

RESOLVING CONFLICT IN MUSLIM MINDANAO



SHOWCASING FOUR TRADITIONAL
MECHANISMS

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FOREWORD

It is impossible to have a world without conflict, yet it is not impossible to attain peace if only humanity constantly and sincerely extend enough efforts to attain it.

Different tribal groups, races and religions exist in the Philippines and in company with are different sorts of settlement of conflicts. Traditional conflict resolution mechanism was not an interesting issue until peace advocates realized its strength in facilitating disputes in Southern Philippines. In Mindanao, the decades-long conflict brought many writers to study this component of culture.

Dr. Datumanong dealt with Magindanaun Datu's/Council of Elders in Maguindanao while Prof. Lingga examined the Kefeduan's way of resolving conflict. Dr. Pigkaulan concentrated on the functioning of the Shariah Courts while Dr. Makalingkang conducted a study not only about these three but included other existing mechanisms, the levels of preference and effectiveness. These writers are not just researchers of this field, they grew up with this tradition.

Grateful with the continuing partnership between the Centre for Peace and Conflict Studies (CPCS) and The Institute of Bangsamoro Studies (IBS) in search for lasting peace in Mindanao, the publication of this book brings benefit to peace and development workers as negotiators, researchers of culture and dispute settlement, as well as different sectors that work towards a better justice system. This must be crucial in strengthening the Philippines' Judicial system for dispute settlement in the country. Indeed, the enactment of the Muslim Code which established the Shari'ah Courts is a milestone in the history of Philippine jurisprudence. It simply shows how recognition of peoples' belief and tradition help in attaining peace. Yet, these are but steps. Ahead is waiting for more concrete moves in order to contribute to building more peaceful communities.

Abhoud Syed M. Lingga
Executive Director, Institute of Bangsamoro Studies

INTRODUCTION

The papers contained in this publication discuss and explore issues of recognition and self-determination, through the examination of traditional dispute settlement mechanisms from communities across the island, and the ways in which they co-exist with modern, non-indigenous practices in the country. Whilst often sidelined and overshadowed by modern systems, these mechanisms are critical for the continuity of traditional judicial practices, and for achieving the acknowledgment and respect necessary for the future of indigenous ways of life.

The four studies seek, through an academic lens, to investigate the use of traditional mechanisms and determine their effectiveness through research and analysis. These papers also aim to gauge and promote deeper understanding of the benefits these mechanisms possess, not only for indigenous people but for the Filipino community at large.

It also stands to showcase the traditional judicial customs of indigenous peoples of Mindanao, for whom the island is a continuing source of pride and identity, and to celebrate the dedication and accomplishment of the authors, who as key peace practitioners in Mindanao have made exciting contributions to peace building efforts in their communities.

Role of Magindanaun Datus in Conflict Resolution, by Abubakar Datumanong, examines the role of traditional forms of justice and dispute resolution through the lens of the Datu in Maguindanao province. This paper aims to promote the inherent value of this conflict resolution method, and to identify the specific perceptions of peace and conflict amongst these respected members of the community in indigenous Mindanaoan communities.

Islamic Conflict Resolution Methods and the Contribution of Shari'ah Courts to Dispute Resolution in Mindanao, by Parido Rahman Pigkaulan, details principles of Islamic conflict resolution and investigates the contribution of Shari'ah Courts to dispute resolution and peace building in Mindanao. The paper examines how Shari'ah Courts play a positive role in peace building initiatives in the Muslim communities of Mindanao by helping to reduce congestion within regular courts.

Dispute Settlement Mechanisms in Maguindanao Province, by Maguid T. Makalingkang, examines four existing dispute settlement mechanisms from Maguindanao province, seeking to determine the most effective and widely used traditional conflict resolution methods in the region. The paper provides insight into how these mechanisms could be incorporated into broader peace building efforts in the Philippines.

Traditional Conflict Resolution Management amongst the T'duray in Upi, by Juwairiya Uka-Lingga, analyzes and documents the dynamics of traditional T'duray conflict resolution in Mindanao, and aims to enhance and promote the understanding of indigenous diversity, custom and tradition in the wider Filipino society. The paper aims to encourage those tasked with managing the peace process to learn from indigenous methods of conflict resolution in the hopes of furthering the chances of peace on the island.

These case studies of traditional dispute settlement mechanisms in Mindanao attest to the contribution of local populations in working towards peaceful societies, and the inherent value of embracing and incorporating indigenous structures and mechanisms into formal practices. They help us to understand and appreciate the benefits of working to conserve unique and ancient customs, and how modern nations that recognize and encourage traditional methods can often mend relations left fractured by the legacies of colonization and oppression.

The publication of this book represents and celebrates the ongoing partnership of two Asian peace building organizations committed to continuing that work; the esteemed Institute for Bangsamoro Studies (IBS), a champion of the field from Cotabato City in Mindanao, and the Cambodia based Centre for Peace and Conflict Studies (CPCS).





ROLE OF MAGINDANAUN DATUS IN CONFLICT RESOLUTION

**BY
ABUBAKAR DATUMANONG**



ROLE OF MAGINDANAUN DATUS IN CONFLICT RESOLUTION

Traditionally, conflict has been viewed as destructive and as something to be avoided. For those involved, understanding the processes and procedures required for effectively resolving and managing conflict is essential, as well as possessing the personal skills for implementing that knowledge on the ground. As conflict is an inevitable aspect of life, the issue is not whether it can be totally eliminated, but rather how it can be managed and prevented.

In Magindanaun communities, the role of the *Datu* in dispute settlement is highly important. It is the *Datu* who holds the legal authority to oversee the resolution of conflicts and disputes and is the person to whom residents will often turn. The role of the *Datu* continues to reflect the idea of unitary law reflected in the sultanate and its institutions, a unitary religion (*agama*) and a unique lifestyle and set of customs (*adat*).

Since as early as the 17th century, Magindanaun society has been governed by sultans and *Datus*, to whom the people look for leadership and guidance. While autocratic, the leadership of the *Datu* remains influential (Ala, 1986). Although they no longer have temporal power, *Datus* in Muslim Filipino societies still possess considerable social prestige and influence (Gowing, 1979).

Today, many *Datus* remain at the top of the Magindanaun social hierarchy, as this system is deeply embedded in the Magindanaun system of values (Ala, 1986).

In terms of traditional conflict management in Maguindanao, it is the responsibility of the Council of Elders (*Walay na Kukuman*) to oversee this procedure. This council serves as a legal body that manages conflict in adherence with traditional laws, and under the guidance of the Holy *Qur'an* and the *Hadith* (Prophet's Tradition).

In spite of the efforts of many researchers and writers to document the role of the Muslim leaders/rulers in conflict resolution and dispute settlement, there remains a scarcity of literature related to the subject. This study, therefore, attempts to examine, analyze and document the role of Magindanaun *Datus* in the resolution and settlement of conflict.

The primary purposes of this study are to identify the profile of Magindanaun *Datus* and the members of the Council of Elders and gauge their perceptions of peace and conflict resolution. It also aims to determine the type and nature of conflicts and disputes brought before the council, and how those conflicts are resolved by the *Datus*, and to understand any issues or problems they face in performing this function.

Concepts of Peace

For some, the term 'peace' is understood to mean the absence of violence. This notion of peace holds that the maintenance of "law and order" is the primary objective of the term. In this understanding, the existence of relatively little overt violence in society provides an indicator of effective peace and peacemaking. Police forces, courts and prison systems are usually the instruments for creating and enforcing this type of peace, which has been characterized as 'negative' since its focus is solely on the absence of violent conflict and war (Walton, 1987).

As stated by Galtung (1969) one major shortcomings of this concept is that in the preoccupation of controlling overt violence, more covert violence (structural violence) may in fact be condoned or perpetrated. According to this view, a system that generates repression and abject poverty for certain members of society whilst others enjoy opulence and unbridled power is guilty of inflicting this type of violence (Wehr, 1979).

For others, as affirmed by Assefa (1993), peace is viewed as a condition of tranquility where there is no disagreement or dispute, where conflict is banished, and people,

individually and collectively, live in serenity. A major shortcoming of this concept is its failure to recognize conflict as an integral and unavoidable element of life and human existence.

In an Islamic sense, peace is understood to be a state of physical, mental, spiritual, and social harmony.

Nature and Dynamics of Conflict

Conflict emanates from differences amongst people, the nature of which will vary depending on the issue on which people disagree.

A person's capacity, openness or way of responding to conflict is influenced by his/her psychological capacity and his/her definition of what is culturally acceptable. To be capable of responding to conflict effectively and productively, it is necessary to understand its nature and dynamics. By doing so, we are able to see conflict in a different light, that is, as an opportunity for personal and societal unity and growth.

Conflict Management

Conflict resolution is much more than conflict management, regulation, or even settlement. Laue (1992) points out that a conflict can be considered resolved only when the parties have reached a joint agreement satisfying the underlying needs and interests of the parties, does not sacrifice any important values of either party, meets standards of fairness and justice, is self-supporting and self-enforcing, and is one that no party will wish to repudiate in the future, even if they are in the position to do so.

According to Assefa (1993) one cannot resolve conflict and thus make peace unless the root causes are identified and dealt with. The implication of this is that for conflicts to be resolved, one must look beyond surface issues and address the substantive and emotional issues as well as the parties' needs and interests. Lasting peace between conflicting parties is possible only when deeper needs are accommodated and satisfied.

Assefa (1993) further stated it is not possible to resolve conflicts and attain peace unless attention is given to the justice and fairness of the process as well as the outcome of the settlement. In other words, peace without justice is a rather meaningless concept, although this is not to suggest that the pursuit of justice and

the pursuit of peace are one and the same. Although justice is an ingredient of peace, the pursuit of peace goes beyond the pursuit of justice. Peace is pursuing justice while at the same time maintaining respect and mutuality with the person from whom justice is sought (Burton, 1986).

In this context, the search for justice requires concern for the impact the settlement of the dispute might have on parties not represented in the peacemaking process. In other words, this definition of peace disavows dispute settlement that favors the interests of the parties in conflict at the expense of the interests and wellbeing of non-represented parties and society in general.

People's deeper needs are not totally incompatible. Parties in conflict can discover commonality of interests and objectives that can lead to mutually acceptable solutions to their problems. Often the help of third parties, whose perceptions have not been distorted by the conflict, may be necessary in such explorations. If parties operate on the level of human needs, it is possible to arrive at creative solutions satisfactory to all contestants.

The appropriateness of an approach to conflict management also depends on the nature of conflict. In this regard, three separate processes are involved in the interaction between conflict parties (Walton, 1987).

The first is bargaining over fixed-sum issues, in which one party gains and another must lose. The second is problem-solving to resolve variable-sum issues, in which, because the principals' underlying interests are not mutually exclusive, it is possible for them to identify these underlying interests and arrive at win-win solutions. The third process is relationship structuring, a process by which parties redefine their mutual perceptions and attitudes, the meaning of their roles and relationships, and the norms that govern the other processes.

The product of the third process, the state of the relationship, is a major factor determining how efficient and effective the parties will be in compromising their inherent differences via bargaining, and in integrating their interests via problem-solving.

In brief and to reiterate, a relationship of mutual understanding and respect is one underlying key in encouraging the disputing parties to go through constructive and effective bargaining or/and problem-solving processes in resolving or managing a conflict. Experience in relationships has taught us that effective communication is a must in the development and sustainability of mutual understanding and respect, thus, in conflict management.

Peace Education

During this past century, there has been growth in social concern about horrific forms of violence, like ecocide, genocide, modern warfare, ethnic hatred, racism, domestic violence and a corresponding growth in the field of peace education where educators use their professional skills to warn fellow citizens about imminent dangers and advise them on paths to peace.

In the face of these concerns, enhancing peace education is seen as very urgent and relevant. As Toh and Cawagas (1987) said that education for peace will contribute to a better awareness of the root causes of conflicts, violence, and 'peacelessness' at the global, national, regional, community, and interpersonal levels. It can further cultivate values and attitudes that will encourage individual and social action for building more peaceful communities, societies, and ultimately a more peaceful world.

There is now a general consensus among educators worldwide that several important issues or problems of conflict and violence are central to peace education. Central to this as cited by Toh and Cawagas (1987) is the need to understand the real issues and thereby address them correctly to attain a long-term peaceful society. These subjects are issues on militarization, structural violence, human rights, environmental care and cultural solidarity.

The Magindanauns

The study conducted by Casiño (1996) revealed that there are two basic theories surrounding the origins of the Magindanauns: the fission and fusion theories.

Briefly, the fission theory proclaims that the Magindanauns emerged after splitting from an undifferentiated prehistoric ethnic matrix, a nameless ancestral stock, from which also came the Tirurays, the Manobos and other related highland tribes. The fusion theory, on the other hand, claims that the Magindanauns came about from the merger of many different ethnicities.

Politically, Magindanauns formed several *datuships* with significant levels of independence from one another. Dyadic and marital alliances between several *Datus* were made, but generally *Datus* pledged allegiance to one or two centers of power, depending on whichever was wealthier or more powerful. Political and military alliances were either made or broken depending on the dictates of the time. This political division has been labelled by Magindanauns as that between *sa-ilud* (downriver) and *sa-raya* (upriver) (Gomez, 2000).

Unlike highland tribal societies, Magindanaun society is comprised of a complex stratification system revealed in the ranking of individuals and groups. At least three levels of statuses were recognized – the *Datu*, the commoner, and the servile or slave class. Within each of these classes were groups identified according to historical, residential, or occupational criteria.

According to Gowing (1979), there were at least three kinds of *Datus* in Moro society: *Datus-in-fact*, *Datus-in-name* and royal *Datus*. *Datus-in-fact* presided over a group of followers and/or controlled a given territory. *Datus-in-name* obtained the title *Datu* as a courtesy because they were born into aristocratic families, whilst in reality they commanded no followers and possessed no actual power. As all aristocratic families were generally thought of as descended from the first Sultans of Maguindanao, all *Datus* were, in a sense, "royal *Datus*", with the exception of those who attained their status by their own personal skills and attributes.

The *Datu* derives power, influence, and prestige from three interrelated sources: his personal wealth, the followers who rally around his leadership, and/or his exemplification of the important values of Islamic society. Commoners who attracted significant numbers of followers and came to exercise de facto control over territory could be (and often were) recognized as *Datus* by neighboring *Datus* or by the sultan (Gomez, 2000).

Casiño (1996) mentioned that *Datus* were not always equal in terms of jurisdiction. If a *Datu* had five sons, all of them would inherit their father's status and title, but only one would inherit the role of the ruling *Datu*. The other brothers would need to develop their own following and carve out their own district if they wished to be a *Datu* in-fact and not just 'in-name'. The more people a *Datu* could attract as followers, the more powerful he became.

As a rule, Gowing (1979) added that it helped to be born into the *Datu* "class" where a degree of prestige was assured and where the opportunities to acquire wealth and influence were greater. But succession to *datanship* was not automatic, and the sons of a *Datu* had to compete with one another and with other candidates (generally relatives) for their father's position. It frequently happened that an uncle or other powerful relative, or a charismatic, heroic or shrewd "commoner" achieved the *datanship* by consensus of the old *Datu's* followers.

How This Research Was Conducted

The research design employed a descriptive-qualitative method to allow for a greater understanding of the role of Magindanaun *datus* in conflict resolution.

The purposive sampling technique focused on *datus* who regularly sit on the council of elders, and who are directly involved in conflict resolution or conflict management in their respective communities, while survey questionnaires, focus groups discussions and key informant interview guides were utilized in the gathering of data.

It also included *datus* who are not currently serving on a council, but are well versed in the practices of traditional Magindanaun conflict resolution, as well as in Islamic and customary (*adat*) laws.

Six of the 18 key informants interviewed were elderly Magindanaun *datus*, including the reigning Sultan of Maguindanao, Mandanaue Darussalam; two were Magindanaun *datus* who were also Shariah Lawyers, one was a government official and seven were parties involved in conflict whose cases were brought before the council of elders for resolution.

