law in relation to the forced 'leaving behind' of women and children and domestic violence.

Besides education for people potentially involved in transnational divorce, there are also educational activities and materials aimed at professionals, such as lawyers and social workers. A popular way of educating professionals in both Morocco and the Netherlands is through expert meetings for different groups of professionals in which lectures are given by Dutch and Moroccan experts. Interestingly, some of the expert meetings are also attended by 'non-professionals', people who are personally involved. Some organisations feel it is important to have their 'target group' represented, for example, when project results are presented. These meetings tend to have a different dynamic than expert meetings that are open to invited professionals only. They are less formal, and participants may be given the opportunity to tell personal stories or ask for advice. Another goal of expert meetings, especially those restricted to professionals, is to give participants a chance to meet each other and build cross-border networks. Especially SSR and the *landelijke werkgroep Mudawwanah* are involved in setting up networks of Dutch and Moroccan lawyers and other experts, both nationally and internationally.

Influencing Policy

A third activity shared by organisations in the field is influencing policy on transnational divorce in both Morocco and the Netherlands; this is mainly done by NGOs. Most NGOs involved in the field attempt to influence policy by drawing attention to the issue of transnational divorce and the problems that can arise. They write petitions and press releases, invite politicians and the media to their meetings, and lobby policy makers. In 2009, the Dutch Ministry of Justice invited certain NGOs to provide information on current problems regarding Dutch-Moroccan family law in preparation for a meeting of the *commission mixte*, a committee formed by the Dutch and Moroccan Ministries of Justice that meets regularly to discuss family law issues. In Morocco, at an expert meeting organised by the Moroccan Ministry of the Family, Social Development and Solidarity, local

24 Landelijke werkgroep Mudawwanah, information on SSR website: http://www.steuurenremigranten.nl/index.php?fuseaction=home.showPages&pagenr=pAjbXUqM&taal=ned_&PHPSESID=8c6652f4b69173998e7be78add2421ae, accessed on 14-7-2011.

Iris Sportel

women's rights NGOs were invited to discuss recent research on family law, including transnational marriages and divorces.²⁵ The SSR office in Berkane always invites Dutch ministers who are visiting Morocco officially to meet representatives and clients of SSR.

Embassies and consulates are often on the receiving end of these lobby activities, acting as representatives of their governments. During an interview, a board member of the small NGO *Stichting Vrouw en Welzijn* proudly recalled her successful campaign to facilitate divorce at the Moroccan consulate.

In 2001/2002 the Moroccan ambassador visited the mayor of Sittard.²⁶ I asked the mayor if I could be present and drummed up 400-500 women from our supporters to hand over a petition. Many men also signed, because it concerned their mothers, wives and sisters, so it was relevant for them as well. Eventually, I became the first woman in the Netherlands who managed to get a Dutch divorce recognised at the Moroccan consulate. ... There were 380 other girls with this problem, and after the petition and pleading with the ambassador they all got their Moroccan divorce.²⁷

As this example shows, the participating organisations do not so much lobby for fundamental family law changes, rather they aim at the accommodation of existing policies to facilitate the transnational divorce process. In their educational and legal aid activities, too, they focus on giving information and aid to obtain a transnational divorce for both men and women, and to protect and promote the rights of women and children.

This focus in their activities reflects certain underlying notions about the problems and solutions of transnational divorce. First, most members of the transnational field of legal aid seem to consider transnational divorce mostly as an issue of concern to women, not men. Secondly, they view their work as helping clients face the complex procedures and the interaction of divorce rules in a transnational context, not as supporting women against their former spouse.

Shared Norms in the Field

Many of the educational and advisory activities are aimed specifically at women or women's issues. Considering divorce to be mostly an issue for women, and sometimes children, can therefore be seen as a notion that is shared by most actors in the transnational field of legal aid. For example, a letter sent to participants in the 2009 SSR expert meeting in Rabat contained the following paragraph:

As you know, Moroccan women who as a result of migration come into contact with the Dutch and Moroccan legal system are often confronted with

25 5-10-2009, Rabat.

