

First Submitted: 3 January 2019 Accepted: 22 July 2019

DOI: <https://doi.org/10.33182/ml.v16i4.669>

Interacting Legal Norms and Cross-Border Divorce: Stories of Filipino Migrant Women in the Netherlands

Asuncion Fresnoza-Flot¹

Abstract

The Philippines is one of only two states in the world in which absolute divorce remains largely impossible. Through its family laws, it regulates the marriage, family life and conjugal separation of its citizens, including its migrants abroad. To find out how these family laws interact with those in the receiving country of Filipino migrants and shape their lives, the present paper examines the case of Filipino women who experienced or are undergoing divorce in the Netherlands. Drawing from semi-structured interviews and an analysis of selected divorce stories, it unveils the intertwined institutions of marriage and of divorce, the constraints but also possibilities that interacting legal norms bring in the life of Filipino women, and the way these migrants navigate such norms within their transnational social spaces. These findings contribute interesting insights into cross-border divorces in the present age of global migration.

Keywords: legal norms; cross-border divorce; “mixed” couples; transnational social spaces; agency.

Introduction

Many family and social-legal studies of divorce (e.g. Allen and Brinig, 1998; Emery, 2012; Uunk, 2004; Wallerstein and Kelly, 2008) have highlighted the causes and consequences of ruptured relationships as well as the complex legal process involved. In the context of migration, relationship break-ups have been studied in the case of parental migration (Frank and Wildsmith, 2005; Pribilsky, 2004) but little is known about the divorce experiences of “mixed” couples in which the partners have “different nationalities and/or ethnicities” (de Hart et al., 2013: 995). Recent studies have shown the legal complexity of these couples’ divorce due to the often-conflicting family laws in the country of origin and of immigration of the separating partners (Kim, 2010; Singh, 2008; Singla, 2015; Sportel, 2013; Qureshi, 2017; Qureshi et al., 2014). These scholarly works demonstrate that conjugal dissolution takes place within these partners’ social spaces, which most often straddle national borders. However, the existing literature focuses on societies where absolute divorce is possible, overlooking cases in which one country largely forbids absolute divorce and the

¹ Asuncion Fresnoza-Flot, FRS-FNRS research associate & senior lecturer (maîtresse d’enseignement), Laboratory of Anthropology of Contemporary Worlds (LAMC), Institute of Sociology, Université libre de Bruxelles, Belgium. At the time of the study, the author was associated with Centre for Migration Law/Institute for the Sociology of Law, Faculty of Law, Radboud University Nijmegen, the Netherlands. Present contact details: LAMC, Institute of Sociology, Faculty of Philosophy and Social Sciences, Université libre de Bruxelles, CP 124, Avenue Jeanne 44, B-1050 Brussels, Belgium. Email: Asuncion.Fresnoza@ulb.ac.be.

Acknowledgements: This study was supported by a Radboud Excellence Initiative Fellowship (2016-2017). I deeply thank Betty de Hart for her intellectual guidance and the study informants who trusted me their migration and family life stories. Preliminary versions of the present paper were presented during the following events: Wine and lunch meeting (Center for Migration Law/Institute for the Sociology of Law, Radboud University Nijmegen, the Netherlands, 20 Dec. 2016); Association for Asian Studies 2017 Annual Meeting (Canada, 16-19 March 2017); and forum Gender in the Philippines: challenges within the domestic sphere and beyond (Université libre de Bruxelles, Belgium, 21 Nov. 2017).



other permits it. How do such contrasting legal norms shape mixed couples' (post-)divorce experiences?

