



Traditional Conflict Management in Yemen (Draft, March 2005)

Sonja Andjelkovic-Al Amry and Nina Scherg



German Technical Cooperation
Republic of Yemen

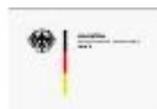


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Editor:

German Technical Cooperation (GTZ)
CPAS - Conflict and Poverty Advisory Service
P.O. Box 692, Sana'a, Republic of Yemen
Tel: 967 1 471165, Fax: 967 1 471163
Email: CPAS-GTZ@yemen.net.ye

Text: Sonja Andjelkovic-Al Amry und Nina Scherg
Photography: Sonja Andjelkovic-Al Amry
Layout: Shoqi Maktary/Sonja Andjelkovic-Al Amry

1. Introduction

Violent conflicts in many parts of the world have contributed to the deterioration of living conditions of people and have therefore hampered the efforts of development cooperation. Additionally, since the worldwide ethno-political clashes in the 1990s, the international community is becoming increasingly aware of their role in influencing conflicts. Hence crisis prevention has become one of the most important cross-cutting issues for the German development co-operation. In this context the German development cooperation has given a top priority to the inclusion of conflict relevant aspects when planning and implementing its projects.

The Muslim region

Many countries with a Muslim majority characterize themselves for political and cultural reasons as Muslim countries. Besides modern, mainly western influenced constitutions in most of the Muslim countries, high importance is given to Islamic law or Sharia, especially as a basis for family law.

In addition to different modern theories, Islamic philosophy and Islamic reform concepts have been intensively discussed in matters of urgent topics in the region. On a cultural and societal level, Islam has a special meaning for the identity of the Muslim people. It is an integral part of Muslim civil society. Therefore, it makes sense to refer to the region as a "Muslim" region in spite of its heterogeneous characteristics.

In Muslim countries, development cooperation needs to take into account the specific cultural particularities of conflict management in order to create conflict sensitive concepts for the future. This report gives an overview on the relevance of conflict management in the Muslim region, i. e. Yemen. Conflict management methods and their current use in Yemen are described. The authors differentiate between a) Islamic and b) tribal methods, approaches and rules of conflict management. The report concludes with the main differences between western and Yemeni understanding of conflict management and gives recommendations for conflict sensitive development cooperation.

2. Relevance of crisis prevention as a cross-cutting issue in the Muslim region:

1. The Arabic countries, particularly the countries of the Near and Middle East are mostly perceived as conflict prone areas. Violent clashes (e. g. in Palestine or in Iraq) boost the frictions in the whole region. Since the 1980s a remarkably growing tendency of Islamistic argumentation used by political actors has additionally complicated the conflict situation. The topic of crisis prevention as a global challenge has been a focal point within the international community since 11th September attacks, which have also affected the everyday political life in most Muslim countries.
2. Western economic and technological superiority, as well as the intervention of the US and its allies, have led to increasing feelings of humiliation and inferiority. Wide parts of Arabic societies are suspicious of western ideas and concepts. At the same time western lifestyles are taking hold of the cities and the elites.
3. Since the political incidents of the last decade religion is becoming more relevant as a cultural connecting point. Islam is an essential part of the cultural identity of the people in the Middle East. However, Islam as a political concept comes up in conflict situations. Therefore the role of Islam in everyday life and in politics depends on the societal, political and historical circumstances of the Muslim countries. From a cultural and social perspective, the Muslim region is diverse. Local traditions and pre-Islamic customs are integrated into every day life, which differ from country

to country. There is still one similarity: traditional perceptions hit upon new ideas and modern attitudes. Globalization and migration have altered the way of life and lead to feelings of insecurity and threat of accustomed behavior. Societal change processes, economic backwardness, extremely difficult local premises and historical conflicts foster extremist views.

The German development cooperation is thus confronted with an ambience of social and cultural change, which requires a lot of sensitivity. The societies involved are in a stage of transition, which can inspire reforms on the one hand but consolidate traditional structures on the other. The conflict sensitive approach of German development policy therefore demands a greater understanding of basic Islamic concepts and the traditional values of the region's population. Conflicts can be identified quicker, if the influence of local and religious structures on these conflicts is properly assessed. Thus sustainability of development cooperation can be improved.

3. Yemen: why crisis prevention?

Yemen is a focus partner country of the German development cooperation and one of the pilot countries for the Action Programme 2015 that supports the international aim of halving poverty until the year 2015. Moreover the German Ministry for Economic Cooperation and Development is one of the most important donors to Yemen. German institutions for development can look back on 30 years of successful collaboration. Therefore, the Yemeni partners are open to cooperate with the German side even on politically sensitive issues.

