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Please give me my divorce: an ethnography of Muslim women and the law in Senegal

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To Bring Home a Mediation Request: the House of Justice and its Effects in the Domestic Sphere

INTRODUCTION

As the previous chapter made clear, while some women do go, women also experience various barriers to bringing their cases to court, and these tend to be largely social barriers. Adjudication disrupts harmony. In addition, to go to court is to expose yourself and your husband, thus contradicting the Wolof conjugal ethic of *sutura*. Here I look at the *Maison de Justice* (House of Justice), a state institution introduced with the help of foreign donors in 2004 to increase access to justice. These institutions aim to provide non-contentious forms of dispute settlement in more familiar settings, and they function adjacent to the state courts. Houses of Justice provide legal information and help in obtaining extracts of judicial records, as well as voluntary mediation and conciliation. They deal with a wide array of – ‘justiciable’ – issues (Genn and Beinart 1999, 12-13), from conflicts over debt to criminal record checks, and from the creation of a neighbourhood savings group to fights between siblings. Help in marital disputes, domestic violence, and divorce form one of the House of Justice’s priorities. While the institution cannot pronounce or establish divorce, they are to mediate conflict and orient people toward the courts and police. In practice, these marital cases account for almost half of the cases brought to the House of Justice, the majority of them brought by women.¹

Thus, women may relate to the state by engaging the court but may also turn to the House of Justice. In this chapter I ask how they use this institution and how the institution responds. Does the House of Justice facilitate women’s ‘access’ to state family law? Why do women turn to the House of Justice and with what results?

A body of scholarly work documents how institutions, both state and non-state, premised on Alternative Dispute Resolution (ADR) and designed to address marital disputes, domestic violence, and divorce in other contexts, tend to prescribe reconciliation of the couple (Ashrafun and Säävälä 2014;

1 N’diaye (2015, 618) finds a similar figure for the House of Justice in Parcelles Assainies, Dakar.

Basu 2015; Grillo 1991; Lemons 2016; Vatuk 2013). These works echo Nader's concept of harmony ideology, and authors point out how the institutions examined are primarily concerned with harmony and healing (Lemons 2016, 245; Nader 1990). The institutions they study do not necessarily provide access to state legal justice; rather, they promote conciliation. Writing about a lower-level civil family court in Kolkata that employs conciliatory instead of adversarial practices, Basu shows that these are exceptional spaces, in that litigants frame their own issues and are encouraged to resolve marriage disputes through mediation instead of alien legal procedure. Yet Basu also sharply denounces them, stating they enable only 'limited legal agency' and prescribe the reconciled family as the optimal solution (Basu 2012, 469). Grillo shows how mandatory divorce mediation in California obscures inequalities between parties and discourages couples from claiming their respective rights (Grillo 1991). On the basis of studies of Indian non-state, women's arbitration centres (*Mahila panchayat*), both Lemons and Vatuk show that these do not help women leave unsatisfactory or violent marriages, but – given the financial and marital security marriage affords – rather aim to reconcile them with their partner (Lemons 2016; Vatuk 2013). Sonneveld, on the other hand, observes how mandatory mediation in divorce cases in Cairo family courts leads to 'mutually agreeable divorce settlements' that are less financially punitive for women than divorces pronounced by a judge (Sonneveld 2012, 132).

Together, these works form an inspiration to my enquiry. In this chapter I show how the mediator at the House of Justice primarily aims to reconcile the couple, sometimes to the detriment of a woman's goals. Mediations also do not necessarily provide women with access to state family law. Yet few mediations in fact take place, and one central goal of this chapter is to argue that the role of the House of Justice lies not necessarily in what the institution does or does not do, but in how it has the effects that it has. I show that evidence of having approached this institution *may* help women to successfully negotiate with their husband and other kin and achieve solutions in the domestic sphere. This can be explained by people's perceptions and ideas about the House of Justice and 'state justice' broadly. I rely on anthropological scholarship on 'affect' to unpack this claim further (Anderson 2014; Bens 2018; Clarke 2019; Navaro-Yashin 2006, 2007; Shouse 2005).

Before turning to this argument, however, in the first section of this chapter I will describe the genesis of the Senegalese Houses of Justice and the policy rationales behind their creation. I set out the legal framework, introduce the House of Justice's different staff roles, and indicate what their roles may be in marital disputes, domestic violence, and divorce. Next, I set out the way women use the House of Justice and how its staff responds. In relating the case of Mamie and of Marième and Ousmane, I subsequently analyse how the House of Justice *may* produce effects beyond the walls of this institution in the domestic sphere.

