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## **The best interests of the child in “mixed” couples’ divorce in Belgium and the Netherlands: Filipino mothers’ socio-legal encounters about their children**

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### **Abstract**

Studies on the marital break-up of “mixed couples” in which partners have different nationalities and/or ethnicities pay little attention to how individual partners, notably the one with a migration background, experience the law and institutions concerning their children. Drawing on ethnographic observations and interviews with Filipino women in Belgium and the Netherlands, this paper investigates these migrants’ socio-legal experiences to shed light on their children’s situation during the divorce process. Paying attention to the principle of the “best interests of the child”, data analyses reveal that the children of women experiencing problematic divorce and/or domestic violence have more direct encounters with laws and/or institutions than those whose parents separated on good terms. Likewise, young people whose parent(s) resort to socio-legal assistance in their country of residence are more exposed to the legal aspects of divorce. This case study underlines the intersubjective dimension of divorce and suggests that state policies do shape individual lives.

### **Keywords**

Socio-legal encounters; divorce; best interests of the child; mixed couples; Filipino migrant women; Belgium; the Netherlands

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## Resumen

Los estudios sobre separaciones matrimoniales de “parejas mixtas” cuyos miembros son de diferentes nacionalidades y/o etnias prestan poca atención a cómo cada miembro, sobre todo aquél con una historia de migración, experimenta las leyes y las instituciones que afectan a sus hijos. Partiendo de observaciones etnográficas y entrevistas a mujeres filipinas en Bélgica y Países Bajos, este artículo investiga las experiencias de estas migrantes socio-jurídicas para arrojar luz sobre la situación de sus hijos durante el proceso de divorcio. Al prestar atención al principio del “interés superior del menor”, el análisis de datos revela que los hijos de mujeres con divorcios conflictivos y/o violencia doméstica tienen encuentros más directos con las leyes y/o las instituciones que aquéllos cuyos padres tuvieron una separación amistosa. Igualmente, los jóvenes cuyos padres o padre/madre recurrieron a la asistencia socio-jurídica en su país de residencia están más expuestos a los aspectos jurídicos del divorcio. Este estudio de caso subraya la dimensión intersubjetiva del divorcio y sugiere que las políticas estatales modelan las vidas de las personas.

## Palabras clave

Encuentros socio-jurídicos; interés superior del menor; parejas mixtas; mujeres filipinas migrantes; Bélgica; Países Bajos

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## 1. Introduction

The question of “mixed” marriage involving partners with different nationalities and/or ethnicities attracts scientific inquiries more often than that of marital breakdown, probably because of increasing state control of binational relationships in many countries (Strasser *et al.* 2009, Fresnoza-Flot and Ricordeau 2017) and of the relational challenges that marriage poses to partners from different socio-cultural backgrounds (see Breger and Hill 1998). In the present age of transnational migration, understanding the institution of marriage implies grasping not only its processes and dynamics but also its very opposite, that is, marital breakdown. In the context of this conjugal dissolution, how do women of divorced mixed families encounter the law and institutions with regard to their children?

The present study<sup>1</sup> responds to this question by examining mothers’ socio-legal encounters about their children. This choice of approach stems from the analytical focus of the larger research from which this paper is drawn – migrant women. It may be reproached for being “heteronormative” (Manalansan 2006) and as an indirect way of accessing children’s points of view (see Mazzucato and Schans 2011). However, it appears useful for the present study as it provides a way to grasp children’s situation during the divorce process of their parents. Besides, the institution of marriage has been widely described as “heteronormative” (Macedo 2015), and in the context of divorce, mothers in many societies most often obtain the custody of their minor children, particularly “when fathers choose not to fight for it” (Chesler 2011, xi). In addition, children are often not directly included in many studies on divorce, like the present study, due to the important methodological and ethical challenges involved (see Quah 2018).

In this paper, I focus on two periods of the divorce process, that is, during and after the arrangements or negotiations between the partners, notably with regards to children’s custody and well-being. This emphasis on “critical moments” (Pande 2017) of individual experiences may unveil the subtleties of children’s lifeworld as well as its “intersubjective” and “intertemporal” dimensions (Fresnoza-Flot 2015). “Critical moments” refer to events in the life trajectories of individuals that have “important consequences for their lives and identities” (Thomson *et al.* 2002). To identify these moments, my paper utilises the gaze of mothers to apprehend their children’s situation during the divorce process. As a guiding conceptual lens, I pay attention here to the “best interests of the child” principle to understand the socio-legal experiences of migrant women and their children. This principle originates from the United Nations Convention on the Rights of the Child (1989), specifically from its Article 3:1 specifying that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. This “best interests of the child” principle is aligned with the “dominant welfare discourse” that perceives children as vulnerable and “at risk of harm if their parents fail, for whatever reason, to manage the divorce, and their parenting, properly” (Kaganas and Sclater 2004, p. 3). In this case, it reflects the Convention’s normative foundation that underlines “children’s lack of