To supplement the results of the Focus Group Discussions, in-depth interviews with selected key informants were conducted. The interviews were carried out to clarify the important points from the FGDs. Interviews of the informants were performed by visiting residences or offices.

The Analysis

Profile of the Datu Respondents

The profile of the Magindanaun *Datu* respondents includes their age, civil status, educational attainment, occupational status, and duration of membership within the council.

Table 1 shows that Magindanaun *Datus* involved in conflict management are mostly 55 years and above. It manifests that people within this age group are regarded as the most likely candidates for the council, because of their known objectivity, sincerity, wisdom, and unblemished reputations. It also suggests that these are the persons mostly comprising the Council of Elders.

Table 1: Profile of the Magindanaun Datus

Profile (N=24)	Percentage
With age above 55 years	54.17
Widowed/Separated	54.17
With Arabic Education Only	33.33
Who are Ustadz/Madaris Teacher	33.33
Who are Farmers/Carpenters	20.83
Who have been with the Council for more than 15 years	45.83

The same table also shows that the majority of elders reported to be widowed or separated. Magindanaun *Datus* are most likely more inclined to become involved in their council and voluntarily devote their time and effort to resolving conflicts than elders who are single or married.

In regard to educational attainment, elders with knowledge of Arabic are most likely to be a candidate for the council of elders and become involved in the management of conflicts.

The occupational status of the respondents in the FGDs is one factor that provides the wisdom necessary for conflict management. The same table also demonstrates that the majority of elders are Ustadzs or working as Madaris (Arabic School) teachers, with 33.33 percent.

Respondents' Perceptions of Peace

The respondents emphasized that the word Islam means “the making of peace.” A Muslim, according to them, is he who has made peace with God and man. A verse from the Holy *Qur’an* was quoted by one of the respondents to affirm this concept, saying “Nay, whoever submits himself entirely to God and is the doer of good to others, he has his reward from His Lord, and there is no fear for such, nor shall they grieve” (*Surah 2:112*).

A well-known illustration of the centrality of peace as expounded by the respondents is reflected in the daily greetings of Muslims: ‘*Assalamu ‘alaykum*’, which translates literally to ‘peace be upon you.’ This greeting is derived from the Holy *Qur’an*.

In supporting the peaceful nature of Islam, the respondents mentioned that peace is the result of balanced action between doing good and fighting evil.

In all focus group discussion sessions, the respondents stressed that the *kalilintad* (peace) to which they all aim cannot necessarily be obtained from the mere signing of an agreement, or the rituals being observed by the conflicting parties after their case or problem is resolved.

“Su kalinlintad a kahanda nu ginawa na dikena bu sagugunay, ka kalilintad a da kadtamanin a mabaloy a tambil a uyag uyag o manusiya”—“The peace they aim for must not be a temporary one, but peace that settles and lasts, thus becomes a matter of their everyday lives. They therefore have to give peace all the required care and preserve it and promote it.”

The study found that peace comes from a growing body of shared values, attitudes, behaviors and ways of life, based on non-violence and respect for the fundamental rights and freedoms of individuals. Understanding, tolerance, and solidarity are the most frequent elements of peace, according to the respondents. For as long as people decline to understand each other, a community is always susceptible to scenarios of conflict. It is also important to maintain awareness of what is happening around us, especially in terms of the issues confronting the community and, at the same time, challenging the people to search for solutions for attaining peace.

Respondents' Perceptions of Conflict Resolution

Two ways for achieving conflict resolution were identified by the respondents. These are, resolution based on cultural and traditional practices, and resolution based on *Shari'ah Law*.

According to the respondents, conflict resolution mechanisms among Magindanaun *Datus* date back to the coming of Shariff Kabunsuan, when customary (*adat*) laws governed *kambitalay* (mediation) and *kagkukum* (arbitration) procedures. They claimed that on many occasions, a sultan or certain individual *Datus* would be called upon to mediate or arbitrate because of their reputation and credibility as influential authorities. They peacefully settled disputes between two disputing families who in turn gave them protection and assistance in time of trouble.

The *Datu* key informants also agreed that achieving a just resolution of conflict, preventing conflict, and perhaps attaining lasting peace as well, requires the elimination of the perceived or actual threat to the satisfaction of the needs of those involved in conflict. In other words, satisfying the needs of the people is the only morally acceptable and just way to achieve conflict resolution, and the only way that resolution may last.

Nature of Conflicts Brought for Resolution

During the focus group discussions, respondents were asked to identify to whom do people turn to resolve their conflicts. The answer to this question was that in most cases, people first turn to the respected Council of Elders for intervention. They confided that this institutional body plays a very important role in the management of conflict in the community.

This statement was re-confirmed by *Datu* key informants during interviews. However, some said there were instances where such conflicts were brought to the police or to the office of the *Sangguniang Barangay* for proper disposition. When seeking clarification about why most people chose the council to report their cases or conflicts instead of the police, the Office of the *Sangguniang Barangay* or the proper court of justice, the key informants cited the following reasons.

First, respondents believe that the Council of Elders are the most accessible as they live within the community; second, in the council there are no complex bureaucratic procedures; and third, the council does not require or impose filing fees, hearing session deposits, or other related charges.

However, the group of respondents from the focus group discussion in Libutan, a predominantly Moro Islamic Liberation Front (MILF) area, revealed that major cases brought to their council involving serious crimes, such as murder, were immediately forwarded to the Shariah Court of the MILF for adjudication. When asked about why such cases are not managed by the council, respondents replied it is because they lack the power of the police to arrest or penalize those legally responsible for the crime.

As observed by the researcher throughout the focus group discussions, the types of cases or conflicts filed and resolved by the council of elders were very similar in their respective communities, particularly *Maugat a Kadupanagana Nadsalat* (Criminal Cases) and *Kamagingedia Nadsalat* (Civil Cases) involving life and property.

Tables 2 and 3 show the type and nature of conflicts brought before the councils, the process of conflict resolution that was used, and also the order of which the *Maugat a Kadupanagan a Nadsalat* (Criminal Cases) were brought to the Council of Elders for resolution.

These lists were based on the narrations of respondents in FGDs over the past three years, and from data extracted from the records (January 2002-October 2004) of the council of elders in Sultan Kudarat, Maguindanao.

Table 2: Types of Criminal Cases/Conflicts Brought to the Council of Elders for

Resolution

<i>Maugat a Kadupangan a Nadsalat</i> (Criminal Cases)	Number of Cases/Conflicts		
	<i>Mediation</i>	<i>Arbitration</i>	<i>Mediation-Arbitration</i>
<i>Kapanegkaw</i> (Theft/Robbery)	10	6	
<i>Kapamagigis</i> (Threat)	10	3	
<i>Kapamaba sa malatabat</i> (Oral defamation/Slander)	12		
<i>Kapananakitan</i> (Physical injuries)	8		
<i>Kapamuno</i> (Murder/Homicide)	3	2	1
<i>Kadzina</i> (Adultery/fornication)	3		1
<i>Kapaminasakan</i> (Malicious mischief)	2	1	

Source: Data from respondents in FGDs over the past three years, and data extracted from the records of the Council of Elders in Sultan Kudarat, Maguindanao (January 2002-October 2004).

Table 3: Types of Civil Cases/Conflicts Brought to the Council of Elders for Resolution

<i>Kamagingedi a Nadsalat</i> (Civil Cases)	Number of Cases/Conflicts		
	<i>Mediation</i>	<i>Arbitration</i>	<i>Mediation-Arbitration</i>
<i>Kagkalumay</i> (Marriage)	30		
<i>Kapagutanga</i> (Debt)	18	3	2
<i>Di Kapagayun a Egkalumay</i> (Marital conflict)	20	2	
<i>Kapamagukag a Mamagubay</i> (Neighborhood conflict)	15		
<i>Kamb'lag</i> (Divorce)	9	1	1
<i>Kabpasay</i> (Sales/ Business Partnership)	9		1
<i>Kapamagumon sa tamuk</i> (Succession/inheritance)	6		2

Source: Data from respondents in FGDs over the past three years, and data extracted from the records of the Council of Elders in Sultan Kudarat, Maguindanao (January 2002-October 2004).

When asked if cases were sometimes left unresolved by the council, respondents

in the focus group discussions commonly replied that not a single case or conflict had been left unresolved.

Respondents in the focus group discussions confided that no case or conflict had been re-filed in the council, implying that no conflicting parties returned to protest or appeal the results of their cases, and that the outcomes of cases are generally found to be satisfactory.

The key informants from conflicting parties equally affirmed they were *pedsukol* (satisfied) with the how the council of elders handled their conflicts.

Strategies for Conflict Resolution

The respondents in focus group discussions disclosed that unique approaches or strategies for conflict resolution do exist in Maguindanao, but are not well documented. They are practiced traditionally and passed on from one person to another and from one generation to another.

It was revealed by respondents that many conflicts brought before them have been handled through the *kambitalay* (mediation) process, in which the council as an authoritative body uses customary (*adat*) standards and criteria as a framework for settlement.

In the management of conflict, the respondents also shared a common view of which approaches or strategies are employed. They stated that in managing a conflict, each council is headed by a Kadi (judge) and assisted by Wazir (vizier). The Kadi (judge) is regarded as the most competent expounder of the law, and the most informed and well respected member in the council of elders. The Wazir (vizier) on the other hand is an Ustadz or Arabic learned person who performs the functions of a priest. He acts in a semi-judicial and clerical capacity. As the Wazir is an Ustadz, he is understood to be a well-informed and wise man.

The study also identified three basic strategies or approaches applied in the actual process of conflict management. These are *kambitalay* (mediation), *kagkukum* (arbitration), or the combination of these two strategies or approaches.

Furthermore, the respondents mentioned that when the council acts as a *kambitalay* (mediation) panel, it then persuades compromise from both parties to reach an *atulan* (settlement), relying on *agama* (religious) and *adat* (traditional) values to encourage the parties to compromise and allow for the restoration of justice and harmony in the community. In the *kagkukum* (arbitration) panel, the

council issues its decision, which is justified through traditional and religious norms and values. The *wazir* (vizier) recites the *Qur'anic* verses supporting the notion of *kabantang* (justice), *kapagayun* (harmony), and *katidtu na palangay* (integrity). The members of the Council of Elders who sit during the process further invoke the values and norms accepted by the parties involved. They propagate these values throughout the process of conflict management.

According to respondents, these religious and traditional values and norms are used by the Council of Elders to influence, persuade, and re-socialize the parties in conflict. Once the council persuades the parties to reconcile, the next step is to finalize the agreement. This is usually done by extending an offer of hospitality, which, if applicable, restores the victim's respect and brings shame on the offender, whilst simultaneously reintegrating the offender through his or her affirmation of the community's social order and traditional values. Meanwhile, the FGD respondents claimed that the agreements and rituals that occur after the decision or settlement of the case, are as follows: both the conflicting parties sign the agreement in a public setting, allowing the contingent of parties and their relatives to witness the procedure. The signing rituals encompass the following basic functions: (a) to publicly sign the agreement so that members of conflicting parties know that harmony and order will be restored to their lives; (b) to increase the obligation of the parties to implement their share of the settlement, otherwise, they will bring dishonor and shame on themselves and the community; and (c) to restore honor and respect for one party. For example, the offending party will publicly apologize and ask for forgiveness from the victim.

The key informants also said that the parties in conflict hold a *du'a* (invocation) by an Ustadz, or sometimes a *kanduli* (celebratory feast) afterwards, to restore goodwill between the two conflicting parties and their families. Likewise, they affirm that the successful resolution of their cases or conflicts by the Council of Elders leads to a harmonious and orderly relationship between them and their families. The responses of the respondents in the focus group discussions and the key informants interviewed were consistent with the perspective of peace education as shown in the following premises:

1. *Su ukit a kapamimitiyalan u Walay nu Kukuman na kabaluy a lalan a kapedsasabuta nu dili pamagayun a pakambalaguna intu sa kanilan langun.* (The strategies provide opportunity and structure for the conflicting parties to work together and create solutions that meet their respective and mutual interests and needs).
2. *Su kambitiyalay na pakagkabagel ku apas u duwa kambala a dili pagayun*

sabap sa san bon natimu sa kanilan su kapangilay sa lalan a kadsabuta endu kapaginuntulan sa panun i kadtuntaya nilan (The mediation process empowers the conflicting parties because they are the decision makers, and they can explore issues and design solutions which are responsive to their concerns).

3. *Su nan a ukit na kadsanggilan su kadsendita ataw ka kapanuntul sa entaini aden sala nin.* (It is not a process for assigning blame or determining fault). *Dikena ya pagadaben i kabpangilay sa entaini pakabenal ataw ka kabenalan* (Who is right and who is wrong are not the appropriate issues). *Ya masla a kahanda san na tanan masukul ku atulan su duwa kambala a dili pagayun.* (The “win-win” value of conciliation is most important for conflicting parties that will lead to a mutually acceptable solution).
4. *Ya pedtandingan na panun i kadtuntaya endu kapangilay sa atulan.* (It focuses on communication and creative problem solving).
5. *Su dili pan kauma a timpo na pedtandingan den.* (It is future oriented). *Su kabpelabit kanu mga naipus a nanggula endu itungan na pakadtabang sa kadsabuta nu duwa kambala dili pagayun.* (Sharing information about past events and perceptions helps each participant understand the point of view and reasoning of the other and creates some common understanding of the past).
6. *Dikena matag paka aden sa atulan ka pakapangulip kanu nabinasa a kapegkalimuwa endu pakapaulit ku andang a saligu uman isa.* (Parties in conflict seek not only to solve the problem, but also to repair damaged relationships and re-establish the trust that is required to produce a satisfactory and long-lasting agreement).
7. *Paka aden sa lalan a kadtabanga nu duwa kambala a dili pagayun sa panun i kadsangul nilan kanu kamutuan ataw ka di pagayunan, kumin sa ukiten nilan sa kapamagukag.* (It offers the opportunity for the parties in conflict to cooperatively attack a problem or misunderstanding instead of attacking each other).
8. *Paka aden sa ukit a di silan kamutuan sa gastu amaika itenilan sa kagkukum.* (It offers the opportunity to reduce the financial burden in an adversarial due process hearing).

Ethics Observed by Magindanaun Datus

Magindanaun datu who constitute the members of the council are honored and revered in the community by virtue of their experience and wisdom in upholding justice, customary laws, and ensuring peace in the community.

Responses also revealed that the *katulangedan* (ethics) observed by the council in the management of conflict are significantly contribute to the respect and recognition from the people in the community..

It was also stated by respondents that the activities of a *Datu* should be in accordance with the almighty will of *Allah* (God). He shall also order those wealthier than him to sponsor all large affairs or activities that concern *Allah*. If this is the attitude of a *Datu*, *Allah* will shower him with grace, so that his *datuship* can be more powerful on earth and in heaven.

Role of Magindanaun Datus in Conflict Management

The respondents in the focus group discussions were also asked about their role in the Council of Elders in regards to conflict management. This study reveals that all respondents were of the same opinion, in that sitting on the council requires members to perform the functions of a *pabibitalan* (mediator), a *pangukum* (arbitrator), and sometimes the combination of both.

The respondents mentioned that the council functions only when cases are brought before them for resolution. Any elderly Magindanaun *Datu* may be asked to sit as the *pabibitalan* (mediator). It is possible that these elders may even be relatives of the conflicting parties, if the conflict is not serious in nature. Several mediators are usually called, preferably those who live a good distance from the parties or are not among the interested parties to avoid conflicts of interest.

As mediators, the respondents explained that their role is to assist the parties in conflict to understand their situations and select options that make the most sense for them. During the mediation process, they listen, ask questions, summarize (without changing meaning), help the parties identify and understand the issues in conflict, identify and assess options, including non-settlement options, but they will not propose settlement terms, draft agreements or make decisions for the parties in conflict.

