TRANSITIONAL JUSTICE IN LIBYA: BETWEEN CURRENT CHALLENGES AND FUTURE PROSPECTS

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This paper examines the transitional period in Libya after the uprising against the 42-year long dictatorship of Maumer Qaddafi and the mechanisms needed for Libyan society to ensure an effective transition towards peace and justice. The paper analyses the Libyan revolution that caused a drastic change in the socio-political structure of the country and provides theoretical and practical proposals for effective transitional justice mechanisms. The paper also offers a series of proposals that could be a useful framework for effective transitioning towards justice, peace and democracy. The paper also highlights the role of religion and tribalism within the framework of transitional justice, and suggests that the significance of these two factors must not be overlooked in developing a comprehensive plan for a more peaceful and just Libya. The development of an effective justice system is needed to ensure the transparency in Libyan society. Without it, the potential for continuous insecurity and uncertainty will continue to dominate the post-revolutionary discourse of the country.

I INTRODUCTION

The recent revolts and uprisings throughout the Middle East and North African region have left a landscape of difficult socio-political transition. Libya, one of the countries severely affected by NATO actions and violent regime change, continues to face ongoing challenges with respect to its national security and human rights violations, not only by the previous dictatorial regime of Qaddafi, but also those that have occurred during and after the uprising.

The following segments analyse the challenging landscape of conflict in Libya, and provide theoretical and practical proposals for effective transitional justice mechanisms. Presently, managing and reintegrating a vast number of armed groups and revolutionaries is one of the critical challenges for the security of Libyan society. Without establishing security in the country, none of the measures of justice and reconciliation could be implemented, as the complex objectives and capacities of the armed factions of Libyan society continue to present a significant challenge for local and national efforts to achieve justice. To that end, this paper also outlines several transitional justice proposals for the post-Qaddafi government to effectively manage and implement disarmament and reintegration programs in order to transform Libyan

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society into a secure and peaceful state. In addition, the paper examines the role of religion in the reconciliation process and argues that Islamic values could play a significant role in helping the society not only heal from the past, but also move forward into a peaceful and just future.

The Libyan Revolution, or the '17 February Revolution', started in February 2011 prompted by mass protests in Benghazi. Initial peaceful demonstrations quickly erupted into armed conflict as the Qaddafi forces tried to suppress the demonstrators. Initial violence was reported in the cities of Benghazi, Misrata, and the Nafusa Mountains, and later expanded to other areas, including the capital Tripoli. As the Qaddafi forces pressed heavily on civilian demonstrators, the threat of high civilian casualties impelled the international community to act under the Responsibility to Protect doctrine. This caused the UN Security Council to pass Resolution 1973, which mandated that member states and regional organisations 'take all necessary measures' to protect civilians.[1] Shortly after the resolution was passed on 17 March 2011, the United States, France and the UK enforced a no-fly zone and subsequently began military strikes against Qaddafi's forces located in Benghazi.[2]

The seven-month bombing campaign ended shortly after the death of Qaddafi. A number of different armed groups emerged immediately thereafter. Most of them formed in opposition to the Qaddafi military apparatus and unified as protective forces for the local populations. However, their initial intentions of securing people in various localities became more volatile, as more and more unregulated arms began to enter the country, creating a state of high instability and insecurity. The armed groups' decentralised operations, incompatible goals and violent transformation continue to challenge the national and regional security environment in post-Qaddafi Libya, which presents further challenges for implementing effective transitional justice processes.

Domestic politics of the Qaddafi regime created a general weakness of the state infrastructure and fractured the conditions of the country's political landscape. For over 40 years Qaddafi's regime purposely undermined state institutions, including the military, and heavily manipulated tribal, regional and political groups in order to maintain tyrannical power.[3] The revolution itself allowed for some local groups to become even more empowered, which in turn weakened the capacity of state security. While the transitional authorities have inherited very weak national government institutions, they do have the responsibility to stabilise the country, manage the security services and ensure peaceful, safe and just transition in society.

II   THE EMERGENCE OF ARMED GROUPS IN LIBYA

During the revolution, a vast number of armed groups emerged in Libya, initially in opposition to Qaddafi's regime. However, the groups soon started to oppose one another creating complex local and national security issues. Kadlec noted in her Carnegie report that these militia exist as

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[1]   SC Res 1973, UN SCOR, 6498th mtg, UN Doc S/Res/1973 (17 March 2011).

[2]   Chris McGreal, 'Coalition Attacks Wreak Havoc on Ground Troops', The Guardian (Online), 20 March 2011 <http://www.theguardian.com/world/2011/mar/20/libya-air-strikes-rain-down>.

[3]   Christopher M Blanchard, 'Libya: Transition and US Policy' (Report, Congressional Research Service, 18 October 2012) 1 <http://www.fas.org/sgp/crs/row/RL33142.pdf>.

loose formations, organised along an unruly patchwork of brigades, attempting to take control of different regions of the country.[4] McQuinn's assessment of the armed groups in Libya reveals that there are four distinct types of non-state armed groups currently operating in the country: revolutionary brigades, unregulated brigades, post-revolutionary brigades and militias.[5] As of late, many of the armed groups initiated their operations in opposition to the newly elected transitional government, which created a highly insecure and untrusting environment in the capital city Tripoli.[6] Therefore, understanding the complexity of the existing armed groups, including their goals, motivations and operations, as well as implementing effective means to control them, poses a grave challenge for the local and national authorities.