The most important conflict lines in Yemen are:

1. The relationship between state and tribes and between the tribes themselves: Reasons for conflicts usually stem from the distribution of resources (water, oil, land), which result in violent clashes, particularly in rural areas. However, there are also alliances between the conflict actors, which suit the purpose of political power balance in the country.
2. The relationship between the former North and South: Since reunification of the two Yemeni states in 1990, the Southern political elites lack a sense of participation in political power. This results in tensions on governmental level and in grievances of the population in the South.
3. The clash between tradition and modernity: the Yemeni urban and rural elites increasingly question their own culture and adopt western life concepts due to the influence of globalization. Furthermore, the urban centers are affected by migration from rural parts of the country. Cities become more and more influenced by the rural population which causes a tribalization and ruralization of urban areas and sharpens the conflict between traditional and modern behavior.

4. Muslim methods of conflict management

Islam is Yemen's state religion. Different Islamic schools of law exist in Yemen. In the North approximately 50 % of the population belongs to the Shiite school of the Zaidis. The Sunnite Shafii

The Zaidis = Shiite school of law

The Zaidis are a Shiite group, which currently exists only in the North of Yemen. Their name is derived from the founder of the school, Said bin Ali, who was appointed to mediate in inter-tribal conflicts and came to Yemen from Medina. The main distinguishing feature of the Zaidis is the emphasis on the imamate. The viewpoint of classical Zaidi thought is that a person can become an Imam only if he is a Sayyid (descendant of the prophet) and has certain characteristics like courage, talent, a sense of fairness, justice and piety.

Even nowadays within the modern Yemeni state, political positions are theoretically bound to these qualifications. In accordance with the Yemeni constitution, the candidate for the presidency has to be of “good character and behavior” as well as “piety” in order to meet the requirements.

School dominates in the South. The Ismailis constitute a minority of 2 %. The Islamic belief is considered as a moral guideline and is deeply rooted in the Yemeni society. Furthermore, honor and reputation of a family are part of the basic elements of Yemeni culture since pre-Islamic times. An essential characteristic of identity is ancestry, respectively origin of a family. Collective interests are much more important than individual needs. This leads to decisions in conflict cases that are not always concordant with individual justice, but serve the common welfare.

Maslaha = common welfare

The concept of maslaha, i. e. common welfare, for rendering a valid judgment is of decisive importance. Common welfare means the identification of social needs and necessities through interpretation of the primary sources of Sharia by Islamic scholars. For modern societies this approach comprises the opportunity to adjust Islamic basic principles to present conditions. The impact of this concept for conflict management and conflict solving is the flexibility of the jurisdiction in accordance with actual facts. Individual rights are indeed subordinate to common welfare, which contradicts often the western, individual driven sense of justice.

In practice, judgments are rendered in accordance to the common welfare providing extenuating circumstances instead of sticking to inflexible instructions.

Islam and Sharia

Quran and Sunna (exemplary speech and deeds of prophet Muhammad) are the main sources of the Islamic law, Sharia. The Quran is not a compilation of laws; rather it contains recommendations or admonitions. But for the case of conflict e. g. in the criminal law clear instructions can be found. Quranic verses have to be interpreted in order to be used in everyday life. According to the opinion of reform oriented Islamic scholars, relevant penal Quranic verses have to be interpreted

Sharia = Islamic law and religious practice

Sharia is a concept that regulates the whole life of a believing Muslim. In many Arab countries, Sharia is the basis of state jurisdiction. Chapter 1, article 3 of the Yemeni constitution for example, states that “Islamic Sharia is the source of all legislation.” The primary sources of Sharia are the Quran and Sunna. In the first centuries of the Islamic era, two more categories for implementing justice were added: 1. Ijma’, i. e. the consensus of Islamic scholars on a law case, which is dissolvable neither by Quran nor by Sunna and 2. Qiyas, analogy conclusion, which made it possible to adjudicate upon new cases by comparing them with already existing ones. In the course of time, different schools have deviated in certain law issues and developed different views dominating certain regions of the Muslim world.