Relatively, the respondents mentioned that in the role of *pabibitalan* (mediator), they usually stress the importance of empowerment and recognition. They may not use these words exactly, but they stress the importance of helping parties understand and solve the problem themselves. They also stress the importance of helping parties to better understand the views and experiences of the other parties in conflict.

On matters concerning the mediator's process in managing conflict, the respondents pointed out that they usually begin with the mediator's *diyandi*, or opening statement, and a discussion of the *gugudan* (ground rules), but thereafter the process becomes more fluid as the parties explore issues of their own interest in their own ways. The respondents also added that as mediator they achieve settlements in a large percentage of cases, suggesting that this is indeed the goal they seek and they see it as their responsibility to work toward that outcome.

On the other hand, as a *pangukum* (arbitrator), the respondents maintained that the members of the Council of Elders who sit on the panel are impartial in proceedings, study the evidence, and then decide how the matter should be resolved.

It was further affirmed by the respondents that the council as an arbitrator is not bound by precedent and therefore possess great leeway in matters such as: active participation in proceedings, accepting evidence, questioning witnesses, and deciding on appropriate remedies. They may visit sites outside of the hearing room, call expert witnesses, seek out additional evidence, decide whether or not the conflicting parties may be represented by a counsel (usually an *ustadz*), and perform many other actions not normally within the scope of a court.

As arbitrators, the Council of Elders possess a wide latitude for crafting remedies in the arbitral decision, with the only real limitation being that they may not exceed the limits of their own authority beyond the law of the *Qur'an* and customary (*adat*) laws.

Furthermore, the respondents mentioned that the council's role as mediator has sometimes been utilized to good effect when coupled with being an arbitrator, particularly binding arbitration, in a process called, appropriately enough, *pabibitalan-pangukum* (mediator-arbitrator). In this process, if the parties in conflict are unable to reach resolution through mediation, the council as mediator becomes an arbitrator, shifts the mediation process into an arbitral one, seeks any

additional evidence needed, particularly witnesses, if any, since witnesses would not normally be called in a mediation, and renders an arbitral decision.

Problems Encountered by Magindanaun Datus

In general, respondents in the focus group discussions claimed that they encountered no problems or difficulties in the resolution of conflicts brought before them. For the respondents, the *pangitaban a bantang* (justice system) is an institution that imposes *kapamagumpong* (unity), *kakumpen* (control), and teaches *kabensa* (discipline) to individuals who do not conform to the rules and regulations in the community.

Foremost, the most important element of the *pangitaban a bantang* (justice system) in regards to relationships between people is to administer *kitabán* (policies), *ukit endu gugudan* (rules and regulations) to be followed by everyone as a member of the community.

Second, to remind individuals of their *kawagib* (rights), and *inibpaliugat a galebekan* (duties and obligations) to others. Third, to impose *kakumpen* (control) and *kabensa* (discipline) so that people will learn to respect the rights of their neighbors. Fourth, to remind individuals to be aware of their personal *kumpasan* (limitations).

Therefore, the system of justice embraced by the Council of Elders is important for it can maintain *kapamagayon* (harmony), which contributes to *kalilintad* (peace) and *kapangengetuan* (development) of the (community). However, some respondents in the focus group discussions admitted that they experienced a number of problems in the process of conflict management, such as lack of *amadan* (evidence), lack of *saksi* (witnesses), and the tendency of certain conflicting parties to withhold and/or alter essential information. There were also instances where defendants failed to settle *kasalan* (monetary penalties) within the prescribed period of time.

The key informants, particularly those who were directly involved in conflicts, affirmed the responses of respondents in the focus group discussions. They manifested that the justice they were seeking was well addressed through the intervention of the Council of Elders.

Findings

Generally, the study determined that Magindanaun *Datus* involved in conflict management were fifty-five years old and above, widowed/ separated, educated in Arabic, working in a Madaris School or Ustadzes, and have been with the council for more than fifteen years.

The respondent's hold a general belief that peace is the foundation of Islam, and understand the term to mean the maintenance of order, brotherhood and camaraderie, a matter of everyday life, an alternative for responding to conflict, a contentment and happiness in life, the sharing of values, attitudes, non-violence and respect, fundamental rights, freedom, tolerance, solidarity and awareness.

The respondents perceived conflict resolution as a constructive approach to interpersonal and intergroup conflicts. They also said conflict resolution is a better option than resorting to violence or going to court, a useful approach for resolving all types of conflict in the community, based on Shari'ah (Islamic Law) and Customary (*Adat*) Laws, knowledge of issues surrounding conflict and how to deal with it, and the satisfaction of parties involved.

In most cases, the Council of Elders was the first body approached by those seeking management and resolution of their conflicts. This is because they are thought to be easily accessible with no complex bureaucratic procedures, no filing fees, hearing session deposits, or other related charges.

The two types of conflict brought before the council were *maugat a kadupangan a nadsalat* (criminal cases), and *kamagingedi a nadsalat* (civil cases). The range of criminal cases include: *kanegkaw* (theft/robbery), *kapamagigis* (threat), *kapamaba sa malatabat* (oral defamation/slander), *kananakitan* (physical injuries), *Kapamuno* (murder/homicide), *kadzina* (adultery/fornication), and *kapaminasakan* (malicious mischief).

Whereas the civil cases brought before the council include: *kagkalumay* (marriage), *kapagutanga* (debt), *di kapagayun a egkalumay* (marital conflict), *kapamagukag a mamagubay* (neighborhood conflict), *kamb'lag* (divorce), *kabpasay* (sales/business partnership), and *kapamagumon sa tamuk* (succession/inheritance).

The approaches employed by the council in the management and resolution of conflict include: *kambitalay* (mediation), *kagkukum* (arbitration), and the combination of *kambitalay-kagkukum* (mediation-arbitration). During the hearing

of these cases, Islamic scriptures from the Holy Qur'an and Hadith (Prophet's tradition), and customary (*adat*) standards and criteria are used as a framework for settlement.

The approaches employed were very explicit about preferred values, such as compassion, justice, equity, fairness, caring for life, sharing, reconciliation, integrity, hope, and fear of *Allah* (God).

Problems encountered by respondents in the process of conflict resolution include a lack of *amadan* (evidence), *saksi* (witnesses) and the intentional omission of information. There were also instances where *pedtuntutan* (defendants) failed to settle *kasalan* (monetary penalties) imposed by the council by the specified time.

Conclusion

This study provides abundant evidence that the role of the Magindanaun *Datu* as *pabibitalan* (mediator), *pangukum* (arbitrator) are perceived to be effective in the resolution of conflict. In most cases, people referred their conflicts, either criminal or civil, to the council.

The set of conflict resolution procedures are anchored in Shariah and customary (*adat*) law, and are mutually employed by the Council of Elders. These religious and traditional values and norms are used to influence, persuade and re-unite the parties in conflict.

From the peace education perspective, the procedures encourage the conflicting parties to deal with their problems. It provides a component devoted to helping those involved develop personal harmony, leading them to find meaning in life, joy in work and happiness in their respective communities. Settlements embrace the values of justice, truth, compassion, sharing, and responsibility.

In terms of recommendations, this study suggests that policy-makers within the government look into the possibility of including criminal laws in *Presidential Decree No.1083*, otherwise known as the "*Code of Filipino Muslim Laws*", which only provides for laws pertaining to Muslim Personal Laws. Also, for the codification of approaches employed by the Council of Elders, to allow for uniformity in conflict management amongst Magindanaun *Datus*. It shall also be used as a guide for future managers of conflict. Cases or conflicts brought to the council for resolution must also be documented in an organized and structured manner.

This paper also recommends that the Council of Elders address the problems faced by parties in conflict in relation to their conflict management strategies, and look into other problems identified throughout the study.

Furthermore, it is recommended that a comparative study on the role of Magindanaun *Datus* and other ethnic Muslim-Filipinos in conflict resolution be undertaken, aimed at determining the peculiarities of their practices, strategies and approaches employed in conflict management within their respective areas of jurisdiction.

Also, a comprehensive study on the possibility of promulgating a code recognizing the system of Muslim Criminal Laws, thus, incorporating them into the existing “*Code of Muslim Personal Laws*” of the Philippines, otherwise known as Shari’ah Law.

In addition, an examination of the contribution of Magindanaun *Datus* in peace and development is recommended. This will provide Muslim and non-Muslim readers with a broader perspective on how Magindanaun *Datus* maintain a peaceful and harmonious relationship amongst people in the community. Lastly, studies should be conducted regarding the position of the *adat* amongst Magindanauns, and its implication on peace and peaceful communities, as it is said that a justice system founded in *adat* is always regarded by the people as the ideal environment for setting the standards of right and wrong.



**ISLAMIC CONFLICT RESOLUTION METHODS
AND THE CONTRIBUTION OF SHARI'AH
COURTS TO DISPUTE RESOLUTION IN
MINDANAO**

BY
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ISLAMIC CONFLICT RESOLUTION METHODS AND THE CONTRIBUTION OF SHARI'AH COURTS TO DISPUTE RESOLUTION IN MINDANAO

In the Philippines, where different kinds of tribes, races and religions are found, differing kinds of conflict settlement have been established over the course of history. Personal, family and clan conflict as well as others bearing political and religious character have been recorded. Some conflicts are resolved by elders or *datus*, while others end in pain and can even result in war, especially when parties involved belong to powerful clans.

Sometimes the judicial system in the Philippines restricts conflict resolution, due to the complex rules and procedures it imposes. In addition, the judicial system is expensive and disadvantages the poor who often opt to settle the case and concede to the will of the wealthier party to avoid these costs.

In this problematic context, Islamic conflict resolution models provide an important opportunity to resolve conflict amongst Muslim communities in the Philippines. Recently, avenues of understanding have begun to be explored to accommodate the demands of Muslims, and recognition has been made by the Philippine Government for the application and enforcement of Islamic laws, including personal laws and beliefs.

One solution that the government acted in favour of, is the promulgation of *Presidential Decree No. 1083*, otherwise known as the Code of Muslim Personal Laws of the Philippines, which officiated Shari'ah Courts in 1977. While the law recognised Shari'ah Courts, the first were not established until 1985. The enactment of Shari'ah Courts is a milestone in the history of Philippine jurisprudence. The Agama Arbitration Council was also institutionalized within the Shari'ah Court system. This Council operates to settle, mediate and arbitrate on matters involving family relations, and has fulfilled Muslim aspirations for an efficient administration of justice in accordance with their *adat*, or customary laws separate from the formal and impersonal process required in the regular courts.

The promulgation of *Presidential Decree No. 1083* has decreased the number of cases taken to the regular courts, especially civil cases involving Muslims. Moreover, the system of conflict resolution through the Agama Court or the local *Datus*, now operate as part of the Shari'ah Courts with equal standing to that of the regular courts, and can resolve many types of cases including criminal offenses. The Agama Court or local *Datus* have a long history within Islamic law and have been used for centuries by Muslims in the Philippines.

Now, the system of conflict resolution in the Agama Courts has been strengthened with judicial functions and authority, while the Moro customary laws (*adat*) and traditions have persevered, including their system of conflict resolution.

In general, this paper focuses on the operations and practices of the Shari'ah Court and its role in resolving conflict where the parties involved are Bangsamoro people. It seeks to determine the structure, mechanisms and functions of the Shari'ah Court, as well as the roles of the judges in settling conflict. In particular, this paper focuses on the types of conflicts brought before the Shari'ah Court and the resolutions employed to determine how the Court contributes to building more peaceful communities

History of Shari'ah Courts, Islamic law and Islamic Conflict Resolution

The development of Islamic law can be divided into seven distinct periods, beginning at the time when the Holy Prophet was alive in 608 A.D. and ending with the abolition of the Caliphate in 1922. In the sixth and final period, Islam was spread to the Muslim countries of Egypt, Pakistan, Iraq, Algeria, Morocco, Nigeria, the Muslim states of Africa, Indonesia, the Federation of Malaya and as far as the

Philippines. Al-Aseer (1976) as quoted by Barra (1988), details the development in Muslim law pertaining to the court system called Shari'ah Court, meaning the body of Islamic judicial system created by the state, vested with power to administer justice and to hear and decide cases brought to it by Muslims, in accordance with Islamic laws.

Technically, Shari'ah refers to the complete code of beliefs (al'aqa'id) and practices, or actions (al'amal) consisting of the totality of Allah's commandments, but is sometimes confined to the Divine Law laid down in the Holy Qur'an through the Prophet Muhammad (S.A.W.). Regardless, Shari'ah law can be seen to embrace all human actions; it is therefore, strictly speaking, not a law in the modern sense but might be regarded as a guide to moral conduct.

Islamic Conflict Resolution Principles Shaping Shari'ah Courts in the Philippines

Shari'ah Courts are shaped by Islamic conflict resolution, which recognizes that conflict changes feelings, relationships and ideas and seeks to identify patterns produced by conflict. It also asks why conflict occurs, why it appears unavoidable in daily life, and what inter-personal, familial and society based structures make conflict inevitable. It also deals with both the resolution and management of conflict.

The Islamic conflict resolution model provides three types of conflict resolution. These are resolution based on tribal laws, resolution based on Islamic law (Shari'ah), generally delivered by a judge (*qadi*) and resolution based on cultural and traditional practices (*'urf*), customary law influenced by Shari'ah.

The Islamic system of conflict resolution began during the pre-Islamic era. However, it was only popularized during the first period of Islamic law during the life of the Holy Prophet (S.A.W.). Historians believe that whenever there were problems amongst Muslims, they would refer the matter to the Holy Prophet (S.A.W.) who would then provide his ruling on the matter. This model of conflict resolution was practiced before and after the sixth period of Islamic law.

Abu-Nimer (1996a) enumerated six assumptions that underlie the process and outcome of traditional conflict resolution in Arab-Muslim communities, regardless of the nature of the disputes. First, conflict is regarded as negative and something to be avoided. To support such an assumption, mediators and arbitrators often declare, "God does not love the aggressors." (Nimer, 1996a, pp. 102-104). The

natural and ordinary goal of the people is to establish harmony or avoid being in conflict with others. Second, the goal of dispute or conflict resolution mechanisms is to restore order to the disrupted balance of power, rather than to change power relationships. To reach a settlement, the third-party often says, "Let us put an end to evil (*sharr*) and agree upon the suggested terms." (Nimer, 1996a, p.102). The third party focuses on the destructive forces of the conflict, calling attention to all the hurt and loss it engenders for the individual, the family and the larger community. Third, community, clan, tribe, and family ties initially contribute to escalation and subsequently to the de-escalation of conflict. Although a conflict might begin between individuals, it typically escalates and widens to include the nuclear and extended families, then to clan groups and eventually the community at large. Third-parties rely on community and clan influence to restrain the behaviour of individuals and ultimately to settle the dispute. Fourth, the initiation and implementation of intervention are based on social norms and customs. These negotiation techniques are based on social and cultural codes, which are in turn shaped by values, norms and belief systems that constitute the individuals' worldview.

Some of those values include restoring lost honour, avoiding shame upon one's family, religion or community and preserving the dignity of the person's family, elders, religion and national group. Fifth, an emphasis on relationships is the main characteristic of these negotiations and third-party interventions. Parties present their grievances in terms of relationship and status in the community. There is a particular emphasis on past, future, and dependent relationships that underline the social network in these communities that, as a result, influence the nature of the resolution.

Lastly, face-to-face negotiations are not always the third-party's first option. In many disputes, the parties meet only at the end, when settlement has been reached through shuttle diplomacy conducted by the third-party. By not allowing the parties to meet, the third-party guarantees his control of the process and saves the parties' involved potential humiliation or commitment to intractable positions in their interaction.

Approaches to Conflict Resolution

These assumptions are accompanied by five dominant approaches to Islamic conflict resolution, that shape how conflict is resolved in Shari'ah Courts in the Philippines.

