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From Settlement to Divorce: An Islamic Judicial Practice in Burkina Faso

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Burkina Faso is a secular state with a legal system based on positive law. This system presents many access problems, leaving a lot of room for informal authorities dispute resolution. Neighbourhood chiefs, lineage elders, priests, imams, social workers and policemen are all involved in resolving conflicts day-to-day. Also, in this country where 60% of the population is Muslim, Islamic reconciliation spaces occupy a prominent place, though they are paradoxically not very visible. These spaces exist by virtue of the charisma of Islamic elites who are considered 'great Muslims' and are therefore consulted in their neighbourhoods, to serve as mediators in family conflicts. Their opinion is regularly solicited on issues concerning inheritance, childcare and divorce. Divorce cases are the subject of a large number of requests. Their analysis is extraordinarily revealing with regard to changes in sub-Saharan conjugality and ways of resolving family conflicts in Muslim contexts. We will therefore examine how 'Islamic law' is used in these conciliation spaces. How does marital conflict resolution work? How are divorce procedures viewed there?

After presenting a few specifics on the Burkina Faso legal and religious context, the study will proceed in three phases. We will first see how 'settlement', *sulh*, constitutes the keystone of Islamic conciliation practices in the context of Burkina Faso, which is anchored in a culture of forgiveness. Then an examination of cases of marital conflict will reveal the multiplicity of Koranic forms of arbitration, in order to finally show their limits where divorce is concerned.

From a methodological point of view, it is important to note that conducting an investigation in Islamic conciliation spaces is a difficult task with results that are too often fragmentary. A veritable 'terrain sensible' (Bouillon, Frésia and Tallio, 2005), this type of setting presents the ethnographer with significant field access problems, and confronts her with a constant feeling of embarrassment. The situations observed there are rooted in the private sphere, making direct observation difficult. On the one hand, couples or families that request consultations do not want their private problems to be heard by a person from outside. On the other hand, the Islamic authorities who receive them wish to respect a principle of discretion that their credibility depends on. Access problems are also linked to the labile, unofficial character of these spaces. Concretely they are mosques, the homes of Islamic authorities, or the premises of Islamic associations. In other words they are environments

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not exclusively intended for conflict resolution, but are socially constructed by the individuals who interact there and who must conform to a specific role (Gofmann, 1973). The ethnographer therefore has to be lucky enough to be present at the right moment: when a consultation is requested.

This sort of lucky opportunity, which Jean-Pierre Olivier de Sardan (1995) characterises as a 'happy coincidence', presented itself to me thanks to stays of several months in the court of the chief of Todiam. This 'immersion' allowed me to get a sense of the day-to-day flow of visitors wishing to consult him. I was often present alongside the chief at the time of their requests, and this gave me the chance to observe them explaining their problems. And when they arranged a meeting for a later date, my presence enabled me to ask the chief for permission to attend. With his support, I was therefore able to observe a few conflict resolution situations. And when this was not possible, I benefitted from the chief's precise, detailed accounts.

However, these access problems suggest that anthropologists should implement investigation plans that enable them to circumvent such barriers. Beyond direct observation, I also based a lot of my work on cases described after the event by one of the protagonists or by the Islamic authority responsible for resolving the dispute. The work is therefore supported by interviews with Muslim chiefs of various leanings who provided me with precise descriptions of many concrete cases. This kind of discourse is obviously different from direct observation, but it offers interesting clues about how mediators use Islamic law. Through their commentary on how the situations should be handled, it is either their pragmatism or conversely their legalism that comes to the fore.