Sharia possesses various methods for resolution of conflicts, which are deducted from the mentioned sources, Quran and Sunna. Inheritance law, family law and criminal law are precisely elaborated in the Quran, whereas complex complex conflict issues demand the involvement of experience with similar cases and incidents. Whenever there is room for interpretation, Customary and Islamic law intermingle, so that an accurate distinction between the two is often not possible.

out of a historical perspective and not literally. For example the Islamic criminal law (hudud)

contains as maximum penalty the detachment of extremities, which differs from the current understanding of human dignity and human rights in most of the Muslim countries, including Yemen. Practically, the execution of the Islamic criminal law is significantly influenced by other sources of law (French or Swiss law) as well as being determined by motives and circumstances of a delict. After considering the circumstances punishment can be extenuated. For example, the practice of cutting off the hand for thievery does not exist in Yemen any more. (Whereas the death penalty for capital crime still exists.) The instructions of the Sharia are decisive for a jurisdiction in accordance to Islam, which differs from country to country and from school to school.

In difficult situations, the Quran calls for patient and calm behavior. Public holding of personal conflicts is not desired, as confrontative behavior leads to the loss of face. From the religious as well as the societal point of view it is desired to face conflicts rather in a passive and expectant way than with confrontation.

All the prophets of the monotheistic religions (Islam, Judaism, Christianity, Zoroastrism) are believed to have the mission of dialogue between people. Therefore, the statements and the deeds of the prophet Muhammad serve as a role model for conflict management strategies. He is supposed to have solved conflicts by dialogue and negotiation rather than by violent means. The statements of the prophet Muhammad (hadith) give accounts of the prophet's habit to council with his companions in cases of conflict and decision making.

Shura = Reciprocal counseling

Shura is the concept of reciprocal counseling with the objective to decide upon a controversial issue. Progressive scholars consider Shura as inherent in Islam. They refer to distinct Quranic verses and the practice of the prophet Muhammad. Conservative scholars acknowledge the concept of shura as desired but not necessarily compelling. Shura is particularly important in the context of the discussion about contemporary political reforms in the Arab region and is understood by some reformists as equivalent to western democracy. The principle of shura in Yemen is fixed in the constitution. Article 125 indicates that „...the President of the Republic shall form a Consultative Council from experienced and qualified specialists in order to expand the base of participation through consultation.

The reciprocal counseling is also mentioned in the Quran, known as Shura. In a political sense, the Shura concept is used by reformists as an argument for political participation of the population.

Al-Hiwar = The dialogue

Dialogue as a medium of conflict resolution is the basis of the “al-Hiwar”- programme established by the Yemeni government. The target of this programme is to reeducate Islamists and convince them to reject violence. It is led by lead by the judge Mahmud al-Hitar and receives great international attention. Al-Hitar is part of the highest religious and consultative authority in Yemen, the “Board of Islamic Theologians”, which was established in 1994. Members of the board are 111 scholars (3 of them female) from different parts of the country. Their function is the clarification of open judicial questions, counseling in controversial issues as well as advising to the government on different levels. The main method of the programme “al-Hiwar” is conviction trough dialogue and clearing out misunderstandings concerning the peace and war concepts in Islam. The programme emanates from the conviction that Islam is basically a peaceful religion and opposes violent conflict “resolution”. The main source for this argumentation is the Quran.-

124 verses mention reconciliation (sulh) and forgiveness. Reconciliation or sulh aims at the ending

of a conflict between two Muslim parties by peaceful means and provide a peaceable interaction. It is used when the social circumstances demand for it. For the reconciliation procedure, the parties in conflict have to appoint a representative for their interest and an uninvolved third person. The arguments of both parties have to be formulated in writing by the representatives and discussed upon. The third person decides. The judgment is not allowed to be contradictory to the principles of Sharia. Reconciliation as a concept for conflict resolution between Muslims and Non-Muslims means a ceasefire for a time negotiated in advance. Still, the main focus of the western media lies on violent responses to conflict and aggressive forms of behavior from Muslim people. Thus, the media is creating the impression that conflicts in general are dealt with in a violent way. The concept of Jihad is central to this discussion. Indeed some Quranic verses do encourage the use of violence in the case of conflict. But theoretically, wars can only be fought when the circumstances require it. They can only be ordered by an accepted religious and political authority. Wars should only be fought for defense purposes, and they have to obey certain rules according to Islamic ideas of justice. Admittedly, the theory does not always reflect in practice. Islamic terms are often misused for political reasons and interpreted according to the interests of certain political groups.