FOREIGN BUT FAMILIAR: ALTERNATIVE DISPUTE RESOLUTION TO EXTEND THE STATE'S REACH

The Senegalese House of Justice is a foreign invention: in regions of France, they have been a feature of the legal system since 1990, and in Belgium and Switzerland they were introduced in 1997 (Noreau and Pasca 2014, 309). I read these institutions – which at the same time facilitate people's access to and provide an alternative to the court system – as embedded in the global ADR movement (Nader 2002) and the trend in legal cooperation to complement a focus on courts with projects involving mediation and paralegals (Maru 2010, 2015).² Announced in 1999, the initial three Houses of Justice were introduced in 2004 in Senegal's capital Dakar and surrounding urban areas as part of a United Nations Office on Drugs and Crime project that was to combat urban delinquency and prevent the emergence of organized crime (M. Gueye 2015).³ Immediately at their implementation, however, they were taken up by the Ministry of Justice's sectoral justice programme (2004–2013) with the different rationale of promoting access to justice (M. Gueye 2015, 8). The programme was supported financially by the French government (*La Coopération française*) and was inscribed in a wider impetus to reinforce the rule of law by creating a modern justice system accessible to all (Coly 2016; M. Gueye 2015, 5).

Donor support for the Houses of Justice remains significant until this day. The French financed the installation of several Houses of Justice, training for personnel, and a nation-wide publicity campaign (M. Gueye 2015, 157). An additional partner is the privately funded Open Society Institute West Africa (OSIWA 2018) – and, more recently, the European Union (European Development Fund), which committed to building and equipping 12 new Houses of Justice between 2014 and 2020 (*La Commission européenne* 2016). These different donors fund the Houses of Justice as part of an effort to contribute to good governance, the rule of law, and a modern and effective justice system, and they see them as a particularly effective way to enhance access to justice.⁴ The relief of court caseloads is another important goal.

2 More generally, the House of Justice can be taken as an example of a legal transplant or, more broadly, a travelling model, a standardized intervention developed by experts and introduced across different countries (Behrends, Park, and Rottenburg 2014; Olivier de Sardan, Diarra, and Moha 2017).

3 By 2017 there were a total of 18 Houses of Justice in Senegal (interview M. Gueye October 2017).

4 Some of these donors also promote the institution as an example for other countries (Frenk 2012; OSIWA 2018).

For the Senegalese Ministry of Justice, the Houses of Justice serve to bring the justice system closer to the people (*justice de proximité*) and solve access-to-justice problems (Décret N° 2007-1253).⁵ As such, they also function to extend the reach of the Senegalese state – to ensure, as the Minister of Justice phrased it, ‘that Law and Justice are sufficiently present’ (Décret N° 99-1124).⁶ Because the Houses of Justice are often situated in areas where courts are nearby, the proximity that the Ministry of Justice aims for is not primarily spatial but more temporal and affective (Wyvekens 1996, 366-67). Indeed, the voluntary mediation offered by the Houses of Justice resembles forms of conflict resolution existing in wider Senegalese society. As the Ministry of Justice states: ‘these modes of settlement, which are in the western world considered as alternatives, constitute for us the normal or classic ways of conflict settlement’ (M. Gueye 2015, 6).⁷ Thus, while the ministry recognizes the foreign origin of the Houses of Justice, it questions its foreign character in the Senegalese context, stating that it is more in line with local realities than court procedures are. For this reason, they do not squarely situate the Houses of Justice with the state justice system, but as an extension of this system at the interface with society, aimed to enhance citizenship (Gueye 2015, 5).

This is reflected in the selection of mediators for the Houses of Justice. A mediator should be a retired judge, lawyer, prosecutor, or bailiff who is part of the community they are to serve. They need to be an older and respected member of the community where the House of Justice is situated, and, in practice, apart from one exception, they are all male (M. Gueye 2015, 11). The authority of the mediator thus draws both on his expertise and his local belonging and status as an elderly member of the community (Thelen, Vettters, and von Benda-Beckmann 2014); they are purposefully doubly embedded: within the state and the community.

Reflecting the crime-related origin of the institution, the House of Justice falls under the responsibility of the Public Prosecutor (Décret N° 2007-1253, art. 5).⁸ He is also the one that presides over the institution’s coordinating committee. According to law, this committee includes the President of the court, a representative of the local administration, the Mediator, the Police Commissioner, a representative of the social services,⁹ and the Coordinator

5 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

6 [‘à ce que le Droit et la Justice soient suffisamment présents’] Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

7 [‘[c]es modes de régulation sont considérés comme alternatifs par le monde occidental constituent chez nous les modes normaux ou classiques de régulation des conflits’]

8 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

9 In Tivaouane this is the *Services d’Action Educative en Milieu Ouvert* (AEMO), the organization for child protection.

of the House of Justice (Décret N° 2007-1253, art. 7).¹⁰ In practice, neighbourhood chiefs and leaders of women's groups also attend its meetings.¹¹ The Coordinator, a jurist tasked with the provision of legal information, is responsible for the daily management of the House of Justice (M. Gueye 2015, 11). This person is often assisted by a secretary, as well as by volunteers and interns.