The Burkina Faso context: the multiplicity of legal authorities and the dynamics of Islam

In Burkina Faso, as in many West African countries, the legal system is based on a multiplicity of formal and informal authorities that are the product of a long history (Alliot, 2003; Le Roy, 1990). Although dysfunction in legal systems has indeed been studied (Tidjani Alou, 2001), a wide range of factors explain why citizens hesitate to go to court. Whether it be access problems experienced by residents of remote villages, long waiting periods, the cost of justice or off-putting legal language, all of these aspects constitute impediments to using the formal system. Added to this is the fact that resorting to the law is often perceived as a solution 'by force', whereas quite often amicable conciliation is preferred. For all of these reasons, citizens do not hesitate to enlist the help of authorities outside of the court system. The simple term 'traditional mediation' (Cavin, 1999) poorly represents the multiplicity of existing authorities. Some state services play a mediatory role in family conflicts. This is the case with the 'action sociale' services, characterised by their staff as 'the little brothers of the law'. Thanks to centres scattered through all of the medium and large towns, these services are a resource that the population knows well. Many litigants also appeal to the gendarmerie and the police, even though this is not their primary function.

In the countryside, regional courts assemble local notables, including both state representatives (prefect, subprefect) and traditional authorities (village and neighbourhood chiefs, etc.). These courts are located in regional administrative capitals, and their objective is to make justice more accessible. Generally presided by the prefect, they also include assessors, usually chosen from among the associates of the district chief, who is often referred to as the 'first assessor'. He ensures that there is a certain continuity between so-called traditional justice and modern justice. Lineage chiefs, neighbourhood chiefs and village chiefs are also resource-persons consulted during the resolution of conflicts. To resolve disagreements, they refer to the 'culture', a shifting set of social norms and practices rooted in local culture and closely linked to 'ethnic' identities. Although the country has a large number of ethnic groups (Fulani, Mossi, Gurma, Bissa, Dyula, Lobi, Dagaaba, etc.), in terms of conflict resolution, it is worth noting that there exists a common substratum based

on a strong commitment to seeking consensus and forgiveness. The judicial system also includes religious leaders (both Muslim and Christian). This panorama of authorities existing in the country reveals both the multiplicity of conflict resolution methods and the importance attributed to the principle of mediation, which comes in a variety of forms situated on different registers.

Islamic authorities therefore represent a solution for individuals wishing to handle their disagreement in a way that is respectful of Islamic precepts. Their influence is not unrelated to the fact that over the past fifty years, Islam has been gradually becoming more widespread in the country. Demographically, Muslims are now the majority. Whereas in 1954 they only made up 27% of the population (Barbier, 1999), in 2006 they represented 60%.[1] These figures have been accompanied by a clear transformation of the urban landscape, which is evenly dotted by mosques. In Ouagadougou, there are currently over 600 mosques, compared with only one in 1954. This shows a clear increase in the number of Muslims, but also a significant segmentation of Islam. As a preacher said when commenting on these figures, 'the fact that there are 600 mosques proves that we're divided, even though everyone should go pray in a single mosque'.

In Burkina Faso, Islam is indeed segmented into several movments: in addition to long-established Sufi groups (*qadiriyya, tijaniyya)* characterised by their ceremonial and magic practices, there are 'reformist' movements (Wahhabi, Shia, Ahmadi) and many Islamic associations. All of this hustle and bustle generates competition for leadership. The Islamic sphere has a potential for internal debates, because the uses of Islamic precepts can vary among the different orientations.

Islamic law, whose principal sources are the Koran and the Hadith (prophetic traditions), serves as a support for preachers as they take positions on societal issues in public speeches and private conflict resolution situations. Thus, Islamic leaders and neighbourhood 'marabouts' are consulted at their homes to resolve a family conflict. Their role in conflict resolution raises the need for an examination of the existence of these multiple 'local Muslim jurisdictions' (Saint-Lary, 2008, 2009) that also take part in this composite legal system.

The theme of conflict resolution by Islamic actors receives little attention in African studies. Although many studies have long demonstrated the multiplicity of legal standards and judicial authorities in Africa (Le Roy, 2004; Le Roy and Hesseling, 1990; Alliot, 2003), the place of Islamic law often receives only brief mention (Meyer, 1990; Vanderlinden, 1983).