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equality and power” and “the many boundaries between childhood and adulthood that are constantly being reinforced by adults on a daily basis” (James and James 2004, p. 99). The “best interests of the child” principle appears, thereby, to be “an adult perspective on the situation of the child” (Moreau 2015, p. 17) rather than the opposite, which suggests the “engagement and responsibility of adults toward a child” as well as the importance of respect for “his liberty and his subjectivity” (Moreau 2015, p. 18). In the context of divorce, such respect may be difficult to uphold if the separating parents have conflicting interests or perspectives regarding their child’s welfare. Divorce, being a critical life moment, may strongly reinforce the conventional view of the child as fragile and weak compared to adults.

To find out, I scrutinize in this paper the experiences of Filipino migrant women who were formerly in couple with Belgian or Dutch men. This choice of focus stems from the observation that Filipino women occupy an important position in the “global marriage market” (Piper 2000). These women have dominated numerically marriage migration from the Philippines since the 1980s. In 2018, for instance, almost 90 per cent of the 17,219 Filipinos registered in the Philippines as spouses or partners of foreign nationals were women (Commission on Filipinos Overseas – CFO – 2019). Likewise, women outnumbered men in the about 560,000 Filipinos in mixed couples between 1989 and 2018: 511,453 versus 48,491 (*ibid.*). They also composed the majority of the 12,419 and 21,789 Filipinos in Belgium and the Netherlands, respectively, in 2013 (CFO 2014). Regarding the geographical focus of the study, I selected Belgium and the Netherlands not only because they are both “Low Countries” with “similar developments” historically, socially and economically (Blom and Lamberts 2006), but also because they (together with Germany) are among the major destinations of Filipino marriage migrant women in Western Europe. In terms of a socio-legal system, following the “principle of social assistance and that of general welfare” (Fresnoza-Flot 2018c, 6), the two countries offer both primary (free-of-charge “information, initial advice and practical services”: see Hubeau and Terlouw 2014, p. 10) and secondary (more detailed “advice, representation and assistance”: *ibid.*) legal aid to divorcing or divorced couples. Nonetheless, the Netherlands has “long-established, centralised, and generously funded systems of legal and social aids” compared to Belgium (Fresnoza-Flot 2018c, p. 16), which may affect Filipino women’s socio-legal experiences about their children.

In the next section, I briefly revisit children’s place in the literature on divorce to bring to the fore the originality of the present study. After this, I explain my methodology, fieldwork and sample as well as the socio-legal contexts of the study. In the main part of the paper, I unveil Filipino mothers’ encounters with the law and institutions with regard to their children as well as the factors influencing the variations in their experiences.

## **2. Children in the context of divorce**

Divorce has been documented in social science research for a long time, and the situation of children within this context of marital dissolution represents one of the main objects of scholarly investigations (Amato and Keith 1991, Amato 2001, 2010). The large bulk of works on this theme remains concentrated on Western societies (Adams 2004), as well as on non-migration or sedentary contexts despite increasing human migration on a global scale.

In the context of migration, the rupture of marital ties is one of the results of parental spatial movements, that is, father, mother or both parents migrating to another place while their children stay in the place of origin. The interest in children's situation has emerged following the visibilisation of women in this field of study. The phenomenon of maternal migration that has touched many societies in the world has incited scholarly attention towards young people, notably concerning the impact of the mother's absence on children's well-being (e.g. Parreñas 2005, Horton 2009). In the body of works on children of geographically separated families, the place of these young people in their parents' socio-legal encounters during marital breakdown has not yet been widely explored. What is usually analysed are their experiences of the law and institutions in their cross-border spaces within the contexts of irregular migration, family reunification and social incorporation (see Solis 2003, Dreby 2012, Allerton 2014).

In the case of mixed couples' divorce, the way partners experience the law and institutions has been largely explored. Studies on this theme highlight the lengthy legal battles over the custody of minor children and how they affect the socio-economic situation, social networks, legal identity and psychological well-being of the individuals concerned (Suzuki 2003, Mand 2005, Singh 2008, Kim 2010, Singla 2015, Sportel 2016). There is also important literature dealing with the cases of international parental kidnapping, that is, when one parent takes his or her children abroad without the knowledge and agreement of the other parent (see Hegar and Greif 1991, Samson 2016, Morewitz 2019). Hegar and Greif (1994, p. 135) remark, in the US context, that "intermarriage is overrepresented in a sample of families who have experienced parental abduction". In other regions of the world, this phenomenon has also been observed (Schnitzer-Reese 2004, Silberman 2008). This suggests that separating or separated mixed couples with children are more exposed to socio-legal challenges during or following divorce compared to their counterparts in non-mixed families. It also implies the inevitability of the encounters of these couples with legal institutions or entities and the intersectionality of divorce's implications on their lives. The empirical data sections of the present paper will examine these closely, unravelling migrant mothers' perspectives of their children's situation during and after divorce.

