

Summary

Sharia in the Netherlands

A study of Islamic counselling and conflict resolution among Muslims in the Netherlands

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This research has been carried out on behalf of the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatie Centrum, WODC*) of the Ministry of Justice and the Ministry of Housing Spatial Planning and the Environment/Housing, Communities and Integration (*ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer/Wonen, Wijken en Integratie*). It meets a commitment made on 2 July 2009 by the Minister of Justice, Hirsch Ballin, after questions by Members of Parliament, to commission research on the possible existence of sharia courts of law in the Netherlands. The research was carried out by a multidisciplinary team of researchers at Radboud University Nijmegen and is intended to provide an inventory of the nature and extent of sharia based conflict resolution in the Netherlands.

Research problem and methodology

The main question of the research is: *does sharia based conflict resolution have place in the Netherlands, to what extent and for what type of conflicts?* This question is subdivided in three clusters of sub questions which address respectively:

1. The nature of such sharia-based conflict resolution and counselling as are found to exist;
2. The actual practise of such conflict resolution and counselling;
3. The place that such conflict resolution and counselling occupy in Dutch society according to those concerned.

We chose not to equate the concept of conflict resolution (*geschilbeslechting*) in the context of sharia with the administration of justice (*rechtspraak*). 'Administration of justice' suggests the authority of a court of law; an official institution recognised and observed by government. The Dutch legal system does not contain sharia-based courts of law (*shariarechtbanken*) or administration of justice based on sharia (*shariarechtspraak*). Use of these concepts could be wrongfully understood as suggesting official authority, and also as implying that clients attribute the authority of a court of law to such institutions, an issue the validity of which this research seeks to determine. Whether any type of binding authority can be discerned in conflict resolution based on sharia, and whether 'conflict resolution' hence is a useful concept to describe what goes on, thus are important elements in exploring the nature of sharia-based conflict resolution.

The two central concepts of the research problem are 'conflict resolution' and 'sharia'. The status of sharia-based conflict resolution in the Netherlands is diffuse. Numerous variations exist between the poles juridically binding conflict resolution as is practised by courts of law, and informal counselling. Exactly where between these two extremes a given case of conflict resolution or counselling is located, depends on the nature of the issue under consideration, the context of the party (parties), the third parties approached, the authority ascribed to

these third parties and the (experienced) binding force of the proposed solution. Such conflict resolution can hence be practised by a broad spectrum of non-official authorities who are recognised, to a greater or lesser extent, by their audience, although their solutions are by no means necessarily seen as binding. We distinguish between sharia-based conflict resolution and counselling to clarify this nuance. Within the scope of this research conflict resolution refers to a situation in which one or more parties submit a conflict to a third party and request that party to give a solution based on sharia rules. Sharia hence concerns laws and rules as well as directions and advice. Because of this we initially chose to use a basic definition of 'sharia' as 'Islamic law', but we chose to replace this definition with 'Islamic norms and values' when research results made clear that our initial definition contained an unwarranted emphasis on law.

The research had to be carried out within the short timeframe of three months. This period was too short to allow us to carry out a random sample survey among Muslims in the Netherlands. Moreover, as very little was known at the time regarding the role of sharia in the Netherlands, we decided to use a qualitative (variable-oriented) approach. We conducted in-depth-interviews with 93 respondents using topic lists and used three panel discussions to test the validity of interim findings and working hypotheses. In order to obtain a sample that mirrored the diversity of opinions and ideas among Muslims in the Netherlands, we selected our respondents on the basis of ethnic diversity, gender, and descent (first, second or third generation migrants) and religious tendency. Our aim was to describe sharia in practice based on the knowledge and experience of our respondents as we wanted to obtain our research data directly and from sources which could be checked and falsified. Yet we also aspired to obtain as complete an image as possible of the role of sharia among the Muslim population of the Netherlands and hence selected our respondents with a view to their expected knowledge of and insights into the situation within their own community and –occasionally- within a broader social context. As a result, the percentage of 'experts in Islam' among the respondents amounts to 44 percent, which is a higher percentage than a random sample would have contained.¹

Respondents about sharia

Respondents define sharia in different ways. A small minority considers sharia mainly as a legislative system; a larger group considers sharia as mainly referring to the religious rites of Islam, whereas the majority understands the concept as a broad system of norms and values. Many respondents pointed out that they do not consciously refer to sharia or actively engage with the concept, and that it

1 In the research we define 'experts in Islam' as persons adhering to Islam who have been specifically educated in Islam which gained them intrinsic knowledge of sharia, who often have a public role within an Islamic community and are pointed out by other members of that community as people possessing substantial knowledge of sharia. In this research the Group of respondents defined as Islamic experts comprises among others imams, theologically educated members of mosques' boards and teachers of Islam operating within mosques or independently.

hence does not take a prominent place in their daily lives. Furthermore they associate sharia with the executive and normative aspects of religion rather than with actual legal matters.