Islamic law receives only half-hearted attention in the field of African studies (this being more the work of jurists than anthropologists), which only occasionally consider questions relating to the law of succession (Gast, 1987; Hamès, 2004) or property law (Bonte, 1987). And yet recent works amply demonstrate the 'adaptability of Muslim law' (Fortier, 2010a) in the spheres of bioethics, divorce, adoption, etc. Thus Élise Guillermet (2009) has studied the combined use of Islamic law and international standards in creating new families for orphans who are eligible for aid. Despite these few recent works, the study of the use of Islamic law in south-Saharan Africa remains a fallow field. If, as Jean-Louis Triaud has written, 'Islam of Black Africa looks a bit provincial compared with its Middle-Eastern or North African older brothers' (Kane and Triaud, 1998: 6), this is even truer of studies on Islamic law, which are far more numerous in the Arab world (Botiveau, 1993; Hill, 1987) and often stress the need for an anthropological approach to Islamic legal systems (Böetsch et al., 1997; Starr, 2001; Botiveau, 2006; Dupret, 2000).

Settlement (*sulh*), the keystone of Islamic conciliation practices

My early research in a rural Fulani area in northern Burkina Faso led me to Todiam, a village whose traditional chief combines this status with that of Sheikh of the Tijaniyya order, an important position in the Sufi hierarchy. During my stay there, I found out how much his day was taken up by arrivals in his court, with visitors arriving from surrounding villages to ask his advice or to resolve

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disputes linked to divorce, inheritance problems, accusations of witchcraft, cohabitation conflicts or even theft (Saint-Lary, 2004).

This chief responsible for resolving numerous conflicts works in collaboration with other notables that he considers as his assistants. Although he received a thorough education in the Koranic schools, he settles conflicts by taking account of a multiplicity of normative references: Islam of course, but also 'custom' and positive law, which he defines by the generic term 'administration'. He believes his role is to bring about reconciliation, not to deliver verdicts. Although he would have liked to have this authority, in a secular country like Burkina Faso, he has no power to impose penalties.

While examining how these people responsible for conflict resolution understand their practice, the term '*sulufu*' came up regularly.[2] This notion quickly appeared as the key to understanding the compromises underlying the day-to-day practice of law. Here is how it was defined by the sheikh responsible for conflict resolution:

> God says that *sulufu* is better than *shari'a*. In *shari'a*, there are plenty of things that aren't good. With *shari'a,* if you put out someone's eye, you lose your eye, an arm, your arm […] Now there are fines or you're imprisoned. That's part of *sulufu*. Even god recommends doing *sulufu*. It's in the Koran. It means *agreement*. (Sheikh of Todiam, August 2002)

When asking Fulani Koranic teachers of the region about this *sulufu* notion, I received more explanations:

> *Sulufu* is when there is disagreement between two parties. Concerning the boundaries of a field, one said the boundary was here, the other said the boundary was there. Together they went to explain the problem to the person responsible for applying *shari'a*. This person said to them: 'I can't take the whole portion away from one of you. In order for there to be agreement and tolerance, you will divide the portion into two equal shares. The boundary will be in the middle.' That's an example of *sulufu*. When it comes to judgements, if they are done with *shari'a*, the truth is sought. Seeking the truth will disrupt cohabitation. So to avoid disrupting cohabitation, an agreement is sought. The real meaning of *sulufu* is agreement. (Tall I., *Tooroobe* Koranic master, Dingri, September 2002)

These conceptions reveal that *sulufu* is based on two principles. First, the principle of bringing a reconciliation between the conflicting parties by favouring the solution that will show consideration for both parties, leading to understanding, '*wum taaba*', an important value also mentioned by Pierre-Joseph Laurent (2003) in his work on Pentecostalists. This approach is preferred over a meticulous search for 'truth', which would lead jurists to investigate the litigants' genealogies in order to identify their landholdings. As this Koranic teacher said, another interpretation of *shari'a* could have led to this method, but for him, it is the principle of *sulufu* that prevails, by virtue of the fact that it is justified by understanding, *wum taaba*. Deeper analysis reveals that *sulufu* is the fulfulde (Fulani language) version of an important notion in Islamic jurisprudence: '*sulh*', which the *Encyclopaedia of islam* defines as an an abstract noun from the verb *ṣaluḥa* or *ṣaḷaḥa* 'to be sound, righteous', denoting the idea of peace and reconciliation in Islamic law and practice. The purpose of *ṣulḥ* is to end conflict and hostility among believers so that they may conduct their relationships in peace and amity. (Khadduri, 2015).