III   SOCIAL STATUS AND TRIBAL ROOTS OF THE ARMED GROUPS

By and large, some of the armed groups' members came from socially and politically affluent communities with a status that allowed their groups to be accepted and seen as protective forces in those areas. Similarly, armed groups with strong local tribal roots have enjoyed the same trustworthy privileges as local tribal populations. During the early stages of the revolution, most of the groups were united against a single force, the Qaddafi military. But as the conflict evolved, many armed groups gained ideological as well as tactical strength, which caused them to turn against each other. Specifically, when any of the armed groups advanced its insurgency beyond the scope of its local operations, the chances for conflict with other groups increased. One of the earliest cases of such hostility was noted in the summer of 2011 when the groups from Misrata and Zintan infiltrated Tripoli, a city that already had its own local security and protective armed forces.[7]

This phenomenon began to spread throughout the country, and it quickly evolved into a complex inter-group conflict. Barfi notes the gang-resembling aspect of some of the armed groups and the mayhem that they have brought, not only to the communities in which they operate, but also the communities through which they transition or try to infiltrate.[8] He further notes that the main operations of these armed groups evolved from the initial anti-Qaddafi movement to much more criminalised behaviour involving extortion, drugs and arms smuggling.[9]

Further complexities of Libya's armed groups involve vast ideological differences that govern their motivation. Several armed groups formed during, as well as after, the revolution, pledging their allegiance to the Qaddafi regime and severely opposing the revolutionary forces. A February 2012 report by Amnesty International revealed that some of the pro-Qaddafi armed group members were sub-Saharan immigrants that Qaddafi himself employed to fight against the

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[4]   Amanda Kadlec, 'Disarming Libya's Militia', *Sada* (Online), 16 February 2012
           <http://carnegieendowment.org/sada/2012/02/16/disarming-libya-s-militias/9of5>.
[5]   Brian McQuinn, 'Armed Groups in Libya: Typology and Roles' (Research Note No 18, Small Arms Survey,
           June 2012) 1 <http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-
           18.pdf>.
[6]   Kadlec, above n 4.
[7]   Ibid.
[8]   Barak Barfi, 'Who Are the Libyan Rebels', *New Republic* (online), 30 April 2011
           <http://www.newrepublic.com/article/world/87710/libya-rebels-gaddafi-ntc-saif>.
[9]   Ibid.

revolutionaries.[10] The Amnesty International report highlighted several cases of torture and detention of sub-Saharan immigrants by revolutionary groups, which further complicates justice and human rights issues not only for Libya, but for the African region as well.

The vast number of weapons loosely floating throughout the country was by and large stockpiled among the groups in Tripoli. Wood notes that one of the main and persistent dangers within Libyan society in the post-Qaddafi era is not only the immense availability of weapons, but also the fact that Libyans do not have a developed culture of gun ownership, ie they simply do not know how to use and/or store weapons safely.[11] The availability and ownership of unsecured weapons continue to threaten security in the capital. Interestingly, one of the Civilian KII ('Key Informant Interviews') reported that the weapons have also created a balance of power among the armed groups, a situation in which people are afraid to attack each other through fear of repercussions.[12] The interviewee stated:

> It's not normal. Weapons are everywhere and cause tension in the community. In the time of Qaddafi no one had weapons. There was no culture of knowing how to use one. Now people want to have weapons. Everyone wants to show that he has a weapon.[13]

This situation continues to present a challenge for the local authorities, still unable to track down lost arms and disarm the population, which will invariably affect the process of transitional justice in Libyan society as a whole.

IV   INITIAL LEGAL OBSTACLES TO EFFECTIVE TRANSITIONAL JUSTICE

The National Transitional Council ('NTC') was the first self-elected Libyan authority to lead the opposition during the uprising. The NTC enacted 38 laws during the transition, some of which were of particular concern. For example, Law 38, which deals with certain procedures regarding the transitional period, has been criticised for not seeking justice for the people but rather serving the interests of particular groups (such as protecting members of the NTC from future prosecution and appeasing militia groups).[14] Specifically, Law 38 grants revolutionaries (Qaddafi opposition fighters) immunity. The rebels were granted immunity in order to protect them from prosecution for human rights violations they may commit during the course of their fight against the Qaddafi brigades.[15] Such a precedent was considered a green light for the rebels to breach international humanitarian law during the conflict. That blanket of protection was justified by the NTC as promoting and protecting the revolution. Specifically, Law 38 states '[t]here shall be no penalty for military, security, or civil actions dictated by the February 17 Revolution that were

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[10]   Ibid.

[11]   David Wood, 'Understanding the Relationship between Communities and Armed Groups' (Report, Peaceful Change Initiative: AFAQ Libya, May 2012) 18 <http://www.peacefulchange.org/uploads/1/2/2/7/12276601/2012_05_relationships_between_communities_and_armed_groups_in_libya_web.pdf>.

[12]   Ibid.

[13]   Ibid.

[14]   [Law no 38 of 2012 on Some قانون رقم 38 لسنة 2012 المرحلة الانتقاليةبشأن بعض الإجراءات الخاصة ب Measures Regarding the Transitional Period] (Libya) art 4.

[15]   Ibid.

performed by revolutionaries with the goal of promoting or protecting the revolution'.[16] The law entrenched a selective type of justice common during the Qaddafi time (against which Libyans arose in the first place) rather than ensuring the aspiration of an effective transitional justice mechanism based on human rights protection. It is pivotal for the new Libya to be built on the rule of law. Hence, those who violated international humanitarian law should be held accountable for the crimes they committed over the course of the conflict.[17]

Thousands of people who are accused of fighting for Qaddafi are still arbitrarily detained by rebel groups. Most of them have yet to be brought before the judiciary. Human Rights Watch reported torture and maltreatment in several detention centres run by militia forces.[18] Some militias have been involved in other severe crimes, such as the conspicuous execution of at least 53 people in October 2011 in Sirte, and forced displacement of 30 000 people from the town of Tawergha, which is considered a crime against humanity.[19] In this case, Law 38 states that even if a person who was confined by the militia is found not guilty by a court, that person has no right to raise a criminal or civil complaint against the state or the militia regarding the abuse they faced, unless the detention is proved to be arbitrary or based on fabricated charges. This causes much concern for the realisation of justice in Libya, as the wrongly detained and released people should have the right to resort to the judiciary and this right should never be revoked.[20]

Libya is a state party to both the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* and the *Convention against Torture.* These Conventions prohibit state members from implementing laws that limit the prosecution of war crimes and crimes against humanity, and require all state parties to investigate and prosecute human rights abusers who commit atrocities on the member states' territory. The Libyan legislature clearly violated the aforementioned conventions by enacting Law 38, thinking only about how to protect the revolution and ignoring the calamities that might result from such immunity. The way this law is drafted displays the serious impact that it will have on the process of reconciliation and justice in the state. Since there is no time limit for this immunity, severe humanitarian law breaches will continue to be committed indefinitely by the militias until the legislature abolishes the immunity. It is possible that the militias will not stop violating human rights in the foreseeable future, as they enjoy full immunity from accountability.

