



SPECIAL REPORT

2301 Constitution Ave., NW • Washington, DC 20037 • 202.457.1700 • fax 202.429.6063

ABOUT THE REPORT

Much has been written about the practice of restorative justice in democratic settings where the rule of law is respected, but much less is written about applying restorative justice in transitional settings. Focusing on Libya, this report highlights some of the opportunities and obstacles inherent to a transitional setting, calls for a deeper understanding of customary law as it is practiced in Libya, and suggests how customary law could be used to help establish restorative justice there. The report is part of a portfolio of rule of law work that the United States Institute of Peace (USIP) is carrying out in Libya.

ABOUT THE AUTHOR

Najla Elmangoush is a professor of criminal law at Benghazi University and a former private-sector attorney. Currently a Fulbright scholar and USIP country representative in Libya, she previously headed the Public Engagement Unit in Libya's Executive Office of the National Transitional Council, which handles outreach with newly emerging civil society organizations. Elmangoush holds a bachelor's degree in law (Garyounis University) and master's degrees in criminal law (Benghazi University) and conflict transformation (Eastern Mennonite University).

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Najla Elmangoush

Customary Practice and Restorative Justice in Libya

A Hybrid Approach

Summary

- Since the death of Muammar Gadhafi in October 2011, violence in Libya has increased dramatically. Armed groups, whose ranks have grown since the revolution, have coalesced into two warring factions. Explosions, assassinations, kidnappings, and fighting between militias are commonplace. The central government is extremely fragile.
- Reconciliation initiatives have failed to end the violence. Some have been too short lived, others too narrowly focused.
- Libya's formal legal system is in disarray, leaving traditional leaders to handle a wide variety of crimes. They are also playing an essential role in resolving not only violent conflicts between families but also broader ones, such as those between militia groups and the government.
- Conflict-related crimes and those involving human rights violations are most appropriately dealt with by a formal legal system, however.
- Legalistic and punitive processes will not be enough for Libya to make the transition from war to peace and to address its legacy of violence. To do so, the country must also turn to restorative justice and its focus on the needs of victims, offenders, and the community.
- Most studies of restorative justice have focused on democratic settings rather than transitional societies. Restorative justice in places such as Somaliland, however, suggests that it might also be effective in Libya, given the many concepts and values that the customary system and restorative initiatives share.
- In integrating restorative principles with customary practices—thereby transforming the relationships that sustain violence—Libya would create the opportunity to move toward peace and stability.

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- When the formal legal system is rebuilt, legislation should be introduced to integrate customary practices into the formal system, which would give traditional leaders an enduring role in mediating disputes.

Introduction

The violence associated with Muammar Gadhafi's decades of dictatorship continue to plague Libya four years after the end of his regime. Local and international reconciliation initiatives have failed to break the violence, whose roots extend deep into Libyan society and reach back into the colonial period. Ibrahim Sharqieh, deputy director of the Brookings Institution's Doha Center, notes that this long legacy of violence is the main obstacle to peace in Libya.¹

The potential for sociopolitical change emerged with the revolution in 2011. By the time the revolution ended, however, some fifty thousand Libyans had been killed—and many continue to die.² The deep personal and structural wounds inflicted on society need time and assistance to heal, but the fragile state and its degraded legal system cannot provide that help.

National and international policymakers have sought ways to promote stability and human security in Libya in the absence of a strong state and robust institutions. They have looked for ways to resolve the conflict, or at least to manage it. But the only way to bring enduring peace to Libya is to transform the conflict. Libya urgently needs to launch a process of conflict transformation. Whereas many proponents of conflict resolution regard conflict as something negative that must be controlled or ended, conflict transformation, as one of its chief exponents—John Paul Lederach—describes it, involves recognizing “that social conflict is naturally created by humans who are involved in relationships.” Conflict transformation is intended to create “constructive change that reduces violence” by increasing “justice in direct interaction and social structures” and responding “to real-life problems in human relationships.”³

This report argues that restorative justice—an approach that Mennonite communities in Ontario and Indiana developed in the 1970s—must be an essential component in any successful Libyan conflict transformation process. According to Howard Zehr, the father of restorative justice, “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”⁴ Restorative outcomes may be particularly important to justice within transitional societal settings characterized by perpetual conflicts at the community level.⁵

