



SPECIAL REPORT

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ABOUT THE REPORT

This report focuses on the different means of dispute resolution—from the formal justice sector to tribal arbitration—available to citizens in Yemen and how these practices were affected by the 2011 crisis and transition phase that followed. It is derived from several United States Institute of Peace (USIP) studies on how the post-Arab Spring transition has affected rule of law, justice, and security in Yemen. USIP has been a leader in exploring customary or traditional dispute resolution practices and their relationship with formal justice mechanisms throughout its areas of work, including in Liberia, Sudan, Afghanistan, and Iraq.

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SPECIAL REPORT 345

APRIL 2014

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Dispute Resolution and Justice Provision in Yemen's Transition

Summary

- Yemen has long had a vibrant tradition of community-based dispute resolution, particularly tribal dispute resolution, which has become even more dominant in the transition period that followed the 2011 Arab Spring protests.
- As the Yemeni state has struggled to regain political equilibrium, rule of law has deteriorated and criminality and armed conflict have increased. State institutions have weakened and now struggle to meet citizens' demands.
- In response, citizens increasingly turn to traditional or community-based dispute resolution for their justice needs. In addition to long-standing actors or mechanisms, a number of new dispute resolution actors have emerged. Some areas have seen a retribalization, while in others, armed actors dominate.
- Although alternative dispute resolution actors have been an important gap-filler during this time, they have also found their authority challenged. The political uncertainty and the rise in lawlessness have simultaneously weakened both formal and informal actors' ability to resolve disputes sustainably and to prevent conflict.
- The result has been more limited options for peaceful dispute resolution overall, which feeds instability and has the potential to exacerbate broader conflict dynamics and weaknesses in the rule of law.
- Strengthening the options for lower level dispute resolution and conflict prevention are critical to restoring stability. Because of the centrality of these community-based justice mechanisms in Yemen, efforts to strengthen rule of law must take a more holistic view of justice provision to include these mechanisms and practices.
- Program interventions should not preference or target one system over the other but instead take an integrated approach and consider the significant role that alternative dispute resolution plays.

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- Critical elements include supporting greater understanding of and dialogue with dispute resolution actors, incorporating alternative dispute resolution into the justice sector strategy, and focusing on reforms and adaptations on both sides.

Introduction

Traditional or customary dispute resolution—particularly tribal dispute resolution—has long been prevalent in Yemen. Official statistics are scarce, but an estimated 80 plus percent of Yemenis resolve disputes—from an individual murder to a tribal blood feud to a dispute over land or property to a car accident—outside the formal justice system.¹

These alternative mechanisms have been playing an even more critical role in justice provision and conflict prevention since the transition period began. In theory, the post-Arab Spring transition in Yemen should have created opportunities for state institutions to strengthen and expand. The Gulf Cooperation Council agreement that ended the Arab Spring protests set a number of benchmarks for reforming the Yemeni government, including strengthening rights protection and law enforcement and improving the judiciary. However, although the transition period has so far involved substantial discussion of institutional reform, the promises have not yet materialized. In lieu of a period of statebuilding and greater rights protection, the period following the 2011 crisis has seen a fracturing of state control and weaker state institutions. As the Yemeni state has failed to reestablish political equilibrium, rule of law and security have deteriorated.

Given the likely continued weakness of the state and formal justice mechanisms, most citizens are likely to go beyond the formal justice system for some time to come. Given the urgent need for solutions to gaps in Yemen's rule of law sector, can more be done with these alternative dispute resolution (ADR) actors and traditions?

Methodology and Terms

Since 2012, USIP has been engaged in research exploring how the post-Arab Spring transition has affected security and justice provision in Yemen, primarily funded by the Bureau of International Narcotics and Law Enforcement Affairs at the United States Department of State. In 2011 and 2012, USIP conducted a study of the impact of transition on rule of law in four governorates.² In 2013 and 2014, USIP conducted a mapping of justice functioning in ten governorates.³ Both of these studies gathered data about how local communities use nonstate or alternative dispute resolution in lieu of the formal sector and how such nonstate practices have changed in the last two years. In addition to these surveys, USIP conducted long-form interviews specific to this paper, including interviews with Yemeni judges, justice officials, and lawyers; tribal leaders, community elders, and others engaged in dispute resolution; and nongovernmental organizations (NGOs) and international donors who have engaged in conflict resolution programming.

Because of the diversity of local practice, no single term accurately describes the entire spectrum of nonstate dispute resolution or arbitration. Common descriptors of such practices include customary justice, informal justice, alternative dispute resolution, tribal dispute resolution, traditional dispute resolution, and community-based dispute resolution. Deciding on one descriptor becomes particularly complex in Yemen. Although many dispute resolution mechanisms draw from long-standing traditions, norms are constantly evolving, as is the landscape of dispute resolution actors. This makes it difficult to describe them *prima facie* as traditional or customary. In addition, the dispute resolution spectrum is fluid,

and individuals may play a state and nonstate role concurrently. For the sake of simplicity, this paper will generically use the terms dispute resolution or alternative dispute resolution.

Dispute Resolution Mechanisms in Yemen

ADR has long played a significant role in meeting citizen demands for justice and conflict resolution in Yemen. This is not only because community-based or traditional dispute mechanisms have been in place for longer—and so are more trusted—but also because of the weakness of the formal system, even prior to this transition period. The state has long had a limited presence in much of the country. Insecurity, local conflicts, and difficult terrain, as well as social and economic barriers, poor literacy, and poor formal documentation make formal justice mechanisms inaccessible for much of the population. The judiciary's reputation for corruption, weak enforcement, and slow decision making leads many citizens to strongly prefer other means of resolving disputes.

Although the tribal system is the most common alternative to formal justice, tribal dispute resolution coexists with other types of ADR, including by local community or religious leaders, commercial practitioners, and state officials acting beyond their official duties.