### **3. Research methods, fieldwork and the sample**

The present paper draws on 26 of 30 semi-structured interviews I conducted with Filipino migrant women in Belgium and the Netherlands from April 2016 to April 2017. The interviews were carried out as part of a two-year postdoctoral research project (2016–2017) on divorce involving Filipino-Belgian and Filipino-Dutch couples in the two countries mentioned above. The 26 Filipino informants were divorced except for one who was in the process of divorcing her Dutch husband at the time of interview. I selected them from a total of 30 informants as all of them had ethnically mixed children (see Table 1 below).

To meet these women, I used a snowball approach and sought the assistance of Non-Governmental Organizations (NGOs) and associations of Filipino migrants in Belgium and the Netherlands as well as these migrants' groups of friends. At the beginning of my fieldwork, I found it challenging to obtain the trust of possible informants, which might probably have been due to the stigma attached to divorce within the Filipino immigrant populations in the countries mentioned above. In order to solve such

difficulty, I frequented the meeting places of Filipino migrant women (churches, ethnic restaurants and so on), participated in their organised activities (celebration of birthdays, Philippine national holidays, parties...), and obtained referrals from a few association leaders. The fact that I grew up in the Philippines, speak Filipino and have an ethnically mixed conjugal union also helped me gain the trust of the informants. Some informants asked me during our first meeting, whether I was divorced like them or was planning to separate from my husband. Many of them welcomed me into their homes, and one informant even invited me twice to sleep over at her place. My "insider" status facilitated my access to the private sphere of the life of my informants. Nonetheless, such a position did not automatically result in my desired outcome as my residence in Belgium caused initial hesitation among some informants in this country to participate in my study. Unlike them, my informants in the Netherlands were not reluctant to share their marital break-up stories with me. Because of my residence in Belgium, these informants were reassured that their stories would be safe with me and not be spread among Filipinos in their receiving country.

TABLE 1

<b>Belgium</b>	<b>Pseudonyms</b>	<b>Age</b>	<b>Nationality</b>	<b>Marriage duration</b>	<b>Children</b>
	Aida	54	Belgian	17	2
	Charlene	40	Filipino	10	2
	Rosa	38	Belgian	6	1
	Trina	45	Belgian	13	3 <sup>a</sup>
	Lani	55	Filipino/Belgian	16	1
	Susan	39	Belgian	10	2
	Eva	37	Belgian	7	1
	Phina	46	Belgian	18	1
	Cahenia	52	Belgian	23	3
	Elsa	30	Filipino	7	1
	May	47	Belgian	8	3 <sup>b</sup>
	Alenia	45	Belgian	8	3
<b>Netherlands</b>	Rita	55	Filipino/Dutch	15	1
	Gina	59	Dutch	14	2
	Jocelyn	49	Dutch	27	1
	Teodora	60	Dutch	26	2
	Lila	48	Filipino/Dutch	12	2
	Liza	45	Dutch	13	2
	Marta	74	Dutch	30	2
	Lyn	57	Dutch	20	1
	Maria	42	Filipino/Dutch	ongoing divorce	2
	Anja	61	Dutch	18	2
	Joan	55	Dutch	16	2
	Helen	49	Dutch	7	1
	Alma	48	Dutch	21	2
	Mina	41	Filipino/Dutch	11	2

Table 1. Interviewed Filipino women with ethnically mixed children.

(Notes: a. Two of these children were born of previous unions prior to their mother's transnational marriage; b. Two of these children were born of previous unions prior to their mother's transnational marriage.)

The 26 informants were on average 49 years old and had mostly reached tertiary level education. Four of them arrived in Europe in the 2000s, 14 in the 1990s, seven in the 1980s

and one in the 1960s. All except one possessed the nationality of their receiving country, and five had dual nationality (Filipino-Dutch/Filipino-Belgian). The majority of the informants were younger than their former husbands with a maximum 23-year difference. At the time of the interviews, many informants actively participated in the labour market, which had not always been the case prior to their separation from their husbands. In terms of the number of children, the informants had mostly two offspring, and the majority of these children were minors at the time of conjugal separation. To protect the privacy of the study informants, I modified their names, their children's names and other identifiable socio-demographic characteristics, specifically their profession or job before and after migration.

#### 4. Children's place in divorce laws in Belgium and the Netherlands

Children occupy an important place in the Belgian and Dutch family laws, notably when it comes to issues surrounding conjugal dissolution. Currently, the principle of the "best interests of the child" serves as a guiding light in the divorce laws of these countries.