As stated above, the House of Justice provides legal information, helps with the obtainment of legal acts – such as the documents required for a criminal record check – and offers mediation and conciliation. The legal framework refers to both mediation and conciliation, where 'mediation' means that parties are encouraged to resolve the conflict and 'conciliation' refers to a situation where a solution is proposed to them. Correspondingly, the person leading the session is referred to as mediator and conciliator. In practice, mediation and mediator are used in all cases; and like the House of Justice staff, I here therefore favour the words mediator and mediation.¹² Civil mediation may be at the initiative of the judge,¹³ the prosecutor, or the parties themselves.¹⁴ When the prosecutor or the judge instigates mediation, the mediator functions as their mandatary and is to report back to them. Mediation initiated by the parties themselves is always voluntary. At the end, the mediator draws up a record. Should the parties come to an agreement, then their signature validates this document as enforceable; but while judges may be presented with such agreements should the couple subsequently go to court to divorce, the agreements themselves are, to my knowledge, never in fact enforced through the court (Civil Procedure Code art 7).

As mentioned above, Houses of Justice can neither establish nor record a divorce. However, they may provide legal advice about divorce, and they may sit down with a couple to agree on a request for divorce by mutual consent. In other cases of marital dispute, as well as in situations of

10 Décret N° 2007-1253 du 23 octobre 2007 Modifiant Le Décret N° 99-1124 du 17 novembre 1999 Relatif Aux Maisons de Justice, à La Médiation et à La Conciliation.

11 Neighbourhood chiefs (see Chapter 7) are invited to the meetings of the coordinating committee. Naturally, not all attend these meetings; an average meeting may host 10 to 20 out of 71 neighbourhood chiefs.

12 Whether or not the mediator/conciliator ends up proposing a solution or not depends on the session. In practice, he often does.

13 Judges have the possibility to refer cases to the House of Justice but they do so sparingly. In the year 2016, seven of a total of 86 visitors to the House of Justice presenting a marital dispute were referred by the court. This low figure may be explained by the fact that the judge has ample possibilities to attempt to reconcile the couple himself. In addition, the judges in Tivaouane are of the opinion that people who apply for a divorce at court have generally already exhausted all options for reconciliation; referring the couple to the House of Justice would therefore only frustrate the parties.

14 The Houses of Justice are also competent to offer penal mediation in cases when there are a number of infractions. In Tivaouane these cases are extremely rare.

domestic violence, the institution offers mediation as well as information and assistance. Legal stipulations relevant to marital dispute are – as set out in Chapter 3 – related to paternal authority, household charges, residence, fidelity, and mutual respect and affection (art. 149-50; art 152-53; art 375 FC). Domestic violence is covered by the Penal Code.¹⁵

NON-ATTENDANCE AND CONCILIATION

My documentary research makes clear that in 2016 the Tivaouane House of Justice received 86 cases of marital dispute, domestic violence, and divorce, most of which were brought by women.¹⁶ The women who solicit the House of Justice commonly belong to the middle or lower classes and have often received little education.¹⁷ Claims rely on broad references to state justice; these may or may not overlap with the normative repertoires of *diine* and Wolof conjugal ethics. Sometimes a woman's application is framed simply as a request for help. Other women ask for information about their legal rights. The secretary of the House of Justice or one of its volunteers – young men with some background in law – respond by providing an appointment for mediation and a formal mediation request to hand to the applicant's partner. If the person's situation requires specific legal advice, they are referred to the Coordinator of the House of Justice. She too tends to advise trying mediation first.

However, while mediation sessions are regularly scheduled, they do not always take place. In fact, only in a small number of the cases of marital dispute brought by women does a mediation take place. The House of Justice hands out mediation requests but has no means to force people to attend; and while in 2016 women, in all but one case, always showed up to marital dispute mediations brought by men,¹⁸ in almost half of the marital disputes that were introduced by women their husband failed to turn up. In other instances, both husband and wife would fail to show up.

When mediation sessions *do* take place, women and their husbands are encouraged to reconcile, or – as it is often phrased in the written reports signed by both parties – to 'avoid future misunderstandings' or 'keep the peace'. Mediations primarily rely on Wolof conjugal ethics and *diine*, which

15 For example: 'UN Women Senegal names the House of Justice as asset in the Senegalese fight against gender-based violence' (<http://africa.unwomen.org/en/where-we-are/west-and-central-africa/senegal>)

16 A total of 51 of 85 cases were brought by women. By comparison, Tivaouane's court decided on 109 cases of marital dispute and divorce.

17 Their self-reported professions show that 22 out of 51 women were housewives, 13 had a business (often small and informal), 4 were third-level students, and 4 were school pupils.

18 In 2016 this happened only once.

together inform conceptions of a good marriage, but they also rely on attempts to render disputes into practical problems solvable through practical solutions. Although husbands who are accused of physically assaulting their wife will receive a stern warning that their behaviour is unlawful, in such situations of domestic violence couples are also encouraged to reconcile. However, if the wife insists she no longer wants to be married, the mediator – a retired bailiff – tends to react by saying that, sometimes, it is better to divorce, drawing on legal norms to explain the different divorce procedures. Nonetheless, this seems to depend on whether or not at least some of the woman's family members support her in her wish to dissolve the marriage. In cases where this is not evident, the mediator regularly organizes a second session to which he invites her father or an uncle. Women whose family members do not support her in her desire to divorce will thus have difficulty in finding an ally in the mediator.