In addition, the armed groups currently possess most of the states' weapons that the previous regime had been accumulating for decades. Perhaps this situation has created a balance of power between the state's official army and the militias. Thus the government has either been avoiding a direct confrontation with the armed groups, in order to avert another civil war in the country, or it does not have the full capacity to deter the militia groups. Recently the Libyan government instituted a security-making committee to tackle the militia type of groups illicitly occupying government assets and/or private properties that were possessed by former Qaddafi officials.

16   Ibid.
17   Libya Working Group, 'Libya: Establishing the Rule of Law' (Working Group Meeting Summary, Chatham House, May 2012)
        <http://www.chathamhouse.org/sites/default/files/public/Research/Middle%20East/0512libya_summary.pdf>
18   Human Rights Watch, 'World Report 2012: Libya' (Report, Human Rights Watch, January 2012)
        <http://www.hrw.org/world-report-2012/world-report-2012-libya>.
19   Ibid.
20   Ibid.

This mechanism was initiated by the government to gradually decrease the phenomenon of militias that have been undermining the authorities' efforts towards democracy and justice in the country. For Libya to implement an efficient and effective transitional justice strategy, the legislature needs to eradicate immunity laws and enact several laws that ensure justice and reconciliation while simultaneously allowing for the truth to surface in society as a whole.

V   EARLY TRANSITIONAL JUSTICE LAW

In February 2012, the NTC enacted the *Transitional Justice and National Reconciliation Law* to meet the needs of successful transition of governance in Libya. The law identified transitional justice as a set of legislative, judicial, administrative and social procedures that address human rights violations that took place during the rule of the former regime since 1969 (the year in which the Qaddafi regime took power). It also proposed to establish a reconciliation process between different categories of society.[21]

Notably, the way this law was written was so that it could not address the period of conflict starting on 17 February 2011 to the end of Qaddafi rule. Instead it was only aimed at the Qaddafi regime's atrocities, ignoring the fact that crimes have been committed by both pro-Qaddafi and pro-revolution people during the course of the revolution. Clearly, the NTC was unwilling to address the period of the revolution in order to avoid the possibility of holding the rebels accountable for their wrongdoings and protecting its own members.[22]

In an attempt to mend this deficiency, in December 2013 the General National Congress passed Transitional Justice Law 29, which revoked the previous law and included the transitional period that ended with an election of a permanent legislative body.[23] However, the new law fails to address human rights violations committed in post-Qaddafi Libya, which is evident in the language used in the law, which revolves around investigating human rights violations that took place during the past regime. For instance, art 4, titled 'The Law Objectives', mentions that the Truth and Reconciliation Commission established by the law shall investigate and repair rights abuses committed throughout the Qaddafi regime.[24] The Law also limits the truth commission's work to last for a maximum of five years. This will present another difficulty challenging the commission's task, given the fact that truth commissions should be given more flexible time, as evidenced by past international experiences with truth commissions.[25] In the case of Libya, which was ruled by Qaddafi for over four decades during which vast numbers of human rights violations occurred, it may be a very challenging task for the truth commission to accomplish its work in a five-year period.

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21   قانون رقم 17 لسنة 2012 بشأن إرساء قواعد المصالحة الوطنية والعدالة الإنتقالية [Law no 17 of 2012 on Establishing the Rules of National Reconciliation and Transitional Justice] (Libya) art 1, 2.

22   شروط تطبيق العدالة الإنتقالية في ليبيا، عبد الحليم عبد العظيم [Abdelhaleem Abdeladeem, Transitional Justice Implementation Terms in Libya] (Almanar, 2012) <http://www.almanaralink.com/press/2012/11/25029/د-عبد-الحليم-محمد-عبد-العظيم-شروط-تطبي/>.

23   قانون رقم 29 في شأن العدالة الإنتقالية [Law no 29 of 2013 on Transitional Justice] (Libya) art 32.

24   Ibid art 4.

25   Priscilla B Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (Routledge, 2001) 72.

VI   THE POLITICAL ISOLATION LAW

As a result of massive pressure imposed by some political parties on the General National Congress ('GNC') to enact a law by which a certain category of officials of the former regime are to be excluded from the political arena of the new Libya, the GNC passed the Political and Administrative Isolation Law no 13. It states:

> Every person who occupied one of the following positions in the period between 1 September 1969 and 30 October 2011 shall be disallowed from practising any political and administrative work, and from running for any type of election and for leadership, functional administrative and financial positions in all of the public sector branches including corporations and institutions, in addition to establishing political parties and civil society organisations for a period of ten years. This applies to everyone who:
> • participated in the 1969 military coup
> • occupied the position of Prime Minister
> • assumed the position of Minister or Chairman of a municipality or city
> • occupied the position of Head of the Parliament
> • assumed the position of Attorney General
> • took over the position of the Governor of the Central Bank of Libya
> • took over the position of an Ambassador or a representative at an international organisation
> • was an Editor in Chief of a public newspaper or a head of a TV or radio station
> • was a Judge or State Attorney who worked at the exceptional or revolutionary courts
> • worked for the internal security department
> • worked for the chief of staff command in the army.[26]