Tribal Dispute Resolution

Tribal structures in Yemen are strongest in the northern mountains and in the desert along the borders with Saudi Arabia, where the population historically belongs to the two major tribal confederations, the Hashid and Bakil. In the lower uplands around Taiz and Ibb, and along the Red Sea coast up through Hudeida, tribal traditions still exist and are dominant in some communities but are overall weaker than in the more northern areas.⁴

Tribal structures are weakest in south Yemen, particularly in Aden. This is in part due to differences in the terrain and economic resources: Tribes were never as strong here as elsewhere. In addition, the Socialist Party, which controlled South Yemen (People's Democratic Republic of Yemen) from 1967 to 1989, took deliberate steps to undermine tribal structures and to increase the presence of and reliance on state mechanisms.⁵ The Marxist region that took over in South Yemen in 1976 severely condemned tribalism, perceiving it as synonymous with feudalism and as a competitor for state control. As a result, "village headmen, who owned no more than anyone else, were murdered by the state as 'feudal landlords.' In some cases, a person would 'disappear' for the mere fault of tribalism."⁶ Land previously owned privately by tribal sheikhs or collectively owned by tribes was taken by the state. This undermined economic and political control by local actors and contributed to a weakened tribal system in those areas.

Tribal ADR is also less prevalent in urban than in rural areas because urban areas tend to have some functioning formal justice mechanisms and other nontribal dispute resolution in place (such as commercial arbitration). Nonetheless, even in urban areas, many Yemenis still identify with their tribal heritage and may still use tribal customs to resolve their conflicts. This is particularly true in Sanaa, which is located in the predominantly tribal area.

For centuries, the tribal system handled conflicts both among tribes and between tribes and the state. Tribal customary law tends to be the most sophisticated and well developed of alternative dispute resolution mechanisms in Yemen with detailed and, in some areas, partially codified rules addressing different kinds of disputes, processes for appeal, and specific enforcement measures. Typically, any low-level sheikh or social figure might deal with the initial stage of dispute resolution. Parties get to choose an arbitrator or arbitrators and agree on general principles and terms. Once the arbitration process has begun and a

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decision is given, if one or both of the disputing parties rejects the decision, they have the option to appeal twice at two higher layers of tribal justice.⁷

The substance of these practices and procedures varies among tribes, geographic areas, communities, and even individual arbitrators. Disputants may choose an arbitrator because they agree with his approach to a particular type of issue or with his interpretation of tribal law. Thus, there is a level of voting with your feet and popular input into how tribal law is applied. Although well-established practices guide certain types of cases, the system is flexible enough for arbitrators to develop solutions for conflict emerging from development, the presence of corporations, or modern technology.

Tribal dispute resolution is used for all types of cases, from civil, commercial, and personal status issues to criminal justice, intertribal disputes, and conflict mediation.⁸ Dispute resolution practices in other Islamic countries have often placed significance on the distinctions between *haq al-abd* (the rights of man) and *haq al-illah* (the rights of God) under Islamic law and argued that for this reason criminal matters should be left in the hands of the state.⁹ In Yemen, there is no general sense that arbitration should confine itself to certain types of cases. In fact, those questioned on this point tended to argue that criminal cases were more likely to be dealt with through tribal arbitration to contain blood feuds or other community repercussions.

Tribes are ultimately responsible for the actions of their members. This collective responsibility element is a strong mechanism for enforcement, though the disputing parties' agreement to abide by the arbitrator's decision and the in-kind or monetary guarantees taken are also important factors.¹⁰

Nontribal Dispute Resolution

Although tribal dispute resolution is the best known and most cohesive form of ADR in Yemen, other nontribal actors and practices are common, even in tribal areas. These include local community leaders (*akls*),¹¹ local council members or leaders in a community, or government officials at a district or governorate level acting beyond their formal duties (for example, a district director or the governor). This community-level ADR tends to be ad hoc and does not follow consistent rules or patterns in the way that tribal ADR does.

Local religious leaders are also involved in conflict resolution both in tribal areas and in more traditionally nontribal urban areas, such as Aden and Taiz.¹² They frequently act as mediators rather than arbitrators, bringing conflict parties together and persuading them to go through a dispute resolution process.¹³ More broadly, religious leaders play a role in encouraging peaceful conflict resolution and reconciliation.

Finally, in the last decade, an increasing number of arbitrators or "arbitration houses" have emerged in urban areas, most focused on commercial matters. A smaller subset may handle other matters, such as child custody, family law issues, or land or property rights.

Formal Justice System

Finally, Yemen's formal justice system is one option for disputants, if an increasingly small and unreliable one. Based on both sharia and civil law traditions, the court system consists of three tiers: courts of first instance, courts of appeal, and the supreme court.¹⁴ The justice system exists in all governorates but has a slim presence outside the main population centers. Criticisms of judges as corrupt, unqualified, or ineffective in enforcing the law are widespread. Law enforcement mechanisms are ineffective and weak, and case outcomes are highly subject to corruption and political interference.

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Table 1. Who does the population turn to outside the state?

In 2013, USIP researchers mapping how justice is working at a local level in ten governorates assessed to whom the population would most likely turn if they wanted to resolve a dispute outside the court:

Abyan: Popular Committees, to a small extent sheiks
Aden: akls, prominent social figures (political, intellectual)
Hadramawt: akls, sheikhs
Hudeida: sheikhs, religious leaders
Ibb: akls and religious leaders in the city center, primarily sheikhs elsewhere
Lahj: akls, sheikhs
Mareb: sheikhs
Sanaa: sheikhs and religious leaders
Shabwa: sheikhs
Taiz: sheikhs, prominent social figures (religious, political, intellectual)

The formal justice system is particularly weak in areas with a strong tribal history and practice. For example, in the highly tribal governorate of Marib, only three primary courts have ever been established in its fourteen districts. Even in more developed governorates, some districts may remain disconnected from formal state services because they are heavily tribal. In USIP's 2013–2014 study, areas of even the more developed governorates of Hudeida, Taiz, and Sanaa included districts that were so heavily tribal that no court had ever been established or the court in that district only acted on a limited (primarily notary) basis.¹⁵

Reliance on formal justice mechanisms has been stronger in the nontribal, southern governorates, particularly Aden. But even in these governorates, systematic weaknesses in the justice system also lead many to resolve their disputes through alternative means. The weakness of the formal justice system since 2011 has made it even more of a last resort.

Cooperation and Cross-Pollination

Cross-pollination and interaction is common between formal justice actors and the tribal sheikhs, community leaders, commercial arbitrators, or other actors engaged in ADR. Resolution tends to be fluid: A case may originate in tribal arbitration but later be appealed before a court or to commercial arbitration or some other combination of the different mechanisms. Resort to nonstate mediation or arbitration has been so common historically that it is officially recognized under Yemeni law. Although cross-pollination between these types of dispute resolution is enabled by Yemeni law, it is predominantly a product of the subordination of justice provision (whether formal or informal) to political actors and dynamics.