Restorative justice shares certain values and concepts with Libya's customary system of law and governance. Conducted by traditional and religious leaders, the customary system was given a greater role in Libyan society during the Gadhafi regime, especially from the 1980s onward. Rather than try to ignore or control this legacy, we should think about creative ways in which we can transform both colonial and Gadhafi legacies into healthy relationships capable of helping and healing society. Moreover, by making the customary system an integral part of their restorative justice strategies, policymakers and practitioners can reach a majority of Libyans, for whom customary justice is both an accessible and an acceptable means of resolving their disputes. As and when the formal system is built or rebuilt, customary practices can be woven into it, creating a balanced, stable mechanism for resolving conflicts.

A new vision of restorative justice is needed, one that integrates restorative justice practices with customary practices to create a hybrid approach to conflict transformation in Libya. Such a model has the potential to be used not only in Libya but also in other transitional countries.

This report is designed to stimulate debate. Our knowledge of the Libyan system of customary law is still somewhat limited by the scarcity of comprehensive scholarly studies of the subject, so some uncertainty necessarily attends any assertions. We need to consider—now, while Libya’s formal justice system is in disarray and conflicts of different kinds are threatening the lives and well-being of Libya’s people—how the customary system might further conflict transformation. Whether the UN efforts under way at the time of this writing to facilitate political dialogue between Libyan stakeholders bear fruit, Libya will need not just political cooperation but also conflict transformation to move toward a brighter future.

The Roots of Libya’s Current Crisis

To understand Libyan culture and sociopolitical structure, one must first appreciate the powerful influence of two historical legacies, one of violence, the other of divisiveness. By examining these carefully, Libyans and members of the international community will be better able to see that what appear to be obstacles to the peace process may actually be opportunities to foster positive societal change.

A Legacy of Violence

The pattern of violence in Libya has affected the society’s collective psychology. This history began with the start of Italy’s thirty-year colonial rule in 1911. Many other violent episodes followed. Three events in particular exemplify the modern period and have been incorporated into the narrative of national identity.

Execution of a national hero. Omar Mukhtar (1858–1931) was a leader of the resistance movement against the Italian military occupation of Libya for more than twenty years.⁶ He was then captured by the Italians and later, by order of the Italian court, hung in front of his followers. Contemporary Libyans remain proud of this national hero, and the sense of grief for his loss still resonates. The movie about his life and death, *Lion of the Desert* (1981), is shown each year on September 16, the day Mukhtar died.⁷ During the Libyan revolution, people protesting in Benghazi chanted Mukhtar’s famous phrase, “We win or we die.” The same words were printed on leaflets distributed at the time. Writing in the *Los Angeles Times*, Robert McDonnell cites a retired army officer who described Mukhtar as the “spiritual leader of the Libyan revolution.”⁸

Prison massacre. In 1996, more than twelve hundred prisoners were executed without legal justification at the Abu Salim prison. The massacre inevitably had a profound impact on the prisoners’ families, relatives, friends, and communities but also affected Libyan society more broadly.⁹ Those who tried to speak out against what happened at the prison were imprisoned or killed by the regime. When the revolution broke out in 2011, a number of U.S. media outlets, including *Foreign Policy*, the *New York Times*, *TIME*, and *Middle East Online*, identified the Abu Salim massacre as the symbolic trigger for the uprising. In a report for Channel 4 News broadcast on March 1, 2011, for example, Lindsey Hilsum described entering a house where “about a dozen women and men were sitting on sofas around the living room, each silently holding up a photograph of a son, a brother, a husband, a father. They were relatives of some of those killed in...Abu Salim prison in 1996. It was their story which sparked the uprising in Benghazi.”¹⁰

Civil war. The most recent violence is the bloody civil war of the past few years. The revolution is over, but people are reluctant to give up their weapons, preferring to use violence to solve their conflicts over the legal system. As of September 2014, 916 Libyans had been violently killed that year.

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In addition, eight thousand detainees captured during the 2001 armed conflict remain in detention facilities. According to Human Rights Watch, “Around 3,000 of these are held in government custody, the rest by militias.” Most have no access to lawyers.¹¹ Also, more than seven thousand people from different cities were displaced when they sought to escape from the vengeance of armed groups.