Respondents did not express a concrete desire to have sharia introduced in an official capacity in the Netherlands, as many of the sharia rules which respondents deemed of importance can already be carried out within Dutch law. Moreover, a majority of respondents maintained that sharia decrees that Muslims must follow the law in force where they live or, should this pose insurmountable problems, move away. Nonetheless respondents perceived a normative and regulating role for sharia in the Netherlands. Government, some respondents feel, is missing out by not using the opportunities sharia offers to, for instance, safeguard the position of Islamic women who divorced their husbands according to Dutch law, by also arranging a divorce according to sharia. Also, religious authorities could assist by confronting criminal Muslims over the latter's behaviour and fear of God. Muslims in the Netherlands do not univocally argue for the establishment of an official national sharia institution, as the Muslim population is ethnically and religiously divided and finding individuals who would be acceptable as representatives on the national level to all Muslims in the Netherlands would be highly problematic.

Sharia-based counselling

Sharia is an abstract concept for which, we found, a description as 'proper Islamic behaviour' closely captures most respondents' understanding. Many Muslims in the Netherlands hardly reflect on the correct and consistent application of sharia rules in their daily lives. Only when confusing or new choices occur, as may happen with a certain regularity to a Muslim in a non-Muslim country, do most respondents find reason to ask an authority for counsel as to the proper conduct according to sharia. Respondents discern a broad scale of persons who may be asked for such counsel. Family, friends, exemplary individuals, imams and mullahs within the country or abroad, members of the boards of mosques or other religious or cultural organisations are examples. Moreover, Muslims can obtain knowledge of sharia themselves through books or the internet and so critically consider the counsel they received. Experts in Islam need to dispose of an extensive and certainly more than average knowledge of their religion, if they are to be considered as an authority. They also must be capable of formulating their counsel in a manner relevant to Muslims in Dutch society. Respondents state that counsel by given is not binding. Anyone can consult various experts on the same matter in order to decide upon the proper way to act. It does happen, however, that those that seek counsel are pressurised by their social environment to follow to follow received counsel. Our research did not show that such pressure is exercised frequently. Whether pressure is exercised to seek counsel or act upon such counsel as has been received largely depends on the specific circumstances of the social group, the subject on which counsel is sought and the circumstances of the moment.

Respondents are aware of the influence that pressure exerted by the social group might have on one's decision, but all maintain to never have followed a religious expert's counsel because of such pressure. Some, ethnically diverse respondents do however state that they have experienced pressure exerted by their families in conflict settlement. Several young respondents pointed out that they feel that both the effect of decisions by experts in Islam and the influence of social pressure are in decline. They maintain that young Muslims are more individualistic than older generations and are less concerned with the maintenance of strong ties to the own community. Young Muslims are more capable to find their way in Dutch society than older generations are, and therefore better positioned to decide upon their courses of action for themselves.

Conflict resolution based on sharia

Various forms of conflict resolution based on sharia exist among Muslims in the Netherlands. A minority (17 percent) of the respondents whom we did not consider as experts in Islam reported explicitly to have experiences of such conflict resolution. A larger minority (31 percent) knows of the existence of such conflict resolution through friends or family. Research results indicated conflict resolution based on sharia to be a flexible concept. Most respondents initially turn to close friends or family for counsel, as has been discussed in the preceding paragraph. If this fails, they might approach an expert for a decision. In such instances, parties and experts together aim to find a solution; preferably one that is approved by all parties involved. Usually the solution can be substantiated religiously by an expert, but such religious substantiation is not dominant. Sharia rules are used to provide direction, as normative limitations of possible solutions and to 'officially' confirm the validity of settlements arrived at. A combination of these three aspects is quite possible and likely occurs more often than strict application of a single aspect. Imams and other experts in Islam indicated that they preferred to settle a conflict in concert, which makes it more suitable to speak of conflict settlement rather than conflict resolution per se. The binding force –if any- of such solutions lies in the authority of the expert engaged. Although most respondents declared that such a solution does not have to be complied with, they added that a party's family, friends or other members of the social group, might exert pressure on that party to comply with the decision. It does take place that parties disregard a decision, yet this becomes increasingly difficult as the parties' social groups become more involved in the settlement process. The room for manoeuvre that parties have within the process, the mediating role of the expert whose authority is solicited and the absence of binding force of the suggested solution, lead us to conclude that it is more appropriate to speak of conflict settlement rather than conflict resolution.