As this interview extract shows, the second principle inherent in *sulufu* is that of integrating the norms of state law (imprisonment or fines) into the procedure, which can lead to collaboration with the public administration. It is in reference to this principle that the Todiam chief has, on several occasions, resolved disputes by collaborating with the commissioner of Titao, the regional capital. When the Todiam chief fails to bring about reconciliation between two parties, he directs them to

the police, where he may serve as an intermediary by explaining his analysis of the facts to the official in charge of the case. His opinion is then taken into consideration. This illustrates the commonplace character of the collaborations between a religious chief and an official who are both eager to do justice and bring about reconciliation.

Quite systematically, *sulh* implies the idea of combining the three normative references: local traditions, *shari'a* and the laws of the state or of public authorities. This is what Isik Tamdogan (2008) showed in an article published in *Islamic Law and Society* exploring *sulh* cases (characterised as 'amicable agreement') in 18th-century Ottoman courts. She shows that Ottoman jurists treated *sulh* as a contract that helped resolve conflicts amicably and gave rise to legal proceedings that involved interpenetration between Ottoman legislation, *shari'a,* and local customs, *urf*. Through this legal practice, we see the extent to which Islamic law allows and even encourages compromises based on amicable resolutions.

From the Weberian point of view that regards law as a social activity in its own right, it is important to consider how *shari'a* is used. As Bernard Botiveau (1993) has pointed out, *fiqh* (Islamic jurisprudence), wrongly called 'Muslim law' by orientalists, was essentialised and studied by these orientalists as an object isolated from social relations and from the contexts in which it takes shape. To borrow Baudouin Dupret's (2004) phrase, 'Islamic law only exists through its interpretation'. In a recent work entitled 'Islamic Jurisprudence in Practice: Gender, Filiation and Bioethics', Corinne Fortier (2010a: 16) pointed out that 'reference to *shari'a*, a term that has become synonymous with obscurantism in the West after its strict, intransigent application by the Taliban in Afghanistan, is not as ossified and unchanging as people tend to believe, but has a certain inherent flexibility as well as a pragmatic logic'.

With this in mind, it is interesting to note that the Todiam's chief definition of *shari'a* – as containing 'many things that aren't good' – repeats the narrow vision of that common meaning, even though in practice *shari'a* manifests a significant pragmatic logic. The frequent use of the notion of *sulufu* in *shari'a's* own legal practices, and the existence of the concept of *sulh* in Islamic law, clearly illustrate the flexibility of a law that is particularly committed to values of conciliation and respect for local legal contexts.

Investigations conducted in Burkina Faso in the Yatenga countryside and the city of Ouagadougou show that although this notion of *sulh* is broadly shared in many of Yatenga's Fulani villages, in the city it only has meaning for people who have done relatively extensive Islamic studies, especially in Arab countries. However, for the Islamic figures in Ouagadougou who are consulted to resolve conflicts, settlement and compromise are still important practical categories. Divorce cases illustrate this particularly well.

A divorce case in a rural area

Examination of Koranic arbitration phenomena either through direct observation in Islamic conciliation spaces or by means of interviews with Islamic authorities reveals that, in the city and in the countryside, most of the conflicts brought to Islamic leaders for consultation are relationship problems, or more broadly issues linked to family law (inheritance, childcare). Family law is of course generally considered the reserve of *fiqh* (Islamic jurisprudence), but in a society where the vast majority of the population marries exclusively under the seal of religion, it is easy to understand why people would bring their family conflicts to religious authorities.