Formal Justice Cooperation Under the Arbitration Law

The Law on Judicial Power, which regulates courts, their composition and competence, recognizes that disputes may be resolved through alternative dispute mechanisms outside the court, within limitations stipulated under the arbitration law.¹⁶ Nonstate arbitration is not permitted for Hudud crimes, impeachment and prosecution of judges, matters relevant to

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the public order, among others—though in practice neither observance of these limitations nor enforcement by the state is evident.¹⁷

The arbitration law stipulates that the decision should be documented and the final signed by both parties as well as by the arbitrators. In practice no enforcement mechanisms for these provisions appear to exist. Official registry of dispute resolution with the state is uncommon. (None were identified in this research.) The law itself is vague and does not enumerate what such a process should be.

Judges, lawyers, and government officials interviewed for this report almost universally noted that under the Yemeni arbitration law, decisions reached through alternative dispute resolution are given the same weight as those reached in the court of first instance.¹⁸ Decisions can be appealed to the court of appeals, though in practice this is less common than appeal within the tribal system. Under article 53, an arbitration verdict can be appealed if the procedures taken or the original agreement were incorrect or invalid, if one of the parties is deemed to be incapacitated or not competent under law, if the mediators selected did not meet the terms of the agreement, or if a decision overstepped the stipulated terms or mandate.¹⁹ The appeal is classified as a civil matter, regardless of whether the case is criminal.²⁰ Finally, an arbitration decision and its award may be set aside if it violates Islamic law or the public order (undefined), either by appeal from one of the parties or by the decision of the court of appeal without a request.²¹

In practice, members of the legal profession frequently describe ADR positively. It is seen as a way to lighten the caseload from the formal system and to prevent and resolve conflict in ways the formal system cannot. Yemeni government officials, particularly those who identify as tribal, sometimes act beyond their official capacity to resolve disputes among citizens. Local governance or justice officials frequently have a strong relationship with sheikhs or other dispute resolution actors in communities. Many judges unofficially or informally encourage disputants to resolve cases out of court. Some even argue that it is their duty to moot this option because Yemeni law permitting parties to resolve disputes outside the courts.

In some cases, cooperation between dispute resolution actors and courts can affect the formal justice system verdict. In 2007 in Shabwa, for example, a conflict between two subtribes from Aal Baras led to the death of five people from one subtribe. When the case was taken to court, the court found that ten people were guilty and sentenced seven of them to death. Elders from the two subtribes feared that implementing the court sentence might lead to revenge killings. After much negotiation, the conflict parties agreed to implement the death sentence on five of the seven. The number of those who were killed from both tribes was thus equal, which ended the conflict and the risk of future revenge killings.²²

More infrequently, cases may also go from the informal to the formal system when the nonstate dispute resolution has failed. In one 2012 case from Marib governorate, a recurring conflict between the tribes of Aal Ghanem and Aal Janah led to the injury of members from both tribes. Local sheikhs who were tired of handling the numerous conflicts convinced the parties to go to court and took guarantees from them to ensure that they would follow the court's ruling.

Although relations between the formal justice sector and tribal dispute resolution actors are frequently constructive, they are not without tension. Local sheikhs pressure judges to decide cases outside the court system or to have cases decided in their favor. In the course of USIP's 2013–14 research, court staff in nearly all ten governorates noted some example of intimidation by sheikhs. This ranged from appearing at court with armed men and threatening the judge or prosecutor either implicitly or directly to threats against disputants outside

the court. For example, one prosecutor attached to an urban court in Taiz recounted an incident in which a prominent local sheikh went to the head of the prosecutor's office and warned him not to release a person being detained "because this would result in murder." The prosecutor interpreted this as a threat to both himself and the detainee. In several of the governorates, court staff noted judges who were transferred or penalized (not given promotion or raises) after ruling against the interests of powerful sheikhs or political figures. A lawyer from Hudeida noted that he had received death threats when he tried to represent clients in tribal areas because it was seen as going against the local sheikh's authority.

Cooperation Between Dispute Resolution Actors

Cooperation between other types of actors who engage in dispute resolution is also significant, if ad hoc. Religious leaders may act as a liaison between tribal and state actors or between tribal and other community actors. In recent years, some of the arbitration houses have begun devoting a great deal of time to mediating between sectors of dispute resolution. Some of these may have tribal ties and act as intermediaries either between tribal entities and the formal sector or between tribal entities and commercial interests.

At a local level, community leaders may mediate between communities and formal justice actors. USIP's 2013–14 judicial mapping found that in many governorates or districts where the state is weak, akls are responsible for delivering court summons or other official documents to the relevant actors in a community—functions that normally might be taken on by judicial police or other state officials.

Politics by Another Name

This level of fluidity between types of dispute resolution is in large part because all justice provision in Yemen—whether through the formal system or through ADR practices—tends to be used as an extension of political control and authority. The military philosopher Carl von Clausewitz was famous for observing that "war is the continuation of politics by another means." In Yemen, dispute resolution is the continuation of politics by another means. Local political actors and informal power brokers (from sheikhs to local businessmen) frequently try to subvert or control different types of dispute resolution—whether formal justice processes, tribal arbitration, or other ADR mechanisms. The Yemeni judiciary has long been treated as an extension of the executive branch. Under the former president, Ali Abdullah Saleh, this situation was particularly acute. Saleh acted as head of the Supreme Judicial Council, which sits at the apex of the judiciary. Military and security actors loyal to the regime were appointed as judges despite having no legal background. Judges were transferred, removed, or disciplined for rulings against the interests of powerful local or national figures.

The overlap between political control and control of justice outcomes is not limited to formal justice provision. Dispute resolution is tightly connected to the political authority of a sheikh, local community leader, or leader of an armed group. The ability to mediate conflicts or resolve disputes, and to have decisions abided by, both stems from and reinforces existing political or military control.

Political actors also frequently attempt to co-opt tribal actors or other ADR mechanisms, and thus any nonstate mediation or arbitration practices in which they are engaged. For example, in addition to trying to control the judiciary, Saleh made deliberate attempts to co-opt and control tribal actors. At a local level, examples of local political leaders attempting to do the same are numerous and frequent.