All the above categories, among others, will be excluded from assuming any position in the new rule of Libya for 10 years. Such an arbitrary law will, of course, be a huge obstacle to effective and smooth transition to justice in the country. Additionally, the Libyan people would never accept and reconcile such a law, which is already evident by the ongoing protests among the public and human rights lawyers against such sweeping legislation.[27]

It seems that the party or parties behind this law aim to acquire power and rule the country without contest. They were influenced by a similar experiment in Egypt, where the former ruling party of the Muslim Brotherhood pushed for a similar law to exclude their opponents from playing any role in the political landscape of the state, so they could become the dominant rulers of the country.[28] In Libya, the Muslim Brotherhood party, along with some other politically prominent parties, aspires to have the same ruling experience, with the very same political goals and without considering the future of true justice in the country. The experiment in Egypt failed,

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26   قانون رقم 13 في شأن العزل السياسي والإداري [Law no 13 of 2013 on Political and Administrative Isolation] (Libya) art 1(1).

27   'Clashes outside Libyan Foreign Ministry over Political Isolation Law', *Al Arabiya News* (online), 10 May 2013 <http://english.alarabiya.net/en/News/middle-east/2013/05/10/Libya-activists-protest-militias-Islamists.html>.

28   ورقة موقف حول: قانون العزل السياسي الصادر في 23 ابريل 2012 [Report on: The Political Isolation Law of 23 April 2012] (Arab Network for Human Rights Information, 2012) <http://www.anhri.net/?p=54845>.

as this law was ruled unconstitutional by the Supreme Constitutional Court shortly after Morsi was elected.[29]

Bu-Hamra, a law professor at the University of Tripoli, believes that this trend entrenches the concept of selective justice, which aims to achieve justice for a particular layer of society or serves a particular agenda of a group of people, instead of the whole of society.[30] The political isolation notion fosters the idea of eliminating anyone deemed to be a Qaddafi follower or loyalist. Broadly excluding a large group of people from any state department without adopting efficient and accurate criteria to firstly identify who the loyalists are, and secondly, to select their substitutes, would allow criminal groups to infiltrate into the new system. Unfortunately, this trend already seems to be the status quo in the new Libya. Such government strategy for containing the militia groups, especially in the police sector and the national army, without following efficient selection criteria, falls under the selective justice aforementioned and should be seriously reconsidered.

With the absence of the rule of law and the presence of the rule of militia instead, the new rule in Libya is forced to coexist with such abnormality of the state and allow the militias to have their own institutions. Because the militia groups were empowered to be in control of certain locations during the revolution, they now claim independence from the state and are unwilling to be under state control and follow its orders. For example, the militias that were protecting certain strategic locations and departments, such as oil refineries and universities, were allowed to create their own policing units or armies. The government continues to provide them with generous salaries, which suggests an implicit approval of their services to the government. As a result, the Libyan people experience a phenomenon of duality in state institutions; they are confused whether to go to the state police department to report a crime or to the security committee composed of rebels and militia type police, which is actually more powerful.

If continued, this duality in institutions will create state abnormalities and prove that the country has the status of a failed state, a process that will negatively affect the overall development of the country and the justice system in particular. This is currently the case. The Libyan authorities choose to coexist with these militias in order to avoid a potential clash with them. If the government continues to empower the militia by providing them with leading roles in society, in order to avoid conflict, the situation might create a more difficult terrain in a state in which various groups with different ideologies can penetrate the state system and foster divergence between the government's will and the militias' agendas.

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[29]   'Court Rules Political Isolation and Election Laws Unconstitutional', *Egypt Independent* (online), 14 June 2012 <http://www.egyptindependent.com/news/update-court-rules-political-isolation-and-election-laws-unconstitutional>.

[30]   خطر التحول من العدالة الانتقالية الى العدالة الانتقائية ،الهادي بوحمره [Alhadi Bu-Hamra, The Risk of Transformation from Transitional Justice to Selective Justice] (Almanara, 2013) <http://www.almanaralink.com/press/2013/02/28153/الهادي-بوحمره-خطر-التحول-من-العدالة-ال_>.

VII   THE CHALLENGE TO THE PROSECUTION MECHANISM

The dysfunctional judiciary continues to contribute to the pervasiveness of the overall issues with transitional justice. Similar to some experiments of post-conflict countries, judges, prosecutors and lawyers have been fearful of functioning in the absence of an official and capable policing system that can protect them and allow them to maintain their neutrality. After the fall of the former regime, a large number of prisoners escaped and joined the militia groups who were disguising their criminal history. Many members of the judiciary have been persecuted, and even assassinated, by the very criminals they imprisoned. Some of the criminals who were sentenced by the judiciary for committing serious crimes became 'revolutionaries' during the uprising, which allowed them to retaliate against the judges and engage in kidnapping, torture and assassinations of judiciary members. This trend caused most judiciary personnel to stay at home, or in some cases to relocate to other cities as they continued to fear for their safety. Recently, Abdelaziz Alhasadi, the former Attorney-General of Libya, was assassinated in Derna by anonymous assassins.[31]

Based on this reality, any attempt at establishing a functional and effective judiciary is irrational with the presence of such insecurity in the state. While there are plenty of capable and efficient judges to implement justice, ongoing instability and lack of security presents the main challenge towards achieving this goal. When the International Criminal Court demanded that the prosecution of Qaddafi's officials should occur outside Libya, the new Libyan government rejected this notion, claiming that it had sufficient resources to implement justice within the country. However, given that the overall state insecurity impedes the effectiveness of the justice system, it could be recommended that the notion of an international tribunal be revisited, at least until the country is stable and secure. Presently there is a wide-spread fear that the judiciary system will continue to be virtually inactive, which will continue to undermine any future efforts at an effective transitional justice process.