5. Tribal methods of conflict management

The Yemeni customary law has a strong linkage to the tribes. A Yemeni tribe is an

organized patriarchal community identifying themselves through the same ancestors and a common settlement area. The tribes are the main societal group in Northern Yemen. Tribal groups are divided into subgroups of the same origin. The subgroups understand themselves as different descendants from the same ancestor. The representative of a tribe is the sheik, who has to be approved by the chiefs of the subgroups in order to achieve this post. The sheikh's obligation is the mediation and arbitration in conflict situations within the tribe. If the tribe finds the sheikh's competences wanting and incapable of representing the tribe it can drop him. Although the position of a sheikh theoretically is not inheritable, usually the oldest son of the sheik takes over. He has been taught Sharia by his father, customary law, negotiation skills and the ability to convict other people. Within the tribes in the North and the North-east of Yemen, customary methods for conflict resolution play a major role. The sources of customary law (urf) are mainly of pre-Islamic origin and include agreements and codes of conduct for the overall organization of tribal life in compliance with tribal customs. Generally tribesmen mistrust modern courts and the official state jurisdiction. The reason for it are

Jihad = to endeavor, to fight for

Jihad is an important Islamic principle and is considered as a basic duty for every Muslim. The interpretation and use of Jihad is subject to political and social conditions. The term Jihad encloses the strive towards a life that corresponds with moral Islamic principles or the physical fight against non-Muslims in case of attacks against Muslim territory. The use of violence for conflict resolution is only legitimized if the aim of peace cannot be reached by non-violent means. Contemporary Islamic scholars interpret Quranic verses that include violence, like e. g. the "sword verse", from a historical point of view emphasizing the basically defensive character of Jihad. The term has even entered modern state legislation. The Yemeni constitution for instance entitles participation in Jihad in article 59 of the Yemeni constitution as a duty: "Defending religion and the homeland is a sacred duty. [...]" Jihad can only be declared by the president in order to be binding.

Jihad has gained a new facet since it has faced modernization. From an extremist point of view it can be lead against Muslims, if they are regarded as apostates.

high costs of often interminable legal proceedings, the traditional independence of the tribes, which reject submission under state law and the experience that decisions are often not made according to their interests.

Conflict solving procedures within and between tribes follow a certain hierarchical pattern. Normally the involved parties try to minimize the conflict by solving it within the family or clan. A resolution within the family is desired in order to protect the reputation of a family, which would be denigrated, if the conflict appeared before the public. If a conflict is not solvable by the conflict parties, arbitrators are called in. Both conflict parties have to agree in advance that they will accept the judgment of the arbitrator. Both parties deposit a guarantee (mostly weapons) for their commitment to solve the conflict. Arbitration is a common and favorite way to solve conflicts. The possibility of addressing a state court if the judgment does not fulfill the expectations, is rarely practiced. The arbitrator has to combine certain qualities. For example he has to be part of a hierarchically higher group than the involved conflict parties. His decision can be based either on Sharia or on customary law.

Paying blood-money as a strategy of conflict resolution

In severe cases that have a violent impact on the society (e. g. murder) and can cause a potential threat of perpetuating revenge, there are different possibilities of conflict resolution:

1. The acknowledgement of debt by the perpetrator. He can admit his debt and accept the sentence of his opponent. Sentences that are made this way are not debatable. According to the tribal tradition, it is expected that the remorseful delinquent receives a diminished punishment or is set free. The reason behind it is the importance of the common welfare (by stopping escalation of the conflict) and the demonstration of own honor and dignity.
2. By paying blood money the murder can be compensated. The sum is fixed according to the way the murder has been carried out and the persons that were involved. If the murder took place under unfair conditions, e. g. by shooting the victim from the back, or if it is regarded as a shame like killing a guest, the sum rises and the delinquent can even be expelled from the tribe. Returning to the tribe is only possible by performing a great deed. If the blood money is for whatever reason not paid by the accused the other tribesmen have to contribute to it.
3. If a solution for such a conflict case cannot be found, the murder is avenged by another murder. In many cases the retaliation for the murder continues, causing further violent clashes.

There is a clear structure of responsibilities and competences in conflict resolution:

1. The „Aqil“ is the head of a tribal branch and responsible for arbitration of conflicts in everyday life. If he is not competent enough to solve the case, the persons involved in the conflict can address a Sheik of another tribal branch or tribe.
2. The „Sheikh“ is responsible for difficult and serious cases. His judgment is legally effective for the whole tribe. The Sheikh has to be male, of considerable age, and authorized for his function with the required knowledge and wisdom. It is his duty to make sure that unwilling conflict parties negotiate with each other. Usually he would sacrifice an animal of his own and get it slaughtered in front of the houses of the opponents, obligating them to hand over their weapons and negotiate under his supervision.
3. Complicated cases of conflicts between different tribes demand an expert, who is called a „Maragha“ and is specialized in complex tribal conflicts. He is firm with the specific coherences

and the history of a tribal conflict. He is the highest judicial authority. Although it is desirable and possible, that every tribe has its own Maragha, it is not brought out by every tribe. If the tribe doesn't have an own Maragha, the Maragha of another tribe can be asked for advice and support.