Of course, women are at times also at the receiving end of a mediation summons. These sessions often function to discipline the wife and underwrite husband's authority in marriage. A case in point is that of the well-connected and highly educated Moustapha, who, during a subsequent interview, related that he came to the House of Justice because, upon returning home early from work, he found his two wives absent from his home. As it turned out, one was at her shop, while the other was buying necessary school materials for their son. This was against the instructions of Moustapha, and he requested mediation of their dispute. During the mediation, Moustapha stated his complaints, explaining that his house had been burgled two years earlier and that he wanted his wives to respect their marital residence and stay at home. Afterwards, the mediator commented: 'When you analyse the problem, it was a miscommunication. [...] The guy, he wants to be respected.' He continued and said: 'The fact that both left the house at the same moment, it's a little bit like not caring about what he says.' The mediator tried to mitigate the wives' guilt, stating that, if only the three of them had coordinated their activities, the house would not have been left empty, thus suggesting that the problem was merely a practical issue. However, he also confirmed Moustapha in his insistence that his wives should not both leave the house at the same time and that it would be disrespectful not to follow his wishes. Although the Family Code stipulates that the husband is the head of the household, husbands cannot force a wife to stay in the house at all times. Here the mediator relied on a stricter notion of obedience, inspired by interpretations of *diine*.

In summary, Tivaouane women who seek out the House of Justice in cases of marital dispute, domestic violence, and divorce make up a significant proportion of the cases brought there. These women solicit the institution because they have a problem with their husband or former husband and tend to frame their requests as broad claims to legal rights. In response, the personnel generally suggest they come back with their partner for a media-

tion session. Primarily, these are directed at keeping the couple together as well as maintaining harmony between a woman and her kin. Only secondarily does the mediator promote legal norms. Even though mediation at the House of Justice may enable women to claim the rights that the Family Code accords them, the principal focus is still on reconciliation. This means that while mediation allows women to address their problems without seriously disrupting their conjugal and kin relations, these sessions also do not always provide the solutions women seek. Most strikingly, mediations often do not take place at all; men simply fail to show up, or women are discouraged from returning, either by their partner or their family members, as in the case of Mamie I discuss below. In a social context where women are to obey their husbands' reasonable demands and where there exists a strong preference to avoid the justice system, the voluntary nature of mediation means that a woman's recourse to the House of Justice regularly remains without a follow-up.

THE CASE OF MAMIE

Mamie, a woman in her twenties, visits the House of Justice at the advice of her sister, who is a neighbour of the institution's coordinator.¹⁹ Mamie's ex-husband – who had repudiated her a couple of years earlier – recently stopped paying maintenance for their daughter and wants custody. Her intake proceeds in a standardized manner. The coordinator fills out a form with questions about her personal details, her reason for visiting, and the response given by the House of Justice staff, thus transforming the dispute into a case (Felstiner, Abel, and Sarat 1980). When I interview Mamie a year and some months after her visit, she explains that she wanted to inform herself about what to do to safeguard custody and child maintenance. She says she talked to the coordinator and was advised to come back for mediation. This would be the opportunity to talk things through and to determine whether her husband had a marriage certificate.²⁰

Mamie recounts that, upon returning home from the House of Justice with a mediation request, she called her uncle to inform him about her visit. 'Now, where is the summons?' he asked. [...] 'He thought I had been to court,'

19 Interestingly, in 2016, cases of marital dispute users often came from neighbourhoods that surround the House of Justice. Cases of marital dispute that were brought to the House of Justice in 2016 came from 26 different neighbourhoods. In most of these, one or two people brought a marital dispute to the House of Justice. There are six neighbourhoods where inhabitants more frequently (3 or more people) solicited the House of Justice in cases of marital dispute. These include the neighbourhood where the House of Justice is situated and three neighbourhoods that border this neighbourhood (18 out of 86 cases).

20 The coordinator likely mentioned this because it is impossible to start divorce proceedings without a marriage certificate (see Chapter 5).

she recounts. '[A]nd he told me that is not worth it to give my husband the summons [...] because he did not want there to be any hostility, that people say that I took my husband to court.' She answered that it was not a question of a summons²¹ and told him: 'We did not go to court; they just invited him. They need him; they want to know whether there is a marriage certificate or not.' Her uncle responded that she should give the request to another uncle of hers, who would bring the document to her ex-husband. But when she transmitted the request to this other uncle, he said that they would go to her husband's home to discuss things first, Mamie explains. He wanted to reach an agreement without going to the justice system. Not long afterward, this uncle started to have health problems. He could not walk well and told Mamie that this was why he had not yet visited her ex-husband. Ten months later he had an accident and died. At the time of the interview, none of Mamie's family members had gone to visit her ex-husband, nor did Mamie return to the House of Justice. Her husband still does not pay child maintenance; she has not obtained a court-divorce, and she does not have legal custody over their daughter.