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Changing Dynamics

Evolving conflict and political dynamics in the past several decades, and particularly since the 2011 crisis, have disrupted many long-standing patterns and practices of dispute resolution. Changing conflict and socioeconomic dynamics have weakened the authority of tribal structures and traditions. Meanwhile, the political uncertainty and weakened rule of law that have followed the 2011 crisis have allowed new actors to emerge. Citizens are increasingly resorting to their own means or turning to new power brokers or armed groups for dispute resolution.

Erosion of the Tribal System

Over the last several decades, Yemen's tribal system has weakened significantly. Conflicts have grown increasingly complex in both their geographic spread and nature, making it difficult for a single sheikh to resolve disputes or to ensure that any decisions are enforced. Militant and criminal groups have also risen in number in tribal areas. This not only increases the number of disputes or conflicts overall but also means that more of the conflicting parties are those over whom tribal actors have little control because militant groups and criminals are less likely to respect or respond to tribal authority.

Militant and criminal groups have begun directly targeting sheikhs. Several high-profile assassinations and attacks on sheikhs in governorates like Marib and al-Jawf attributed to al-Qaeda affiliates have had a chilling effect, making sheikhs less likely to intervene to try to stop al-Qaeda or other criminal activities. These assassinations and targeting also make sheikhs appear weak. It is taken as evidence of their inability to confront local security threats and thus reduces their perceived authority in other spheres.

Changing political and social dynamics have also undermined respect for sheikhs. Under Saleh, sheikhs were co-opted, provided with high salaries and other benefits in exchange for loyalty to the regime. As sheikhs spent more time in Sanaa and—with new sources of wealth and influence—became less accountable to the population, the credibility of tribal leadership overall was affected.²³ Many residents in tribal areas who traditionally relied almost solely on sheikhs for dispute resolution and other services now view them with greater mistrust, as corrupt and unable or unwilling to address their concerns.²⁴

Increased urbanization and changing migration patterns have altered traditional power structures in some tribal areas. Worsening overall socioeconomic conditions, high unemployment, and increasing poverty have contributed to many conflicts over resources and livelihoods. Because these stem from deeper structural issues in Yemen—rather than personal conflicts that might be resolved solely through mediation—sheikhs are often unable to resolve them in a sustainable way. This has decreased confidence in sheikhs' ability to mediate disputes and to meet popular demands, which over time has decreased their overall authority.

Many of those interviewed noted that even within predominantly tribal areas, they have seen a decline in sheikhs' authority. Tribal practices and traditions that have enabled conflict resolution are more widely disrespected. For example, tribal principles that forbid violence in public places and against those in the company of women or children have increasingly been disregarded. Traditionally, tribal arbitrators or mediators are considered immune from attack. In recent years, however, the number of reported incidents of sheikhs being killed during mediation has risen.²⁵

Declining respect for tribal principles of *'urf* and for tribal authorities is particularly acute among youth. Close to half of the Yemeni population are under the age of fifteen and another third make up its youth cohort (age fifteen to twenty-nine), so this challenge is likely to increase over time.²⁶

Traditionally, tribal arbitrators or mediators are considered immune from attack. In recent years, however, the number of reported incidents of sheikhs being killed during mediation has risen.

Because of all these factors, sheikhs are less willing or able to intervene in conflicts than they once were. In addition, as a result of this decreased authority and other economic factors, the transactional costs of using the tribal system are rising. Typically, tribal arbitration mechanisms demand up-front guarantees from the conflicting sides in the form of either money or valuable assets. In the last decade, the cost of these guarantees vis-à-vis the value of the assets in dispute or the overall economic conditions has increased significantly. Weaker overall respect for tribal arbitration has lowered the social and reputational costs of defaulting, so more money has to be demanded instead to guarantee enforcement. The rising costs may in some cases be due to growing corruption in the tribal system. Whether due to corruption or a legitimate need for greater enforcement leverage, many are no longer able to afford the cost of tribal ADR.²⁷ As one prominent social leader argued, “The money people spend for arbitration costs more than the land they have a dispute over.”²⁸

Because of the higher costs and the inability of sheikhs to fully contain some threats (such as from criminal or terrorist groups), calls for state justice and security intervention in tribal areas are stronger than in the past.

Emergence of New Actors

The transition period has also led to significant changes in dispute resolution dynamics, weakening the formal justice sector and giving rise to new actors and practices of ADR.

The popular protests that erupted in early 2011 triggered violence and civil unrest across the country. In many areas, the formal justice system was effectively halted for more than a year and still struggles to return to pre-2011 levels of operability. USIP’s mapping study found that in 2013, of the ten governorates surveyed, courts were often closed 20 percent of the time due to increased insecurity, strikes, and political disobedience.²⁹ In governorates like Hadramawt, Hudeida, Ibb, and Lahj—which previously had relatively functional judicial systems—spreading insecurity and a higher than average level of strikes may have led to many courts being closed 60 percent of the time.

The impact of this decline in state law enforcement and judicial functions in terms of meeting citizen demands for justice is illustrated by the decline in new cases over this period. In Aden, which has long had the highest number of cases per capita, the number of new cases brought in 2013 decreased 44 percent since 2010 (from 12,239 to 6,640).³⁰ In Sanaa city, it decreased 41 percent (from 22,995 to 12,871), and in Taiz, 35 percent (from 13,032 to 8,464).³¹

Instead of bringing matters to the courts, citizens are increasingly taking matters into their own hands or turning to nonstate power brokers to resolve disputes. Many areas that previously did not have strong levels of tribal arbitration have seen retribalization in the wake of the formal system’s virtual collapse in 2011. In Taiz, sheikhs, supported by relatively well-armed and organized tribal armed groups, played a strong role in the 2011 protests and in securing parts of Taiz in the absence of state control. Those factors, combined with the weakening of the Taiz judicial and enforcement mechanisms, has led many more citizens to turn to sheikhs to resolve conflicts.³² This trend has as much to do with sheikhs’ ability to enforce their decisions as with the weakening of the judicial system.³³

What is notable about retribalization is not that citizens turn to tribal actors—after all, tribal elements have always existed in nearly all governorates in Yemen. It is that citizens who do not primarily identify as tribal or who might have relied on state mechanisms are now increasingly turning to tribal actors because the state structures can no longer meet their needs. This has been happening not only in Taiz but also in Lahj and Hudeida, for example.³⁴

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Retribalization is but one of the examples of increasing resort to nonstate actors. In Aden, retribalization has been less of a phenomenon (although for certain types of disputes—particularly over land—sheikhs from nearby Abyan and Shabwa governorates have been asked to intercede). Instead, throughout much of 2011 and 2012, residents relied heavily on akls. In neighborhoods where the protests were the strongest, they turned to youth leaders who were prominent in the 2011 protest movement or to opposition leaders affiliated with al-Hiraak. Religious leaders (particularly the Salafis) have also been playing a greater facilitating role.³⁵ “People created these alternatives because justice and security deteriorated,” noted Shafee Alabd, a prominent activist and civil society leader in Aden.³⁶

Civil society activists interviewed noted that although it was good that these alternatives were available, some of the new ADR actors were themselves the source of conflicts, and thus their empowerment was not necessarily a positive development.³⁷ In addition, unlike much of tribal ADR, these ADR mechanisms tend to be based only on oral agreement and are not deeply vested in local social constructs, so they are highly vulnerable to default.