26 A small city in the south of the Netherlands.

27 Board member of *Stichting Vrouw en Welzijn*, 2-7-2009.

complex legal issues and complicated procedures regarding family law and immigration law. The problem of the forced 'leaving behind' of women and children as well as the rights of migrant children also attract quite a lot of attention. It is therefore very important to mobilise the social and legal expertise in both countries and to develop a communal approach.²⁸

As this example shows, women are seen to be the 'problem-holders' of transnational divorce; they are the ones who are confronted with legal complexities, not their former husbands.²⁹

In its focus on transnational divorce as a women's issue, the field of legal aid is connected to national discourses in Morocco and the Netherlands. In Morocco, family law is often discussed within a discourse on human rights; in this context that means women's rights. This connection between family law and women's rights is reflected in the fact that the fifth anniversary of the introduction of the new *Mudawwanah* was proclaimed by the Moroccan King as a national day of the Moroccan woman.³⁰ In the Netherlands, the focus on the position of migrant women is connected to debates about the integration and assimilation of migrants in Dutch society. Roggeband and Verloo describe how parallel shifts in gender equality policy and policy frames on the integration of ethnic minorities between 1995 and 2005 together lead to Muslim women being singled out as a 'group in particular need of emancipation'.³¹ According to Prins and Saharso, it is assumed that '... Dutch laws and customs particularly conflict with the privileges of immigrant (i.e., Muslim) *men*. Immigrant (i.e., Muslim) *women*, on the other hand, were depicted as 'victims' of their own culture, and as having a self-evident interest in their integration into Dutch society'.³² Websites and policy plans of various Dutch organisations involved in the transnational field of legal aid contain such phrases as 'stimulating the social participation of migrant women'³³ and 'we consider emancipation as a condition for successful integration and societal participation'.³⁴ These phrases are easy to link to the policy changes described by Roggeband and Verloo.³⁵

This linkage of norms in the transnational field of legal aid to similar national discourses and frames on the rights of Muslim women is interesting when one compares the work of, among others, Sally Merry on the translation of global human rights law in local settings. According to Merry: 'Human Rights ideas, embedded in cultural assumptions about the nature of the person, the community, and the

28 Fragment from letter SSR confirming participation in expert meeting, 24-10-2009. Translated from Dutch.

29 Verloo & Lombardo 2007, p.14.

30 Celebrated in October 2009, with a large conference organised by the Ministry of the Family, Social Development and Solidarity.

31 Roggeband & Verloo 2007, p.286.

32 Prins & Saharso 2008, p.368.

33 IDEA, Utrecht: <http://www.idea-utrecht.nl/idea>, accessed on 22-2-2010.

34 Information booklet on *Dona Daria*, Rotterdam: accessed through <http://www.donadaria.nl/> on 22-2-2010.

35 Roggeband & Verloo 2007.

Iris Sportel

state, do not translate easily from one setting to another.³⁶ However, as the norms of the transnational field of legal aid are easily connected to discourses on women's rights in both Moroccan and Dutch society, the translation between these settings is quite smooth.

Gross has described how NGOs have a certain interest in connecting their activities to the general discourse in society because they need to frame their projects in a way that will get them funded.³⁷ However, as the representatives of the participating organisations are themselves part of these societies, they can be expected to be affected by dominant discourses, not just when framing their projects but also in their personal perceptions. Stating that NGOs adopt the dominant discourse just to get their projects funded is to do them an injustice. It ignores the passionate involvement with which their representatives attempt to improve the position of women in such cases.