By observing Islamic reconciliation practices and marital conflict resolution practices, one begins to see the problems that the divorce phenomenon presents to Islamic elites and to Burkina Faso society as a whole. During my first stays in the chefferie of Todiam between 2001 and

2004, I could already see the seriousness of the problem: the chief of Todiam received visits from a number of women telling him they wanted to separate from their husbands. During a stay in 2003, the chief handled no less than five conjugal conflicts in ten days. Faced with the recurrence of these cases, he told me he was worried about being perceived as the last resort for women who want to divorce. His reputation as an Islamic authority was endangered. A divorce request case I observed in 2004 in Todiam illustrates the role that a Muslim chief can play in this area.

One morning, a woman went to the Sheikh of Todiam accompanied by two men, one of whom was her husband. I found them consulting with the chief in one of the vestibules in his home.[3] The two men sat on a mat near the chief while the woman, with her back to them, waited in the background, seated in a chair, her head lowered, her veil partially covering her face. A few minutes later, the chief, who did not speak French, asked my interpreter to translate a note that he wished to give to each of the two spouses. Here is what it said:

> Saturday 24 January 2004. A. Tall has for the third time come to see me, the Chief of Todiam. She has come in tears three times saying she does not want her husband. These three times I have tried to reason with her so she would return to her husband's house. But this time she told me that the previous times I did not help her because she is an orphan and poor. I tried to reason with her because she has had three children with her husband and I feel pity for those children. Otherwise, I did not side with the husband. He gave me nothing to corrupt me. Only god has witnessed that I did not take anything to help the husband. But I wish to tell the wife to return to her husband again, and if there are still disagreements between her and her husband, she should not return to see me, she will be free to find another husband. The husband should not come to see me again either. The Sheikh of Todiam.

Although marital disputes are common, this case was not easy because it was not the first time the woman had gone to Todiam. The chief therefore decided to give each of the spouses a letter, translated from *moore* and written in French, to be kept by the spouses until their next and final quarrel. Being purely informative, the note was not in any way legally binding, but it was all the more relevant for being signed by a Sheikh. Even if the chief refused to directly intervene in the couple's divorce, his letter shows that his opinion was likely to be considered authoritative, particularly in families committed to respecting the precepts of Islam.

Furthermore, the letter also stipulated that if a new conflict arose, the woman would be free to 'find another husband', and therefore to divorce. This idea of freedom, given to a woman who is divorcing, corresponds to what is characterised in certain Muslim contexts as 'female divorce'. This form of divorce is called *khul'* in Arabic. It 'refers to the idea of removing, or more specifically getting rid of, the matrimonial link' (Fortier, 2010b: 62). Thus we see, in the context of a Fulani town, that female divorce was tolerated by the consulted religious leader, even though he was not very eager to repeat this sort of decision often. He recognised that the position he took was risky and likely to harm his reputation. Even though divorce initiated by the wife is definitely well planned by the Islamic texts, in practice it is little accepted and the Muslim chief who tolerates it jeopardises his credibility, since his role as 'wise man' requires him to favour conciliation under all circumstances. Subsequent investigations into the question of divorce in the city confirmed the exceptional nature of this decision.

This situation observed in 2004 in a Fulani area in the north of the country sparked my curiosity about a Muslim chief having the possibility, not of declaring a divorce in the legal sense of the term, but still delivering an opinion, specifically in writing, in favour of separation. In a context in which marriage is usually religious, how are separation situations managed? Do religious elites authorise a divorce as a last resort? Do they grant divorces? After these observations in Todiam, these questions had to be raised.