In these countries, children are not legally excluded during the divorce process and thereafter. In Belgium, children of all ages have the "right to be heard" before the court for matters concerning "parental authority, residence right and right to personal relations" (Article 1004/1 of the Belgian Judicial Code). Minors aged 12 years and above are "informed by the judge" about his or her "right to be heard" in the court, whereas those aged below 12 could be heard "at his request, at the request of the parties, the public prosecutor or of the office of the judge" (*ibid.*). Likewise, in the Netherlands, the law accords the right to a child aged 12 and above to express "before the court" his/her "serious objections against having contact" with his/her "parent or the person with whom" (s)he "maintains a close personal relation" (Book 1, Article 1:377a of the Dutch Civil Code).

In a post-divorce situation in Belgium and the Netherlands, both parents retain their authority over their children. In this logic, they need to explicitly define the care and living arrangements of their children following separation. In Belgium, they can exercise either joint or sole custody based on their common agreement or the court's decision (Civil Code, Article 302). The court (in this case, the Tribunal of the Family) can assign "the exclusive exercise of parental authority" to one of the parents if it sees that the parental arrangement regarding the "child's custody, the important decisions over his health, his schooling, his formation, his leisure activities, and his religious or philosophical orientation" is "contrary to the interest of the child" (Article 374 of the Belgian Civil Code). In this sole custody situation, the court prescribes the terms on which the non-custodial parent can "maintain personal relations with the child", "preserve the right to monitor" his education and "obtain from the other parent or third party all useful information in this regard" (*ibid.*). In the Netherlands, ex-partners also enjoy joint custody of their children (European Justice 2020b). Sole custody is possible and "the court may order" it "upon the request of one or both of the parents" provided that one or both of the following situations are present: "there is an unacceptable risk that the child would get lost or jammed between the parents and it is not to be expected that this situation will sufficiently improve within a foreseeable period of time" or "for another reason a change in authority over the child is necessary for the best interest of the child" (Article 1:251a of the Dutch Civil Code).

Concerning financial support for the child following a divorce, the ex-partners are legally expected to provide this support in the two aforementioned countries. In Belgium, they should support their children regardless of their age as long as they are in need, specifically when their schooling (*formation*) is not yet completed (Article 205, Belgian Civil Code). The amount of child support following divorce is calculated based on the ex-partners' income and social situation as well as on their child's needs (European Justice 2020a). It is generally mothers who act as the primary child carers and who head single-parent households, which constitute 94 per cent of the single-parent families with the right to claim child alimony in the country (Blogie 2014). In the Netherlands, former partners are obliged by law to provide "maintenance" for their children aged below 18, and to give "maintenance" and education support to their older children aged 18 to 21 (see Articles 1:392 and 1:395a of the Dutch Civil Code). Like Belgium, the amount of child alimony in the Netherlands depends on certain factors such as the number of children and the partners' economic situation. Statistically speaking, "(t)he courts annually grant alimony to children in nearly six in ten divorces involving under-aged children" (de Winter and Spranger 2015). In many cases, as in Belgium, the mother acts as the recipient of child alimony from her former partner (Oostrom *et al.* 2012). In the case of non-payment of financial support to the child, which is a challenging issue in Belgium and the Netherlands, there are state institutions that claim unpaid child allowances in these countries: in the former, the *Dienst voor alimentatievorderingen* (DAVO) in the Flemish-speaking community, the *Dienst für Unterhaltsforderungen* (DUFO) in the German-speaking community, and the *Service des créances alimentaires* (SECAL) in the French-speaking community; whereas in the latter, the *Landelijk Bureau Inning Onderhoudsbijdragen* (LBIO).

These socio-legal contexts in Belgium and the Netherlands suggest that children occupy an important place in these countries' family laws. Their "best interests" throughout and after the divorce process appears to be taken into account and is guarded through state agencies such as DAVO and LBIO. In real life situations below, we will see how migrant mothers in mixed couples encounter the law and institutions with regard to their children in the aforementioned countries.

## **5. Considering children's interests during the divorce process**

The degree of children's implication in the divorce process of the study informants appears to be dependent on the divorce law in their country of residence, the nature of parental divorce (conflictual or friendly) and children's age (minor or not).

All the women interviewed and their husbands dissolved their marriage following the divorce law in their respective countries of residence. Besides, it would not have been possible for them to carry out their divorce in the Philippines, where divorce is only possible for Muslim Filipinos (Fresnoza-Flot 2019). In this case, Belgian and Dutch family laws were therefore the ones that framed the informants' conjugal dissolution. The notion of the "best interests of the child" in these laws stressed the importance of children's voices during the divorce process, which appeared to be influential in the decisions of most informants and their former partners. For instance, Rita and her former Dutch husband ensured that their daughter (aged eight at that time) would be legally informed of what was going on in their marriage:

Our agreement was to prepare Kate. So, we talked to her and told her that we would be divorcing, separating and that it was not about her, just ah... She said, of course, that she did not like that we separate. She said that. Then, we explained to her our situation, and after that, we consulted a lawyer. One time, we brought Kate with us. So, when we talked to our lawyer, Kate was also there. So, she knew that her father and I were not cross with each other. It was like involving her in some way during the stage that she could carry on. Of course, it was not the first time that we consulted a lawyer. My [ex-] husband and I did first the consultation; later on, we told our lawyer that we would bring Kate [in our next meeting]. It was like conniving with our lawyer, so he could explain things to Kate in a way adapted to her level.