The persuasive approach is commonly used by mediators in settling or resolving conflict involving family disputes, dealing with issues such as land and divorce. By employing this type of approach, the Shari'ah Court judge, before the case is filed with the Agama Arbitration Council, tries to persuade the complainant to withdraw their complaint, explaining that the process is expensive and litigious due to the necessity of hiring a lawyer and the accompanying lawyer fee's. Usually, the defendant shows willingness to accede to the other party in a win-win situation. Using this approach, the mediator attempts to persuade both parties to voluntarily reach an agreement in order to maintain harmonious relations between the conflicting parties and the people of the community with an amicable settlement. Mediators tasked to settle such conflicts are required to use persuasion and negotiation, so that an amicable settlement of conflict is more likely to be achieved. This approach is usually applied in cases such as divorce, requests for financial support, subsequent marriage, annulment of marriage, partition and other family disputes.

Rubin et al. (1994) as cited by Grogorio (2000) explains that persuasion, if listened to by both parties, convinces them through a series of logical thoughts, thereby creating avenues for reconciliation.

This approach is supported by *hadith* (common sayings by Muhammed), which records Umm Kulthum bint Uqba hearing Allah's messenger saying, "He who makes peace between the people by inventing good information or saying good things is not a liar" (al-Qur'an, 49:9 and 4:128). This saying of the Prophet is further supported by the revelations in the Holy Qur'an which state:

And if two parties or groups among the believers fall to fighting, then make peace between them.

If they make terms of peace between themselves; and making peace is better
(al-Qur'an, 49:9 and 4:128).

Another method of convincing parties to settle their conflict is through a diplomatic approach where the judge or mediator should act diplomatically, so that they can easily persuade the conflicting parties to reach an amicable settlement. This type

of approach is usually applied by the judge or any mediator in all types of cases. Diplomacy can be defined as an art or science of conducting negotiation (Webster's Dictionary, 1989).

Gregorio (2000) states that by being cordial and friendly to the conflicting parties, mediators can establish rapport and build trust with the parties. The absence of trust is believed to hinder the settlement.

A third approach, *the cooling-off approach* is usually employed by a judge or mediator when a conflict arises between husband and wife, especially when the parties seek divorce. Just like a legal separation process in the regular courts, the judge in the Shari'ah Courts will suspend the trial for six months creating a cooling-off period where it may be possible for the parties to reconcile (Araneta vs. Concepcion, 99 Phil. 709).

Another reason why the cooling-off period is employed by judges in the Shari'ah Courts is to determine whether there is collusion between the spouses or not. It is the courts role to order his personnel, usually the court clerk, to prevent collusion between the parties and to ensure that the evidence is not fabricated or suppressed. If the clerk finds that there is collusion between the spouses, then he may recommend that the case is dismissed. This type of approach is considered effective in divorce and subsequent marriage cases.

Albano (2001) states that the law seeks to preserve marriage, hence, the court is obliged to avoid making hasty decisions and must take steps towards reconciliation of the spouses. The endeavours of the court in trying to reconcile the spouses can take various forms such as private talks, individually or together, during the pre-trial conference. Pre-trial conferences are undertaken during the period in which the trial is suspended for six months are advisable because the court then has an opportunity to reconcile the differences between the parties. Emotion may have been high at the time of filing the action, but may subside or cool-off during the six month period.

In the *humanitarian approach*, the judge or mediator takes primordial consideration of human welfare and the condition of the parties involved in the conflict, including children who may be affected. The judge or the mediator will express to both parties equally, the notion that they have nothing to quarrel about. This is usually practiced when the conflicting parties are closely related to each other, for example, when the parties to the conflict are brother and sister,

parent and child, or husband and wife. The mediator emphasises the value of reaching a peaceful settlement of the case because the parties are closely related to each other.

Gregorio (2000) states that invoking the, conscience of the parties motivates them to resolve conflict based on the golden rule “do not do unto others what others do not do unto you” (Gregorio, 2000, p.75). Using an Islamic perspective, the mediator invokes that there is nothing to quarrel over since both parties are following the Islamic faith and therefore they are brothers. Caution is also emphasized by the mediators in the use of the humanitarian approach so as not to confuse the parties with partiality.

Mc Hugh and Bessler (2006) explain that in the humanitarian approach, negotiation is an important tool used to enable, facilitate and sustain humanitarian action, and therefore must be undertaken in accordance with three core principles of humanity, neutrality and impartiality. In cases of petition for financial support, the Shari’ah Court judge tries to convince the party requested of support to comply with his family obligation to provide financial support for humanitarian reasons. This approach usually leads the party to realize their wrong doing, thus, the request for support is not only granted but the family will be reconciled. A common experience in the Shari’ah Courts reveals that after mediation, broken families are reconciled resulting in more binding harmonious family ties.

The *bluffing approach* is usually employed by mediators in divorce and land disputes as a ploy to encourage conflicting parties to reconcile, especially when both parties seem to ignore the ground rules of the proceedings, or refuse to accede to the request of the court for an amicable settlement. The mediator will bluff, elaborating clearly the outcome of not settling amicably, the expenses incurred, especially in the hiring of counsellors or lawyers and produce documents supporting their claims.

Usually, this approach is initiated by mediators when the case has not yet been filed with the court. Bluffing should not be considered as a threat since it is mandated in the role of the mediators to approach the parties and remind them of the expenses that they may incur from the litigation and lawyer’s fees once they pursue the case. In addition, mediators often remind the parties that the conflict may escalate to include their respective relatives. With the help of respected relatives from both parties, the aim is for the conflicting parties to realize the benefit of reconciliation, not only to their respective families, but to the community as a whole.

Shari'ah Courts in the Philippines

The signing of the 1976 Tripoli Agreement between the Government of the Philippines (GOP) and the Moro National Liberation Front (MNLF) in Tripoli, Libya on December 23, 1976, paved the way for the implementation of *Presidential Decree 1083*, otherwise known as the Code of Muslim Personal Laws of the Philippines and the gradual creation of Shari'ah Courts. This law was passed on February 4, 1977, but was only implemented in 1985 after almost ten years.

In addition to *Presidential Decree 1083*, the 1987 Philippine Constitution recognises the legal system of the Muslims as part of the law of the land, the codification of Muslim personal laws, and commits to providing an effective administration and enforcement of Muslim personal laws amongst Muslims.

Barra (1988) stated that the Muslim Code provides for the creation of Shari'ah Courts in different parts of the Regional Autonomous Government including the appointment of five judges of the Shari'ah District Court and 51 judges for the lower Shari'ah Circuit Court. While these judges were mandated only a few have been appointed because only 14 people have passed the 1983 special Shari'ah bar examination given by the Supreme Court of the Philippines, which is an essential requirement for the appointment of a Shari'ah judge.

Legal Center, Inc. (PLRC) on the Shari'ah Law in the Philippines, noted there is a wide gap between the actual number of existing courts compared to the number mandated by law. There is a failure to appoint judges to existing courts, which are weighed down by large numbers of docketed cases or cases resolved by settlement. There is also a lack of physical court infrastructure, support facilities, court personnel and a wide gender disparity in the appointment of judges, who often work in various courts. Court decisions are based on Koran (Qur'an), Sunnah and the Code of Muslim Personal Laws and there is a low level of awareness on the nature and function of Shari'ah Courts among the Muslim community, as well as a failure by local government units to appropriate funds for local Shari'ah Courts.

The Structure, Mechanism and Function of Shari'ah Courts

Presidential Decree No. 1083 determines the structure, mechanism and function of the courts. However, as part of the judicial system of the Philippines, the courts have a limited jurisdiction. These courts exercise power in accordance with Title Four of the Muslim Code. The Shari'ah Courts are comprised of Shari'ah Circuit

Courts which are stationed in the various municipalities, cities and provinces equivalent to the Municipal Trial Court in Cities /Metropolitan Trial Courts/ Municipal Circuit Trial Courts of the civil courts in the different provinces of the ARMM, and in Regions 12, 10 and 9. There are also Shari'ah District Courts, which are the equivalent of Regional Trial Courts and are stationed in the five Shari'ah Judicial Districts.

The personnel of the Shari'ah Courts are subject to the administrative supervision of the Supreme Court and have the same category with the existing civil courts. In addition, judges of the Shari'ah Courts (both district and circuit courts) must be learned in Islamic Law and jurisprudence and must have passed the special Shari'ah bar examination given by the Supreme Court.

Shari'ah judges are appointed by the President of the Philippines, must be a citizen of the Philippines, at least 25 years of age and have passed the examination in the Shari'ah and Islamic Jurisprudence (*fiqh*) given by the Supreme Court, for admission to special membership to the Philippine Bar to practice in the Shari'ah Courts.

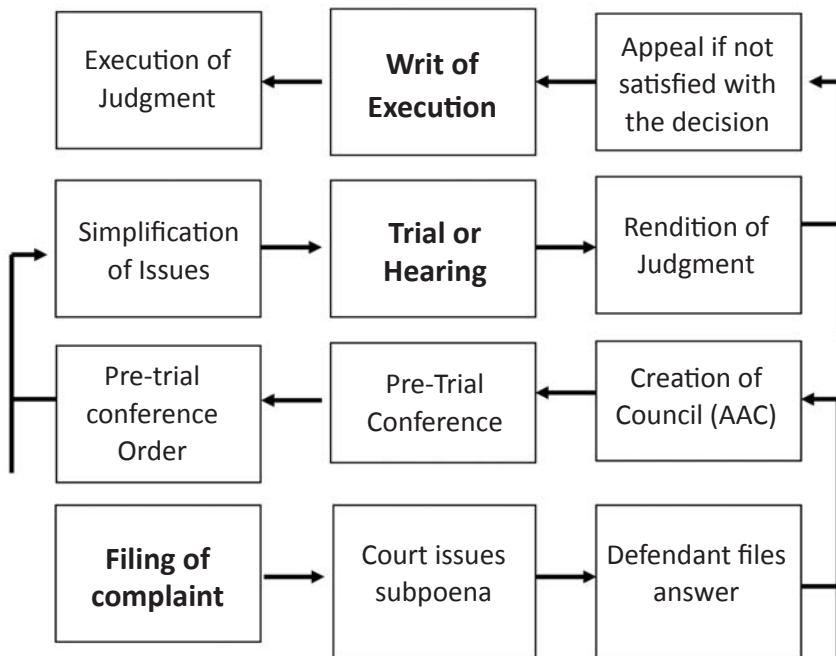
Operation of Shari'ah Courts

Under the special rules of procedure in the Shari'ah Courts, proceedings commence by filing a complaint and paying a docket fee at the Shari'ah Court. Upon receipt of the complaint, the court clerk will issue a subpoena to the defendant requiring him/her to submit his/her answer to the complaint under oath within 15 days of receiving the subpoena. If the judge can not create an amicable settlement then they will order the creation of the Agama Arbitration Council with the court clerk as the *ipso facto chairman*, and at least two representatives from each party as members. The council plays a vital role in the mediation, arbitration and handling or management of the conflict leading to the restoration of peaceful and harmonious relationships between the parties to the conflict. If the Agama Arbitration Council fails to settle the dispute amicably, then the case will proceed to a pre-trial conference with a possibility of amicable settlement with the simplification of issues. In the pre-trial conference, the parties are not required to employ the services of a lawyer or Shari'ah counsellor. If the pre-trial conference is unsuccessful in securing an amicable settlement then the case will proceed to a hearing or trial. Before the trial or hearing begins, the parties are represented by a lawyer or Shari'ah law counsellor of their own choice. After the hearing or trial, the case is submitted for resolution and the judge renders his decision or judgment. Upon proper motion of the concerned party, the writ of execution

shall be issued by the judge. If one party is dissatisfied with the decision they have the right to appeal, however, the judgment can be executed or enforced pending appeal.

Figure 1, below, shows the mechanism and flow of the complaint followed by the Shari’ah Courts of the Philippines as described above.

Figure 1: Flow of the Cases in the Shari’ah Court



Agama Arbitration Council

As mentioned previously, Shari’ah District Courts or Shari’ah Circuit Courts may constitute an Agama Arbitration Council if disputes can not be resolved amicably in the first stages of resolution. After the Agama Arbitration Council had been constituted in accordance with the Code of Muslim Personal Laws, the arbitration proceedings are conducted in accordance with the method deemed most appropriate. The Agama Arbitration Council takes into consideration the circumstances of the parties, the possibility for reconciliation of the parties, the interests of any children and other third parties involved, and the need for a

speedy settlement of the disputes. However, no arbitration proceedings shall take place *ex-parteor* in the presence of only one party.

If the Agama Arbitration Council successfully settles a dispute, the chairman of the council prepares a report together with recommendations, which are submitted to the judge who issues the outcome. Afterwards, the order is read by the court clerk in the presence of the conflicting parties.

Types of Cases Usually Brought before the Shari'ah Courts

A careful analysis of the provisions of the Muslim Code reveals that the Shari'ah Courts are limited in the types of cases they can deal with. Among the cases they can deal with are those relating to marriage, subsequent marriage, betrothal or breach of contract to marry, divorce, distribution of properties upon divorce, disposition, distributions and settlement of the estate of Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors. There are also some cases brought before the Shari'ah Courts, which are under its exclusive original jurisdiction.

The Shari'ah Courts are mandated to exercise original jurisdiction over petition for certiorari, prohibition, mandamus, habeas corpus and other auxiliary writs and processes in aid of its appellate jurisdiction, and exercise exclusive appellate jurisdiction over all cases tried in the Shari'ah District Courts established by law.

There are also some cases the Shari'ah Courts, like the Shari'ah District Court, have original jurisdiction over. These are petitions by Muslims for the constitution of a family home, change of name and commitment of an insane person to an asylum, all other personal and real actions wherein the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive jurisdiction of the Municipal Circuit Trial Court, and all special actions for declaratory relief where the parties are Muslims or the property involved belongs exclusively to Muslims.

The regular courts, under *Presidential Decree 1508*, require barangay arbitration of conflict before the Barangay Lupon Tagapamayapa, as a pre-requisite for the filing of the case. The same is not observed by the Shari'ah Courts. The Shari'ah District Courts have exclusive original jurisdiction over all cases involving custody, guardianship, legitimacy, paternity and filiations arising under this Code; all cases involving disposition, distribution and settlement of the estate of Muslims, probate of wills, issuance of letters of administration or appointment of administrators or

executors regardless of the nature or aggregate value of the property; petitions for the declaration of absence and death and for the cancellation or correction of entries in the Muslim Registries mentioned in Title VI of Book Two of the Code; all actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and all petitions for mandamus, prohibition, injunction, certiorari, habeas corpus and all other auxiliary writs and processes in aid of its appellate jurisdiction.

This paper investigates the effectiveness of Shari'ah Courts as a mechanism for conflict resolution and peacebuilding in Mindanao. This study used a survey questionnaire, key informant interviews and focus group discussions (FGD) to gather detailed data on respondent's perceptions of the role of the Shari'ah Courts in resolving conflict, the problems that might hinder the Shari'ah Courts in resolving conflict and the Shari'ah Court's contribution to peace building. All results were triangulated to ensure consistency of the results.

The purposive sampling technique was used to select the Fifth Shari'ah Judicial District Court situated in Cotabato City. Random sampling was used to select the five out of a possible 15 Circuit Courts that were established in the provinces of Maguindanao in the Autonomous Region in Muslim Mindanao (ARMM), and in North Cotabato and the Sultan Kudarat in Region 12.

Since the research focused on the role of Shari'ah Courts in resolving conflicts, the respondents were comprised of judges, personnel of the Shari'ah Courts, and plaintiffs and defendants whose cases were filed with these Shari'ah Courts. Due to the use of random sampling, the assumption made is that the perceptions of these participants will reflect experiences in other Shari'ah courts located in the four other districts.

Participants who took part in this research were divided into four groups, group 1 consisted of judges, group 2 was court personnel, group 3 was mudda'i or complainants and group 4 was mudda'alai or respondents.