EFFECTS BEYOND THE HOUSE OF JUSTICE

The case of Mamie shows how one woman used the House of Justice and illustrates how this institution responded as well as why she did not return. Mamie sought the help of the House of Justice, but the voluntary nature of mediation and her decision to involve her uncle meant that no mediation took place. Echoing some of the conclusions of Chapter 4, Mamie's story thus also provides an example of the role of various kin relations in marital dispute and divorce. In a broader sense, Mamie's case shows that to understand Tivaouane women's *use* of this state justice institution, it is not sufficient to look merely at what happens *at* the institution; it is also important to look *beyond* the institution. I will draw on the following case of Marième and Ousmane, in which mediation did take place, to further unpack this point.

At the House of Justice

On a Monday in September 2016 Marième solicits the House of Justice. She is a woman in her mid-twenties, who has been married for four years and has a daughter. Marième tells the secretary that she is a high-school student. She has failed her school exams and is preparing for a retake from home. Once Marième has provided all of her personal details and the secretary of the House of Justice has noted them down, she explains that her husband

21 Note that in Senegal the French *convocation* is generally used, which can be translated as summons, request, or invitation.

does not provide secure housing and she asks for information about divorce by mutual consent. In response, the secretary proposes a mediation session, which I attend three days later.

As I am waiting for the start of Marième's mediation in the office of the female secretary, the latter points out that Marième – who has taken a seat in the waiting room – is particularly pretty. Ousmane, who is in his late thirties, and has by now also arrived, has little that makes him stand out from other men his age. Both wear non-traditional clothing.

Once it is their turn, the mediator calls Marième and Ousmane into his office. Marième, Ousmane, Fatou, and I all take a seat, and the mediator gives the floor to Marième; being the complainant, she gets to speak first. He asks her to provide her personal details, but as Marième reiterates the information she provided three days previously, we are interrupted: Marième's mother walks in and sits down to join us. Marième continues and the mediator notes down what she says. Once he finishes, he asks Marième what the matter is.

In a resigned and calm manner, she explains that she has been living at her parents' home for a year now and that her husband does not provide for her. The mediator asks whether she lived with her husband's family before, and Marième responds that she did, adding that she has returned home to her parents. Then the mediator probes further, and Marième explains that she had problems there and that her husband had tried to find her different accommodation. This puzzles the mediator. He asks whether it was not good where she was staying; Marième responds that the room she stayed in was not safe and that she was alone with their daughter. The mediator asks what Marième wants, and she responds she wants to divorce. He replies: 'But divorce is the last stage [...] You told [us] what hurt you; we have to try and solve the problem.'

Now it becomes quiet; the mediator writes up Marième's statement by hand and this takes a considerable time, the silence serving as if to underline the formality of the moment. When the mediator is finished, Marième's husband Ousmane gets to speak. During his wife's account he was silent and avoided making eye contact. Now he seems irritated and his tone betrays anger. Ousmane explains that Marième lived with him, but that they had problems and that she moved back home. He had sent his cousin to fetch her, and Marième promised she would return but she did not. He explains that Marième would spend the days in his family home, but at night they would go to his uncle where they had a room.²² He says that she was angry about this, and that one day she insulted his mother and said that, following the advice of her parents, she would get her luggage and

22 Clearly there was not enough space for them in the family home.

return home. Ousmane explains that he asked Marième's mother what the matter was and that she told him to find his daughter a room. 'Ever since we are no longer at peace,' he continues. 'Sometimes she calls or texts me to insult me. I cannot even see my own daughter, even if I do send her food.'

The mediator asks if Ousmane knows that his wife wants to divorce and he responds that he does, but that they should not have reached this point – implying that he is unhappy and ashamed about discussing his situation at the House of Justice. He tells the mediator that Marième's father called him one day to say that his daughter no longer wanted to be married and that he had to liberate her. He explains that he said that it is his parents' role to take care of such matters, to which Marième's father responded that he did not want to come over with his daughter to discuss the problems. Afterward, Ousmane's godfather had taken the initiative to contact Marième's father,²³ but the latter did not respond, Ousmane explains. All the while, Marième is silent. At several moments her face displays a derisive smile.

Once the mediator finishes recording Ousmane's statement, the nature of the session changes. He starts to attempt to reconcile the couple and brings the conversation back to the question of accommodation, saying: 'If you have a problem and you want to solve it, you have to look at the source of the problem.'

She wants her own house; you respond that you do not have the money and that you only have your uncle's room. You have to try and find a middle ground. The problem of marriage of young people is on the news, on radio and television programmes. And sharia hates divorce. God allows divorce, but He hates it. [...] So it's better for you to find a solution. What your wife said is not complicated. You do not have to find her an apartment, but you can make an effort to find her a safe room.