The increased prominence of other nontribal local community actors or political figures in ADR is not limited to Aden. During the 2011 crisis and for some time after, youth leaders played a more prominent role in ADR and mediation in some parts of Taiz. The increased prominence of local community actors and akls in dispute resolution was also noted during USIP’s mapping study in Lahj, in the more urban areas of Ibb (the rural areas turn more to tribal actors), and in Hadramawt.

Finally, given the breakdown in rule of law and increasing levels of violence across the country, armed actors are becoming more dominant, including in dispute resolution. Citizens turn to prominent local armed groups—sheikhs, armed factions of political parties, locally supported armed groups, and other power brokers—for dispute resolution because they are able to enforce decisions. For example, much of Abyan, parts of which were taken over by the al-Qaeda-affiliated Ansar as-Sharia (AAS) militant group in 2011, remains in the control of the so-called Popular Committees—locally supported, largely pro-government armed groups that helped drive AAS out in 2012. Although akls or *majeles ahlia* (community leaders, not usually part of armed groups) mediate some disputes, most other cases tend to be handled by Popular Committees because they have the power to enforce their decision making.³⁸ This is particularly true of criminal cases or issues between armed groups.

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Peaceful Dispute Resolution Compromised

USIP’s research sampled these trends in only ten governorates, but increasing resort to ADR appears to be a widespread phenomenon across Yemen. Although not entirely negative (many citizens have long preferred nonstate mechanisms), there are some drawbacks. First, though in many cases citizens are happy not to have to deal with the state, many of those interviewed were concerned that they did not have the option of doing so. They resorted to nonstate actors because they had no choice. Access to justice or different options for justice however defined, is unquestionably limited in this period.

Second, even though many citizens prefer nonstate mechanisms, the success and sustainability of ADR decisions is less likely in this period. As noted earlier, increasingly complex conflict dynamics and socioeconomic changes had already eroded traditional structures like the tribal system before 2011. The political uncertainty and weaker rule of law since then have further undermined local community structures. The Arab Spring protests and the resulting removal of Ali Abdullah Saleh was a seismic shift in the political system, upending the power balance between Yemen’s key power brokers and factions and causing ripple effects in both formal and informal channels. ADR works best and is most likely to result in sustainable solutions

when it is anchored in and enforced by local social hierarchies and contexts. In the post-Arab Spring transition period, those hierarchies and structures have been shattered. At the same time, the security vacuum in many areas has given even more breathing space to criminal, terrorist, and other armed groups who often challenge or intimidate local leaders, both tribal and nontribal. Together, the political uncertainty and the security vulnerability make traditional patterns of authority more open to challenge and more likely to fluctuate.

These two factors have created a much more tenuous situation for ADR actors who wish to contribute to lower levels of conflict at a community level. It is more difficult for them to command the authority needed to reconcile parties or to enforce a decision. Where they do intercede, decisions are more vulnerable to default.

Thus, at the same time that state rule of law and enforcement structures are at a nadir, the authority of tribal and other community actors is also weak. Citizens' ability to resolve disputes or to prevent conflict from developing has been eroded. This carries serious potential to feed instability and larger conflict dynamics.

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Future Directions and Programming Options

Absent stronger leadership and control from the state, the deteriorating security and poor law enforcement that have been a hallmark of the transition period seems likely to continue. The current transitional government is weak, divided, and hampered by continuing political uncertainty. Rather than emerging with a unified consensus on the way forward, the Yemeni government emerged from the National Dialogue Conference—the flagship of the transition process—as divided as ever. At the time of writing it was not clear whether the many positive resolutions—including those related to judicial reform—would actually be implemented.

Given that justice institutions are not yet at 2010 operating levels, the next step of addressing the plethora of access, corruption, and capacity issues that have long plagued the Yemeni justice system—and led many citizens to prefer ADR—seems unlikely in the near future. Rule of law and the formal justice sector will likely remain weak for some time to come. Nonstate dispute resolution will thus continue to be the only reliable alternative for communities. This raises the question of what types of engagement might be possible with regard to ADR actors to help support justice provision in Yemen.

Programming and Engagement to Date

Research and programming with ADR actors in Yemen has been limited so far. To the extent that it has taken place, research and programming have focused on tribal actors' engagement from a conflict resolution framework, rather exploring their role in dispute resolution as it contributes to justice provision. Exploration of nontribal ADR has barely happened at all.

Activities have tended to fall into one of three categories: pure research and assessment, training aimed at tribal sheikhs or dispute resolution actors, and on a more limited basis trying to develop or create dispute resolution mechanisms. Within the first category, some conflict assessments and research have explored the role of ADR in preventing, mitigating, or helping resolve local conflicts. Of note, in 2008, the Adventist Development and Relief Agency developed a reference guide to local terminologies used in local conflicts in the districts of Barat Almarashi and Munabeh districts in al-Jawf and Saadah.³⁹ Other actors have engaged in more context- or program-specific mapping or research before beginning projects or activities in a community. In 2013, the United Nations Development Programme undertook an extensive mapping of the informal system, not limited to dispute resolution. At the time of writing, however, it has not yet been published.