Although women are seen as problem-holders in transnational divorce, their role is rather passive. This relates to the second shared notion in the field: transnational divorce as a problem of rules and procedures. In the field of legal aid, transnational divorce is disconnected from conflicts between spouses in which both wives and husbands play an active role. Instead, when asked to describe the problems of transnational divorce, all representatives of organisations start to summarise conflicting rules and procedures. Organisations see their work as helping people to lawfully 'fight' a complex set of rules and interactions to obtain a valid divorce in two countries. In transnational Dutch-Moroccan divorce cases, there are many opportunities to thwart the former spouse, such as using the collision of legal systems to get higher maintenance payments or block access to children. The forced 'leaving behind' of women and children can also be seen as one of those strategies, but is strongly opposed by the organisations in the field. By focusing on women confronted with a complicated legal situation, organisations in the field transfer the focus of their activities from domestic conflicts between former spouses, to states and legal systems. When asked explicitly about this aspect, the employees of the SSR office in Berkane replied that their main task is to check whether a client has entitlements according to Dutch law. Interestingly, they also referred to SSR's principal objective: 'helping their [Moroccan] clients preserve and effect rights acquired in the Netherlands'.³⁸ This principal objective refers to the history of SSR, which was founded to help returning Moroccan migrants with Dutch social security issues. These issues still form the majority of the workload of their office in Berkane. However, in cases, for example, involving child maintenance rights after divorce, it is not a Dutch institution that pays, but the former spouse. This difference was not seen as such by SSR's employees. Even when discussing the forced 'leaving behind' in Morocco of Moroccan women who have lived in the Netherlands, the focus is on how to enable 'left behind' women to return to the Netherlands. Although the husbands of these 'left behind' women are viewed as perpetrators, the discourse and actions of the organisations helping

36 Merry 2006, p.3.

37 Gross 2004.

38 Interview with employees of the SSR office in Berkane, 19-10-2009.

these women – mostly the Dutch embassy in Rabat and the SSR office in Berkane – aim at a smooth and effective immigration procedure to enable these women to return to the Netherlands quickly. SSR and other organisations make an effort to influence Dutch migration policy in the hope of facilitating the return of ‘left behind’ women to the Netherlands. Punishing the perpetrator-husbands in any way is never mentioned: efforts focus solely on Dutch migration law and procedures.

As stated above, an SASF is identified by ‘the fact that it can generate rules and coerce or induce compliance to them’.³⁹ When analyzing the organisations involved in legal aid in transnational divorce cases as part of a field, shared norms concerning transnational divorce become visible. These rather general norms regarding divorce form the source of more concrete ‘rules’ on how to handle law in transnational divorce cases.

Framing transnational divorce as a women’s issue causes the participating organisations to focus on protecting the women’s position in transnational divorce. The forced ‘leaving behind’ of women by their husbands in Morocco, for example, is condemned as a divorce strategy. An organisation that helped husbands to arrange the ‘leaving behind’ of their wives would certainly be acting contrary to the rules of the field. Because the organisations involved in the field focus on the accommodation of divorce in both countries, they are helping their clients to navigate a complex web of regulations using lawful means. Organisations that help their clients to frustrate a former spouse – for example by obstructing the recognition of the divorce in the other country – would not be accepted. Many private offices are therefore talked of with some contempt by other organisations in the field, since, as commercial businesses paid by their clients, they may not always adhere so closely to rules that demand the protection of women and accommodation of divorce. Moreover, some private offices are accused of using methods other than the lawful means of the organisations in the field, including bribery. However, the exact operation of these rules and the mechanisms of coercion or inducement are not yet clear. I would claim, tentatively, that the field, in common with most examples in Moore’s article, functions mostly by way of exclusion, meaning that organisations are, for example, no longer invited to participate in meetings. Further research into the exclusion of organisations is needed to test this hypothesis.

Conclusion

In this article I have tested the usefulness of analyzing organisations involved in transnational Dutch-Moroccan divorce as a transnational semi-autonomous social field of legal aid. Although some of the organisations involved, especially government agencies like embassies and consulates, are unlikely candidates for participation in an SASF, they do seem to fit Moore’s description. After all:

39 Moore, 1973: p.722

Iris Sportel

The semi-autonomous social field is defined and its boundaries identified not by its organisation (it may be a corporate group, it may be not (sic)) but by a processual (sic) characteristic, the fact that it can generate rules and coerce or induce compliance to them⁴⁰

By analyzing the many and various organisations involved in providing social and legal aid in Dutch-Moroccan divorce cases as belonging to a transnational SASF, one can clearly show how these organisations share norms on transnational divorce. Considering transnational divorce as a women's problem and as a problem of complex, interacting rules and regulations is characteristic of the varied organisations in the field of legal aid, and which form the source of rules on how to handle law in transnational divorce cases. However, further research into the working of these rules and the mechanisms of inducements and coercion is necessary.