Now Marième and Ousmane start an exchange about their living conditions. Marième insists that it is not safe where she stays during the night; Ousmane, in turn, denies that there is a problem.

Shortly afterward, the mother of Marième interjects to say that she initially asked her daughter to return to her husband, but that later she started to understand her daughter. She leans forward and points a finger at Ousmane. Angrily, she explains that he came over to say that he would find her daughter another room, but that he has not fulfilled his promise. In

23 This may be the person after whom Ousmane is named or a mandatary (someone who stands in for the father in the process of tying the marriage knot) (see Chapter 4).

the meantime, his family came over to ask for her daughter's return to her marital home, but she refused. Although neither Marième, nor Ousmane, nor Marième's mother makes explicit reference to the norm that a husband has to provide for his wife, they all refer to it, centring their discussion on what is reasonable given material and financial constraints.

When Marième's mother has stopped speaking, the mediator begins explaining to Marième, her mother, and Ousmane what his role is. He has to ensure that the solution is equitable. He also cannot force the parties into an agreement. Then he tells Marième and Ousmane that they should try and resolve the problem together with their family members. Marième's mother responds saying they have made sufficient efforts already.

The mediator now seems to change strategy. He cites a 'wise person', as he calls it, who said, even before the Family Code was enacted, that if a couple no longer wants to be married, they cannot be forced. Only the wife and the husband know what they endure within their marriage, he continues. He explains the court procedure to obtain a divorce and concludes by telling Marième to ask her father to go and talk to Ousmane's family and return in two weeks to report the results of those discussions. When they leave the room, Ousmane is angry, the comments of his mother-in-law having visibly annoyed him.

Two weeks later the couple returns to the House of Justice and agrees on a divorce by mutual consent; Marième gets to keep their daughter and the *procès verbal* (record) mentions that the court will decide on the amount of child support.

She Had Taken Me to 'La Justice'

About a year later, I interview Ousmane. He meets Fatou and me during lunch hour in the shop he works at. The shop is closed, but we are not entirely alone; opposite the corner where we sit, a colleague is doing work. Ousmane seems not to be at ease; nonetheless, he willingly shares his story and tells us that, after the first mediation session at the House of Justice, he called Marième to ask her what she wanted, at which she responded she wanted a divorce. He then granted the divorce.

This puzzles me.

I ask him whether Marième had asked a divorce before. She had done so several times, Ousmane responds. He explains that at that point he no longer had a choice: that her going to the House of Justice had tipped the balance. 'She took me to *'la justice'* (justice),' he says indignantly, 'and I realized it was a waste of effort' – thus conflating the House of Justice with the wider justice system. When I ask Ousmane whether they have

now obtained a court-divorce, he tells me they have not.²⁴ They had gone to court once and sat there all day, but they were not called for their hearing and ever since they have not been back.

‘[W]e were doing well, and one day it all changed,’ Ousmane states. ‘Maybe it was my mother-in-law,’ he goes on. ‘[O]ne day her father even visited me [...] I joined him in his car and he said I should set his daughter free, because she no longer loved me.’

When I ask Ousmane whether other family members were also involved, he explains Marième’s brother – who happens to be his friend and who had migrated to Europe – phoned him one day. He asked Ousmane to settle the problem and avoid conflict. Ousmane responded affirmatively, he recounts to us, asking his friend to tell Marième and their father to come visit him at his family home. ‘That was a Wednesday, and on Thursday I got a call to say that there was a request for mediation at the House of Justice,’ Ousmane explains. ‘It shocked me immensely. I did not expect it. It shocked me. [...] My family was also shocked and agreed that things had gone too far.’

Before we leave, Ousmane says he will never say anything negative about his ex-wife. ‘Marriage is intimate; it’s a matter between myself, the girl [Marième], and God. One day God will decide and will reward the person who was right. I am not to be scorned. Whatever the circumstances, I will never underestimate myself. I put my fate in the hands of God.’

Marième

Marième has since moved to another city and remarried. When I call her, she explains she prefers not to meet me, telling me she does not want to revisit the past. Not long after that I learn that Marième’s mother – well-dressed and president of a local *daayira* – has somewhat of a reputation for ‘breaking up’ her daughters’ marriages; no man is good enough for her daughters. Another daughter of hers was married to a driver of a motorcycle taxi, but that marriage ended too. People in her neighbourhood criticize her for it.

The household of Marième’s parents is one of relative ease. Marième’s father has a salaried position at the mining company near Tivaouane, and her brother in Europe regularly sends remittances; they have a car and their house is large. It seems unlikely that Marième’s mother was the main cause of Marième’s and Ousmane’s divorce. However, she certainly supported her daughter in her grievances, and I wonder whether she did anything to encourage her daughter to stay.