Gadhafi’s Divisive Society

Gadhafi’s dictatorship lasted forty-two years, during which time he cultivated social, economic, and political chaos. He established, for example, a culture of division by creating privileged citizen groups called revolutionary committees that supported his ideology.¹² Committee members spied on other citizens and informed on dissidents, who were then sent to jail. He also recruited uneducated, impoverished people from small towns and rural communities to serve in public office, giving them wealth and power in exchange for their unqualified support.

Gadhafi undermined the education system by reducing teacher salaries—as well as those of other professionals—and by revising school curricula to support his ideology. Professionals who wished to further their education were required to sign statements of support for him. Policies such as these were designed to bolster allegiance to the regime but effectively divided society.

On Gadhafi’s order, mosques were closed throughout the day and opened only for prayers. Those who attempted to pray in mosques before dawn were jailed on charges of plotting against the government. Years of this oppression not only fostered hatred of the Gadhafi regime but also helped breed the extremist Islamist ideology used to justify much violence today.

Many who disagreed with Gadhafi’s policies emigrated, creating a Libyan diaspora. Gadhafi had previously exiled dissidents, threatening them with detention should they visit or reenter the country. After the revolution, some exiles returned, but much of Libyan society did not accept them. Libyans who had suffered through the dictatorship felt that members of the diaspora had not and resented them for it.¹³

The socioeconomic, ideological, and geographic rifts created by Gadhafi persist today and obstruct efforts to build national unity.¹⁴ Furthermore, the example of his divisiveness inspires even his foes to follow suit. Many of the postrevolutionary leaders have adopted approaches similar to those used by Gadhafi. Just as Gadhafi drew sharp divisions between those who supported him and those who did not, so have the Thuwars—those who supported and fought for the 2011 revolution. In keeping with the culture of division, Libyans who had supported Gadhafi (known to the revolutionaries as Azlam) have been socially isolated since his death. In fact, the elected General National Congress (GNC), which was formed in August 2012, went so far as to pass the Isolation Political Law (No. 13/2013, PIL), which barred any person who had held a government position under Gadhafi from participating in or holding office in the new government. This has prevented everyone with any previous government experience from contributing their expertise to the new Libya.¹⁵

Libya has an official if fragile functioning official state (consisting of the government and the GNC) as well as an informal state that controls weapons and money and is run by Thuwars, who expect privileges for the role they played in liberating the country. Other political factions, however, want the Thuwars to return to their normal lives and to allow the new government to build a national army loyal to the nation rather than to the revolution and its commanders. Many Thuwars now belong to one or other of the seventeen hundred militias currently active in Libya.¹⁶

Many Libyans take the view that though Gadhafi is dead, his ethics and ideas live on and still permeate daily life. Political factions continue to divide society and to provoke violence. During the eight-month civil war, for example, Misrata City was targeted and bombed daily.

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Gadhafi recruited people from Tawergha to fight against the Misratans. After Gadhafi's death, people from Misrata burned the city of Tawergha in revenge and exiled its forty thousand residents—including women, children, the elderly, and others who had not been involved in the fighting—to areas throughout Libya. These people now live in poor conditions in camps. Efforts to bring the two sides—Tawerghans and Misratans—together to discuss the possibility of reconciling or at least allowing the exiles to return to their city have led nowhere.

Given Libya's culture of violence and Gadhafi's legacy of division, policymakers and would-be peacebuilders must confront several questions: How can the collective narratives of violence, divisions, and extremism in Libyan society change? How can the legacy of violence be challenged? More important, how can these legacies be reframed as opportunities to create positive change?

Reconciliation, Customary Law, and Traditional Leaders

The number of conflicts that need to be transformed in Libya, and the number of parties that need to be reconciled, are each depressingly large. The gloom is all the more dark because efforts at reconciliation launched since the revolution have so far failed. In most cases, failure springs from the same set of reasons: persistent divisions in society, the political isolation of former Gadhafi supporters, and an abiding desire for revenge.