The role of internet and television

Counselling based on Islam does not only take during actual meetings between those asking for counsel and expert(s) in Islam. Internet and television have an important position. Internet pages are visited in order to obtain information regarding the proper Islamic way of life or ask questions on that way of living to experts in Islam through expert's websites, or to other Muslims on discussion forums. Respondents read blogs maintained by widely known as well as by largely unknown experts in Islam and watch movies of lectures or sermons on *YouTube*. Internet allows one to 'shop' between forums and advisors and obtain multiple answers to a single question, which are then used to inform one's own decision.

Respondents using internet were mostly below forty years of age. The percentages of men and women using the internet appear comparatively similar, but the extent and nature of internet usage do differ among the sexes. Women use the internet more frequently than men as a medium to obtain counsel. One reason is that women prefer not to put questions pertaining to relations or sex directly to the mostly male experts, such as the imam, in their social environment. The relative anonymity that the internet provides is a welcome alternative.

The large variety of counsel available and the relatively unbounded authority of experts consulted through the internet are, respondents feel, a major problem as well. The meaning of texts and counsel is not always clear and on the internet everyone can present himself as an expert in Islam. Respondents hence consider the diversity in outlooks as a reason to be careful in consulting forums or persons through the internet, and to be critical in accepting counsel and explanations. To complicate matters further, a *fatwa* given by an expert in Islam in a foreign country cannot always be directly applied in the context of life in the Netherlands. Yet often such experts fail to 'translate' their counsel, thus creating a new problem for the person seeking advice. In these circumstances as well 'shopping' for additional counsel or searching for 'translators' are considered useful strategies. Some respondents make it fully clear that they will follow such counsel as best suits their own ideas and understandings, although they add that they consider the reputation and status of the councillors as an indication of the counsel's validity.

The internet does not seem to be used for conflict settlement. Respondents pointed out that the lack of a physical meeting in which parties and councillor together try to find a solution, make the internet an unattractive medium for settlement practices. The anonymity of the internet, and the ability of the medium to do away with physical distance, aspects found advantageous when using the internet in order to obtain counsel, are thus seen as disadvantageous for conflict settlement.

General conclusions

The research findings show that counselling and conflict resolution based on sharia do have a role in the Netherlands, but that they generally come to the fore

as attempts to agree upon the best solution under the given circumstances. Sharia is referred to in order to test the religious validity of the proposed solution. For nearly all respondents sharia in the Netherlands is dissimilar to sharia in, for instance, Pakistan or Morocco. Our respondents pointed out that they live in a Western democracy and must, whether they agree to them or not, obey the laws of the state. Each Muslim must find a *modus vivendi* for him-, or herself in following Islamic rules in a non-Islamic country. We hence feel that our initial definition of sharia as 'Islamic law' places, with regard to the lives and experience of Muslims in the Netherlands, too much emphasis on 'law'. A definition of sharia as 'Islamic norms and values' seems more accurate.

We have found no indications of the existence of a 'sharia court of law' (*shariarechtbank*) in the Netherlands. Moreover, the ethnic diversity of the Muslim population in the Netherlands makes it unlikely that such an institution would be accepted by all groups without diverse interpretations of, competition over, and doubts regarding the institution's authority. The situation in the Netherlands hence does not resemble the arbitration that has place in Great Britain and where compliance with a decision reached by the *Muslim Arbitration Tribunal* can, in principle, be enforced by a court of law. In the Netherlands, the practice of conflict resolution based on sharia does not have the status of arbitration, since Dutch law does not allow for arbitration for such (family law) subjects as respondents indicate to be subject to conflict resolution. In so far as a comparison with a legal form can be made, mediation probably comes closest. Led by an expert who actively participates in the process, parties seek to come to a solution that is acceptable to all involved and in line with the law in force. It is important that the solution is actually accepted by parties since compliance cannot be legally enforced. Social pressure can be an alternative to legal or judicial enforcement, but if pressure results in oppression the law is on the side of the oppressed. We hence believe that such events cannot be considered as sharia based conflict resolution, but rather should be seen as conflict settlement.