The respondents in this study included six judges, 38 court personnel of the six randomly selected Shari'ah Courts under the jurisdiction of the Fifth Shari'ah Judicial District, seven plaintiffs and seven defendants whose cases were filed with the identified Shari'ah Courts, with a total of 58 respondents. The responses of the respondents in this study were encoded, processed and analyzed to determine the role of the Shari'ah Courts in resolving conflicts as well as its contribution to peacebuilding. In total the project consulted with 37 males

(63.8 per cent) and 21 females (36.2 per cent) showing that the Shari'ah Court is dominated by males.

There were two sets of structured interviews which served as guide questions for the researcher during interviews. The first sets of structured questions were intended for the respondents under groups 1 and 2 (judges and court personnel), while the second set of structured interviews were intended for the respondents under group 3 and 4 (Mudda'i or complainants and Mudda'alai or respondents)

Cases Filed and Resolved in the Shari'ah District Court

The results show that a range of cases are brought to the Shari'ah District Court and vary in the proportion of cases that are successfully resolved or that are still pending (unresolved). The types of cases brought to the Shari'ah District Court can be categorised into four broad categories: 1) appealed cases (cases appealed from the Shari'ah Circuit courts) made up 15.52 % of cases, 2) civil cases (including partition of property, specific performance, recovery of money, annulment of title and action for moral damages) made up 30.17 % of cases, 3) special proceedings cases (including quieting of title, correction of names and issuance of letter administration) made up 50.84% of cases and 4) special civil action (including certiorari, habeas corpus, and declatory relief) cases made up 3.44 % of the total cases.

The specific case type registered with the highest frequency were partition of property with a frequency of 24 (20.69 % of total cases registered), quieting of title with a frequency of 22 (18.97 % of total cases registered), correction of names with a frequency of 20 (17.24 % of total cases registered), cases appealed from the lower courts with a frequency of 18 (15.52 % of total cases registered) and finally issuance of letters of administration with a frequency of 17 (14.67% of total cases registered).

Types of cases that were less common were specific in performance with a frequency of 6 (5.17 %), recovery of sum of money with a frequency of 3 (2.59% of total cases registered) and certiorari with a total of 2 cases registered (1.72% of total cases registered). Habeas corpus, annulment of title, action for moral damages, and declaratory relief cases were all only registered once (0.86 % of total cases registered).

Of the overall categories, findings reveal that while special action had the highest percentage of resolved cases at 67% the total number of cases resolved was only three. Appealed cases had the next highest percentage of success in resolving

cases with 66.67% and resolved a total of 12 cases. Civil cases had a percentage success rate of 64.99% and resolved 28 cases and lastly special proceedings resolved 57.78% percent of cases with a total resolution of 34 cases. One sub-category that was notably successful in resolving the type of case is correction of names in which 15 out of a total 20 cases were successfully resolved giving this category a 75% success rate.

In sum, of the 116 cases registered with the Shari'ah Courts, 65 cases or 56.03% were resolved while only 51 cases or 43.97% had not been resolved or were still pending before the Shari'ah Court.

Cases Filed Before the Shari'ah Circuit Courts

The results show that a range of cases were brought before the Shari'ah Circuit Courts. The types of cases brought to the Shari'ah District Courts can be categorized into four broad categories: 1) civil cases (including divorce, financial support, collection of mahr, restitution of marital rights, annulment of marriage and breach of contract to marry) making up 84.64% of cases, 2) special proceedings (including subsequent marriage and custody of children) making up 13.83% of cases, 3) special civil actions (including declaratory relief) making up 0.58% and lastly, 4) special criminal cases (including violation of Presidential Decree 1083) which made up the remaining 0.58% of cases.

The specific case type registered with the highest frequency was divorce with 239 (68.88%) cases filed. This was by far the most common type of case filed in the circuit courts as the next most frequent type of case filed was cases for financial support with 34 (10%) cases filed and subsequent marriage with 30 (9.8%) cases filed. All of the remaining cases had a frequency of less than 15.

Of the overall categories, findings reveal that civil cases had the highest rate of successful resolution with 70.71% or 195 cases resolved. This result is strengthened due to the high number of cases that were registered in this category. Special proceedings cases had the next highest percentage of success in resolving cases with 70.17%, however the sample size of cases was significantly lower and resolved cases totaled 32. Special civil actions and special criminal cases both had a 50% success rate of resolving cases however, both of these categories only had two registered cases meaning that only one case in each category was resolved.

In sum, of the 347 cases registered with the Shari'ah Circuit Court 229 were successfully resolved with an overall success rate of 66%, while only 118 or 34% remained unresolved or pending resolution.

Stages of Arbitration in the Shari'ah Courts

While the regular courts, under Presidential Decree 1508, require barangay arbitration of conflicts before the Barangay Lupon Tagapamayapa¹ as a pre-requisite for the filing of the case, the same is not observed by the Shari'ah Courts. The reason that barangay arbitration is required in the regular courts is because not all barangay officials have undergone seminars and training on Islamic law and jurisprudence and therefore are not well versed in Islamic law. The judges and clerks of the Shari'ah Courts have undergone a series of seminars and trainings on Islamic law and therefore are well-versed in Islamic laws and jurisprudence.

In the FGDs conducted, judges revealed that there are several arbitration proceedings or methods of resolution in the cases conducted in the Shari'ah Court to settle disputes amicably.

The first stage of arbitration happens when the dispute is brought to the attention of the judge to seek advice prior to the filing of the case in the Shari'ah Court. At this stage the judge tries to convince the complainant to amicably settle the dispute using one of the five strategies of Islamic conflict resolution outlined previously, namely: the persuasive approach, diplomatic approach, cooling-off approach, bluffing approach or the humanitarian approach. If the judge fails to convince the complainant to settle the dispute amicably then the judge will advise the complainant to formally file the complaint with the appropriate court.

The second stage of arbitration is initiated by the Agama Arbitration Council that is formed after the complaint has been formally filed with the court. The Agama Arbitration Council uses the same strategies and/or approaches as the judge in the resolution of the dispute.

The third stage of arbitration occurs during the pre-trial conference that takes place if the Agama Arbitration Council fails to resolve the case amicably. At the pre-trial conference the Chairman of the council recommends a resolution.

¹ Barangay Lupon Tagapamayapa is a committee or group in the Barangay. The Barangay Captain is the Chairman and the Lupon are individuals who arbitrate conflicts submitted to the barangay.

The fourth stage of arbitration is conducted through a hearing or trial where the parties to the case are required to obtain lawyers who will represent them in court. In this stage, the lawyers argue in court on behalf of their respective clients.

Finally, the fifth or the last stage of arbitration happens after the case has gone to court and is submitted for judgment to the court. Before or after the judge renders his decision or even after the rendition of the judgment but before the issuance of the writ of execution of the decision, the judge attempts once more to settle the case amicably by calling either, or both, of the parties to his chambers and tries to settle the dispute for the last time. If the judge still fails to settle the case, then he will, upon proper motion, issue the writ of execution of the judgment.

The data gathered showed that there are few Muslims who file cases before the Shari'ah Courts. One explanation for this is due to a lack of information available on the procedures of the Shari'ah Courts. Another reason is because they are resolved elsewhere, for example in the barangay courts with the local datus (traditional leaders who still exercise conflict resolution roles) or are taken to Shari'ah Courts established by the rebel groups MNLF and MILF in rebel controlled areas (Buat, 2002).

Manner of Settling Conflicts

Based on the data gathered in the FGDs, the following systems were usually used by the Shari'ah Courts to settle conflicts in addition to what is legally specified:

- 1. Settlement initiated by the Judge** – Usually complainants discuss with the judge of the Shari'ah Court the possibility of filing their dispute before a Shari'ah Court. The judge will then determine whether or not the court has jurisdiction over the case. If the court has jurisdiction over the case, then the judge will take advantage of the situation and try to convince the complainant to settle the dispute amicably. If the judge senses that he can convince the complainant to settle the case amicably, then he will summon the defendant and attempt to convince the defendant to settle the case amicably. Otherwise, he will order the formal filing of the complaint. If the judge is successful in settling the case the dispute ends there.
- 2. Settlement by the Agama Arbitration Council** – Immediately after the formal filing of the case, the judge directs the clerk of the Shari'ah Court to form an Agama Arbitration Council of not less than two, and no more than four members to settle the dispute amicably. The clerk requires each of the parties to nominate at least two representatives who are given full authority to represent

them. The representatives of the parties to the Agama Arbitration Council are appointed by the Court with the court clerk as the Chairman of the Council. The Agama Arbitration Council is given full authority to arbitrate cases submitted, taking into consideration the circumstances of the dispute, the conciliation of the parties, the interests of any children and other parties involved and the need for a speedy settlement of the dispute. The Agama Arbitration Council submits a report to the court with the result of arbitration. On the basis of this report and any other evidence the court issues a corresponding order. Under the Muslim Law, the Judge is deemed competent to decide the outcome of the case based on the findings of the arbitrators. The arbitrator is empowered to hear and receive evidence and to administer oaths. The arbitrators findings are filed with the court and are used by the judge to make a decision.

- 3. Trial on the Merits** – Under the Muslim Procedural Law the pre-trial and the trial are combined in one proceeding. During the hearing, the plaintiff presents their claim and the defendant is asked if the plaintiff's claim is true or not. If the defendant admits to the claim, the court awards the plaintiff his claim. If the defendant denies the claim and the plaintiff has no evidence, the plaintiff can then demand an oath or *yamin* from the defendant; if the plaintiff has evidence, this is presented and the case proceeds to trial.

The primary intention of the pre-trial conference is to ensure that all necessary issues are properly raised. Another purpose for the pre-trial is to eliminate the element of surprise by requiring that both parties disclose all facts and relevant evidence that they intend to raise at the trial at a pre-trial conference. This is encouraged because it brings both parties together, thus making an amicable settlement possible.

This is the third time that the case can be referred to the Shari'ah Court for arbitration. The first is the arbitration initiated by the judge before the case has been formally filed with the Shari'ah Court. The second is the arbitration proceedings before the Agama Arbitration Council. If a settlement is not achieved during the pre-trial conference the court will clarify and define the issues of the case creating a pre-trial order by discarding or eliminating unnecessary matters.

Within ten days of the pre-trial order, the parties or counsel must submit to the court a statement of witnesses (*Shuhud*) and other evidence (*Bayyina*) pertinent to the dispute so these can be clarified and defined before the law and verification of facts relied upon by the parties can be undertaken.

After considering the pleadings, the court may find evidence and memoranda that warrants a judgment without the need of a formal hearing. The court may do this within 15 days of the submission of the case for decision.

When the conflict is not settled by the judge or the Agama Arbitration Council during the arbitration proceedings, or if the judge fails to settle the case during the pre-trial conference or rendered summary judgment or judgment on the pleadings after the case had been submitted for decision, then a trial follows. At the trial the conflicting parties are required to employ the services of a lawyer or counsellor to defend them. Sometimes this stage is referred to as the confrontation stage because the parties, through their respective lawyers or counsellors, will present their case before the judge. After the case has been submitted by the respective lawyers or counsellors to the court for resolution, the judge renders their judgment.

- 4. Offering an Alternative Solution** – Even if the judgment has been rendered, there is still a chance to settle the dispute amicably though an alternative solution offered by the judge. Before the execution of judgment, the judge will call the parties to a conference and offer his alternative solution. Again, the judge will discuss the outcome of the conflict if the dispute is not settled peacefully and the result of the conflict is settled amicably. The judge will also ask the parties if there are other alternatives they know of that may lead to the peaceful settlement of the dispute other than the rendition of judgment. If there is still no solution that can create a settlement of the case, then the judge will proceed to the execution of the judgment.
- 5. Signing of the Agreement or Judgment** – If the judge or the Agama Arbitration Council is successful in settling the case amicably an agreement will then be signed. The same is done if the judge successfully settles the case in the final stages of arbitration after the rendition of his judgment. Alternatively, if the judgment has been rendered and the judge does not settle the case amicably, then the execution of judgment follows.
- 6. Execution of the Agreement and/or Judgment** – After the execution of the agreement the conflict is finally resolved, however, the execution of the decision rendered by the court indicates that the conflict was only partially resolved. Even if no appeal has been initiated by the parties, the failure to create an amicable settlement indicates that the conflict has not been fully resolved.

- 7. Administration of Oath** – An oath or *yamin* is legally binding under Muslim Law and may, by order of the court, be administered upon any parties who are Muslim to establish a fact, or to affirm any evidence presented. The administration of oath is based on the Holy Qur'an which provides:

'Allah will not call you to account for what is void in your oaths, but He will call you to account for your deliberate oaths' (Holy Qur'an, 5:89).

'Fulfill the covenant of Allah when ye have entered to it, and break not your oaths after ye have confirmed them; Indeed ye have made Allah your surety; for Allah knoweth all that ye do' (Holy Qur'an, 16:91).

The person taking an oath must be a Muslim and shall perform a religious ablution. The oath must be performed in the Mosque, preferably in a venerated place in the Mosque, i.e., Mihrab (altar) where the Iman (Muslim Priest) stands when giving sermon (Khutbah); or in court, in the presence of the judge; and the oath should be taken by the person in the standing position.

The person taking the oath must swear by God (Allah) besides whom there is no other God; upon the Holy Qur'an. The Ulama are unanimous in their opinion that the oath, which is admissible under the Shari'ah must be coupled with the name of Allah. This is also a form of oath-taking which is feared by Muslims so that anyone who has undertaken an oath will never do any act that is in violation of the oath taken, hence, by administration of oath it is considered a manner of settling Muslim disputes.

Factors that Facilitate and Hinder the Functionality of the Shari'ah Court

Several factors that facilitate the role of the Shari'ah Courts in resolving conflicts were reported by the FGD respondents. The first factor identified is the role of the Qur'an, the Hadith of the Prophet and other Islamic Laws. These factors facilitate the role of the Shari'ah Courts in resolving conflict because every Muslim fears what is stated in the Holy Qur'an, the Hadith and other Islamic laws, thus making it easy for the Shari'ah Court judge to resolve the dispute. In the FGDs several judges who participated revealed that they usually tried to convince the conflicting parties to agree to settle the dispute by invoking the Islamic method of resolving conflict. Accordingly, by invoking the Holy Qur'an, the Hadith of the Prophet and other Islamic laws, it would be easy for the judges to convince the conflicting parties to amicably settle their disputes before the court.

The next factor identified as facilitating conflict resolution was the Agama Arbitration Council. This council's only function is to arbitrate and settle disputes. The composition of the Agama Arbitration Council is well-balanced since both parties are represented in the council, which helps the Chairman of the council to settle the dispute. The procedure of the Agama Arbitration Council in resolving conflict is provided by law; however, the council often deviates from this procedure to achieve a peaceful and amicable settlement of the conflict. The court personnel interviewed in the FGDs revealed that the Agama Arbitration Council, whose chairman is the court clerk, stated unanimously that their role in resolving conflict comes in after the judge fails to settle the dispute.

The last factor identified is the administration of an oath or *yamin*. The administration of an oath or *yamin* clearly swears the parties before the Holy Qur'an and facilitates the Shari'ah Court in its role in resolving conflict, because the act of swearing a party before the Holy Qur'an is feared by every Muslim. When a Muslim is sworn by the judge before the Holy Qur'an, they are assured that this person will abide by the oath, thus, facilitating the Shari'ah Courts ability to resolve disputes.

On the other hand, the data gathered in the survey questionnaire and FGDs identified several factors as hindering the role of the Shari'ah Courts in conflict resolution.

The first hindering factor identified is the limited jurisdiction of the Shari'ah Courts. The judges who participated in this research were unanimous in saying that the limited jurisdiction of the Shari'ah Courts hinders its role in conflict resolution. Because of its limited jurisdiction, only minor cases are filed with the Shari'ah Court, thus the effectiveness of the court to resolve conflict is not utilised.