VIII   THE TRIBAL ROLE IN TRANSITIONAL JUSTICE IN LIBYA

The Libyan societal structure is mainly tribal. The tribes have played a significant role in the Libyan revolution, whether supporting the change, as was the case with a large number of them, or favouring the Qaddafi regime, as a small number of them did. Tribes have also played a significant role in mediating and solving disputes between Libyans, as tribal conflict resolution mechanisms are indigenous to the society. Tribal features of Libyan social make-up should be utilised more in this particular stage of Libyan history in order to institute better reconciliation or truth hearing mechanisms. Most recently, the GNC's efforts to end the conflict between two tribes in the south of the country was successful. The head of the GNC called the chiefs of the Altabo and Awlad Sliman tribes, which were in an ongoing dispute over territory, to meet and reconcile with one another. Through the tribal mechanism of conflict resolution, the

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31   اغتيال النائب العام السابق عبد العزيز الحصادي بدرنة وعريف بقاعدة بنغازي [The Assassination of Former Attorney General Abdul-Aziz al-Husadi in Derna and a Soldier in Benghazi Base] (Quryna Aljadida 2014) <http://www.qurynanew.com/58787>.

reconciliation between them worked and was a positive sign towards recognising the importance of tribes and their engagement in the transitional justice process in the rest of the country.[32]

While the existence and role of tribes is vital, not only for the overall structure of society but also in effectively implementing transitional justice, it is imperative that they are included and referred to in the truth and reconciliation efforts. Unfortunately, Transitional Justice Law no 29 did not include tribes in the proposed truth commission; the commission would only be in liaison with the tribes when working on the reconciliation process. The legislature has thus far ignored the importance of tribes being included in reconciliation and the truth hearings commissions as members. However, given that the law has yet to be implemented, it is recommended that tribes, and especially their leaders, be included in the conversation about the justice process in the country.

IX   RECOMMENDED POLICY FOR TRANSITIONAL JUSTICE MECHANISM

A   *Vetting*

Instead of the broad political isolation law presented above, the Libyan government should implement a carefully designed vetting mechanism to administratively exclude certain individuals who were found to be involved in past abuses. If the perpetrators continue to serve in official positions of the new administration, people's trust toward the new regime will decline.[33] Likewise, the broad exclusions proposed in the Political Isolation Law suggest a weakness of the new regime, as they may wrongfully exclude those who did not commit any past crimes. Therefore, vetting processes should be designed to reinstate public trust in the new institutions by setting aside the abusers or unqualified individuals and preventing them from playing any role in the new system. It should be set as an administrative procedure rather than a political decision or a judicial action, and as such it should require lower standards of evidence to implement, unlike judicial decisions that require a specific type of evidence and political decisions that are often biased and subjective. The vetting program must consider objective, neutral criteria and just procedures. The United States Institute of Peace ('USIP') provides a useful framework for implementing an effective vetting process and suggests two essential forms of vetting review:

- *Retroactive Review*, based on screening current employees to verify their appropriateness to serve in public sectors based on past performance. Only adequate evidence can remove a certain employee based on their past abuses.
- *Prospective Appointment and Reappointment Review*, which requires current employees to re-apply for their positions and be vetted for possible involvement in past atrocities. In addition to conducting a review of qualifications of current employees, new candidates should also apply and be subject to the same vetting process.[34]

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[32]   Farah Waleed, 'Tripoli Conference Produces Sebha Peace Deal', *Libya Herald* (online), 20 April 2013
          <http://www.libyaherald.com/2013/04/20/tripoli-conference-produces-sebha-peace-deal/>.
[33]   United States Institute of Peace, *Transitional Justice: Information Handbook* (September 2008)
          <http://www.usip.org/sites/default/files/ROL/Transitional_justice_final.pdf>.
[34]   Ibid.

This mechanism would be the right choice for the new Libyan government to implement, rather than adopting a completely unfair elimination mechanism such as that proposed in the Political Isolation Law no 13. While this might be common sense in many countries, this seemingly bureaucratic process never existed under Qaddafi rule and it is therefore a novelty for the current government. The people in Libya have been dreaming of a fair and transparent system of appointment to government positions, and this might be a good time to introduce it to society.

B   *Lustration of Public Institutions*

It is critical for the new government to restore state institutions and make an overarching review of laws, considering that some changes reflect unconstitutional statutes. Without a deep scrutiny of these institutions, especially the judicial, security and military institutions, there will never be progress towards transitional justice and the rule of law. This process should aim at the effective vetting mechanism described above that will restore public trust in state institutions. The institutions must be built on professionalism and impartiality under judicial oversight, so that the culture of discrimination and nepotism of the Qaddafi era is eradicated. Everyone in Libya should regain the trust in state institutions that should exist to serve all of society, not only a specific class based on political, tribal or regional categorisation.

Scrutinisation of the institutions and employees must be implemented within the context of the criminal prosecution and trials of those who committed criminal acts throughout their career and service to the state. But lustration must be based on collective, not individual, accountability, and political orientations must not be in place within the new administration. The scrutinisation process must not be at the expense of procedural guarantees for those subject to scrutiny; in fact, they should be allowed access to a process where they can challenge the accusations and have the right to rebuttal in court.[35] The notion of absolute political isolation will never bring justice to society, and it will stand against all transitional justice aspects, because it is established on unfounded and unjustified collective elimination.

C   *Dealing with the Victims*

One of the major methods to ensure justice in post-conflict societies is to repair the victims who suffered past violations. It is critical to repair and heal the wounds of the past in order to assist the victims to forget and forgive.[36] Yet, it is an arduous task to accomplish, specifically when the government is not capable of providing proper compensation. For an effective reparation mechanism, the new government needs to identify victims and their various wounds. For instance, what should be given to a mother whose child was murdered should not be the same as for a tortured person. The reparation process should be assigned to the truth commission which is more capable of assessing the needs of the victims.

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35   Ibid.

36   Chandra Lekha Sriram and Suren Pillay (eds), *Peace Versus Justice?: The Dilemmas of Transitional Justice in Africa* (University of KwaZulu-Natal Press, 2009) 7–11.