To take just one example, two tribes in the south of Libya—the Tebu and the Awlad Suleiman—have long resented each another, in large part because Gadhafi supported one and neglected the other. The Awlad Suleiman, who were originally from Egypt rather than Libya, were given rights during the Gadhafi regime to own land and gain Libyan nationality. They consider themselves to be Libyan and to have fought for Libyan rights. The Tebu, however, view them as foreigners without the right to own land and settle in Libya. Many local initiatives have attempted to bring these tribes together to end violence between them, but all have failed. John Paul Braithwaite and Tamim Rashed, researchers from the Australian National University, recount one reconciliation meeting at which three members of the Tebu were killed. In March 2012, a meeting was convened in Sabha, a small town in the south of Libya, conducted mainly by traditional leaders of tribes who were not involved in this conflict. The meeting, however, did not get beyond the preliminary (“understanding”) phase of the reconciliation process before a heated argument and a firefight broke out.¹⁷

A successful conflict resolution dialogue usually requires two key ingredients: an effort to be inclusive and another to come to agreement on the agenda. Both elements were missing in Sabha in March 2012. For example, although tribal leaders were brought together for the reconciliation, no women or youth were included in the dialogue. Not enough time was allotted to establish consensus on what the dialogue would address. The needs of the parties in moving toward peace were not definitively identified.

Sabha is just one illustration of how difficult the reconciliation process in Libya is given the country's history of violence and societal divisions—divisions that now include the chasm between supporters of the revolution and former Gadhafi supporters. An article in *Middle East Voices* recommends that reconciliation efforts in Libya “should be predicated on a viable and legitimate national reconciliation program between the forces behind the revolution and the supporters of the former regime, most of who live in exile in neighboring countries.”¹⁸ This diagnosis is surely sound. But how is such a reconciliation process to be conducted?

A Potential Role for Customary Law and Traditional Leaders?

Fortunately, given the urgent need to heal its divisions, Libya has one significant asset: the prominent role already played in dispute resolution by its traditional leaders using custom-

ary law. Under Gadhafi, tribal leaders became more influential in society than the central government, especially during the security crisis, which peaked in 2012. During much of his regime, Gadhafi promoted a culture of *bedouinization* that elevated the tribal identity above that of the family and nation. Bedouinization instituted customary practices as a mechanism for dealing with conflicts between families and between tribes.

Customary law in Libya follows the same principles as that in Somaliland; it is a “process of elder-based consensus which places great weight on tradition in order to determine outcomes and impose fines, usually as camels or cash.”¹⁹ Customary law in tribal societies typically includes four elements: first, building trust between the leaders and victim’s family through visiting the family and expressing condolences for their loss; second, selecting unbiased, neutral tribal leaders to be brought from outside the community to serve as respected mediators; third, compensating the victim’s family, such as by giving the family a certain number of sheep or something of equivalent value; and, fourth, proposing an agreement to resolve a problem between the two parties.

In Libya, when a crime (whether as minor as petty theft or as serious as attempted murder) is committed against an individual, the individual has two kinds of rights: a personal right to report the crime and insist on punishing the offenders by going to the police and following a legal process, and a state’s right, because the crime is considered to be against the state—and thus, the state can intervene to seek justice for the individual’s safety. Traditional leaders—or customary law—can help bridge these two rights and achieve justice for all involved.

For example, Ahmad, a businessman from a well-known family in Benghazi, was stabbed by two men while walking at night; he received minor injuries. At the time, no one recognized the offenders, but Ahmad’s father went to the police station to report the crime. A week later, two strangers knocked at the door of the home of the tribal leader of Ahmad’s family. The two men represented the offenders’ tribal leaders; they were inquiring about Ahmad’s health. A week after that, they visited again, this time asking Ahmad’s family to waive their right to go to court and, instead, to settle the matter privately because the two attackers were minors, acting under the influence of alcohol, and were not expected to cause trouble again. Ahmad’s father agreed to renounce his personal right but did not drop the right of the state. The issue was eventually resolved during an official meeting between the traditional leaders from both sides. The leaders made the decision on behalf of the two families: The offenders were jailed for a short time.²⁰

Ahmad’s story neatly illustrates the complex layers within the Libyan system and customary law’s potential as a tool of restorative justice. Traditional leaders can significantly affect the dynamic of the relationship between two parties in a conflict, even when the conflict involves the state. For instance, the postrevolutionary government of Libya turned to tribal leadership in hopes of facilitating reconciliation meetings between the government and a militia that had seized four oil ports on the eastern coast.