The second factor that was found to hinder conflict resolution is the presence of non-Shari'ah lawyers in the Shari'ah Courts. Defendants who participated in the FGDs, reported that the conduct of non-Shari'ah lawyers in the Shari'ah Courts hindered conflict resolution because these lawyers have no knowledge of Islamic Law and cannot effectively defend their clients in court. The arguments they made in an open court are usually irrelevant to the case, thus making it difficult for Shari'ah Court judges to weigh the evidence and arguments presented. This usually prolongs the litigation of cases in the Shari'ah Court where both parties lose.

The last factor identified as hindering conflict resolution in the Shari'ah Courts is the establishment of Shari'ah Courts by rebel groups including the tribal and

local courts. According to some of the plaintiffs interviewed, the Shari'ah Courts established by the rebel groups hinder the role of the Shari'ah Courts in resolving conflict because the parties to the conflict are divided as to which court will effectively resolve their dispute. Often one party will go to the Philippine Shari'ah Court while the other party will go to the rebel established tribal or local court. Courts established by rebel groups are not recognised by the Philippine Government. This can cause the dispute to become more serious, making the relationship of the conflicting parties worse and more difficult for the person charged with settlement to resolve the conflict.

Respondents were asked to use a five point scale to rank factors that hinder the role of Shari'ah Courts in resolving conflict. Number 5 was categorised as most pressing as a hindrance to conflict resolution, while number 1 was least pressing. The results show that ineffective and inefficient information campaigns of the Muslim Code, limited jurisdiction of the Shari'ah Courts, lack of support from the national/local government units, lack of recognition of Shari'ah lawyers, exclusion of criminal, election, and commercial offenses under the jurisdiction of the Shari'ah Courts, limited knowledge of Shari'ah Court judges of Islamic law, Qur'an and the Sunnah of the Prophet (SAW). This allows for the appearances of non-Shari'ah lawyers before the Shari'ah Courts, the existence of the traditional or customary way of resolving conflicts by the local leaders or *datus* in the locality, the existence of the Shari'ah Courts established and controlled by the MILF/MNLF were all categorised as 5, most pressing, in their role of hindering the effectiveness of Shari'ah Courts to resolve conflict.

Approaches and Strategies Used by the Shari'ah Courts to Resolve Conflicts

In the FGDs the judges were asked to rank the frequency of their use of the five approaches to conflict resolution (persuasive approach, cooling-off approach, diplomatic approach, humanitarian approach, and bluffing approach). A scale was used where five is always use, four is usually use, three is often use, two is sometimes use and one is seldom use.

The judges reported that the persuasive and cool-off approach were always used, the humanitarian approach was often used, the bluffing approach was sometimes used and the diplomatic was usually used.

The Contribution of the Shari’ah Courts to Peace Building

In the FGDs, the respondents, specifically judge’s and Court Personnel’s groups, were of the same opinion that by being part of the Shari’ah Court their role in the resolution of conflict contributed greatly to peace building in the Bangsamoro communities. One main contribution of the Shari’ah Court to peace building is through the resolution of conflict before it escalates into the so called *rido* or war among clans.

The respondents under the judge and court personnel category mentioned that their contribution to peace building only materialized when the parties to the conflict choose to settle their conflict amicably before the Shari’ah Court. These respondents explained their role as a mediator to the conflicting parties and emphasized to the parties likely scenarios that would emerge if the conflict is not settled amicably.

In the FGDs, judges reported that conflicting parties could be easily convinced to amicably settle their case in the court by invoking the name of Islam. In other words, telling the parties to the conflict to settle their disputes in accordance with Islamic teachings contributes to the resolution of disputes.

Conclusion

Several conclusions can be drawn from this paper. The true Shari’ah Court is feared by Muslim people as it is perceived to be a divine court of law, hence the resolution of conflict by the Shari’ah Court is efficient and effective. Although it does not necessarily follow the rules provided under the special rules of procedure set by the Supreme Court of the Philippines, the Shari’ah Court has its own mechanisms for resolving conflicts efficiently, effectively, and peacefully and allows for previously harmonious relationships to be restored.

Due to limited jurisdiction, the Shari’ah Courts resolve conflicts pertaining only to persons and family relations. Offenses emanating from criminal or commercial laws, which are usually the root causes of the conflict are beyond the jurisdiction of the Shari’ah Courts.

The judges and the Agama Arbitration Council play an influential role in the Shari’ah Courts because they run and control its affairs. Settling conflict is conducted in several stages to ensure that the disputes presented are resolved effectively and efficiently and that peace between the conflicting parties is maintained or restored.

The Shari'ah Court can contribute to the promotion of peace and development, and helps resolve conflicts through peaceful means and in accordance with Islamic beliefs.

The study recommends that the House of Representatives of the Philippines and the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) look into the possibility of expanding the jurisdiction of Shari'ah Courts, through a supplementary law which would include offenses pertaining to criminal and commercial law under the jurisdiction of the Shari'ah Courts.

Also, the House of Representatives of the Philippines should enact a law establishing additional Shari'ah Courts in cities where there are significant Muslim populations, such as Davao, General Santos, Digos, Butuan, Surigao, Dipolog, Cagayan de Oro and Ozamis in Mindanao; Cebu, Tacloban, Bacolod, Iloilo and Puerto Princesa in the Visayas; and Metro Manila and Baguio in Luzon.

The Supreme Court of the Philippines should promulgate a law amending the present special rules of procedure of the Shari'ah Court, to suit the Islamic system and approaches presently used and adopted by them in conflict resolution. The High Court should also issue a memorandum that would restrict non-Shari'ah Lawyers from practicing, counselling and appearing before the Shari'ah Court. Likewise, the High Court en banc should issue a resolution requiring judges, court personnel, and witnesses who would testify in court, including lawyers, to perform ablution before allowing them to appear before the court. The performance of an ablution will prevent the parties concerned from lying during proceedings, thus, contributing to the effectiveness and efficiency of resolution.

Additionally, the High Court should issue a memorandum circular, lowering the required qualifications for Shari'ah District Court judges, so that the Shari'ah Counsellor may also qualify to perform the role.

Lastly, Notre Dame University in Cotabato City should offer a quality two-year Special Course\Program for Shari'ah law, separate and distinct from a Bachelor of Law under so that more Shari'ah counsellors may be produced.

Recommendations for further study include, undertaking a study that may illustrate the duration of Shari'ah Courts case resolution, focusing on the efficiency of Shari'ah Courts in resolving disputes. Also, a comprehensive study for the possible establishment of a true Islamic law or Shari'ah Courts, thus incorporating

Islamic criminal and commercial laws to be known as the Philippine *Shari'ah Law* is recommended.

Lastly, the paper recommends an exploratory study investigating how Shari'ah Courts can further contribute to peacebuilding and development in the Bangsamoro communities.



DISPUTE SETTLEMENT MECHANISMS IN MAGUINDANAO PROVINCE

BY
MAGUID T. MAKALINGKANG



DISPUTE SETTLEMENT MECHANISMS IN MAGUINDANAO PROVINCE

Conflict is inevitable in human interaction. It can originate from individual differences in value systems, ways of thinking, or behaviour. Nevertheless, mechanisms for resolving conflict have endured since the beginning of human interaction.¹ In the past, dispute settlement has been a major function of the state in maintaining peace, and ensuring the viability of society². Following the Philippine colonial period, formal dispute settlement mechanisms were introduced and applied throughout the country.

However, in the Province of Maguindanao, this formal dispute settlement system was largely mistrusted by the local population, and failed to take root in the area. Instead, those who live in the province continued to rely on the customary laws of their ancestors and the indigenous peoples.

This study was conducted to assess the effectiveness of those dispute settlement mechanisms being utilised within Maguindanao, and, in particular, to identify the socio-economic profile of the respondents and the existing dispute settlement

¹Wardak, Ali, "Jirga-A Traditional Mechanism of Conflict Resolution in Afganistan, University of Glamorgan, United Kingdom, <http://www.un.org/Overview/rights.html>. 2006.

²Orendain, Antonio, Skills and Values in Barangay Justice, ALPHA OMEGA Publications, Mandaluyong City 1550, Metro Manila, Philippines, p. 1, 1989.

mechanisms in the province. The study also seeks to highlight the ways in which respondents personally perceive those mechanisms in terms familiarity, economic viability, convenience, accessibility and effectiveness.

In this study, *“The Principles of Islamic Interpersonal Conflict Intervention and Resolution”* by Amr Abdalla was used as the primary reference. This model emphasises a number of points for conflict resolution in predominantly Muslim societies, most notably, the need for a combination of Islamic and Western approaches to conflict resolution. This model also places importance on the restoration of justice, freedom and equality, the engaging of communities and the adjustment of intervention techniques.

In Muslim communities such as Maguindanao where a variety of dispute settlement mechanisms exist, there are two critical approaches to keep in mind. The first is to avoid the uncritical adoption of Western principles, not championed by Islamic religion and culture, and the second is to not automatically dismiss Western principles simply because they are un-Islamic³. It is essential that those in a position to resolve disputes remain impartial and reach decisions justly.⁴ For this purpose, it is necessary to investigate dispute settlement approaches of applied in specific regions countries and cultures.

Harmonising Formal and Non-Formal Dispute Settlement

George Irani argued that ‘justice’ does not exist solely in the realm of the state and its formal legal organs. He argued that justice also belongs in the arena of community mediation and negotiation. As such, comprehensive strategies for improving access to justice for the poor should thus encompass formal and informal dispute resolution.⁵

In traditional Pacific societies, most disputes are (and have over time been) settled through some form of negotiation or adjudication. This is due to the use of customary and traditional apology rituals for mitigating the seriousness of offense (s). These are indicative of pluralist systems, characteristic of Pacific societies where custom and tradition co-exist and overlap with formal legal systems. Minor disputes are resolved by apology and settled informally amongst families, whereas other more

³ Lagenhausen, Muhammad, “Islam and Western Theories of Equal Rights”, *Hikmat, A Quarterly Journal of Islamic Research*, Vol.1, No. 2, Autumn, p. 200, 1995.

⁴ Al-Buraey, Muhammad, *Management and Administration in Islam: An Islamic Perspective to Administrative Development*, King Fahd University of Petroleum & Minerals, Dhahran 31261 – Saudi Arabia, p. 346-48, 1990

⁵ Irani, George, “Islamic Mediation Techniques for Middle Eastern Conflicts”, *Middle East Review of International Affairs*, p. 3, 1999.

serious offenses follow more structured court-like procedures. These procedures employ formal assemblies of disputants or community members, presided over by a designated person or group acting on behalf of the community. A common characteristic of dispute settlement in Pacific societies is that communal interests often outweigh the rights and interests of the individual.⁶

Regional nations such as Fiji and Australia also recognise the role of traditional culture in modern dispute settlement, and provide provisions in their constitutions for incorporating traditional mechanisms into the mainstream judicial system. In Fiji, the government has established what are known as Problem Solving Courts, aimed at reducing over-representation and recidivism, and providing alternatives to prison.

The theory here is that crime may be prevented if the offender is aware of the harmful consequences of his or her actions. This crime reduction model is gaining popularity in countries with more multi-cultural communities, such as Australia.⁷ In essence, laws in these nations remain the same, but existing court processes have been modified to improve outcomes for the offender and the community at large.

In multicultural communities, formal courts often experience difficulty in resolving local community disputes. To facilitate dispute resolution, governments adopt or develop dispute settlement approaches whilst others choose to strengthen and incorporate traditional mechanisms into formal structures of justice. In the regional nations of Brunei Darussalam, Malaysia, Indonesia, China, and the Philippines, disputes are traditionally settled by way of negotiation, mediation and conciliation.

In 1984, Philippines courts experienced heavy congestion due to the indiscriminate filing of cases, leading to the deterioration of quality proceedings. In response to this, it was deemed appropriate to formally organise and institutionalise a system of amicable dispute settlement at the barangay level without judicial recourse.

In 1978, *Presidential Decree 1508* was promulgated, recognising the above-mentioned social realities and institutionalising the traditional mediation of disputes by co-opting them into the formal system. By structuring the indigenous system with formal rules, traditional conciliation became a legitimate measure for legally settling interpersonal disputes.

⁶ Ibid., p.3,1996

⁷ Hinton, Martin, Sentencing and Indigenous Australians? Addressing over representation from within the criminal justice system? in *Indigenous Australians and the Law* eds., by Elliott Johnston QC, Martin Hinton and Daryle Rigney, Cavendish Publishing 1997.

How This Research Was Conducted

Research was conducted in the Magindanaun municipalities of Datu Piang, Buluan, Datu Paglas and Datu Odin Sinsuat. These municipalities were chosen specifically because they each have a presence of Traditional Dispute Settlement (TDS), Shariah Circuit Court (SCC), Municipal Trial Court (MTC), the '*Katarungan Pambarangay*' and are all relatively peaceful.

The effectiveness of existing Magindanaun dispute settlement mechanisms was determined through descriptive evaluative research. Respondents were chosen at random from the farming, business and NGO sectors, the public service, from the Council of Elders and from among the unemployed.

The study relied primarily on a Likert scale and open-ended questionnaires to gather data. The questionnaires were translated into Maguindanaon dialects to ensure clarity. Data was also taken from a review of existing documents and the personal observations of the researcher. Data analysis was performed using the percentage frequency count, mean, z-test, and ranking, and the level of significance used in the test was set at 0.05.

Socio-Economic Characteristics of the Respondents

In terms of the socio-economic characteristics of respondents, slightly more than one-third fell within the 41 – 50 year old age group. Just over one-half were male, the majority were married and all have attained formal legal schooling in either the English or Arabic language. Their respective monthly family incomes range from less than 5, 000 Philippine Pesos (PhP) to 25,000 PhP and above.

Respondents' Understanding of Existing Dispute Settlement Mechanisms

When questioned on their understanding of dispute settlement mechanisms in their communities, a common trend was observed amongst respondents.

Regarding familiarity, respondents were asked whether organised dispute settlement mechanisms exist in their communities, what those mechanisms are, and which of those are they personally familiar with.

All respondents answered 'yes' to the first question, indicating that dispute settlement mechanisms do exist within the communities of respondents.

Respondents identified those existing dispute settlement mechanisms as the Council of Elders (TDS), the Shari'ah Circuit Court (SCC), the Municipal Trial Court (MTC) and the Katarungan Pambarangay.

TDS and Katarungan Pambarangay received the highest frequency and percentage, meaning that from 289 respondents, 189 claimed that these mechanisms do exist in their communities. More than one-fourth also claimed that the SCC exists in their communities. In regards to the question of familiarity, the respondents indicated that TDS is the mechanism with which they are most familiar mechanism for respondents, followed by Katarungan Pambarangay.

Respondents' Preference for Dispute Settlement

For each of the dispute settlement mechanisms, a series of short item-statements were used to analyse and gauge the perceptions of respondents in terms of economic viability, convenience and accessibility.

In regards to the economic viability of each mechanism, the following statements were used:

1. Requires filing fee
2. Requires legal counsel
3. Restitution based on culture and tradition
4. Immediately pronounces decision
5. Decision prevents insolvency in decision
6. Requires presence of witness (es)

In regards to convenience:

1. Allows for the use of local dialect
2. Safety of disputants is assured
3. Procedures are simple and familiar
4. Rules are familiar
5. Prompt resolution of disputes
6. Accepts verbal complaints

In regards to accessibility:

1. Venue is within the community
2. Entertains second person complaints
3. Resolution body is resident in the community
4. Complaints can be filed at anytime
5. All types of disputes can be settled
6. Resolution body is committed to settling disputes

Traditional Dispute Settlement

In the Philippines today, much of the political power held by Sultanates has been weakened by the emergence of other sources of leadership, especially within the ranks of Magindanaun youth (Glang and Convocar, 1978). However, the royal house still performs religious and ceremonial functions and enforces both customary '*adat*' and Quranic laws.