To address this question, this paper adopts a transnational approach that pays attention to the way the process of conjugal breakdown unfolds across the borders of nation-states. Given that many migrants in mixed or non-mixed couples maintain links with their society of origin (Bélanger et al., 2011; Yeoh et al., 2013), a transnational analytical lens is useful to capture the cross-border aspects of their divorce (Constable, 2003; Sportel, 2016; Quah, 2018). To do so, I draw from Faist's (2004) concept of "transnational social spaces", which "are constituted by the various forms of resources or capital of spatially mobile and immobile persons, on the one hand, and the regulations imposed by nation-states and various other opportunities and constraints, on the other" (192). Within these spaces, legal pluralism can be observed, notably in the state laws of countries in which migrants have established various ties through the years. According to Hooker (1975), legal pluralism refers to "the situation in which two or more laws interact" (6). Given the "complicated legal pluralism" resulting from mixed couples' "connections with more than one legal system" (Sportel, 2014: 46), studying these couples' divorce can illuminate how legal pluralism works in transnational social spaces and how migrants live with and navigate it. Such pluralism may strongly influence mixed couples' (post-)divorce experiences, through the constraints that interacting legal norms bring during the ex-partners' active involvement in their transnational spaces.

To test this hypothesis, this article examines the case of Filipino migrant women in the Netherlands. These women came from the Philippines, one of only two states in the world where divorce remains largely impossible (the other one being the Vatican). The ensuing rift between the legal norms in the Philippines and those in the Netherlands may have far-reaching consequences for Filipino migrants. Aside from this, focusing on Filipino women's case is empirically interesting as women dynamically participate in the Filipino international migration. Since the 1980s, women have been dominating numerically the marriage migration from the Philippines. In 2015, for instance, almost 80 per cent of the 21,602 Filipinos registered in the country as spouses or partners of foreign nationals were women (CFO, 2016). Women also account for 67 per cent of the 20,073 Filipinos in the Netherlands (CBS, 2017), where many of them are in couple with insider citizens. The Netherlands being one of the countries in the European Union with the highest divorce rates in 2016 (two per 1,000 inhabitants: Eurostat, 2018), it is, therefore, an interesting terrain where to start investigating the interaction of legal norms and their impact on the separation and/or divorce of mixed couples involving Filipino women.

The following sections describe first the contexts in which these women are enmeshed, specifically the family laws in the Philippines and the Netherlands, then present the study's data-gathering methods and respondents. The main part of the paper examines the influence of legal norms on the experiences of Filipino migrant women, focusing on selected divorce stories. The article concludes by identifying possible research areas concerning mixed couples' break-up.

The Philippine and Dutch family laws

The family laws of the Philippines and the Netherlands display interesting characteristics with certain similarities and differences, which may fashion the lives of separating/separated mixed couples.

Concerning marriage, religious wedding is legally recognized in the Philippines but not in the Netherlands, where it is not legally valid without civil marriage as the "law considers a marriage only in its legal civil relationships" (Book 1, Dutch Civil Code). Overseas religious marriage is considered valid in the Netherlands according to the Dutch Act Conflict of Law Rules for Marriages,



which stipulates that a “marriage that is contracted outside the Netherlands and that is valid under the law of the State where it took place or that has become valid afterwards according to the law of that State, is recognised [...] as a valid marriage” (Article 5). Regarding the loss or maintenance of nationality, the Philippines and the Netherlands have also contrasting attitudes. The Philippines’ constitution states that “[c]itizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission, they are deemed, under the law, to have renounced it” (Article IV, Section 4), for instance by obtaining the nationality of his/her foreign partner. Republic Act No. 9225 of September 2003 provides a way to reacquire Filipino nationality: “natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the [...] oath of allegiance to the Republic” (Section 3). In the Netherlands, Dutch citizens keep their nationality if they voluntarily acquire the nationality of their foreign partner (except if their partner is a citizen of Norway or Austria²).

Moreover, the Philippine and Dutch governments encourage their respective citizens to register their overseas marriage in their territory with certain difference. In the former country, this changes the civil status of their citizens from “single” to “married”. In the latter country, registering in the Registry Office in The Hague is “not mandatory”³. However, it can facilitate the dissolution of marriage as the court accepts the extract of the separating couple’s marriage certificate from The Hague’s Registry Office. In this situation, partners do not need to obtain a copy of their wedding certificate from the country where they got married.