Beyond pure research, or assessments, several organizations have sponsored conferences or symposiums to explore the role of sheikhs or other nonstate actors in conflict resolution. For example, Germany's Gesellschaft für Internationale Zusammenarbeit (GIZ, formerly GTZ) supported a series of reports, articles, and small workshops to better understand Yemeni approaches to peaceful conflict resolution, their underlying principles and values, and differences with Western approaches.⁴⁰ In 2010 and 2011, Partners Yemen conducted two symposiums bringing together key justice sector representatives and sheikhs from Marib and Shabwa to discuss ways in which the tribal system could support development and security in tribal areas.⁴¹

Training has also been a significant category of programming, from training on Yemeni or international law to gender sensitivity training to conflict resolution and mediation techniques. Dar As-Salam, a local NGO, engages a network of more than three thousand sheikhs and religious figures in direct mediation and awareness-raising activities that attempt to reduce levels of violence and mitigate the impact of revenge killing and tribal conflicts.⁴² Human rights groups have also frequently provided human rights training to tribal sheikhs because tribal ADR has a reputation for reaching decisions that violate women's rights or the rights of other marginalized groups and that reinforce discriminatory practices or customs.

On a limited basis, some organizations have tried to create conflict resolution mechanisms to improve access to and the success of peaceful dispute resolution in a community. In one such project, respected local tribal mediators in a community were brought together with other actors (local council members, youth leaders, and some civil society figures), provided training in conflict resolution techniques and other issues, and encouraged to work together to resolve local conflicts. These councils also had some development funding at their disposal. In general, these projects were funded for only a year, much of which was spent identifying community actors, building trust, and forming the councils. The model, those involved argued, would have had more of an impact if it had been supported for a longer period.

Another local NGO (supported by an international donor) developed a project to improve linkages between formal justice actors and tribal or other alternative dispute resolution actors. Among other components, it would have first trained nonstate actors on correct ways of recording the outcome of a dispute and then worked with them to have the final outcome registered with the local justice system.⁴³ The project fell apart before it was launched, however, because of a management issue early on.

Future Programming

Promising work remains to be done on dispute resolution mechanisms given the high demand for nonstate dispute resolution and the fluid relationship between the formal and informal systems. Nonetheless, much more learning and dialogue is needed before constructive pathways can be found. Experiences from previous programming in Yemen, as well as similar dilemmas and dynamics in other countries, offer some cautions and caveats on how to approach such programming.

Local context

Where ADR works well, it tends to be either because it is deeply rooted in local cultural traditions and community mores and derives legitimacy and enforcement from those traditions or because of the strong personality and reputation of the local actors involved (if not a combination of both). Because of these reasons, developing successful models depends highly on understanding the local context and actors involved, often down to the immedi-

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ate neighborhood or village level. Any programming must be based on an advance in-depth assessment of the local dynamics and practices.

This local context analysis is important not only for projects that seek to engage with ADR actors and practices (for example, developing or supporting local councils directly) but also for training and outreach programming. Trainings designed independently of the specific local context and background run the risk of community blowback. For example, NGOs interviewed feared that programs that promoted Western rights paradigms without working within or contextualizing vis-à-vis existing traditions created the unintended consequence of pushing communities further away from the Yemeni state or from a human rights-based conception of law.

Longer timelines

The personality-driven and context-specific nature of dispute resolution mechanisms, particularly in tribal areas, may require a longer period of research and trust-building. Projects have tended to be short, typically a year or less, without any renewal option. One year was typically enough time to identify key actors, build relationships, and begin to change attitudes or to sensitize communities to different approaches but not enough time to significantly change structures, traditions, and relationships of much longer historical duration.

The longer timelines required should act as a check against the idea that existing non-state dispute resolution can be a short-term gap-filler for problems in the formal justice system. Establishing relationships with, or correcting practices within, ADR mechanisms can take as long as addressing problems within state institutions.

Scaling project objectives

Because these systems are so personality based and so tailored to local context, it may be difficult to scale any model developed to a national level. Yemen is diverse, and the dynamics of ADR differ from one area of the country to another, between urban and rural areas, and even from one community to another. Efforts to improve access to justice or rights compliance may be possible in one area but not in another. Also, given available resources and the time involved in molding a program to the specific local context, they may be possible in only a few areas. Although there has not been a sufficient level of programming to test this scalability problem in Yemen, similar dynamics in other countries offer cautionary indicators. For example, in Afghanistan, where engagement with informal mechanisms (for either justice or stabilization needs) has been tested at a much broader level, models developed successfully at a local level proved difficult to scale countrywide or even regionally with the same effects.⁴⁴ Due to this scalability issue program, interventions motivated by a desire to have a large-scale impact on a sectoral level (for example, viewing ADR as a substitute for a functioning formal justice sector) may be difficult to accomplish.

Better fit with objectives

Future projects may also want to pay closer attention to the fit between the activities and the problem being addressed. In the past, those engaged in these programs found that the source of the disputes was frequently larger structural issues (for example, lack of development, economic, or resource dilemmas). Programs that attempted to address recurrent conflict with training or additional resources alone did not get to the root of the problem and created bad perceptions among the target audience. Beneficiaries of such trainings have grown tired of the same sort of activities without any meaningful results for the problems that most concern them. A female civil society activist who engaged in many of the human

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rights who and conflict resolution trainings noted that “tribal people, community leaders... they’re fatigued of being ‘trained.’”⁴⁵

Programming has also frequently tried to change the awareness and attitudes of sheikhs or local leaders to influence the outcome of ADR decisions to be more compliant with Yemeni or international legal standards—for example, providing training to sheikhs on women’s rights in an effort to reduce discriminatory practices. Although deeper assessments and longitudinal studies were lacking, the experience of those engaged in such trainings in the past suggested that education alone was not enough to change the behavior of these local leaders. Societal pressure to do so was critical. Because these community actors may be more responsive to demands from their communities than to external actors, strategies that engage the entire community, including sheikhs or community leaders, may be more effective.

Conflict dynamics

The constantly evolving conflict and political dynamics in Yemen can challenge traditional ADR practices in ways that are harmful to peaceful dispute resolution or do not reflect community perceptions of justice. This is frequently a problem where armed groups become prominent in local ADR. Because armed actors’ position vis-à-vis ADR is by virtue of their political control or physical coercion (rather than community legitimacy or specialization in tribal codes or other sources of knowledge), when the power balance fluctuates, all of the ADR agreements negotiated by that armed actor may be void, leading to the renewal of local conflicts and disputes. In addition, where militia groups appear to have captured the political space and are engaged in ADR, dispute resolution is frequently accompanied by reports of abuse of power. Programming in these contexts risks unintentionally empowering or supporting these actors, thus legitimizing negative power dynamics or restricting access to justice. For this reason, donors should be extremely cautious about engaging with ADR in these environments, and certainly not without extensive and continuous appraisal of the local conflict dynamics.