This conflict began when Ibrahim Jathran, the guard of the four oil ports in the east, recruited a militia of his own because the central government in Tripoli was incapable of protecting the eastern coast and providing security. On March 8, 2014, Jathran’s militia took control of all four of the ports, placing pressure on the central government and the GNC to grant Jathran’s demand for local governance. Libya before Gadhafi’s era, although unified, existed as three locally governed provinces: East, West, and South. Jathran was demanding a return to this system. As a result of this crisis, Prime Minister Ali Zeidan resigned and left the country three days later.²¹ The GNC tried to resolve the situation by sending government representatives to the militia group at the port, but the militia group refused to speak to them.²² Only when the government asked tribal leaders to mediate was there a productive conversation and any possibility of reconciliation. In the end, after a series of conversations negotiated over a month, the militia returned control of the ports to the government.

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The advantages of customary law in a weak state, especially one mired in conflict, are many. For instance, customary practice can function with minimal preparation and resources. Even though the Tebu conflict was not successfully resolved, the attempt at negotiation required little travel time, low expense, and was quickly planned and implemented. Formal legal proceedings in Libya can take years and still fail to yield a decision or other solution. Most courthouses in Libya are bombed out, most judges have had their lives threatened and so have left the country or changed jobs, and the police force is too weak to protect the legal system and its employees.²³

Some elements of customary practice are more restorative than those of the state's formal legal system. Tribal leaders take the time to get to know both parties, to build relationships and trust, to give gifts, and to focus on repairing relationships that have been destroyed in a conflict. These practices help restore trust between parties.

One must be careful, however, to avoid idealizing traditional practices. Customary law can impede justice as well as further it. According to Erica Harper, customary justice can "block access to justice and legal empowerment. Customary justice systems can also be barriers to legal empowerment when they provide a remedy or build consensus around a resolution that is discriminatory."²⁴ Some traditional leaders use their power to get the results they want rather than to find a solution that meets the needs of all parties.

Even so, Harper recognizes the advantages of customary law. Individuals, she notes, often depend on customary justice practices as the principal pathway to a remedy for a grievance or dispute. These practices, which evolve as values change over time, are part of the social, cultural, and political structure of community life. As a result, customary practices and processes can be used to help solve certain types of conflict. In Libya, traditional practices are more likely than the formal judicial system to be attuned to the linguistic and cultural landscape in which local conflicts arise.

Exactly how large a part the customary law system could play in conflict resolution and restorative justice efforts in Libya is hard to determine, not least because scholars have yet to undertake any extensive studies of the country's customary justice system. No comprehensive study exists, either in Arabic or in any Western language. Until such studies, which would be welcomed not only by academics but also by conflict resolution practitioners, become available, we must be careful to acknowledge our uncertainty about the scale of the contribution customary law might make. But there seems little reason to doubt that it does have the potential to play a significant role. This is especially clear given examples from elsewhere in North Africa of states that have recognized customary practice through formal legislation, including recognition by exclusion or incorporation, general codification, incorporation, adjustment, and accommodation.²⁵ One notable example is Somaliland.

Lessons of Somaliland and Their Relevance for Libya

Somaliland, a self-declared independent state internationally recognized as an autonomous region of Somalia, shares significant characteristics with Libya. Both use the Arabic language, and both are predominately Sunni Muslim. Both have been occupied at various times by the Ottoman Empire, by Italy, and by Great Britain. When not occupied by other nations, Libya and Somaliland have seen dictatorships and civil wars. Today, both countries are postconflict areas.

The two states, to be sure, also have important differences. Somaliland has fewer resources. Its people are more impoverished. It has a longer history of recent conflict, and its people have been victims not only of war crimes but also of genocide. The practice of customary law in Somaliland is more widespread and integral to daily life than in Libya. Indeed, customary law in Somaliland has been the foundation for Somali social, economic, and political life since the seventh century.²⁶ In Libya, the role of customary practice has been more diverse, inconsis-

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tent, and informal, in part because “historically, Libya was characterized by sets of connections between relatively autonomous polities,” such as Tripoli and Misrata.²⁷ Libya also has had a longer history of centrally organized government, albeit not a strong one.²⁸

According to Barry Hart, “the Somali Republic had historically been without a central government, instead having a society governed by clan structures and traditional problem-solving mechanisms.”²⁹ As a consequence, soon after seceding from Somalia, Somaliland was able to establish a functioning legal system that included customary law.