When it comes to marital property, the Philippines and the Netherlands share certain similarities since January 2018 when the latter country introduced a new matrimonial regime. In this new regime, like in the Philippines, common marital properties refer to possessions gained by the spouses during their marriage and do not include those obtained by individual partner before their union. In the present study, all the respondents’ marriages occurred before January 2018 and therefore fall under the old matrimonial regime that included properties acquired by each partner before marriage and by the couple during their marriage.

Regarding the dissolution of marriage, the Philippines and the Netherlands have contrasting laws. Divorce is largely impossible in the Philippines where family laws have a pluralistic character linked to its two Codes: the 1987 Family Code of the Philippines (for non-Muslim Filipinos⁴) and the Code of Muslim Personal Laws. The 1987 Code states that marriages can be broken by voiding them, through annulment, or via legal separation. Partners whose marriage is voided or annulled can remarry afterwards, whereas those who are legally separated cannot do so as their marital bond remains legally undissolved. On the other hand, the Code for Muslim Filipinos authorizes divorce if at least the male partner is a Muslim. Unlike these Philippine family laws, the Dutch family law authorizes absolute divorce and do not possess pluralistic character. This law had undergone major changes for the last five decades. For instance, no-fault⁵ and unilateral⁶ divorce has been introduced in the Netherlands in 1971. Despite their striking differences in terms of marriage dissolution, the Philippine and Dutch family laws appear similar in one aspect: they both demonstrate a transnational character. In the case of the Philippines, this can be attributed to its Civil Code stating that “[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad” (Article 15). That

² This is due to the treaties between these countries and the Netherlands (Ministry of Security and Justice, 2017).

³ See the website of The Hague’s Office: <https://www.denhaag.nl/en/certificates-and-official-documents/certificates/converting-a-foreign-certificate-into-a-dutch-certificate.htm>

⁴ They represent 96 per cent of the Philippine population in 2010 (NSO, 2014).

⁵ This refers to a divorce in which a proof of wrongdoing of a partner in a couple is not required for the dissolution of marital ties.

⁶ This means that either of the partners can file for divorce and that mutual consent is not prerequisite.



is why Filipino migrants are expected by the Philippine state to register their marriage in the Philippine embassy or consulate in their receiving country. Concerning divorce, Article 26 of the 1987 Family Code specifies that the Philippine state accepts divorces obtained abroad by the foreign partner of a Filipino national. Besides, on 24 April 2018, the Supreme Court declared in the case *Republic of the Philippines vs. Manalo* that divorces Filipinos obtain abroad shall also be recognised in the country. In the case of the Netherlands, the transnational character of its family law can be observed in its civil code and private international laws concerning legal marital relationship, matrimonial property regime, pension rights equalisation and marriage dissolution. We will see later in the empirical data section how the interactions of the Philippine and Dutch family laws may lead to complex situations for Filipino-Dutch couples in the process of dissolution.

Methodology

The data in this paper emanate from a larger research project on marital break-up. Data gathering in the Netherlands was conducted between April and August 2016, using a “multi-sited” ethnographic approach (Marcus, 1995) combining observations, semi-structured interviews and informal conversations in various places, mostly cities.

At the beginning of fieldwork, it was difficult to meet Filipino women who would agree to be interviewed and share their life stories. This shows how important a united family is for Filipino migrants and how marital break-up is considered as a stigma for many of them. To meet potential respondents in three of the four largest cities in the Netherlands, a snowballing approach was adopted and observations were carried out during events such as birthday parties, Philippine Independence Day celebrations and other gatherings of Filipino migrants. Sleeping over twice in the house of one respondent proved to be useful to access her group of friends. Non-Governmental Organizations and associations founded by Filipino migrants provided information and assistance to meet other respondents. Nonetheless, obtaining the trust of the respondents remained a long and delicate process that required assuring them that their identifiable characteristics would be anonymised in the publications and presentations resulting from the study. Interviewing some respondents in their home and communicating with them via email proved effective to obtain additional information about their situation and lifestyle.