24 Marième runs the risk of being prosecuted for bigamy (see Chapter 5).

BRINGING HOME A MEDIATION REQUEST

Marième and Ousmane offer an example of a case where a woman's recourse to the House of Justice proved a relative success. When supported by family members, and provided the husband shows up, mediation can help women find solutions to their marital dispute or obtain release from their marriage. Even if mediation did not lead to an official divorce, Ousmane ended their marriage and Marième eventually contracted a new marital union. Notably, their case indicates that solutions are not necessarily produced *at* the House of Justice but can also materialize in the domestic sphere, *beyond* the House of Justice. In the many instances in which the House of Justice is petitioned by a woman and in which mediation does not take place, evidence of having approached the House of Justice may promote similar effects.

In response to a question about women whose families dissuade them from returning to the House of Justice, the mediator stated that, sometimes, this is not what she wants. Yet he also argued:

Sometimes, too, she can find satisfaction with a husband who was rather brazen, who did not care. Sometimes it is the husband who returns to his senses, and who pushes her to withdraw, to accept, to return to him.

The volunteers and secretary at the House of Justice, too, explained that they suspected that the mediation request sparks family members, neighbours, and other close ones into action to try and resolve the problem themselves. They told me they interpret absences as a positive sign: the people involved must have restored the peace.

And indeed, tracing the women who had come to the House of Justice but had not returned, I learned that in some cases the mediation request itself had been enough to bring the other party to change their behaviour. In one case a woman came to complain about physical violence and insults she had suffered at the hands of her husband. When visiting her months later, she told me she never returned because her husband apologized and changed his behaviour upon receiving the mediation request. An interlocutor that I knew outside of the context of the House of Justice confided that she once needed to go to the hospital but that her husband refused. She then went to the House of Justice to complain and came home to her husband with a mediation request, at which he immediately sent her to a good hospital – all the way to Dakar, she recounted with a smile of satisfaction. In a case of a young mother who had had a baby outside of marriage and who wanted the House of Justice's help to safeguard custody rights when the father started to threaten her to take the child, her parents told her to let them try and intervene before going ahead with a mediation at the House of Justice. Coming home with a mediation request thus spurred her parents into action and resulted in a fruitful meeting between her family and that of her child's father.

THE RECEPTION AND REPUTATION OF THE HOUSE OF JUSTICE

How are these effects produced? I suggest that the answer lies in the House of Justice's reputation and reception and draw out some of the details of the case of Marième and Ousmane to illustrate my point.

Perhaps most simply stated, going to the House of Justice may indicate that ultimately a woman is also ready to go to court, or, in situations of domestic violence, to the police. In Marième's case, as in that of a number of women who did not return, it was clear that in court they would have easily obtained what they were out to get, a fact their spouses and other kin were undoubtedly aware of. For husbands it was therefore easier to accommodate their wife's claim and avoid court procedures. Yet the case of Ousmane and Marième also allows us to get a glimpse of how women's use of the House of Justice may work on another level. Ousmane was angry and ashamed. This shame and anger was directed at his wife, his mother-in-law, and the mediator, but it was also deeply embodied, personal, and affective.²⁵

While the legal and bureaucratic realm may not seem the most obvious places to look for feeling and affect, a number of anthropologists have asserted that also in these contexts affect merits close examination. Bens (2018) argues that court ethnographies should complement attention to writing and speech with descriptions of affect. Clarke's (2019) study of international criminal law in Africa suggests that the life of international criminal law is replete with affect and argues that this is an important source of its force. Working on the bureaucracy of the 'illegal' Turkish Republic of Northern Cyprus, Navaro-Yashin (2007) mobilizes affect theory to reveal how documents may provoke uncertainty, threat, irony, and cynicism. She shows that 'the material objects of law and governance, [are] capable of carrying, containing or inciting affective energies when transacted or put to use in specific webs of social relation' (Navaro-Yashin 2007, 81).

The ethnography I have presented in this dissertation so far indicates that affect and feeling are part of marital disputes, also in court and at the House of Justice. Here, I suggest that Ousmane's and Marième's case indicates that kin act upon the evidence of someone's having gone to the House of Justice because of the affects transposed onto them. Ousmane was moved

25 Emotion, feeling, and affect are terms that are closely related and sometimes confused. Anthropological literature foregrounds the most abstract term of the three: affect. Affect should be understood as a sensation or experience. The term refers both to the capacity of a body (including things and non-humans) to affect and its capacity to be affected. Thus, it is from relational configurations of bodies that affect emerges (Anderson 2014, 11). Broadly stated, feeling is affect that is interpreted by the individual who experiences it; emotion, in turn, is 'broadcasted feeling' and is thus deeply social (Shouse 2005).

to action in part because of the shame and anger he felt at Marième's decision to move their dispute into the sphere of state justice, and at what this action signified to him. His shame and anger related to having his failures exposed, to Marième's willingness to rely on the power of state justice to force him to do something against his will, and, finally, to her readiness to render their relationship into legal terms – to turn them from a private couple into public litigants with opposite claims. In addition, as set out in Chapter 5, women's explanations for why they prefer to avoid the court repeatedly referenced fear and shame. Men likewise related such feelings to me, even if they were also more adamant that they had the unique right to decide on divorce and that such matters were simply none of the court's business. While a number of men and women remarked that the House of Justice was a good institution because it relied on mediation – as one respondent put it: 'it is a true house' – many also denounced people who went there, saying that the justice system is shameful and should be avoided. This fear and shame is tied up with images of the state, as well as with Wolof notions about propriety, honour, and harmony. Donors and the Senegalese state deliberately tried to position the House of Justice at the interface between state and society, but this is not always how the institution is perceived.