In an article published in 2010, Barry Hart and Muhaydin Saed discuss the complex structure of customary law in Somaliland, which embeds tradition within a Western-style government and emphasizes customary law more strongly than in Libya. “The Somaliland constitution,” the authors explain, “outlines three separate, but not mutually exclusive, legal systems: sharia law (based on Islamic traditions and interpretations of the Quran), civil law (based on officially binding punishments and agreements), and customary law (consisting of rules used by councils of elders to regulate life and resolve conflicts at the clan and sub-clan levels).”³⁰ The kinds of conflicts dealt with by the elders extend to murder. In the case of murder, the police and courts may be involved first, with elders brought in if the parties request an outside or nonjudicial process. The elders then inform the courts of their decision. The following case illustrates customary law and how it interacts with civil law:

A member of a tribe murdered a member of a different clan. The offender was arrested, and the victim’s family was given a choice by the court to have the perpetrator tried by the court system under civil law or to have the case adjudicated by a traditional council of elders....Seven elders, chosen from different clans came together in a council and agreed that the perpetrator should make amends to the family of the deceased by giving the victim’s family and the clan 120 camels or the equivalent in Somali currency.³¹

Traditional leaders in Somaliland rely on a process that involves patience, listening, and negotiation to reach an agreement. This process has some similarities to that in Libya, such as building trust through contacting other tribes’ leaders to hear their insights and perspectives. Negotiations consist of bringing tribal leaders to act as respected mediators, exchanging goods and gifts, and asking for an agreement on a method for resolving the problem.

Traditional leaders are never likely to be able to handle conflict-related crimes, the complexity of which is daunting for all but highly specialized and well-resourced legal professionals and courts. Libyan elders and other traditional leaders, however, could help promote reconciliation between former enemies and defuse disputes that threaten to lead to human rights violations.

Combining Customary Practice and Restorative Justice

Customary law and governance in Somaliland, and in Libya, is currently capable of dealing effectively with a wide range of disputes—but not with all kinds. Both states face the challenge of dealing with human rights violations and their subsequent impact on politics and security, but traditional leaders lack the necessary knowledge and training on how to handle the impact on victims of war crimes, such as torture and the use of rape as a weapon of war. Traditional leaders also lack the power to impose the kind of sanctions, such as lengthy custodial sentences, that most Libyans want perpetrators of conflict-related crimes to be given.

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A central goal of restorative justice is to restore relationships, not only between victims and offenders but also between entire communities that have been directly involved in a

conflict. Restorative justice has indigenous and religious roots that recognize a community responsibility to address wrongdoing and the harm it causes and to be involved in making things as right as possible.³²

This emphasis within restorative justice on community responsibility makes restorative justice ideally suited to help break the cycle of violence in Libya. The principles of restorative justice can fit well in the Libyan context because Libyans already value strong, interconnected communities and have great respect for their traditional leaders. Restorative justice as a process can include all stakeholders in Libya: perpetrators, victims, and the communities and other groups of which they are a part, including civil society, government, militia, tribes, prodemocracy groups, and pro-Gadhafi groups. If restorative justice approaches were to be integrated into Libya's customary practices for handling conflicts, traditional leadership would be better able to address the harms that have been done, the ongoing needs of the victims, and how the community can support them, and could become central to the transition process. Security would be improved both in the short-term and the long-term because the training and process would prepare leaders to handle future conflicts as well as those of the present.

What might this merging of restorative justice approaches and customary practices look like in practice? Take the example of the conflict between Misrata and Tawergha, which affects not only these two cities but also all of Libya. More than forty thousand Tawergha refugees have dispersed to a variety of cities, where they live in overcrowded camps with few basic services, high crime rates, and low employment. Many Libyans outside the two cities feel responsible for the suffering of these refugees and want to help them resolve their conflict and improve their lives.