Aside from ethnographic observations, 32 interviews were conducted in Filipino, English and using the combination of the two languages. They were digitally recorded with the consent of the respondents. The present paper specifically draws from interviews with 15 Filipino women: 14 had divorced their non-Filipino husbands (12 Dutch, 1 African, and 1 Dutch Caribbean) and one was undergoing divorce from her Dutch husband. At the time of the interviews, these respondents were 54 years old on average and had been residing in the Netherlands for an average of about 27 years. Most of them were highly educated: six had attained tertiary level, six had vocational degrees and three had secondary education. Thirteen of them were working, one was retired and one was unemployed. They had two children on average. The major factors that triggered their conjugal separation were conjugal infidelity, financial problems and lack of intimacy and communication. The average duration of their marriage had been 16 years. In 11 of the 15 cases, it was the respondents who decided to divorce. This echoes previous studies’ observation that women predominantly decide and initiate divorce among heterosexual couples (Boylan, 2007; Kalmijn and Poortman, 2006). To protect the privacy of these respondents, their names were replaced by pseudonyms.



Differing civil statuses “here” and “there” following marriage

The marriages of 12 Filipino women in this study had a transnational legal dimension, as they were registered both in the country where they had been solemnized and in the country where the couple resided thereafter. These women possessed the same married civil status in both countries. Only one of them, named Joan (55 years old), registered late her marriage in her country of residence.

I was going to divorce [my Dutch husband]. I was filing the divorce, [but I found out that] I was not registered in The Hague [...] Our marriage was not actually registered. You cannot divorce [in the Netherlands] because you are not registered, not married in the first place. What can I do?

Joan’s experience suggests that the process of marriage for mixed couples does not end after the wedding, as it is important that their unions be registered in the partners’ respective countries of origin. Joan was not aware of this when she got married with her Dutch boyfriend in 1994 in the Philippines in a religious ceremony. When she came to Europe in 1994 to join her Dutch husband, they did not register their overseas marriage in the Registry Office in The Hague. It was only in 2004 that Joan, wanting to divorce her husband, found out that she had first to register her Philippine-celebrated marriage in The Hague, which highlights how the family laws of the Netherlands and of the Philippines interacted. At that time, she was already a Dutch citizen. To be able to divorce, she asked her sister in the Philippines to send her legal proofs of her marriage, including her birth certificate. This implies the importance of migrants’ transnational social spaces consisting of various ties (mostly familial), which help them confront difficulties in their immigration country (see Fresnoza-Flot, 2012). After receiving the needed documents, Joan registered her marriage in The Hague. On the following day, she went back there again, got an extract of her registered marriage and was finally able to file a divorce. Joan’s case suggests that the permanence of Philippine marriages carved in the Family Code of the Philippines can be challenged when Filipino migrants are registered in a country where absolute divorce is allowed. If they are no longer Filipino citizens, they can directly file the divorce by themselves and then seek the judicial recognition of this overseas divorce from the Philippine court.

Like Joan, six respondents got married once through a religious ceremony in the Philippines, and one tied the knot in the same way in another country (Australia, where religious marriages are legally recognized like in the Philippines). Two other women interviewed had their marriage solemnized twice: once during a civil wedding in the Netherlands or in another country, and a second time during a religious ceremony in the Philippines or in another country. The remaining respondents had only civil marriages, which were mostly solemnized in the Netherlands. Filipinos are supposed to register in the Philippines their marriages abroad, which most respondents did: only three respondents married in the Netherlands did not do so, and therefore remained “single” in the eyes of the Philippine law. This legal situation appears advantageous for some women with properties in this country. For example, Mina (41 years old), together with her new Dutch partner, bought a piece of land in the Philippines and put her name as owner of the property. She was required during the process to present a certificate of civil status and when she got this certificate from the municipality office she discovered that her marriage in the Netherlands was not actually registered and that she remained “single”.