In other countries, ADR actors have been envisioned as a potential counter to militant, terrorist, or criminal groups in areas beyond the state’s control.⁴⁶ Given the security dynamics and gaps in state control, it is easy to imagine a similar objective for ADR engagement in Yemen. However, studies of similar dynamics in other countries caution against this: Nonmilitarized, traditional civilian actors are generally powerless to temper the negative reach of armed groups.⁴⁷ As witnessed with the targeting of sheikhs in places like Marib, those who challenge these actors’ authority—even on a dispute resolution basis—are more likely to be killed or silenced, chilling the potential for alternative civilian sources of authority for some time.

Legal framework

One tempting direction for future work is to build on existing connections between the formal sector and ADR actors. The Yemeni legal system, through its arbitration law, offers baseline recognition for disputes resolved outside the formal system. That this legal baseline and relationship already exists enables more dialogue and discussion between the two sectors. This could in turn lead to an accepted practice of law that takes a more holistic approach to justice provision, perhaps integrating more of the advantages of local practices but going further than existing practice in allowing practical rights of appeal or other alternatives to engaging in ADR.

The benefits of such formal-informal cooperation has its limits, however. A frequent programmatic response in such situations is to try to further clarify the relationship between formal and informal justice provision in law—for example, delineating the jurisdictional

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boundaries of ADR in positive law or formalizing the relationship through specific fusion mechanisms. Overlegalizing the relationship between ADR and the formal system can backfire. Local communities often value these alternative processes precisely for their flexibility and adaptability to local norms. Although yet untried in Yemen, efforts to increase jurisdictional limitations on ADR and to formalize nonstate dispute resolution practices in law has had negative results in Liberia and Sudan.⁴⁸ One study of such strategies in Sudan noted that these efforts limited the flexibility and perceived local fairness of customary justice and ran the risk of enshrining one group's interpretation of local justice in law at the expense of others.⁴⁹

Recommendations

By both preference and necessity, the majority of the population will continue to rely on ADR for some time. It could take decades for formal justice institutions to expand services and meet popular expectations. Consideration of nonstate justice provision is therefore essential in any engagement with rule of law and justice provision in Yemen. However, engagement with ADR should not be viewed as a quick alternative or a substitute to long-term formal justice investment. Improving justice outcomes for the population and building rule of law institutions in Yemen requires the engagement of both formal and informal stakeholders, but in either case it is a long-term process. Program interventions should not preference or target one system over the other but instead take an integrated, long-term approach.

A number of elements are critical:

- Supporting greater documentation, research, and understanding of dispute resolution mechanisms, particularly the impact of changing political and security dynamics on these practices.
- Encouraging dialogue between dispute resolution actors, the formal sector, and civil society. Over time this may contribute to stronger coordination and rights protection based on mutual social reinforcement.
- Being cautious of turning to nonstate actors and dispute resolution mechanisms as a substitute for the formal system or as a tool for stabilization.
- Ensuring that any outreach, education, or linkages efforts with dispute resolution mechanisms allow for substantial variation at both a regional and local level. Programs that succeed in one area may fail in another. Extensive research and assessment of each context is crucial to determine the most appropriate interventions for each local context.
- Integrating alternative dispute resolution within justice sector assessments, program design, implementation, and evaluation. Dispute resolution should not be treated as a separate set of program interventions but instead incorporated into the general justice sector strategy.
- Approaching rights education and awareness with dispute resolution actors or traditional leaders as one component (and an important target group) in a broader legal awareness strategy, rather than as a way to reform the outcome of dispute resolution decisions as a whole in the short term.
- Focusing, when efforts to develop linkages or relationship between the formal system and dispute resolution are attempted, on reforms or adaptations on both sides. Particular attention should be given to how the formal justice sector can better support ADR actors to reduce conflict, a frequent request of those interviewed.

Consideration of nonstate justice provision is essential in any engagement with rule of law and justice provision in Yemen. Improving justice outcomes for the population and building rule of law institutions in Yemen requires the engagement of both formal and informal stakeholders.