Tackling this conflict through a combination of restorative justice and customary practices might involve traditional leaders taking the following steps, which together amount, in Zehr's words, to engaging "affected parties in a process that encourages collaboration and problem solving."³³

1. Traditional leaders, who have been trained in restorative justice principles and practices and who have the support of civil society organizations that focus on mechanisms to resolve intergroup conflicts, research the causes behind the conflict and take time to understand the causes and explore the parties' needs.
2. The leaders organize separate meetings with the parties; conduct interviews with the parties and with other stakeholders, including women, men, youth, and members of political parties; and use conflict analysis tools to gather more information. The traditional leaders listen to both sides of the conflict to better assess how they have been affected by the dispute, the challenges they face, the rights they possess, and their demands.
3. The leaders bring the parties together in a safe environment. Creating a safe environment means choosing the right time, preparing, and being clear about the purpose of the intervention. The location should be neutral—for example, representatives from Misrata and Tawergha, both of which are in the west of the country, could meet in Benghazi, which is in the east.
4. Within the safe environment, the leaders help the parties find common ground. For example, the two cities had a very good relationship before the revolution. Their residents shopped at the same shops, intermarried, and traded with one another. They have a common history that can be built upon. They also have common identities: They are not only neighbors but also Libyan and Muslim. Building from these commonalities, traditional leaders can help the parties understand the harm that has been done, the dignity that has been violated, and the price that individuals not even involved in the violence of the revolution have paid.

5. The parties, in a process facilitated by the traditional leaders, brainstorm how to repair the harms done. For instance, in the Misrata-Tawergha dispute, possible solutions might include providing financial restoration and relocating the homes of offenders' families. Relocating the family of a murderer to a distant city for one year is a common step in the customary system. This resolution reduces the likelihood of revenge attacks and gives the victim's family time to heal.³⁴ This process could be repeated on a large scale with families from the Misrata-Tawergha dispute.
6. Drawing on Islamic beliefs in forgiveness and compassion, both sides decide to make a new start to their relationship and move forward in peace, even if they cannot put painful memories to one side. Nearly all Libyans are Sunni Muslim and thus have similar beliefs.
7. The offenders share their stories, accept responsibility for the wrongs they have done, and explain what kind of threats and pressures motivated them to act as they did. (Although customary law practice is victim oriented and does not permit the offender to be part of the process, adapting the principles of restorative justice would require that traditional leaders include the offenders—Tawergha fighters, for example—in the process.)
8. Traditional leaders encourage victims to share how the wrongs done to them have affected their lives, hoping to empower them to heal and overcome the challenges they face daily.
9. Sharing these stories builds an emotional understanding between those who have done wrong and those who have suffered wrong, thereby creating the possibility—though not the guarantee—for empathy and forgiveness to grow.
10. The traditional leaders identify resources in both communities to support both the victims and the offenders and to take steps to prevent further conflict.

International organizations that specialize in restorative practices could help provide traditional leaders with the education in restorative justice they will need to shepherd the process. For example, a small group of specialists could travel to Libya to teach an intensive training workshop to a small group of traditional leaders, religious leaders, legal professionals, and local nongovernmental organization workers. A local Libyan organization could partner with this international group to combine the insider and outsider perspectives. A second phase of training might consist of these new local trainees sharing their newfound knowledge with additional local leaders as well as some from the law sector of civil society. Finally, in a third phase, the new team of community members, now trained in restorative justice principles and practice, consisting of both tribal and religious leaders and members of civil society trained in law and other related professional fields, can assess which Libyan conflicts might be tractable to an approach that combines restorative justice and customary law.

After every restorative justice initiative, the trained leaders could reflect on whether their process met the following six criteria, which are adapted from Zehr's flexible framework:

- Does the process address harms, needs, and causes of the different stakeholders?
- Is the process adequately victim oriented?
- Are offenders encouraged to take responsibility?
- Are all relevant stakeholders involved?
- Is there opportunity for dialogue and participatory decision making?
- Is the process respectful to all parties?³⁵

Overcoming Potential Obstacles

This hybrid process of customary-restorative justice is likely to face many obstacles, any one of which might derail the process.

One potential problem is the impact of traditional gender roles. Women as well as men must be included in the process if it is to be both fair and equitable because war presents crimes, such as rape, that primarily target women. However, Libyan gender stereotypes give privileged status to men in customary justice and view women as, at best, peacemakers, usually just as victims or, in the case of rape, even as offenders. The customary system needs to recognize the potential of training well-respected female leaders and participants in communities to address gender sensitive issues and partner with justice initiatives. Before the revolution, women seldom participated in and engaged with civil society. During the revolution, however, women were able to break this stereotype and play a significant role. Since then, however, some extremist groups have targeted activist women, assassinating some and intimidating others into withdrawing from civil society. It is vital to prevent the silencing of women if restorative justice is to be successful in Libya.