It was not possible to put his name (in the land title), so I used my name. I was worried that I might still be married (in legal status). If this was registered, my new boyfriend would get angry, and then maybe later on my former husband would reappear to ask for his share of the property. [...] When I returned (to the Philippines) I immediately asked (for the certificate of civil status in the municipality office). I was nervous what result would come out. When the result came out, it was (written) “single”.

What Mina was not aware of was that her ex-husband could demand in the Netherlands half of her properties in the Philippines though she was “single” there, as their marriage fell under the old Dutch common marital property regime and their divorce followed the Dutch laws. This happened to Elisabeth (66 years old), whose marriage in another country was registered in that place and in the Netherlands but not in the Philippines: during their divorce, her Dutch husband asked for his “share” of her properties in the Philippines that she inherited from her parents, which upset her a lot. This is because her properties acquired prior to her marriage were subjected to the Dutch divorce laws.

The experiences of migrant women like Joan, Mina and Elisabeth echo Estin and Stark’s (2007) observation that the “extraterritorial expansion of family law” poses “new challenges” (4) to individuals and cross-border families. Mixed couples’ failure to register their marriage in the countries in which they are enmeshed can result in differing legal statuses in the two countries and often in complicated situations; this also applies to divorce, as we will see in the next section.

Differing civil statuses “here” and “there” after divorce

All the women interviewed had the same nationality (Dutch) as their husbands and their divorce followed the Dutch family law as they were residing in the Netherlands. None of these respondents sought for their divorce to be legally recognized in the Philippines, which resulted in a double civil status: divorced (or, in one case, widowed) “here” but married or single “there”. These differing legal identities can create emotional and practical constraints:

My passports are very ironical: Santiago [her maiden name] appears in my Dutch passport, whereas Van de Verde [the surname of her ex-husband] is in my Philippine passport. Every time I go back to the Philippines like recently, I ask myself “what will I do? Will I present my Dutch passport or my Philippine passport [to the immigration officer at the airport]?”. (Rita, 55 years old)

The confusion that Rita feels every time she visits the Philippines stems from her differing civil statuses that intersect with her dual nationality. This complication started after her divorce in 2007. A Dutch national since 1991, she decided to apply at the Philippine embassy to reacquire a Filipino nationality a few years after her divorce. The passport that the Philippine embassy issued to her used the name of her Dutch ex-husband. Rita protested, but the staff at the embassy told her that it would not be possible, as she was still registered as “married” in the Philippines and that there was no divorce there. This engendered problem later on when Rita and her new partner went back to the Philippines in 2014 to buy together a piece of land. Rita used her maiden name in filling up the administrative forms, but presented her Philippine passport with her ex-husband’s name on it as her proof of identity. The real state agent asked her to legally justify why she was utilizing different names to buy the property, during which time the process of land purchase was put on hold. Rita explained why she used her Philippine passport at that time:



[...] when you will buy [a property] in the Philippines, you have an advantage if you have a Philippine passport. So if I would only use my Dutch passport, I could not avail myself of that advantage. I needed to present my Philippine passport, but that passport is Van de Verde [her ex-husband's surname].