Kate's smooth encounter with the law was probably due to the friendly nature of her parents' conjugal break-up. Among the study informants, only three, including Rita, underwent a friendly divorce, that is, a marital dissolution mutually agreed upon by the couple in a peaceful way. In these cases, the children seemed less likely to encounter the law in a challenging way. Their interests and needs were taken into account by their separating parents, as Joan narrated below:

It was so that the children would not be transferred to another school because they would lose their friends. I was thinking of my children's well-being. What changed was the personal contact between him [ex-husband] and I. Actually, what arrangement we had before I left home remains the same, all remains the same.

However, when the divorce was conflictual, the former couple, as well as their children, underwent difficult socio-legal and emotional experiences. Informants undergoing a conflictual divorce also considered their children's wishes, like Rita, and let them get involved in their decisions, though this would sometimes mean not living with them. For example, Lyn and her Dutch husband resorted to a mediator to resolve their divorce issues, and they together with the mediator organised one session just for their 13-year-old daughter. During this session, their daughter expressed that "she would rather have co-parenting" and that she would be mainly living with her father. The latter arrangement emotionally affected Lyn, but she accepted it respecting her daughter's choice. Likewise, Teodora, during a problematic divorce from her Dutch husband, heeded her minor child's wish to reside with her father and did not legally claim her right to co-parenting when her child stopped seeing her, due to the tensions between them. A social worker helping Teodora to tackle her divorce issues became the mediator between her and her child. Subsequently, the personal issue between Teodora and her child was resolved.

Heeding the child's wishes during the divorce process was not always the case. For example, Susan's divorce in Belgium took a year and a half because of the negotiations with her ex-partner regarding childcare arrangements: "I looked for a lawyer because he did not like to share with me our eldest (child) [...]. I had to fight that". Susan's eldest child aged eight did not like spending time with her, which Susan attributed to her parents-in-law's "extra stories" to her children, saying that she was "a bad mother", "always going to the cafés", "hanging out with men" and "dating other men". Susan contested these allegations and asked the court for shared child custody, an equal parenting arrangement legally introduced in the country in 2006. Despite the disagreement of her ex-partner, Susan's legal battle ended up being partially successful. Although it was against the wishes of her child to come to her place, she had him "for a

few hours" a week. Susan tried to change his view of her as "a bad mother", but "it was difficult" for her child. Susan confided: "there were times that yeah, I had to regret because of my eldest child". Susan's behaviour in not considering what her child wished stemmed from her observation that her parents-in-law were inculcating in her child fake stories about her. Her action suggested that she viewed her child as needing maternal protection, which reproduced the social view in her country of origin of children as vulnerable and defenceless (Asis 2006; see also Fresnoza-Flot 2018b). This transnational reproduction of the normative conception of a child in the Philippines affected Susan's son, who was obliged by Belgian law to be with his mother for a few hours each week despite his wish to be with his father all the time.

Close encounters with the law or socio-legal structures were mainly observed among the young offspring of informants who had a problematic divorce and those who underwent domestic violence. One woman interviewed in the Netherlands narrated her experience residing in a secret shelter together with her young children:

My kids were nine years old and ten. Amalia [eldest child] was ten, I think. Amalia was really a witness; she was seeing how her father hurt me. She had a health issue at that time because of what she was witnessing. Then I went to Belgium [to live in a shelter]. I was not allowed to make phone calls (...). I disappeared for one and a half year, yeah. I have to stay in an *omgangshuis* [a shelter for individuals in challenging divorce situation] for one and half year. My kids were with me. I was in Belgium for two months. The welfare centre has also [schooling programme]. They [social workers] put my kids there; they were immediately put in school (...). I also went [after] to X [name of a Dutch city anonymised].

Unlike minors, young adult children of the interviewed women did not have direct socio-legal encounters during their parents' divorce process, as most of them were already living separately from their parents. Aware of the legal age of majority in their respective country of immigration, some interviewed mothers had considered the age of their children in their decision when to separate from their respective partner. For example, Pina and her Belgian husband revealed to their son that they would divorce when he turned 18 years old "to preserve him from suffering". Alma who waited for her eldest to reach almost the age of majority before separating from her Dutch husband explained: "I do not want to leave my children not understanding anything (about the situation). So, when I told them that their father and I would separate, they said that 'it is better mama'". These informants considered the interests of their children in their decision to divorce, which aligned with the social view in their country of origin regarding children as well as with the "best interests of the child" principle in the family law of their respective country of residence.