Results from the data reveal that the majority of respondents disagreed with items 1 and 2, portraying TDS or the Council of Elders as seemingly less expensive. What is required, however, is the presence of a witness or witnesses, as claimed by the majority of respondents in item 6.

The term "convenience" encompasses flexibility, cost-efficiency and timeliness in decision-making. Respondents agreed to all six items, demonstrating that traditional settlement mechanisms are viewed as convenient because they allow for local dialects and utilise familiar governing rules, accept verbal complaints, resolve disputes promptly and most importantly, ensure the safety of conflicting parties.

The majority respondents agreed with three items (items 1, 4 and 5), demonstrating a strong perception of TDS mechanisms as occurring within the community, engaging community residents, and allowing for flexible filing of complaints. Overall these responses indicate that respondents largely view TDS as accessible. "Undecided" responses in items 2, 5 and 6 show that many respondents were unsure if traditional mechanisms are truly committed to settling disputes, or have the capacity to settle all types of disputes.

Shari'ah Circuit Court

The SCC is a venue for Filipinos of Islamic faith to air personal and family related disputes. This section deals with respondents' preference for this mechanism using the above-mentioned indicators.

Respondents agreed to items 1, 2 and 6. From these responses, the study determined that the SCC does require disputants to submit a filing fee, have legal representation and a witness or witnesses to proceedings. Regarding item 3 (restitution), an average of 266 respondents agreed with the statement. As determined by responses, the SCC does not immediately pronounce decisions.

These results imply (in terms of restitution and decision) the SCC maintains its own jurisdiction. In the case of item 5 (insolvency), 148 of 289 respondents agreed, whilst 139 disagreed.

Results indicate that the SCC does not allow for the use of local dialects, and that verbal complaints are not accepted.

Results pertaining to the remaining item statements indicate that, most likely, litigation under Shariah law can be lengthy due to fixed rules and procedures that are required to be observed by judges and counsels.

These results could be taken to mean that many respondents are unfamiliar with the rules and procedures of the SCC. They may also have been bolstered by the scarcity of Shariah lawyers available to assist in litigation.

Out of each statement, only item 4 was agreed to, meaning that all 289 respondents agree that complaints may be filed at anytime in the SCC.

Municipal Trial Court

The data garnered from respondents suggests that the MTC does require a filing or docket fee, as well as the presence of legal counsel for disputing parties before the commencement of trial can begin.

Analysis of the data demonstrates that according to respondents, the MTC is seemingly not as economically viable as TDS.

As indicated by 100% of respondents, the MTC does not allow for the use of local dialects in the settlement of disputes. Verbal complaints are also unacceptable in the MTC, again indicated by 100% of respondents.

As far as the safety and security of disputants is concerned, perceptions of respondents were almost equally divided. Concerns surrounding the lack of safety is therefore one of the reasons disputants are hesitant to file complaints with the MTC, a finding that seems to validate the study conducted by Datumanong (2005), Tapa (2010), and Pigkawlan (2008).

The majority of respondents disagreed with item statements 1, 2, 4 and 5, claiming that MTC venues operate outside of their communities. All 289 respondents claimed that the MTC is unable to settle all types of disputes, and many were unsure of the commitment of the court.

Katarungan Pambarangay

The final mechanism examined in this study is the *Katarungan Pambarangay*, otherwise known as the Barangay Justice System. Katarungan Pambarangay is not so much a Court of Justice, but a body tasked with the amicable settlement of local disputes (Orendain, 1989), or cases punishable by no less than a 1, 000 PhP fine and/or imprisonment of less than one year⁸.

Respondents indicated that Katarungan Pambarangay requires no legal counsel, yet disputants are required to provide witnesses as indicated by responses to items 2 and 6. For the remaining items, the discrepancy in responses may be attributed to the amount of information available to respondents in regards to this mechanism.

The majority of respondents agreed with items 1 and 6, indicating that this mechanism allows for the use of local dialect and accepts verbal complaints.

For items 2, 3 and 4, close to an equal number of respondents agreed and disagreed with the statements. It can be said that this discrepancy may once again be attributed to the amount of available information and respondent experience with this particular mechanism.

All respondents agreed that the venues for Katarungan Pambarangay operate within their communities. When asked about whether Katarungan Pambarangay is able to settle all types of disputes, 279 respondents disagreed with the statement, indicating that Katarungan Pambarangay has limited jurisdiction and capacity for the settlement of disputes.

Respondents' Perception of Dispute Settlement Effectiveness

An effective dispute settlement mechanism is considered one that provides balance, efficiency, equity, and voice. Data presented in this study pertains to the examination of perceived levels of effectiveness in the four existing dispute settlement mechanisms.

The level of effectiveness of each mechanism was measured by the following short item-statements using a 5-point scale.

⁸ Gerry Roxas Foundation, Barangay Justice Advocate Manual, Eds., Judge Delano F. Villarruz, p. 69, (Nd)

1. Fairness in making decisions
2. Justness in resolving disputes
3. Customized decision
4. Bespoke in conducting investigation
5. Bespoke in validating information
6. Restores wholesome relations
7. Equality of treatment

Findings

In regards to traditional dispute settlement, results indicate that respondents found the most effective aspects of TDS mechanisms to be their customized decisions and means of validating information. Overall, the data shows that respondents believe that TDS mechanisms are effective measures for dispute settlement in Maguindanao

For the shari'ah circuit court, respondents rated items 6 and 7 as "fairly effective" while items 1, 3, 4 and 5 were rated 'effective.' Only item 2 was rated 'very effective.' These findings suggest that in terms of restoring wholesome relationships and equality, TDS mechanisms are more effective than the SCC in the eyes of the respondents. However, responses to item 2 indicate participants believe that the SCC is more effective than TDS in terms of just dispute resolutions.

In relation to the municipal trial court, all items in relation were rated "fairly effective", with the exception of item 4, which was rated 'effective' by respondents. The analysis of the data shows that respondents consider TDS and SCC mechanisms to be more effective than MTC in settling disputes.

The final dispute settlement mechanism analysed in this study is the 'Katarungan Pambarangay'. Respondents rated items 5, 6 and 7 as 'effective.' This trend in responses was also observed in the same three items discussed in Traditional Dispute Settlement, signifying that 'Katarungan Pambarangay' and TDS mechanisms are similar in terms of effectiveness. In relation to items 1, 3 and 4, respondents rated these items as 'fairly effective', suggesting that in dispute settlement, TDS and SCC mechanisms are more effective than Katarungan Pambarangay.

Conclusion

The objective of this paper was to determine the perceived preferences of those people in relation to the overall effectiveness of existing dispute settlement mechanisms in the province of Maguindanao.

In terms of socio-economic profile, respondents who participated in this study were mostly married males in their early 40's with average monthly incomes beneath the national poverty level. The majority had received basic education, and very few reached or had graduated from college.

Generally, Traditional Dispute Settlement was found to be the most convenient and accessible mechanism for respondents, and the most effective measure for settling disputes in the province followed by Shariah Court, Katarugan Pambarangay and Municipal Trial Court.

These conclusions suggest that in the province of Maguindanao, residents generally believe that Traditional Dispute Settlement mechanisms are most capable of resolving their disputes in an affordable, accessible, convenient and effective manner.

The study also suggests that the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) enact regional legislation that allows for the effective combination of customary and formal laws for dispute settlement in Maguindanao, drawing lessons from the experiences and approaches of regional neighbours such as Fiji, Australia, Indonesia, and Malaysia.

Lastly, it is recommended that a formally organised Local Dispute Settlement body be established throughout the province, as official extensions of barangay governance with appropriate offices and facilities.



**TRADITIONAL CONFLICT RESOLUTION
MANAGEMENT AMONGST THE T'DURAY
IN UPI**

BY
JUWAIRIYA UKA-LINGGA



TRADITIONAL CONFLICT RESOLUTION MANAGEMENT AMONGST THE T'DURAY IN UPI

Conflict is an inevitable part of human life. Nevertheless, in suitable environments it can be managed, prevented and resolved in a healthy manner.

The term 'conflict' essentially describes a clash of interest between parties, which may lead to the formation of negative emotions between the groups or individuals involved. However, in some cases, negative aspects of conflict can actually assist in working towards and achieving positive outcomes. Members of society and organizations ought to understand that in conflict resolution and management, they must first identify ways of effectively integrating conflict resolution procedures and interpersonal skills into real-life situations. These skills are indispensable, especially in responding to the ever-increasing demands and nature of conflict around the world.

In the Philippines, although the Indigenous T'duray people participate in national elections, they are ostracized from the majority of the country and are inadequately represented in the federal government, resulting in a lack of attention to issues and concerns affecting them. In an effort to counter-act this under-representation, communities in lowland, highland and rural areas have developed dispute settlement mechanisms, born from the preservation of traditional conflict resolution methods, for managing disputes through means such as kin mediation and community leader intervention.

The 'Timuay', a tribal system of governance practiced by the T'duray and Lambangian people, is a system characterized by collective leadership and open participation by 'maginged' (citizens) in attending assemblies and forums called for by the 'Baglalan' (tribal title holders). The Timuay system of governance is also territorial, meaning that each tribe has its own specific laws and center of governance. Anthropologists, sociologists and organizations have conducted a number of studies surrounding the conflict resolution methods of these Indigenous peoples, however, there is limited literature on the traditional conflict management methods used by ethnic groups in Mindanao, particularly the T'duray in Upi, of which this study attempts to examine.

Human Needs Theory

Relating the consequences of conflict to the human needs theory is important for helping to understand how resolution can occur. The brainchild of Abraham Maslow, the Human Needs Theory asserts that all people are driven by a desire to fulfill the fundamental human needs of safety and security, love, a sense of belonging, self-esteem, and the ability to attain one's goals.¹

Beyond these basic few, higher levels of human needs exist. These include the need for understanding, aesthetic appreciation and spiritual needs. The Human Needs Theory suggests that a person does not experience these higher needs until the demands of the first have been satisfied and so on.

Human needs theorists John Burton, Marshall Rosenberg, and Manfred MaxNeef adopted Maslow's Hierarchy of Needs in the analysis and resolution of conflict.² They suggest that these needs underlie many deep-rooted and intractable conflicts and perceived human needs as an emergent collection of human development essentials. For them, needs do not have a hierarchical order but rather, are sought simultaneously in an intense and relentless manner³.

According to Gert Danielsen⁴, violence and conflict occurs when certain individuals or groups do not see any other way to meet their respective needs.

¹ Cited in Ebrahim F. Ampuan, "Conflict Resolution Strategies Among the Tausug, Magindanaun and Subanen of Zamboanga Sibugay". Master's thesis, Mindanao State University – Buug, 2009, pp. 14-15.

² Ibid., p. 15.

³ Gert Danielsen, Meeting Human Needs, Preventing Violence: Applying Human Needs Theory to the Conflict in Sri Lanka (Buenos Aires: Universidad del Salvador, 2005) pg.

⁴ Danielsen, Gert

Types of Conflict

Understanding various types of conflict is useful in evaluating and determining root causes and for designing resolution strategies with higher probabilities of success.

Relationship Conflict - Often occurs as a result of misperception, stereotyping and miscommunication.

Data Conflict -Lack of necessary information needed for making utilitarian verdicts can lead to data conflict. Miscommunication and other incompatibilities associated with data collection, interpretation or communication are the major characteristics linked to data conflict. Most will have "data solutions".⁵

Interest Conflict - Often are caused by competition over perceived incompatible needs. Conflict of interest results when one or more of the parties believe that in order to satisfy his or her needs, the needs and interests of an opponent must be sacrificed.

Commonly expressed in positional terms, interest-based conflicts may occur over substantial issues (such as money, physical resources and time), procedural issues (the way the dispute is resolved) and psychological issues (perceptions of trust, fairness, desire for participation and respect). For an interest-based dispute to be resolved, parties must be assisted in defining and expressing their individual interests so that all their needs may be addressed. Interest-based conflicts are often best resolved by the maximizing integration of the parties' respective interests, positive intentions and desired experiential outcomes

Structural Conflict - External forces, such as limited access to physical resources or geographical constraints (proximity) are often the cause of structural conflicts. Organizational changes can make structural conflict seem like a crisis. Structural conflicts often have structural solutions.

Value Conflict -Perceived or actual incompatibility of belief systems can cause this kind of conflict. Whilst it is possible for societies to live together harmoniously with differing value systems, disputes can arise when individuals attempt to force their values on others or are not open to divergent beliefs.

⁵ Ibid.

Certain conflicts can be relatively easy to resolve whilst those of greater magnitudes require strategy and expertise. In the case of the Philippines, lowland and highland communities have devised mechanisms for managing their disputes ranging from kin mediation to the intervention of community leaders.⁶

The strong western influence on the Philippine judicial process has largely affected and replaced traditional approaches of resolving conflict. This has occurred particularly in the realms of mediation and conciliation. Nonetheless, tribal communities have continued to preserve indigenous conflict resolution methodologies.

A study by Schlegel⁷ on the T'duray people, found their concepts of law and justice are mainly based on the people's sense of reality.

Conflict Resolution Strategies

William G. Cunningham⁸ explains that the human needs theory provides a new dimension in conflict theory. He explains that it offers an important conceptual tool that not only addresses human needs on all levels, but also recognizes the existence of negotiable and non-negotiable issues. Consequently, the human needs approach makes a case for rejecting traditional negotiation models that do not take into account non-negotiable issues, a win-win or consensus based solutions.

Regardless of how sophisticated some conflict resolution concepts may be, in traditional cultures time tested ways of resolving conflict continue to exist.

Parallel to the idea of the significance of traditional methods, Augsburg's⁹ book, *"Conflict Mediation across Cultures: Pathways and Patterns"*, presents four basic propositions in regards to thinking about cross-cultural conflict. These are our patterns of either-or, win-lose forms of resolution preventing us from exploring alternative solutions; people in conflict are the least able and equipped to settle their own disputes and that the traditional ways of settlement must be broadened into more creative ways avenues such as mediation and negotiation; conflict across

⁶ Ibid

⁷ Stuart A. Schlegel. *Tiruray Justice: Traditional Tiruray Law and Morality*. University Of California Press. London, p.79

⁸ William G. Cunningham. *Theoretical Framework for Conflict Resolution* as cited in Ebrahim F. Ampuan, *Conflict Resolution Strategies among the Tausug, Magindanaun and Subanen of Zamboanga Sibugay*, Master's Thesis.2009, p. 17

⁹ Ibid.

cultures highlights the problem that our accepted theories of conflict and the way humans interact, goes against our conventional wisdom in regards to our accepted forms of social contract, and regardless of how well versed some may be in conflict resolution, there exists in traditional and more primitive cultures time tested ways of resolving conflict that challenge what more learned or sophisticated societies may think is the correct way; and lastly, a universal method of achieving conflict resolution would be inappropriate for the reason that there exists in every culture a particular way to resolve problems that works for them based on their shared values and history.

Conflict resolution is an important skill to possess when working with others, but it is necessary to understand the root of the conflict before employing strategies to resolve it. One misconception is that conflict is a negative thing; however, conflict is one of the greatest opportunities to strengthen a relationship.

Teams who are able to work through conflict become more likely to succeed in the future. Conflict resolution in personal relationships is no different. The best strategies for resolving the conflict are going to depend on the situation. Some conflicts need to be resolved immediately. Resolving a conflict with peers may seem much different to resolving a conflict with your boss.

Approaches to Managing Conflict

To fully understand how to manage issues of conflict between agencies or organizations aiming for the same essential goals would first require an appreciation of why conflicts arise. Reflecting on the past and examining the relationship could be beneficial in recalling the central theme of the dispute and analyzing its causes.

Various perceptions of the situation can often be a source of conflict, but can also contribute to its resolution through sharing and establishing an understanding based upon a mutually accepted assessment of the scenario. People from various cultures often have radically different views about how a situation can progress. Conflicts of this nature can often be addressed by establishing a mere understanding of the opposing culture.