Note

1. Laila Al-Zwaini, *The Rule of Law in Yemen: Prospects and Challenges* (The Hague: Hiil Rule of Law Quick Scan Series, September 2012), 50, www.hiil.org/data/sitemanagement/media/QuickScan_Yemen_071212_DEF.pdf; Hiil Innovating Justice, "Building Rule of Law in Yemen: A Need for More Focus on Informal Justice Processes," www.hiil.org/insight/building-rule-of-law-in-yemen-a-need-for-more-focus-on-informal-justice-processes.
2. Erica Gaston and Nadwa al-Dawsari, "Waiting for Change: The Impact of Transition on Local Justice and Security in Yemen," *Peaceworks* no. 85, United States Institute of Peace, April 2013.
3. Erica Gaston and Nadwa al-Dawsari, "Local Justice in Transition," United States Institute of Peace, forthcoming spring 2014, copy on file with authors.
4. Elham Manae, "Yemen, the Tribe and the State," *Albab*, June 25, 2007, www.al-bab.com/yemen/soc/manea1.htm#before.
5. *Ibid.*
6. *Ibid.*
7. More experienced sheikhs, of a level that would deal with appeals, are often referred to as *azzawaya*.
8. Yehya Almwari, "Role of Tribal Traditions in Promoting Stability and Development" (paper presented at the Symposium on Reviving the Tahjeer Traditions as a Tool to Reinforce Rule of Law Efforts, Sanaa, March 22–23, 2011).
9. For example, in Afghanistan, this concept has morphed into a common interpretation that criminal cases should be left to the state, not to the informal sector. This division of labor is widely espoused by both tribal leaders and state officials in Afghanistan but in practice is frequently violated.
10. Nadwa al-Dawsari, "Tribal Governance and Stability in Yemen" (Washington, DC: Carnegie Endowment for International Peace, 2012), http://carnegieendowment.org/files/yemen_tribal_governance.pdf.
11. Akls also often take on community service functions, such as raising issues with power cuts, shortage of water supply, and other services. In some areas, akls may have some more formal deputization and relationship with the government, including modest financial stipends.
12. In tribal areas, religious leaders are involved in arbitration only if they have status or experience as tribal arbitrators in addition to their religious orientation. Local Aden leaders and civil society activists, meeting, February 7, 2012, Sanaa.
13. Abdullah al-Aqeeli, interview, February 4, 2012, Sanaa; Shawqi al-Qadhi, member of parliament and religious leader, interview, January 30, 2013, Sanaa.
14. Laila al-Zwaini, *Rule of Law*.
15. Courts operating on a limited basis appeared to be open only part of the time, or were predominantly dealing with administrative or notary functions rather than, for example, criminal cases or complex property disputes. Although this was sometimes due to lack of resources and poor performance by personnel, in the heavily tribal districts it appeared primarily due to lack of demand. Erica Gaston and Nadwa al-Dawsari, "Justice in Transition or Justice in Decline," 2014, copy on file with author.
16. Al-Zwaini, *Rule of Law*, pp. 21, 44–46.
17. Yemeni law codifies seven *hudd* crimes: revolt (*baghy*), apostasy from Islam (*rida*), armed robbery (*hiraba*), theft (*sariqa*), unlawful intercourse (*zina*), false accusation of unlawful intercourse (*qadhif*), and alcohol beverage (*shurb al-khamr*) (Article 12). For more, see Laila al-Zwaini, "State and Non-State Justice in Yemen" (paper presented at the Conference on the Relationship Between State and Non-State Justice Systems in Afghanistan, Kabul, December 10–14, 2006), 11, www.usip.org/sites/default/files/ROL/al_zwaini_paper.
18. One lawyer interviewed for this paper argued that the Arbitration Law was intended to apply only to officially certified arbitrators, but neither the text of the law, nor the statutory history support that interpretation. See also Laila al-Zwaini, "State and Non-State Justice," 11–12. Judges and Ministry of Justice officials interviewed said the outcome of arbitration has the same weight as a judgment in the court of first instance.
19. Arbitration agreements often stipulate that arbitrators should have certain qualities or qualifications. In addition, article 23 of the arbitration law stipulates that unqualified arbitrators can be removed upon appeal to a court.
20. See al-Zwaini, "State and Non-State Justice," 12.
21. Article 53 stipulates that an award can be voided if it violates Islamic law and public order but not based on a violation of the Code of Civil Procedure and the Commercial Code.
22. In tribal traditions, revenge killing can end when the number killed from the two parties is equal.
23. Al-Dawsari, "Tribal Governance."
24. Nadwa al-Dawsari, Daniela Kolarova, and Jennifer Pedersen, "Conflict and Tensions in Tribal Areas in Yemen" (Brussels: Partners for Democratic Change International, 2011), www.pdci-network.org/wp-content/uploads/2013/10/baseline-assessment-without-annexes.pdf.
25. A mediator was killed in the context of a tribal dispute in Marib in 2009, which led to a series of revenge killings between the al-Ashraf and Jahm tribes that still has not been resolved. <http://ye.vlex.com/vid/memory-shareif-salem-messenger-touched-60268026>
26. International Labor Organization, "A National Employment Agenda for Yemen: Towards an Employment Strategy Framework" (Beirut: ILO/Ministry of Social Affairs and Labor for the Arab States, 2009).
27. Abdulhakeem al-Ofairi, expert on Yemeni tribes, interview, January 26, 2013, Sanaa.
28. Abdullah al-Aqeeli, Endowment and Guidance Ministry, interview, February 4, 2013, Sanaa.
29. Gaston and al-Dawsari, "Local Justice in Transition."
30. The Ministry of Justice issues an annual statistical report of cases. Copies on file with author.
31. *Ibid.*
32. Gaston and al-Dawsari, "Waiting for Change." Hamoud Almekhlafi, Mohammed Naeif, and Abdullah Saber were three main sheikhs mentioned by locals as being increasingly involved in resolving local conflicts.

33. Ibid.
34. Gaston and al-Dawsari, "Local Justice in Transition."
35. Researcher, interview, February 7, 2013, Sanaa.
36. Local Aden leaders and civil society activists, meeting, February 7, 2012, Sanaa.
37. Local Aden leaders and civil society activists, meeting, February 7, 2012, Sanaa.
38. In January 2013, after heavy petitioning from the councils, the governor issued a decree formally recognizing the efforts and role of so-called Ahlia committees in dealing with local governance issues, including civil disputes. Local Abyan activists, interview, February 3, 2013, Sanaa.
39. Aref Al-Mekhlafi, *Guide to Customary Terminology Used in Dealing with Local Conflicts* (Silver Spring, MD: Adventist Development and Relief Agency, 2008).
40. GIZ, "Advisory Service on Conflict Prevention and Conflict Transformation (CPAS) Resource Pack," 2009.
41. Partners Yemen conducted a symposium for Shabwa on February 13–14, 2011, and for Marib on March 22–23, 2011.
42. Abdurrahman al-Marwani, interview, February 10, 2013, Sanaa.
43. Nongovernmental organization, interview, October 22, 2012, Sanaa.
44. Erica Gaston, Arne Strand, and Akbar Sarwari, "Lessons Learned on Traditional Dispute Resolution in Afghanistan," United States Institute of Peace (April 2013), 32–33, www.usip.org/sites/default/files/Traditional_Dispute_Resolution_April2013.pdf.
45. Nongovernmental organization, interview, October 13, 2012, Sanaa.
46. In Afghanistan, donors have looked to informal justice actors—particularly tribal actors—as an important counterinsurgency strategy, an alternative to "Taliban justice" or a way to supplement deficits in government justice provision that led the population to embrace antigovernment armed groups. See Noah Coburn, "Informal Justice and the International Community in Afghanistan," Peaceworks no. 84, U.S. Institute of Peace, April 2013, www.usip.org/sites/default/files/PW84-Informal%20Justice%20and%20the%20International%20Community%20in%20Afghanistan.pdf
47. In the chapter discussing customary justice in Afghanistan, the authors note that "Customary law has little impact on powerful militia commanders who can afford to ignore community sentiments and act as they wish." Deborah H. Isser, *Customary Justice and the Rule of Law in War-Torn Societies* (Washington, DC: U.S. Institute of Peace, July 2011), 174–75, 331–32.
48. Ibid., 225–32, 358–61.
49. Cherry Leonardi, Leben Nelson Moro, Martina Santschi, and Deborah H. Isser, "Local Justice in Southern Sudan," Peaceworks no. 66, U.S. Institute of Peace, 2010, 66.

eISBN: 978-1-60127-224-9

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