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The strength of agreement or the impossible divorce

The investigations carried out in Ouagadougou showed that Islamic leaders responsible for marital conflict resolution agree on the fact that divorce is tolerated by Islamic law. They consistently remind us that 'among the things that are allowed, divorce is what God detests most', but concede that it is a right possessed by both husband and wife. They agree that Islamic law does not confine itself to repudiation (*talak*), as is commonly assumed. Divorce on the initiative of the wife is also a right (*khul'*) recognised by many of the Islamic leaders I met in Ouagadougou. As an Islamic activist from CERFI[4] suggested:

> Women don't know divorce is a right that Islam gives them. Women too have the right to ask for a divorce in Islam. It's important to make them aware of this so they at least know there's a way out if they reject polygamy. (Aïssatou, December 2011, Ouagadougou)

Aïssatou's statement provides a good illustration of this common belief among Muslim women who have been taught their religion: one of the first battles for women is to learn their religion in order to understand their rights. However, all Islamic leaders (men and women), regardless of their orientation, make sure that the decision to divorce only comes at the end of a long reconciliation process involving mediation by families, witnesses, three attempts at reconciliation and a three-month waiting period. Despite this, none of the Islamic chiefs I met in the capital acknowledged having granted or even authorised a divorce at the end of this process – and certainly not by means of a written document. As an imam of the AEEMB[5]/CERFI explained:

> Generally imams are very reluctant. Personally I've never done it […] even if it becomes necessary, it's not easy to separate people. (Imam Tiemtoré, Ouagadougou, December 2009)

On this question, Yahia Paré, a doctor of Islamic theology educated in Syria, sees Islamic divorce as a judicial act that falls within the competence of a judge, *qadi*, whose presence is guaranteed by an Islamic state. According to Paré, in the context of a secular state like Burkina Faso where *qadi* has no place, a neighbourhood marabout should not substitute for him:

> The marabout can't separate. He has the means to advise, bring together, marry – he has the full right to marry – but doesn't have the right to separate. (Dr. Paré, Ouagadougou, December 2009)

Echoing the views of 'Dr. Paré', the imam Tiendrébéogo believes that Islam has given a lot of autonomy to followers. If couples respect the precepts of Islam before divorcing, specifically the requirement for reconciliation attempts, waiting periods, etc., then it is possible for the spouses to separate in front of witnesses. The presence of an imam is not an absolute precondition for divorce, just as it is not for marriage. Islamic elites deplore the large number of separations that proceed 'far from the texts', usually to the women's disadvantage:

> The men are very authoritarian. The husband says 'pack your bags' and that's it, whereas in reality, divorce in Islam is very complicated. A divorce is not granted to the first comer. Barriers have been put up so that, whatever our differences might be, we can reconcile. But what people do here is often far from the texts. (Imam Tiemtoré, Ouagadougou, December 2009)

Divorce is therefore tied to that powerful idea that agreement must take precedence and that a reconciliation is always preferable, especially considering that divorced women have a lot of trouble remarrying. Imam Tiemtoré recognises that 'we are better at managing widows than divorcées'.

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Salimata, a divorced women, explains the difficulties that punctuate the everyday life of a divorced woman:

> One day in my neighbourhood, a woman came to help cook for a wedding. While she was washing her hands to start kneading the flour, an aunt came to say to her 'no, you can't touch the flour'. She said: 'oh really, why?' [Because] 'you're a divorced woman, you'll give the curse to the future wife'. So she left right away. She was humiliated in front of everyone. (Salimata, Ouagadougou, August 2008)

She says that the people around her never saw divorce as a solution for her:

> Here no one will ever advise someone to divorce. They'll tell you 'since you were able to put up with it until now, it's better to keep putting up with it' and there are even people who'll say 'but at your age (45), what are you going to do after you divorce?' (Salimata, Ouagadougou, August 2008)

Divorce in the judicial sense of the word, whether legal or Islamic, remains very rare. On the other hand, separations are quite common in people's lives. Couples move away from each other on the pretext of finding work in a more prosperous region, and then rebuild their lives without any divorce being declared. Divorce is a phenomenon that is both trivial and taboo, and it is difficult to gather reliable statistics. Demographic data shows this clearly: during the 2006 census in Burkina Faso, the proportion of people declaring themselves as divorced hardly surpassed 1.5%, with the highest percentage being seen among women in the 40–54 age bracket. As commentary on the census suggests,[6] these figures based on declarations are biased because of the fact that 'at the time of the count, divorced people can declare themselves either single, married, or widowed. Similarly, a man who is married or was cohabiting but has separated from his spouse may prefer to declare himself single, while his wife might still consider herself married' (INSD report published in 2006: 43). These reservations raised by census analysts provide a good illustration of the problem presented by the simple act of declaring oneself divorced.