In today's environment, the general actions necessary to prevent emerging conflicts prior to escalation is to schedule and attend regular meetings. In attendance at these meetings should be the leadership of conflicting agencies and the stakeholders involved in the efforts. These 'get-togethers' should be established on a regular,

scheduled basis so that the members involved know they have access to a forum where they can voice their concerns. Managers should promote a philosophy of openness and free exchange of information at these meetings. This can lead to other partners recognizing pre-emptive conflicts before they become a major issue. Dealing with prevention is usually a much easier process than attempting to resolve an open-wound issue. Trust between the various parties involved and between the leaders in the community and the group may be difficult to establish initially but it can be nurtured and built upon by taking all concerns seriously and being honest with the partners involved. Withholding critical information from stakeholders fosters distrust amongst members who will eventually withhold their findings as well.

An approach by Andres, as cited by Datumanong¹⁰, is to repress differences, that is, open expression of differences amongst members of a unit are not allowed to emerge by placing a continuous emphasis on loyalty, cooperation, teamwork, and other similar values within the group. This approach is common amongst managers in the Philippines. They emphasize loyalty to themselves by creating an atmosphere of repression and by consistently rewarding agreement and cooperation.

Thamhain & Wilemon studied the use of the following four approaches to managing conflict as cited by Datumanong¹¹. The cooperative approach places an emphasis on mutual goals, joint benefit, and the incorporation of several views for a team solution; confirming conveys that the other person is accepted and avoids blaming or trading insults; the competitive approach assumes that conflict is a win-lose struggle. There is a use of force and coercion to make team members conform to one perspective; and avoidance attempts to maintain harmony and smooth over any differences between members. This method avoids frustration and aggression.

Conflict Management

To prevent conflict from intensifying, the root causes of conflict should be identified and dealt with at an early stage.

According to Ember, as cited by Datumanong¹², transgression of the law by individuals can give rise to the use of force by authorities. Hence, the state has a

¹⁰ Abubakar M. Datumanong, *The Magindanaun Datus: Their Role in Resolving Conflict*, Dissertation in Notre Dame University, 2005, pp. 22-23

¹¹ Ibid.

¹² Ibid.

monopoly on the use of force and the right to coerce citizens into submission with regulation and custom. This indicates that anyone who violates the law can be sanctioned by the State.

Studies conducted by anthropologists¹³ in various Indigenous communities reveal that amongst these groups of people, traces of traditional values pertaining to conflict resolution remain.

Amongst the Mamanua community, the Datu (tribal council) is the authority that presides over conflict resolution. However, in special cases, other members of the community who are not authorized leaders are permitted to amicably resolve conflicts. This exemption is especially applicable if the conflicting parties involved are members of a family. In this case, a well-respected relative is permitted to intervene on family matters in the hopes of avoiding scandal.

However, if the conflict is serious and/or non-indigenous people are concerned, the Barangay Chairman is requested to settle the dispute.

Likewise, among the Manobo, no person is permitted to settle disputes without the authority to do so. However, an exemption exists where certain individuals may be allowed to arbitrate only in limited circumstances. First, in the absence of the Datu (tribal council), an elder from the community with knowledge of customary laws is allowed to settle a simple case. Second, if a marital discord occurs, a relative is permitted to intervene and attempt to resolve the conflict. Arbitrators usually investigate the case by seeking evidence and witnesses to testify and settle the dispute amicably. If the matter cannot be resolved, it is then passed on to the tribal council.

Among the Tala-andig, conflicts occur when customary norms and laws are violated, or when a person's rights have been infringed upon. This type of conflict is only able to be settled by "batasan" (custom law), and resolution occurs under the following two general laws.

First is the "Lagitip ha Batasan", which incorporates payment by way of goods in conflict resolution. Presently, this law serves as a basis for settling other cases wherein the Datus, or tribal councils demand a specified amount of goods as payment for their services or as a penalty.

¹³ See Burton and Canoy (1991), Mastura and Buat (1975), Garvan (1931) as cited by Domingo S. Aranal, "Conflict Resolution Strategies Among the Tausug of Jolo". Master's thesis, Notre Dame University, 1999, p. 26.

Second is the “Saungangen ha Batasan”. This is a law that uses a method similar to the “Lagitip ha Batasan”, but demands lower penalties.

Serious family problems are usually referred to the Datus for arbitration depending on the gravity of the offense. Appropriate payment is also demanded from the offender.

The findings of Burton and Canoy’s study, as reviewed by Aranal¹⁴, indicate that these three indigenous groups maintain different ethnic and cultural identities. There are however, similarities in the manner in which they perform conflict resolution.

Indigenous conflict resolution occurs in a way where the victim and offender meet before the arbitrators. The decision made by the lead arbitrator is strengthened by a belief that divine intercession plays a part in the decision.

Methodology

The respondents in this study were a total of fifteen Kefeduans, the legal specialists of T’duray customary law.

The study employed a descriptive qualitative method to gain a greater understanding of traditional conflict resolution and conflict management amongst the T’duray. The triangulation method was also used in this study, incorporating Focus Group Discussion (FGD), key informant interviews, survey and content analysis. Qualitative research emphasizes what people think and demonstrate through their cultural context and daily life in their communities. It is crucial to note that one general characteristic of a qualitative research method is naturalistic inquiry – that is, learning and observing people or events in their natural surroundings.

Questionnaires comprised of a structured set of questions were used to collect data from respondents in relation to their age, civil status, occupation, education and experience in conflict resolution. Second, a FGD guide was used to examine T’duray perceptions of how Kefeduans perceive peace, the approaches they use in conflict management and the limitations they encounter during the process.

Lastly, key informant interview guides were used to study the experience and knowledge of Kefeduans in regard to conflict management, based on their traditional customary laws, the types of conflict brought to them and the methodologies employed for conflict resolution.

¹⁴ Ibid.

Analysis

This chapter recounts the comprehensive processes of traditional T'duray conflict resolution, and a set of rules followed by both parties in conflict and the T'duray community.

The life of the T'duray is governed by their adat (standard of conduct or customary law) (Schlegel 1970:299). It is a norm that dictates what "they ought to do and how they ought to do it" and is referred to as their 'creed', or 'Tegudon'. (Schlegel 1970:299). Like many other Indigenous peoples, the Tégudon is passed down orally from generation to generation. Generally, the T'duray try to avoid committing acts with the potential to give rise to ill feelings in the community. When this rule is transgressed, the Tégudon offers guidance on how to restore harmony amongst victims, families and members of the community, and is the basis for justice and development in the community.

The Kefeduwans lead the council of elders and are spokesmen for the village. They are considered the official authority or moral leaders of the T'duray. They participate actively during discussions at a Tiyawan, are familiar with the smallest details of T'duray custom and can reason rationally and convincingly on matters with appropriate interpersonal skills. The Kefeduan are mostly male, 35 years old who are literate. There are women Kefeduwans who preside in the Tiyawan when necessary. Schlegel (1970: 59) states that being a Kéféduan is not a profession, political position or social rank. Outside the Tiyawan session he is like any other T'duray who participate in domestic activities. In some instances a Kefeduan could be charged with lying (tugien); if he agrees to conclude a Tiyawan and then fails to keep the promise, the Kefeduan loses respect in the eyes of his fellow Kefeduan. In addition he cannot engage in a Tiyawan alone unless accompanied by another Kefeduan who is trusted and has integrity when making informed decisions.

As peace-loving people; the T'duray try and avoid committing acts that would give rise to ill feelings in the community. When this rule is transgressed, the Tégudon offer guidance on how to restore harmony among the victims, family and members of the community. This is the basis used for justice and development in the community. A study of Schlegel's (1970) on the T'durays established that their concept of law and justice is based mainly on people's sense of reality. Nevertheless, the rule of law lies in the hands of Kefeduwans who manage the Tiyawan every time conflict between two people arises. T'durays are sensitive when it comes to dealing with moral issues; according to Schlegel (1970), the

moral rules are the sole source of any rules recognized as legally valid for purposes of legal action in the Tiyawan.

Conflict is an inevitable aspect of life; the T'durays are not exempted from it. As a matter of fact they established cultural norms and standards to guide people long before intruders invaded their land. The common cases addressed by the T'durays include land disputes, acts of lasciviousness, attempted rape, marital problems, murder, gun toting, family feuds, stabbing and physical injury, and commodity or trading problems.

In terms of how conflict is resolved, first, the Félolok (filing of the Case) is performed by reporting the incident to the Kéféduan, who will then suggest possible resolutions for the case to both parties. The Kéféduan involved in the case will coordinate ways to liaise with both parties and deliberate on the action to be taken.

At this point, the offender and victim are informed of when the proceedings will occur, to provide time for preparation. Lastly, the Tiyawan (proceedings) take place. Statements made during the hearing can be translated into a variety of languages depending on the linguistic requirements of participants.

The Adang is the initial stage of the Tiyawan process where both parties exchange greetings in order to create a sense of familiarity and reduce tension between the offender and victim. If all parties involved are present, the Kéféduan in charge will then recount the material brought forth regarding the case.

In addition, the rights (Séfétukol) of both parties are clearly stated. Anything that cannot be resolved during the session can be reassessed at a later date by the Kéféduan. The Timfad, one of the Kefeduan, will then make the final decision after consulting all who are present. Férédaan is known as a unanimous decision.

In cases of rape (lémnudég), if both parties are single, the woman will be asked if she wishes to marry to the offender. If she obliges then the offender will give dowry to the woman's family following the normal process of marriage. If either the victim or offender is married, the case will follow the process of Ménbuwa.

As for murder (Ménggéféléhu), the rights shall favor the family of the victim. However, the manner in which the offense was committed shall be taken into consideration, and should the suspect present valid reasons for committing the crime, for example, in cases of self-defense, the final decision shall favor the

offender over the victim or their family. Today, penalty for committing this crime ranges from ten thousand (10,000) pesos to as much as twenty thousand (20,000) pesos excluding other damages.

Cases of robbery (Ménakaw) are dealt with in several ways. Mowih is the act of secretly stealing the property of another without the owner's knowledge. The stolen property is returned to the victim and the offender usually gives an added sum as penalty paid to the village equal to one and a half times the amount of the stolen property. If the stolen items are no longer with offender, the equivalent cost of said items shall be returned to the rightful owner.

When settling conflict between the T'duray, discussions about the conflict take place and methods of resolution are suggested to those involved. Participants of the Tiyawan process are the Kéféduan (legal specialists), the relatives of both parties, the victim and the offender. The proceedings are conducted in a democratic manner where the participants sit in a circle and in no particular order. Schlegel (1970: 65-66) observes: "There is no set placement for any individual, and many who leave for a few moments to discuss something privately or go to the powder room return to different places than they had previously occupied. Those who represent the same party in the Tiyawan need not sit beside each other or in any set location with regard to the Kefeduan or the other party." The Kéféduan of the victim will then contact the Kéféduan of the offender. The Kéféduan of the victim and the offender will meet for preliminary discussion and set the dates for the Tiyawan.

Once the Tiyawan has begun and after the deliberations, a Kéféduan will then propose a decision. He will await responses and reactions from the parties, and, if there are none, a unanimous decision is handed down. If certain parties are dissatisfied with the decision, discussions will continue until a consensus is reached. Once consensus is reached all parties agree to abide by the agreement.

When an offense is committed, the victim immediately reports the case to the Kéféduan. To become a Kéféduan, one must respect the rules that constitute the body of customs and have the ability to reason clearly and convincingly on all matters brought before them.

Schlegel (1970: 59) states that being a Kéféduan is not considered to be a social or political position. Outside the Tiyawan he is an ordinary T'duray man. Tiyawan is not confined solely to settling only disputes but also for formal negotiations between businesses as well as matters concerning marriage.

T'duray Traditional Conflict Resolution Management

The primary conflict resolution method employed by the Kefedewan is the Timuay justice system. Among the Tribal Justices, the Fagilidan (Tribal Appellate Court) is considered to be the highest court. The Fagilidan formulate the governing rules and guidelines of the Tiyawan process, which are then submitted to the Congress of Kefedewan for approval. The Kefedewan and Fagilidan serve as important conflict resolution institutions for the T'duray, who have limited access to the Philippine formal justice system. Among the T'duray, traditional beliefs enforced through the Timuay justice system, like that of communal ownership, have isolated them from the rest of the country, and has weakened their access to more formal institutions of conflict resolution in the Philippines.

The Timuay Justice and Governance (TJG) have been preserved throughout T'duray history. The entire community adheres to a social guide known as the Ukit, which has a preamble and four chapters, similar to a constitution. The first chapter details the policies and principles followed by the Baglalan, the T'duray, and the TJG, while the second chapter lists the rights of community members and responsibilities of community leaders. The Ukit's third chapter contains the structure of governance and the various forms of leadership from the Inged (tribal territory), Remfing Fenuwo (village cluster) to the Fenuwo (village). It also includes roles played by particular leaders either in Minted Sa Inged, Kasarigan and Kefedewan and the obligation of all within the Timfada Limud.

The Kefeduan ensures that the rights of the victims in each case are always respected. If the conflicting parties are not satisfied with the decision of the Kefeduan, they continue discussions until a consensus is reached. All parties then agree to abide by the Kefeduan ruling.

Conclusion

Economically and politically marginalized from the larger community of Filipinos, the T'duray have developed their own traditional conflict management approach based on their moral laws to help them effectively govern their communities. The T'duray system of justice is largely restorative rather than punitive, recognizing and addressing the needs of all parties involved. The agreement reached in the Tiyawan prioritizes reintegrating the victim into society over reprimanding the offender.

Although this traditional justice system has been used for hundreds of years, it has been adjusted frequently to correspond to changing beliefs, institutions and attitudes. Conflicts are settled in this manner through a series of *Tiyawan* to engage the community and maintain good relations amongst its members. Above all, the *T'duray* justice system seeks to protect the rights of all those involved, including the victim, offender and the community at large.

In regards to the purpose of the study, the *Kefeduan* are mostly male, married farmers in their thirties, and are typically known for their extensive interpersonal skills. They are familiar with *T'duray* customs and laws and actively participate in discussions held at the *Tiyawanare*. In some of the more critical cases, a select number of female *Kefeduan* are also consulted.

When conflict in the community does arise, the *Tégudon* (Creed of *T'duray*) provides a moral framework for proceedings. The *Tégudon* gives guidance on issues such as how to maintain the dignity of the victims, the offenders and other community members, and is often used as a basis for legal action in the *Tiyawan*.

Common issues resolved through the traditional methods of *T'duray* conflict resolution include land disputes, such as boundary infringements, family or marital relations, gun possession, murder, rape and robbery.

Forms of conflict resolution depend on the nature of parties involved. Most individuals settle conflict through the *Tiyawan* or *Kefeduan*, but if both parties are Muslim, then the conflict is resolved before the *Kokoman*. If it is a cross-tribal case, the Mayor's Council sits en banc, whilst cases remaining unresolved are ratified by police for proper arbitration. On August 25, 2001, Mayor Ramon Piang Sr. issued Executive Order No. 4 which created the Mayor's Council and launched the program called "Tri-People Way of Conflict Resolution."

This council's primary function is to amicably settle cases arising between residents of *Upi* and outside parties. The council has its own sets of rules and regulations that are followed when disputes are settled. To ensure equal representation, the council is composed of six representatives, two from each group, who are elected through a general consensus to assure the council decisions will be recognized and respected.

In terms of recommendations, the study suggests that *Kefeduan* who are active in the process of mediation become more involved in familiarizing their communities with customary laws. This may be achieved by conducting trainings or seminar

workshops for T'duray youth allowing them to practice and refine their skills in mediation and arbitration, so that they are less reliant on Kefeduan if and when conflict does arise.

In addition, it is recommended that other indigenous peoples of the Philippines review their conflict resolution methodologies to ensure stability and prosperity within their respective communities.

Lastly, it is advised that in addition to the codified customary laws of the T'duray, the Lambangian customary laws are actively supported by indigenous people to allow for the establishment of more peaceful and sustainable environments.

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