The Sada as conflict mediators

(Sg. Sayyid, descendants of the prophet Muhammad) are a separate social group and have had a special status: before the revolution they constituted the center of the Imamate. Although they were living in tribal territories, they never assimilated to the surrounding tribes but had a special protective relationship with them. Sada were considered as religious scholars and peacemakers. Therefore they were asked to mediate between the tribes in case of conflict. The contemporary Sada are mainly urban academics and work in the fields of politics, science and law. While they still have a high social prestige, they have been assimilating more and more into the rest of the population. In some conflict cases they are still asked for advice.

6. Modern methods of conflict resolution by an arbitration institution

Tribal structures are for historical reasons less distinctive in the South around Taizz and Aden than in the

North of Yemen, due to the Southern openness for external influences. For that reason conflicts are solved mostly through state law. As an alternative to state courts, civil arbitration courts operate in the field of conflict resolution. By appointing an arbitrator, prolonged official legal proceedings can be avoided. For instance the chambers of commerce can be called in as an arbitrator for business and trade conflicts. Also, some local NGOs are active in arbitration (Yemeni Center for Reconciliation and Arbitration, House of Peace).

Arbitrators, as well as chambers, do not use fixed legislative rules but look at the proposals of the conflict parties. Most important is a good intention and the will for a compromise. Arbitration courts choose procedures from different sources of law, normally either from state law, Sharia or from customary law. The source has been agreed upon in advance by the conflict parties. More often the arbitrator decides a case according to his personal feeling of justice. As some arbitrators have a profound knowledge of the official legislation, it is used in some cases.

7. Conclusion

Internationally, Yemen is perceived as a country where conflicts are mostly solved with weapons. This report showed in contrast, that non-violent methods of conflict resolution are rooted and used in Islamic as well as in tribal tradition. Conflict management in Yemen follows certain rules that have been tried out for centuries and are predominantly accepted by the local population. Problems in implementing these rules and methods of conflict management result from the parallel existence of tribal tradition and the attempts of the modern state to enforce state power and rule of law.

The following differences emerge when comparing western and Yemeni methods of conflict management:

1. While the western focus lies on the individual right, the traditional Yemeni legislation strongly underlines the maintaining of common welfare. It is not the issue to accomplish the legal claim of the victim against the offender or to punish the perpetrator, but the rebuilding and preservation of the community to which both actors belong. Remarkably, this principle has been changing due to the impact of modern and western judicial approaches.
2. State legislation on the other hand is strongly influenced by religion and tradition. Partly, state jurisdiction legitimizes subsequent decisions that were made according to traditional rules. This

is a huge problem for foreign investors as the legal position in the country is not reliable.

3. The concept of remorse is, from the western point of view, essential for the relationship between victim and perpetrator as well as for the determination of the punishment. In contrast, conflict management in Yemen puts emphasis on retaining honor and reputation of the actors. Where the conflict case, i.e. e. the crime, is of such a dimension that it is not possible to retain reputation, the community separates from the respective person, who is then expelled from the tribe.
4. As a rule, conflicts in Yemen are arbitrated by persons, who come from a higher hierarchy than the parties in conflict.

Which recommendations can be derived from these conclusions for conflict-sensitive development cooperation?

1. Instead of importing western concepts of conflict management, the existing ones should receive more attention. Western concepts could augment existing local ones, if the principles do not contradict each other. Initiatives of reconciliation that base on the principle of ruefulness and individual forgiveness would not be very successful in the Yemeni context.
2. Development cooperation has to include the important actors in conflict management, i.e. these actors should have an appropriate hierarchical position and be notable persons in their community.
3. The concept of common welfare plays a crucial although not absolute role and has to be taken into account. Therefore, conflicts being important in the context of development cooperation should be treated in a way, that the affected population can recognize the benefit for the common welfare.

Conflict-sensitive development cooperation in Yemen should not only be informed about the conflict situation in its regions of activity but also has to bear in mind the local structures and values of conflict management an integrate the relevant actors.

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