As the president of the Association des Femmes Divorcées avec Enfants en Difficulté (AFEDI/ The Association of Divorced Women with Children in Difficulty) explained, 'divorce is taboo to the point that the choice to place the word 'divorce' in the name of the association was a big problem'. Suzanne Ilboudo says that when her association was created, several people formally advised her against including the word 'divorce' in its name. But since she believes that it is by forcing things that they can be changed, Suzanne decided to go ahead with her idea, convinced that the association is precisely all about helping people fully embrace this choice. But she recognises that women who dare to flaunt this unenviable status are those who have nothing left to lose, women who, after their separation, find themselves in situations of extreme vulnerability. In a society in which marriage is a passport to social advancement and recognition, divorced women are marginalised. They are characterised as '*wemba*', a pejorative *moore* term designating a category that encompasses prostitutes, single women over thirty and even married women 'visiting their father's courtyard'.[7] These women are considered likely to engage in adultery with their first love, and on this basis they qualify as *wemba*… In light of these facts, and as explored in the works of Fatou Binetou Dial (2008), one can better understand why it is that for women, divorce is far from being viewed as escape that enables them to regain autonomy and assert a desire for social advancement.

This attitude towards divorced women on the part of Burkina Faso society sheds light on how mediators approach divorce. Whether they are family members, religious figures or employees of social programs, these mediators will never recommend divorce as a solution. This also applies to the courts, where judges themselves try reconciliation procedures by sending litigants back to religious or family authorities, as several informants reported.

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This article empirically shows that Islamic law does not exist in essence, but rather through the interpretations that are made of it. In this sense, the principle of agreement is key to understanding ways of negotiating this law by combining it with other normative sources, such as 'customs' and positive law. Agreement is a fundamental principle that refers to a pragmatic position that is often valued. However, in urban areas, the principle of agreement is so strong that it leads most elites to refuse to support a divorce. Contrary to what was described in the countryside, although Islamic elites in cities all recognise that Islam authorises divorce for both men and women, in practice they refuse to support it. This means that despite the existence of judicial frameworks in both Islamic and positive law, couples whose relationships are collapsing have very few practical means of formalising their divorce, whether it be through legal channels or by having it declared within families. This dysfunction reveals all of the fragility of the legal system in the face of that powerful social exhortation to get married and preserve the relationship.

Translated from the French by Matthew Cunningham

Notes

1. Source: INSD (National Institute of Statistics and Demography), 2006.
2. This notion is well-known in other Fulani villages we visited in Yatenga (Todiam, Banh, Dingri).
3. On the use of spaces in conciliation practices, see Saint-Lary (2009).
4. The *Cercle d'Étude, de Recherche et de Formation Islamique* (CERFI/The *Circle of Islamic Study, Research and Education*), founded in 1989. In Burkina Faso it is a very well-known organisation whose members are usually activists, educated in secular universities, who have built their knowledge of Islam in the field. The association assembles various groups but refuses to promote this, in the name of an ideal of unity (*umma*).
5. Association des Élèves et Étudiants Musulmans du Burkina Faso (AEEMB/The Association of Muslim Students of Burkina Faso). Founded in 1987, this association operates side-by-side with the CERFI. It is usually in the AEEMB that Islamic activist careers begin, and then these continue in the CERFI after students enter the workforce.
6. www.insd.bf/fr/IMG/pdf/Theme3-Etat_matrimonial_et_nuptialite.pdf.
7. In Burkina Faso, many societies apply a virilocal matrimonial system in which the spouses join the husband's household or 'courtyard'. When they visit their family, it is customary to say that they are returning to 'their father's courtyard'.

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