SPACES TO MANOEUVRE

How does this contribute to an understanding of women's use of the House of Justice? In her ethnography on the use and practice of new South African domestic violence legislation, Hornberger (2009) notes the regularity with which women in Westbury Johannesburg went to the police to open domestic violence cases against their husbands and then withdrew them. She argues that for these women, having their husband arrested and then dropping the case seemed to open up new spaces of social manoeuvring, allowing them to renegotiate their violent relationships. Women 're-directed' (Hornberger 2009, 173) the new domestic violence legislation and achieved solutions in the domestic sphere.

This analysis helps us think about the way that some Tivaouane women use the House of Justice and create spaces to manoeuvre, which enable them reconfigure or end their marriage. For female users of the Tivaouane House of Justice, the mere evidence of having gone there *may* generate options in the domestic sphere. Clearly, this use contradicts the official policy goals of the House of Justice. It is, moreover, not always what these women wanted themselves; nonetheless, a number of women who bring home a mediation request but do not follow up with mediation are able to harness – or 're-direct' (Hornberger 2009) – some of the force of the state legal system. Their disputes continue to be a matter of the domestic sphere; at the same time, these disputes come to be addressed in close proximity to the state. It

must be emphasized that while it is tempting to read these women's actions as 'strategic', it is not clear that they plan to use a mediation request to exert pressure; rather, it seems they try out the House of Justice and see what this brings them. Ultimately, the social field in which the conflict originated also regularly stands in the way of a resolution, as we saw in the case of Mamie.

Why some women are able to realize their claims after having visited the House of Justice, and others not, is not easily accounted for. Class and educational differences may be expected to play a role, but my fieldwork does not indicate this; instead, an answer to the question may be sought in a woman's kin relations and in the norms prevalent in the domestic sphere. Mamie wanted her husband to continue to pay child maintenance; and while this norm carries some weight, few men pay child maintenance, especially once women start to be courted by other men or remarry. Marième, on the other hand, wanted to divorce her husband; and although divorce is a man's prerogative socially, a husband's failure to maintain his wife is – depending the severity – understood as a valid reason for divorce, both within the repertoire of *diine* and under the Family Code. More important perhaps, Marième's mother and father were clearly in favour of a divorce – as it appears, they felt she deserved a better and wealthier partner. The uncertainty about what will happen when a woman takes a marital dispute to the House of Justice is considerable. In the final analysis, the possibilities created by the House of Justice are both limited and rather unpredictable.

CONCLUSION

This chapter focused on the way Tivaouane women understand, draw on, and interact with the state institution of the House of Justice. I showed that women bring marital disputes, domestic violence, and divorces to the House of Justice with some regularity. These women come because they want their husband to change his behaviour, because they want to divorce, or because they want to secure custody or child maintenance. Their claims rely primarily on broad references to legal rights or to state justice.

When mediations take place, the mediator initially relies on *diine*, Wolof conjugal ethics, and 'practical problem solving' to reconcile the couple and ensure continuity of the marriage. Yet when a woman insists on her claims and when it is clear these are supported by her kin, he shifts to the legal repertoire and may refer a woman to court. In summary, mediations at the House of Justice allow women to retain a measure of harmony and *sutura*, but they do not always help them realize their claims.

However, few mediations do actually take place; because of the voluntary nature of mediation, men regularly do not show up; in other cases, neither of the spouses returns. Much like a number of ADR institutions aimed at

domestic violence, marital dispute, and divorce that have been studied in other contexts, the House of Justice's shift away from adjudication and force makes it difficult to help women claim legal rights, here primarily because mediations do *not* take place.

Yet I also showed that it is not sufficient to look at what happens at the House of Justice in response to the concerns of these women. In the second part of this chapter, I focused on the *effects* of the House of Justice, which are often produced beyond the institution, and which tend to bear little relation to what happens there. I showed that some women successfully use the institution to achieve solutions in the domestic sphere. This relates, I argued, to people's perception of the House of Justice. The House of Justice may spur people into action because of what going there communicates and because of the affect that the institution transposes onto the people involved in the dispute. This is mainly because of how the institution is associated with state justice. Taken together, this would suggest that the way in which institutions help women to create spaces to realize their marital claims cannot always be directly deduced from what the institutions they approach actually offer and do.