## **6. Children in asymmetric living arrangements**

Having minor children most often complicates conjugal dissolution, as separating partners (aside from the stress of administrative paperwork) must negotiate to determine the care arrangements for their offspring (see Kelly 2007 for instance). In the present study, seventeen informants confided that their children mainly lived with them, and fourteen had children living alternately between their home and that of their other parent. The overlapping and intersecting effects of factors, notably family law, nature of

separation and child's choice determined the post-divorce living arrangements of children in the case of the interviewed Filipino women.

Since Kate was still in elementary school, she was with me from Monday to Wednesday. Then from Wednesday to Friday, starting from Wednesday afternoon, she was with her father. Then, we [ex-partner and her] equally shared [parenting] in the week-end. (Rita)

Rita's remark indicated equal parenting between her and her ex-husband, a situation shaped not only by the law in their country of residence (Netherlands) but also by the friendly nature of their conjugal break-up. In this exceptional case, the ex-partners' negotiations concerning childcare arrangements appeared easy and less emotionally consuming for the couple and the children. On the contrary, informants whose ex-partners refused to cooperate during the divorce process resorted to a legal battle. Women with limited resources asked for help from (non-)governmental organizations, from their friends and acquaintances or negotiated with their husband to confront their difficulties. For example, Joan was a full-time housewife and had no financial capital at the time of separation. With her ex-partner's agreement, she had custody of her children. When Joan started working, she and her ex-husband mutually agreed to co-parent their children: now, he often comes to her apartment to look after them, or it is Joan who brings their children to their former home. Joan and her ex-husband have maintained a friendly relationship for the sake of their offspring, which suggests how the presence of children can influence the separation process and shape the child's living arrangements following marital rupture. This coincides with what Quah (2017) observes in her study of divorced couples in Singapore: many of them, despite their ruptured marital ties, continue "living together apart" (Bawin-Legros and Gauthier 2001) for the sake of their children.

In a few cases, minor children of some informants expressed their choice of residence. For instance, Lyn's daughter, who was 12 years old at the time of her parents' separation, chose to stay in the family house with her father. Likewise, Alma's two children (one adult and the other minor) chose to live with their father who kept the family home. As a result, Alma's husband, who had been most often absent from home before the divorce suddenly became the central figure in the daily lives of their children.

In the present study, it is interesting to note that joint custody of children did not always mean co-parenting. The majority of the interviewed mothers had children whose movements between two "homes" were unequal: in many cases, the children spent most of their time in their mother's home than in their father's. In one case, the informant's ex-partner moved out of the country and could no longer participate in shared parenting: "before, my children were with him, every weekend, but he left" (Mina). This situation reflected the conflicting views of the ex-partners concerning the "best interests" of their child and post-divorce parental responsibilities. In many cases, the non-involvement of fathers in hands-on care of their children had already been observed before divorce, as Mina explained below:

We slept separately, but I left every week-end. I left him; I left my kids with him during week-end, and he was at home (...). In the beginning, I was hurt to see that he did not take care of my kids. It was painful for me, but I needed to teach him [a lesson]. Sometimes, I came back home [and] our living room was filled with poo because he let my kids marinated in their pampers with their poo.

Despite the absent parenting of their ex-partner, the women interviewed did not run after their ex-husband to claim what he should legally fulfil for his children. This demonstrates the difference between “law in books” and “law in action” (see Pound 1910), which we will also observe in the next section.

Changes in children’s living arrangements also occurred when these young people got older and became more expressive of their choice of residence. For example, when Trina’s youngest child turned 16, he decided not to go to his father’s home anymore. The children of another informant refused too to see their father after they (together with their mother) moved out of the family house.

Furthermore, unlike the case of divorced non-mixed couples whose children in many cases could maintain contact with their grandparents notably on their mother’s side (Kruk and Hall 1995, Lussier *et al.* 2002), the children of the women interviewed visited their paternal grandparents more frequently than their maternal ones who lived in the Philippines. This was due to two major reasons: firstly, the Filipino migrant women interviewed who had undergone a conflictual divorce rarely obtained the agreement of their ex-husbands to let their children go with them to the Philippines during school vacations because these men worried that their ex-wives would keep their children in their country of origin; and secondly, even if the ex-husbands agreed, some Filipino women (notably those who were unemployed or who had a low monthly income) could not afford financially to take their children regularly to the Philippines. For instance, Alma (48 years old) explained that she used to go to the Philippines with her children but that the situation changed after her divorce: “They like of course (to come with me), but I tell them that ‘we are in a different situation now. I have no work’. Besides, they should do all by themselves at the age of 18 here in the Netherlands”. Although the law prescribed, in general, equality in post-divorce parenting and the pursuance of the “best interests of the child”, the women interviewed and their children in Belgium and the Netherlands found themselves in a disadvantaged situation linked to the nature of divorce and the often-challenging economic situation of the former. As a result, the living arrangements of the children of divorced couples appeared in the case of the interviewed Filipino women to be asymmetric in spatial and temporal terms.