A reparations program is a powerful mechanism for assisting victims to recover from past abuses if it is appropriately implemented. Considering that no payment can ever fully repair the torture and killing, the symbolic value of reparations, along with acknowledgement and apologies, might provide a level of healing for the victims. An additional possible caveat in legislating the reparations is that some governments may not be able to afford large payments for thousands of victims, in which case governments should implement measures that add symbolic value to the healing process.[37]

USIP identifies four types of reparations that could be implemented alone, or in combination, depending on the availability of resources of the state:

- *Restitution*, the return of property or other measures to re-establish the conditions that existed before the violation took place.
- *Compensation,* which includes the payment of economically measurable damages, pensions, or smaller symbolic payments as an acknowledgment of one's victimisation.
- *Rehabilitation,* which may include medical and psychological care, establishment of rehabilitation centers, administrative rehabilitation (such as the dismissal of false charges or the restoration to a job from which one was dismissed for political reasons), legal and social services, and educational benefits.
- *Symbolic Measures,* which may include State apologies, construction of memorials, renaming of streets, establishment of commemoration days, dignified re-burials, and waivers for job training and educational fees.[38]

Libyan Transitional Law no 29 addresses the compensation program, and includes types of reparation such as financial compensation, memorials, medical care, rehabilitation and social services. The law generally urges the truth commission to establish a victims' compensation department, which will have the authority to make compensation decisions that will be binding on the government.[39]

Law no 29 gives the GNC the authority to decide when and how to implement its executing mechanism, but the GNC has not paid adequate attention to this process because of its struggle with security and other calamities in the country. Having no robust reparations program may undermine the efforts of transitional justice, because victims' contributions in building sustainable peace in society are highly critical.[40]

D   *Criminal Prosecution*

States, in general, are obliged by international law to prosecute individuals who commit crimes over the course of a conflict. It sends a robust social message that criminal acts will not be

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[37]   Ibid.
[38]   United States Institute of Peace, above n 33.
[39]   Law no 29 of 2013 on Transitional Justice, above n 21, art 23.
[40]   United States Institute of Peace, above n 33.

tolerated in the future. Prosecution is the most typical form for holding perpetrators accountable, as it restores the rule of law in the states in order to avoid retaliation from the people. States are also challenged to ensure fair and impartial trials for perpetrators in which the accused are given the right to challenge the accusations and provided lawyers to represent and defend them in the courts.[41]

For Libya to have an effective prosecution program, it needs to ensure impartial and fair trials within an efficient court system. Law of Judiciary no 6 of 1974 guarantees multiple degrees of litigation so that the accused can enjoy the right to challenge the resolution of the first phase litigation.[42] The law also guarantees the right of an accused to a lawyer to defend them and the right to rebut evidence against them. Therefore the current Libyan court system is sufficient to conduct trials for various perpetrators. Libya also has enough capable and well-experienced judges, prosecutors and lawyers, respected for their credibility and integrity, to handle the amount of crimes against humanity and war crimes committed in the country, which are generally thought of as difficult to investigate and prove in a court of law. But the main obstacle, as highlighted earlier, is that the judicial branch lacks the secure environment in which it can operate impartially and effectively. The widespread use of arms and militant groups is preventing the judges and prosecutors to function without the fear of being killed or kidnapped. Given this fact, the government must first and foremost ensure the rule of law and security in Libyan society in order to reactivate the judiciary and start the truth commission program, for the sake of implementing a dynamic and efficient transitional justice system.

E   *Truth Commissions*

USIP Transitional Justice research outlines a group of criteria that truth commission mandates, in general, should consider, including its:

- objectives
- legal authority to interview witnesses and collect testimony, including in some cases the power to compel such testimony
- types of violations the commission will investigate
- time period to be investigated
- time granted to the commission to complete its work
- authority to issue recommendations.[43]

The truth commission mechanism currently provided by the Libyan legislature added another mission for the commission to conduct the role of the reconciliation mechanism.[44] As noted above, the tribal aspect of society should be utilised as an active agent for relinquishing the past hatred that still lingers between the communities. Tribal leaders, using their trustworthiness and credibility in society, as well as using indigenous conflict resolution mechanisms, can play a critical role in calling for tolerance and unity among the divided communities in efforts to build a

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[41]   Ibid.
[42]   قانون نظام القضاء رقم 6 لسنة 1974 [Law of Judiciary no 6 of 1974] (Libya) art 11.
[43]   United States Institute of Peace, above n 33.
[44]   Law no 29 of 2013 on Transitional Justice, above no 21, art 7.

prosperous future for the new Libya. Although Law no 29 does not explicitly emphasise the role of tribal figures as commissioners in the truth commission, it references that the truth commission should consider engaging 'the wise men'. In the cultural context, this means the highly regarded people in the communities, who are often tribal and religious leaders. Therefore, the legislature acknowledged the importance of Libyan traditional approaches in solving disputes.

At the time of writing this article, a Libyan truth commission had not been established. In the mean time, the National Dialogue Preparatory Commission ('NDPC') was founded in August 2013 by a group of 13 neutral volunteers mandated and funded by the Libyan government. The task of this commission is to establish national unity and dialogue between all people without distinction.[45] All people, including tribal and religious figures, are invited to participate in the dialogue when the commission's team tours all over the country to cover as many societal components as possible. The ultimate objective of the dialogue is to reach an overarching representation of all layers of Libyan society in order to develop a national charter to be written by representatives from participating regions. The charter will be the foundation for a more comprehensive constitution and transitional justice process. The commission's initiative is considered an indirect reconciliation mechanism as it paves the ground to achieve transitional justice and reconciliation through people's involvement in an initial, direct and constructive dialogue to settle their differences.[46]