This analysis of a transnational field of legal aid as an SASF can contribute to studies on law and society as well as studies on migrant transnationalism. First of all, the common focus on the economic, social or cultural links that migrants maintain with their country of origin is extended here with the links and interactions that migrants have with the legal systems, both in their countries of origin and residence. Secondly, it shows how a transnational SASF can be semi-autonomous within two national contexts, consisting as it does of organisations that are not necessarily themselves transnational. Finally, it goes beyond an opposition between transnational social fields and the state. Not only are Dutch and Moroccan embassies and consulates themselves part of the transnational field of legal aid, the subject of this field actually *does* involve dealing with the interaction of two state legal systems.

References

- M. Alders, 'Prognose van gezinsvormende migratie van Turken en Marokkanen'. *Bevolkingstrends*, 2005 (2), p.46-49.
- C.S. Gross, 'Struggling with imaginaries of trauma and trust: the refugee experience in Switzerland', *Culture, Medicine and Psychiatry*, 2004 (28), p.151-167.
- H. De Haas, 'Migration, remittances and regional development in southern Morocco', *Geoforum: Journal of physical, human and regional geosciences*, 2006 37 (4), p.565-580.
- B. De Hart, *Onbezonnen vrouwen. Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht*, Amsterdam: Aksant 2003.
- E. Hooghiemstra, *Trouwen over de grens. Achtergronden van partnerkeuze van Turken en Marokkanen in Nederland*, Den Haag: Sociaal en Cultureel Planbureau 2003.
- T. Lacroix, 'Transnationalism and development: The example of Moroccan migrant networks', *Journal of Ethnic and Migration Studies*, 2009 35 (10), p.1665-1678.
- P. Levitt and B.N. Jaworsky, 'Transnational migration studies: Past developments and future trends', *Annual Review of Sociology*, 2007 (33), p.129-156.
- S.E. Merry, *Human rights and gender violence. Translating international law into local justice*, Chicago: The University of Chicago Press 2006.

40 Moore 1973, p.722.

- S.F. Moore, 'Law and social change: The semi-autonomous social field as an appropriate subject of study', *Law & Society Review*, 1973 7 (4), p.719-746.
- C. Pool, *Migratie van Polen naar Nederland. In een tijd van versoepeling van migratieregels*, Den Haag: Boom Juridische uitgevers 2011.
- L. Pries (ed.), *Rethinking transnationalism. The meso-link of organisations*. London: Routledge 2008.
- B. Prins and S. Saharso, 'In the spotlight. A blessing and a curse for immigrant women in the Netherlands', *Ethnicities*, 2008 8 (3), p.365-384.
- Raad voor de Rechtsbijstand. *Betrokken dienstverlening. Jaarverslag 2008: Raad voor de Rechtsbijstand*.
- C. Roggeband and M. Verloo, 'Dutch women are liberated, migrant women are a problem: The evolution of policy frames on gender and migration in the Netherlands, 1995-2005', *Social Policy & Administration*, 2007 41(3), p.271-288.
- R. Salih, 'Moroccan migrant women: transnationalism, nation-states and gender', *Journal of Ethnic and Migration Studies* 2001 27(4), p.655-671.
- E. Snel, G. Engbersen and A. Leerkes, 'Voorbij landsgrenzen. Transnationale betrokkenheid als belemmering voor integratie?' *Sociologische Gids*, 2004 51(2), p.75-100.
- M. Verloo and E. Lombardo, 'Contested gender equality and policy variety in Europe: Introducing a critical frame analysis approach.' In: M. Verloo (ed.), *Multiple meanings of gender equality. A critical frame analysis of gender policies in Europe*, Budapest-New York: Central European University Press 2007, p.21-49.
- C. Wilkinson, M. Goedvolk and S. Dieten, *Korte termijnevaluatie Wet inburgering buitenland. Eindrapportage*, Den Haag: WODC, ministerie van justitie 2008.