## **7. Children under limited financial help**

Many studies on divorce show that the non-custodial parent (generally the father) most often does not pay the allowance for their children due to various reasons such as having a low income or being unemployed (for instance: Municio-Larsson and Pujol Algans 2002, Nelson 2004). In the present study, only seven women interviewed regularly received child allowance from their former husband; the rest of the informants (except those with children aged 18 and above) mainly carried the financial burden of raising their children following divorce.

He gives me 100 euros [per month], but is it enough for one child? I told him, whatever you give me, I would manage to make it fit our needs. If it does not fit, I would find a way to make it. (Lila)

Among the informants who received child allowance from their ex-husband, a few of them, like Lila, revealed its small quantity and how challenging it was for them to budget such financial support to satisfy the needs of their children. These informants’ children

form part of young people in single-parent households in Belgium and the Netherlands, a group of youth who are prone to grow up in poverty (Blogie 2014, Statistics Netherlands – CBS – 2015). Limited financial support from the former partner was a source of frustration for both the interviewed women and their children. As a result, certain children made sure that they did not pose a problem for their custodial parent to make things easier. A woman interviewed in Belgium said that her daughter had wanted to participate in a school field trip abroad, but her ex-husband did not provide any financial support for it. Her daughter was very frustrated and asked her mother's new Belgian partner to help her, which he did. Another informant stressed that her child did not make it hard for her to feed him, which influenced her decision not to ask for child allowance from her ex-partner:

My child is easy to feed, I said [to the judge]. I did not ask [for child allowance] because I showed that Filipino women are not after money [*mukhang pera*]. I am poor, I said, but I can raise my child. (Lani)

Four other informants refused to claim child allowance from their ex-partners who in two cases were unemployed. These women were all residents of Belgium where non-recourse to social services in terms of housing and job training among many people in precarious situations appeared to be common, as unveiled in the 2016 report by the Health and Social Observatory of Brussels-Capital (Observatoire de la Santé et du Social de Bruxelles-Capitale) (see Noël 2016). The informants' decision not to claim their rights can be attributed to the fact that Filipino women had a "negative social image" in Belgium as being "greedy for money", as one woman interviewed described it. Their non-recourse to child allowance resembled that of the 1.5-generation Latinos in the United States of America, whose undocumented status became subject to social stigma, posing challenges to their claims-making (Abrego 2011). The negative social image of Filipino women in Belgium partly stemmed from the influence of the Belgian media. For example, some Filipino women I met in Flanders during my study expressed their disappointment in the television series *Exotische Liefde* (exotic love) in 2012, which according to them depicted women, such as Filipinos and Thais, as engaging in a relationship with Belgians for mainly economic purposes. Some informants told me about the stereotype regarding Filipino marriage migrants as being "bought" by their Belgian husbands. Such images and stereotypes made a few informants in my study decide not to claim their rights in order to change the negative social view about them and to prove that they could raise their children by engaging in paid work. As Erel, Reynolds and Kaptani (2018) observe in the British context, migrant mothers "are expected to prove their ability to belong by conforming to neoliberal ideals of the good citizen" such as labour market incorporation (p. 69). In the Netherlands, where I did not observe any negative stereotypes about Filipino women, many informants "claimed their social rights" during and following their divorce (Fresnoza-Flot 2018c). Such absence of negative stereotypes may have been due to the socially known history of Filipino immigration in the country as mainly a movement of skilled workers, political exiles, *au pairs* and students. It may also have been due to the fact that even if the informants did not wish to ask for child support or spousal alimony, the Dutch state would claim it for them in the best interests of their child, as Santa confided below:

I told her [social worker] that I did not like [to receive] any types of support, [but she said] 'it is not for you to decide'. If possible, I said, 'I do not like to receive [support]

because if ever, many will have a claim over me or over my child. I do not like to hear reproaches'. She told me, 'but madam, it is not for you to decide, it is for the court to decide'. When the payment of child support [by former husband] stopped, I received a letter saying, 'you have the right to, to demand [support]'. I replied, 'no, I will not'. I was informed again that 'you are not the one to decide, it will be the court'. I said, 'let him [ex-husband], he may have no money'. [I received a reply,] 'it is not your problem. It is his problem. Besides, it is not for you; it is for your child'.