Supported by the United Nations Technical Assistance Team and various Libyan civil society organisations, the NDPC has successfully completed the first phase of its task, which was to conduct the national tours. Presently, the NDPC is in the process of selecting a representative group of 300 delegates to participate in drafting a national charter. The second phase of the dialogue will be finalised within a minimum period of three months, and will be focused on significant national issues such as security and transitional justice.[47] The NDPC has been working for less than a year and its efforts in laying the groundwork for effective national dialogue, despite consistent logistical challenges, have already received much praise from the international community.[48]

X   SECURITY CHALLENGES AND THE NEED FOR PEACEFUL TRANSFORMATION IN LIBYA

Throughout Libya, people have generally expressed high hopes in the future of their country and are sensing slow but gradual improvements, and believe positive developments could be possible. But in order to achieve effective transitional justice mechanisms and long-term stability, and for security to take place, the developments will depend on a paradigm shift among the people. A dramatic regime change in a society that was governed by a dictator for over 40 years caused unprecedented challenges for peaceful transformation, and the elected government continues to operate under severe domestic and international pressure in order to maintain and

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[45]   National Dialogue Preparatory Commission, *Mandate and Objectives* (2013) <http://ndpc.ly/commission-en/>.

[46]   Ibid.

[47]   Ibid.

[48]   Ibid.

establish a long-term structure for democracy and justice. One of the critical elements upon which the entire process of justice depends is ensuring security in the country. Given the wide spread increase of arms and militia groups unafraid to use them, the process of disarmament, demobilisation and reintegration ('DDR') is seen as critically interconnected with the transitional justice mechanism.

A   *Disarmament, Demobilisation and Reintegration Program within Transitional Justice*

As noted in the earlier analysis of Libya, some of the armed groups worked in opposition to, and with an aim to overthrow, the ruling state government, while some engaged against other armed groups within the same state borders. Presently, many armed groups continue to threaten the security of the country and act as enforcers of legislature by parking their armed vehicles outside Ministries and various State buildings, demanding that certain laws are passed.[49] Researchers on non-state armed groups unanimously agree that, regardless of their intended goals, they all pose an undeniable threat to security and peace and most of them are successful in mass recruitment.[50]

The transitional authorities in Libya are met with unprecedented challenges in managing the large number of armed groups throughout the country. The transitional government itself was, by and large, composed of many revolutionaries who either defected early from the Qaddafi regime, or were later appointed as leaders of the various opposition groups. Some of the initial tactics that the government chose to use in dealing with armed groups allowed them to join the interior or the defence ministries, and included them in the various public service positions.[51] This allowed some of the formed armed group members to engage in proper political and public policy training and education, as part of the early reintegration process. The ongoing challenge within the reintegration program is the lack of outreach to communities still driven by armed group ideologies. Therefore, a more comprehensive and inclusionary reintegration program is needed in order to transform former fighters into responsible citizens, allowing them to be a part of the non-violent state building discourse.

As noted in the United Nations Disarmament, Demobilization and Reintegration ('UNDDR') program, one of the key elements for improving security is reintegration, as the former fighters need to be reintegrated back into their communities as civilians.[52] It is imperative to reactivate their roles in society to enable them to constructively engage in rebuilding the country. As such, the government should increase better job opportunities for the unemployed former fighters and, in the case of youth who participated in armed groups, allow for an increase in educational and vocational opportunities. This is a critical element for the success of the transitional justice mechanism in Libya.

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[49]   'Libya Fighters Surround Foreign Ministry', *Aljazeera* (online), 28 April 2013
         <http://www.aljazeera.com/news/africa/2013/04/2013428102159904364.html>.
[50]   Jeremy M Weinstein, *Inside Rebellion: The Politics of Insurgent Violence* (Cambridge University Press, 2007) 136–181.
[51]   Kadlec, above n 4, 4.
[52]   Peacebuilding Support Office, '2012 Annual Report' (Report, United Nations Peacebuilding Support Office, 2012) <http://www.un.org/en/peacebuilding/pbso/pdf/2012PBSO-AnnualReport-Final.pdf>.

The vast availability of the former regime's abandoned ammunition poses a critical challenge for national security in Libya. Stockpiles of unregulated and unsecured arsenals are still scattered all over the state, posing a high threat if acquired by criminal hands. Many of the unregulated arms have been used during the revolution and are still unaccounted for.[53] Furthermore, the transitional authority, with assistance from the international community, needs to implement stricter measures in managing the arms smuggling across Libya's borders. The international de-mining experts have reported that the spread of weapons in Libya has surpassed the levels noted in other post conflicts states.[54] A disarmament campaign should be launched with the assistance of the international community. The transitional authorities could compensate those groups still holding onto their weapons. Stricter border control could be implemented in order to capture criminal smuggling of arms to neighboring countries.

XI   THE ROLE OF ISLAM IN THE RECONCILIATION PROCESS

Given that Libyan society is 97 per cent Muslim,[55] the role of Islam can and should play an important role in the reconciliation process. Recent political events show that much of the conflict narrative against Islam stems from large misunderstandings and misuse of the religion by non-Muslims, as well as Muslims, or by misinterpreting religious texts to fit the needs of various political powers within the Muslim world. But one of the critical aspects of Islam that tends to be overlooked when discussing either conflict or peace in Islam is its inherit value of *Sulha* (or 'settlement') and *Musalaha* (or 'reconciliation').

The importance of these two frameworks as inherent values within Islam suggests that Muslim countries are capable of implementing effective conflict resolution mechanisms to fit the needs of their communities during the process of reconciliation and peacebuilding. *Sulha* is a structure for resolving conflicts among the Arab tribes that predates Islam. Sulha emerged from a verse of the Quran that states '[t]he believers are nothing else than brothers, so make reconciliation between your brothers, and fear Allah, that you may receive mercy',[56] as a method for settling disputes in the absence of a legal system within the Arab tribes. This practice carried on for centuries and was incorporated into the core of Islam. *Musalaha* is reached through the step-by-step process of *Sulha*, which was practised by both Muslim and Christian Arabs during the pre-Islamic tribal times. Jandt notes:

> The Sulha ritual stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended.[57]

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53   Nicolette Boehland and Bonnie Docherty, 'Report Finds Qaddafi's Weapons Poses Threat to Civilians' (Press Release, 2 August 2012) <http://civiliansinconflict.org/resources/pr/report-finds-qaddafis-weapons-pose-threat-to-civilians>.