Aside from this names issue, the real state company also questioned the legality of Rita's relationship with her new partner with whom she was buying the land. To solve this problem, Rita sought the help of a lawyer and made an affidavit stating that her Filipino and Dutch passports belonged to the same persons. After this, she and her partner returned to the Netherlands to obtain a certificate from their municipality stating that they were in a registered partnership. This certificate, together with the affidavit, allowed Rita and her partner to finally acquire a piece of land in the Philippines. Rita's experience underlines the importance of registering in one's country of origin the change of civil status acquired in another country to avoid problems in keeping social ties with that country such as through acquisition of properties. This suggests how the laws in the countries of origin and of residence of migrants dynamically interact and reinforce each other. Rita was supposed to apply in the Philippines for judicial recognition of her divorce, but she was not able to do so due to time constraints and to her belief that the process would be long and costly.

Several of my respondents cited the same reasons as Rita for not registering their change of civil status in the Philippines, which suggests Filipino women's resistance to the power of the Philippine family law. Other respondents emphasized their lack of incentive to do so given that they were permanent residents in the Netherlands, intended to focus their lives in this country and had no plan to remarry "here" or "there". As Liza (45 years old) confided: "in my view right now, [I am for] living together not [for] getting married". Alma (48 years old) who was dating a possible Dutch partner appeared ambivalent: "I will maybe register (my divorce) when I visit there but I will not get married to a Filipino. I will not be getting married in the Philippines". Among the 15 women interviewed, only Joan, whose civil status in the Philippines remained "married", expressed her intention to apply soon in that country for judicial recognition of her divorce. Having a new Dutch partner, she was probably aware that if she would get married to him her ex-husband could file a case of bigamy against her in the Philippines. Moreover, only one respondent remarried in the Netherlands, but like other women interviewed, she did not change her married civil status in the Philippines.

Among the six respondents whose divorce had a strong transnational legal dimension, only three (Joan, Elisabeth and Rita) reported cross-border legal inconveniences during or following the rupture of their relationships. This implies that having differing civil statuses in the two countries does not always trigger legal problems in the everyday lives of Filipino migrant women.

Conclusion

The present study shows that marriage and conjugal breakdown in the context of Filipino migration are connected to each other in a complicated, challenging way. They have cross-border characters due to the interacting socio-legal norms within the transnational social spaces of Filipino migrant women.

Despite their Dutch nationality and long residence in the Netherlands, Filipino women often live under the engulfing power of the Philippine family laws, notably when they break up with their partner while maintaining dynamic transnational ties with the Philippines. This situation constrains the lives of some women, for instance by impeding them to divorce when their marriage in the Philippines is not registered in the Netherlands. This illustrates how the Dutch family law interacts



with the Philippine family laws in two ways: by recognizing Philippine marriages legally registered in the Netherlands, and by offering to (former) Filipinos residing in its territory the possibility to end such marriages through divorce. The transnational power of the Philippine family laws appears therefore limited, which provides a legal space for Filipino migrants to bring a legitimate end to their married life. Nonetheless, this power manifested itself again during the post-divorce lives of the respondents in the form of administrative hindrances when trying to acquire properties in the Philippines (due to the respondents' differing civil statuses). Despite these challenges, Filipino migrant women find a way to confront the laws that constrain them, in accordance with Kulk and de Hart's (2013) observation that "rather than resisting or avoiding the law, [mixed couples] tr[y] to navigate the law: they navigate between the different wishes, expectations and norms surrounding their family" (1067).

Hence, the present study's starting hypothesis turns out to be partly verified: interacting legal norms do shape Filipino migrant women's (post-)divorce experiences, not solely by exerting constraints on them during their active involvement in their cross-border social spaces but also by providing them possibilities to counter the power of those norms. Residing in a country where absolute divorce is possible allows Filipino migrant women to counter the power of the Philippine family laws, confirming thereby Baier's (2013) observation that "(p)lace can suspend the obligation to follow the law" (339). The findings in this paper can hardly be generalised due to its limited sample; nevertheless, it provides interesting insights on the interconnections between the institution of marriage and that of divorce in the Filipino diaspora. By shedding light on how family laws "here" and "there" interact, it may serve as a starting point for further studies of mixed couples, notably of the way legal norms in their transnational social spaces intersect in their lives.

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