This vignette illustrates how the state reinforces the boundary between adults and children (James and James 2004) through its emphasis on the "best interests of the child". Both Belgian and Dutch states through their designated agencies ensured that children would receive financial support from their non-custodial parent. Cahenia, for instance, was able to receive child allowance from DAVO that obliged her ex-husband to reimburse it afterwards on an instalment basis. Likewise, Aida showed me during my interview the papers she filled out for SECAL to be able to get child allowance from her ex-partner. In this case, the children of women like Cahenia and Aida appeared not to have been abandoned as the state played the role of "substitute father" to them, despite their non-custodial parent's non-cooperation in raising them. Interestingly, unlike professionals like social workers in Belgium who used the "best interests of the child" discourse, the women interviewed did not explicitly refer to the same discourse in their decision to claim or not child support. This observation echoes what Sportel (2016, 175) remarks in her study on transnational divorce among Dutch-Moroccan and Dutch-Egyptian couples, who made "very few references to law when discussing child care after divorce" and who mostly "make arrangements outside of the court".

Other informants in the study did not receive child allowance from their ex-husbands for the following reasons: their children became young adults and started working, or they mainly resided in their father's home as he was their primary custodian. The Belgian and Dutch family laws determine how post-divorce parenting in material terms should be, which in real life are often not followed as we have observed in the case of Filipino women and their children, notably in Belgium, in the present study.

Other informants with casual or conflictual relationships with their ex-partners experienced post-divorce parenting in a challenging way. In fact, the more the ex-husband neglected the maintenance of the agreed-upon children's living arrangements, the less involved he was in the provision of practical and emotional support to his offspring. Mina, for example, complained about her absent ex-husband who left the Netherlands to work in a nearby country and who could not, as a result, regularly see their children. Lani too mentioned her ex-husband who left Belgium after their divorce and took their son with him. This situation made Lani's mothering and her son's childhood transnational for a while, as she relied on the telephone and the Internet to maintain contact with him. After some time, her son became cross with his father and decided to return to Belgium. Since then, Lani's ex-husband had no longer participated in providing direct practical and emotional care to their child, who had returned to his mother's home. Despite their ex-partners' negligence of their parental obligations, Mina and Lani did not file a suit against them or resort to state agencies such as DAVO to claim what was legally due to their respective children.

The impact of parenting through practical and emotional support in the post-divorce situation could be well observed in the quality of the parent-child relationship. Most of

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the informants had a good relationship with their children at the time of the interview, and many of these children had an emotionally distant relationship with their fathers due to irregular contact with them or less quality time together. Only four interviewed women had a complicated relationship with their children who, in those cases, had remained with their father.

## 8. Discussion and conclusion

The case of the Filipino women examined in this paper unveils migrant mothers' socio-legal encounters with regard to their children during and after the divorce process. These women's experiences of the law and institutions appear to be shaped by various factors. It is evident that the younger their children are and the more conflictual their divorce, the stronger their judicial and/or institutional encounters will be.

The "best interests of the child" principle in the family law governing divorce does interact with the interests of separating parents, who interpret and re-frame "notions of children's best interests according to their own criteria" (Kaganas and Day Sclater 2004, p. 6). In highly conflictual divorces, as the case study shows, parents' interests often dominate the legal concept of the "best interests of the child". It is not surprising that many children in such a divorce find themselves in a challenging situation characterized by asymmetric living arrangements and limited financial support from their non-custodial parent. More often than not, it is the mothers who mostly bear the brunt of raising their children, which echoes the scholarly observations about non-mixed ex-couples (see Municio-Larsson and Pujol Algans 2002). Such mothers' situation is different from what it should be according to the family law in their respective country of residence. However, these women are not alone in confronting the impact of divorce as the state supports them in rearing their children by providing financial assistance. This may be interpreted as the way the state paternalistically ensures the reproduction of the nation: it raises its young citizens, the future of the nation (Fresnoza-Flot 2018a).

Albeit only observed in three situations (contact with maternal kin, the impact of the Philippines' normative notion of a child and transnational mother-child interaction), the transnational dimension of the informants' socio-legal encounters about their children distinguishes them from mothers in divorced non-mixed families. Another distinguishing characteristic of the group studied is the refusal of some mothers to claim their social rights following divorce, such as asking for child allowance from their former partners, which is particular to interviewed women in Belgium who attempt to disassociate themselves from the negative social image of Filipino women in their receiving country. Their experience confirms the structuring effect of negative gendered stereotypes on the claims-making of women in mixed couples (De Hart and Besselsen 2020). Non-claims-making often limits the interviewed women's economic resources, which subsequently affects them and their children during their post-divorce family life.

The transnational and relational aspects of the post-divorce situation of migrant mothers and their children, as illustrated in this paper, will require further examination including the points of view of both children and their fathers as a necessary analytical step to gaining a holistic understanding of divorce in mixed families. Furthermore, the question of how the children of divorced mixed couples make sense of their belonging to their natal nation and to that of their migrant parents appears to be an interesting subject for

research in the future, notably in citizenship terms and identity (re)construction perspective.

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