Another potential obstacle is fear of domination, either by traditional leaders, who might exclude others from the practice of restorative justice, or by armed groups, which might intimidate those entrusted with resolving disputes. One goal of using a hybrid of customary law and restorative justice is to de-escalate armed conflicts and human rights violations that heavily armed militia groups have perpetrated to undermine traditional leadership since the ousting of Gadhafi. Integrating restorative justice principles with customary practice could empower traditional leaders in the Libyan society, especially given that the rule of law is still fragile.

A third obstacle is that restorative justice is a new concept for most Libyans. For a customary-restorative justice process to work, Libyan society needs support from international organizations and restorative justice practitioners, as well as from legal professionals and local civil society, to educate not only the traditional leaders but also the larger Libyan society about the importance of restorative justice. A massive effort to educate the public about its benefits is needed.

Fourth, the traumas generated by Libya's violent history, Gadhafi's oppressive regime, and the violence and instability of recent years complicate the present reality, adding new layers of trauma to an existing strata of trauma. Furthermore, at a personal level, many Libyans, especially victims of injustice, suffer from humiliation and shame, which in turn induce or compound trauma. How trauma affects both victim and offender in Libya needs to be explored, especially the ways in which victimization and trauma, if not adequately addressed, can both cause people to become stuck in a victim identity and lead to further offending behavior.

None of these obstacles is necessarily insurmountable, however. Gender stereotyping, for example, could be reduced by training equal numbers of men and women in restorative justice practices, thereby increasing the likelihood that women's interests will be better represented. No traditional leaders are female, but *shaka*—women who work in the mosques and help women with personal issues, such as family problems and conflicts between women and their husbands or their mothers-in-law—could be trained. Including women such as these in the training process along with male leaders would enable women to share in the leadership of restorative justice practices.

To take another example, the need to educate Libyans about restorative justice could be addressed in a public education campaign to promote the benefits of restorative justice and reconciliation processes in postconflict areas. Such efforts might include distributing leaflets, presenting seminars, and sponsoring media broadcasts of documentaries about reconciliation processes from other postconflict countries, such as Somaliland and Rwanda. Additionally, significant books and articles about the role of restorative justice in transforming conflict (such as Zehr's *Little Book of Restorative Justice*) could be translated into Arabic.

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Above all, proponents and practitioners of customary-restorative justice must acknowledge that their work will inevitably encounter obstacles, must try to anticipate the particular challenges that they will face, and must devise specific strategies in advance and put them in place to address each of those challenges. Acknowledging the seriousness of obstacles from the outset will help to minimize later frustrations. Contingency plans will be vital. Practitioners must also be courageous and persistent when they encounter setbacks.

Conclusion

“The logic of restorative justice,” notes Braithwaite and Rashed, “is that where it is hardest to do, it is most important to do.”³⁶ Certainly, obstacles to its use in Libya are significant, but so is opportunity to use it, integrated with the country’s customary justice and governance system, to help repair the health of Libyan society.

Although the formal legal system is barely functioning, traditional leaders can expand the role they already play in handling crimes and defusing disputes, both large and small. This should be seen as an interim solution pending later decisions by Libyan policymakers about the relationship between the customary justice system and the formal justice system.

A complementary role, and perhaps a more enduring one, for a customary system hybridized with restorative justice principles and practices is to promote reconciliation and conflict transformation. If Libya is to overcome its legacy of violence and division, and heal the traumas of its recent past, it needs to restore (or in some cases nurture) relationships between individuals, groups, and communities. Well-trained traditional leaders might even engage with the extremist, al-Qaeda-affiliated Islamist groups that include jihadis returning from Iraq and Syria, seeking to persuade the former jihadist exiles that violence is the wrong path for Islam and that they would be better off reintegrated into mainstream Libyan society.

Libya will need support from the international community to provide its traditional leaders, and other members of civil society, with the necessary training in restorative practices. This support must be given in the form of partnerships that respect local leaders and allow them to have ownership of the customary process. Insiders and outsiders will need to collaborate and think creatively if they are to connect the fractured people of Libya, empower traumatized persons, restore healthy relationships, and build a secure society.

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