54   Ibid.

55   CIA, *The World Factbook*: *Libya* (2013) <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>.

56   القرآن الكريم، سورة الحجرات، آية 10 [Quran, Chapter 49, verse 10].

57   Fred E Jandt, *Intercultural Communication: A Global Reader* (Sage Publications, 2003) 271.

Islamic Law ('*Sharia*') later defined the purpose of *Sulha* as 'the principle to end conflict and hostility among the Muslims so that they may conduct their relationships in peace and amity'.[58] There are a number of Islamic countries where *Sulha* is integrated into the judicial systems (eg Jordan) and some countries where *Sulha* is not a part of the formal judicial system but it is widely practised (eg Lebanon, Palestine).[59] Such private modes of conflict control and reduction are practised in areas not controlled by the state. Therefore customary and traditional steps are taken to restore justice. Sometimes, both private and official justice are invoked simultaneously in fostering reconciliation.[60]

The most recent report from USIP on the work of the informal justice system in Afghanistan suggests that informal justice mechanisms, and indigenous *Shuras* and *Jirgas*, have been successful in solving conflict and disputes among the local populations. Given that few Afghans have confidence in the state's ability to deliver justice through the formal court system, the informal justice sector in Afghanistan has been successful in not only providing pervasive and effective venues for people to settle conflicts, but it has provided the people with *access* to the type of justice inherent in their cultural traditions.[61]

USIP researchers found that Afghan-led initiatives for justice have been more successful in increasing predictable conflict resolution, suggesting that certain types of small, flexible and context-responsive programs focused on linking the formal and informal sectors can promote more predictable access to justice indigenous to the local communities.[62] This process could be further applied to other Muslim countries as a means to empower civil society to work towards and achieve a more participatory peace process and justice. The cultural values and traditions of the Arab-Islamic societies could be incorporated into state-to-state and intra-state diplomatic efforts, which can further facilitate legitimate peace through the processes that respect and validate religious and cultural realities. This suggests the importance of good governance of collective responsibility in the decision-making process. It further suggests that this type of consultation is the ideal way of leadership, which is the foundation of participatory democracy.

In the case of Libya, the tribal and religious leaders' involvement in settling conflicts between armed groups has been effective in multiple incidents. For example, last year the government made a decision to expel all non-state armed groups from Tripoli.[63] Enforcing the government's decision resulted in a direct armed clash between the state army and one of the non-state armed groups. This particular clash was resolved by tribal and religious figures from the regions that the non-state armed group came from. The earlier referenced 'wise men' practised *Sulha*, which has become an important element in the traditional practices of Libyan people to settle their

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[58]   Majid Khadduri, *Such in the Encyclopedia of Islam* (Brill, 1997) 845–846.

[59]   Robert Terris and Vera Inoue-Terris, 'A Case Study of Third World Jurisprudence — Palestine: Conflict Resolution and Customary Law in a Neopatrimonial Society' (2002) 20(2) *Berkeley Journal of International Law* 462, 469–470.

[60]   Ibid 490–491.

[61]   Noah Coburn, *Informal Justice and the International Community in Afghanistan* (17 April 2013) United States Institute of Peace
<http://www.usip.org/publications/informal-justice-and-the-international-community-in-afghanistan>.

[62]   Ibid.

[63]   قرار المؤتمر الوطني العام رقم 27 لسنة 2013 بشأن إخلاء مدينة طرابلس من المظاهر المسلحة غير الشرعية [The General National Congress Decision no 27 of 2013 on expelling non-state armed groups from Tripoli] (Libya).

conflicts. Given the success of this incident, local and national governing bodies should continue to utilise the *Sulha* method where appropriate, and incorporate it into the mainstream transitional justice efforts.

XII   CONCLUSION

One of the most dramatic political transformations in Libya brought an unprecedented challenge to a society which relied on the stability of a dictatorial regime for 42 years. Rapid disintegration of the state system, along with socio-cultural fragmentation, caused Libyan people so many grievances in such a short time. The challenge of transitioning the society from the decades of tyranny to some form of democracy after a violent revolution requires a seismic commitment by the new government, as well as every level of society, to help pave the way towards a peaceful and just country. Despite the somber reality, this paper is a humble attempt at optimistically looking at various ways in which Libya can be transformed and stabilised in order for its current and future citizens to live in peace and co-exist with one another.

The complex challenges that the present government has in securing and transforming Libya require not only international help, but a commitment from every citizen to personally engage in ensuring a peaceful and just transitional process. It is critical that the political power-grabbing be minimised, with the help of innate cultural and religious values of society. It is also imperative that outside forces such as Al-Qaeda, which continue to infiltrate the region and impose ideologies unknown to Libyan society, be eradicated.[64] Finally, the development of an effective justice system is needed to ensure transparency in society. Without it, the potential for continuous insecurity and uncertainty will continue to dominate the post-revolutionary discourse in the country. Libyan citizens are in dire need of a justice system not founded on the principles of the old regime; such a notion would require the collective paradigm shift that is necessary in order to establish fairness, transparency and the principles of democracy within society. Only under such conditions could Libya become a safe, secure and prosperous place in the region. The policy proposed in this paper reflects the author's thoughtful and genuine dedication to the country that has enormous potential to be a leading example of democratic rule within the Middle East and North African countries.

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[64]   Federal Research Division, 'Al-Qaeda in Libya: A Profile' (Report, Library of Congress, 2012) 2
        <https://www.fas.org/irp/world/para/aq-libya-loc.pdf>.