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Libya: Whose Land Is It?

Property Rights and Transition

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EXECUTIVE SUMMARY

In 1978, Muammar Qaddafi decreed that no Libyan could own more than one house. All rental properties were subsequently reallocated to tenants or confiscated by the state. In 1986, he abolished land ownership altogether. These and other sweeping redistribution policies had far-reaching consequences, creating the profound grievances, administrative chaos and economic imbalances that have hampered the reconstruction of Libya since 2011.

Without an understanding of the history of Libyan property rights, both before and after the revolution, it is impossible either to understand how Libyan politics came to deteriorate so quickly, or to design a realistic path out of the current crisis. Disputes over property helped spark the post-revolutionary fighting, and they continue to fuel conflict today.

The resolution of property rights issues also has a deeper significance. Before peace and prosperity can have any chance of succeeding in Libya, the country's citizens will have to resolve longstanding historical grievances in a manner which all perceive to be just. The conversations that will be required to fix the chaos over land and housing are the same kinds of conversations that will be required to create a stable political and economic system.

1 History and context of Qaddafi's redistribution policies

Qaddafi used property to mobilise support and dismantle his opposition; he created weak, ad-hoc institutions that would not threaten his power. These policies created social conflict and economic damage. By the time Qaddafi and his son Saif al-Islam tried to undo these policies in the 1990s, it was too late.

2 Attempts to reform Libyan property laws after the 2011 uprising

In the immediate aftermath of the revolution, property rights were considered a high priority. But without a wider reconciliation framework, a fully functioning judiciary, and state monopoly of force, Libya's neophyte lawmakers failed to make any progress. Quickly, disputes over property fuelled new violence. An examination of the failure to reform property laws helps explain why other reforms have failed too.

3 Policy recommendations

Despite the ongoing violence and political turmoil, some steps can be made—now—towards the establishment of institutions that can resolve property issues in the future. Libyans can begin to collect and verify property claims, raise awareness, and establish the principles of this future process. By providing some faith in the possibility of a solution, the debate about property rights could even become part of Libya's recovery. Later on, a careful dialogue among owners, occupants and other stakeholders could give Libya its best chance to tailor a bespoke solution that satisfies more people than it harms. The creation of a purpose-built institution would streamline efforts to tackle the issue without hindering the day-to-day workings of the already over-burdened judiciary and transitional authorities.

4 Conclusion: the destructive legacy of Qaddafi's policies still haunts Libya today

The lack of trust in any institution or the rule of law, the cycles of vengeance and tribal rivalries, the lack of economic opportunity and ownership over the political process, all of these are Qaddafi's legacy. Ultimately, the question of housing, land and property rights is so difficult—and so important—because it touches on the fundamental question of post-2011 Libya: what do Libyans want their new Libya to look like? There will be no long-term stability until Libya finds a way to deal with its past, and talk about its future.

INTRODUCTION

In 1978, Muammar Qaddafi decreed that no Libyan could own more than one house. All rental properties were subsequently reallocated to tenants or confiscated by the state. In 1986, he abolished land ownership altogether. These and other sweeping redistribution policies had far-reaching consequences, creating the profound grievances, administrative chaos and economic imbalances that have hampered the reconstruction of Libya since 2011.

In the current context, any discussion of these land, housing, and property rights can seem irrelevant. Four years after the hopeful uprising that deposed Qaddafi, the elected government controls just a fraction of the country, a rival rump government sits in the capital, and the Islamic State is gradually making its presence known. Weapons abound, militias do as they please, and the oil-rich nation is nearly broke. As of March 2015, some 400,000 Libyans are internally displaced and more than a million are estimated to have fled the country (out of a population of about six million).¹ In this environment, there is little political will or capacity to reform Qaddafi-era laws, address historical wrongs or take the hard steps necessary to prepare the ground for foreign investment.

Yet without a deep knowledge of the history of Libyan property rights, both before and after the revolution, it is impossible either to understand how Libyan politics came to deteriorate so quickly, or to design a realistic path out of the current crisis. Disputes over property helped spark the post-revolutionary fighting, and they continue to fuel conflict today. Without a settlement of property disputes, it will be difficult if not impossible to re-establish a legitimate government, let alone the rule of law.

The resolution of property rights' issues also has a deeper significance. Before peace and prosperity can have any chance of succeeding in Libya, the country's citizens will have to resolve long-standing historical grievances in a manner which all perceive to be just. The conversations that will be required to fix the chaos over land and housing are the same kinds of conversations that are required to create a stable political and economic system.

This paper will examine both the history and the current impact of Qaddafi's redistribution laws. In addition, we will ask what we can learn from the failed efforts to resolve these property conflicts since 2011. Indeed, Libyans' inability to resolve this smaller dispute helps explain why they have been unable to resolve their broader legal and political crisis.

I. HISTORY AND CONTEXT OF QADDAFI'S REDISTRIBUTION POLICIES

On 1 September 1969, a council of young Libyan army officers led by Muammar Qaddafi overthrew King Idris Senussi and swept to power in a self-proclaimed revolution. To legitimise that revolution, Qaddafi and his associates proclaimed their allegiance to the Nasserite ideology of socialism and equality which had won over many Libyans after Egypt's own military coup of 1952. In the Proclamation of the Republic—an address given by the Revolutionary Command Council (RCC), the *de facto* government—they guaranteed “the right of equality to [Libyan] citizens” by “opening before them the doors of honourable work... with none terrorised, none cheated, none oppressed, no master, no servant, but free brothers”.² Buried in the high-flown language were hints of the redistribution to come.

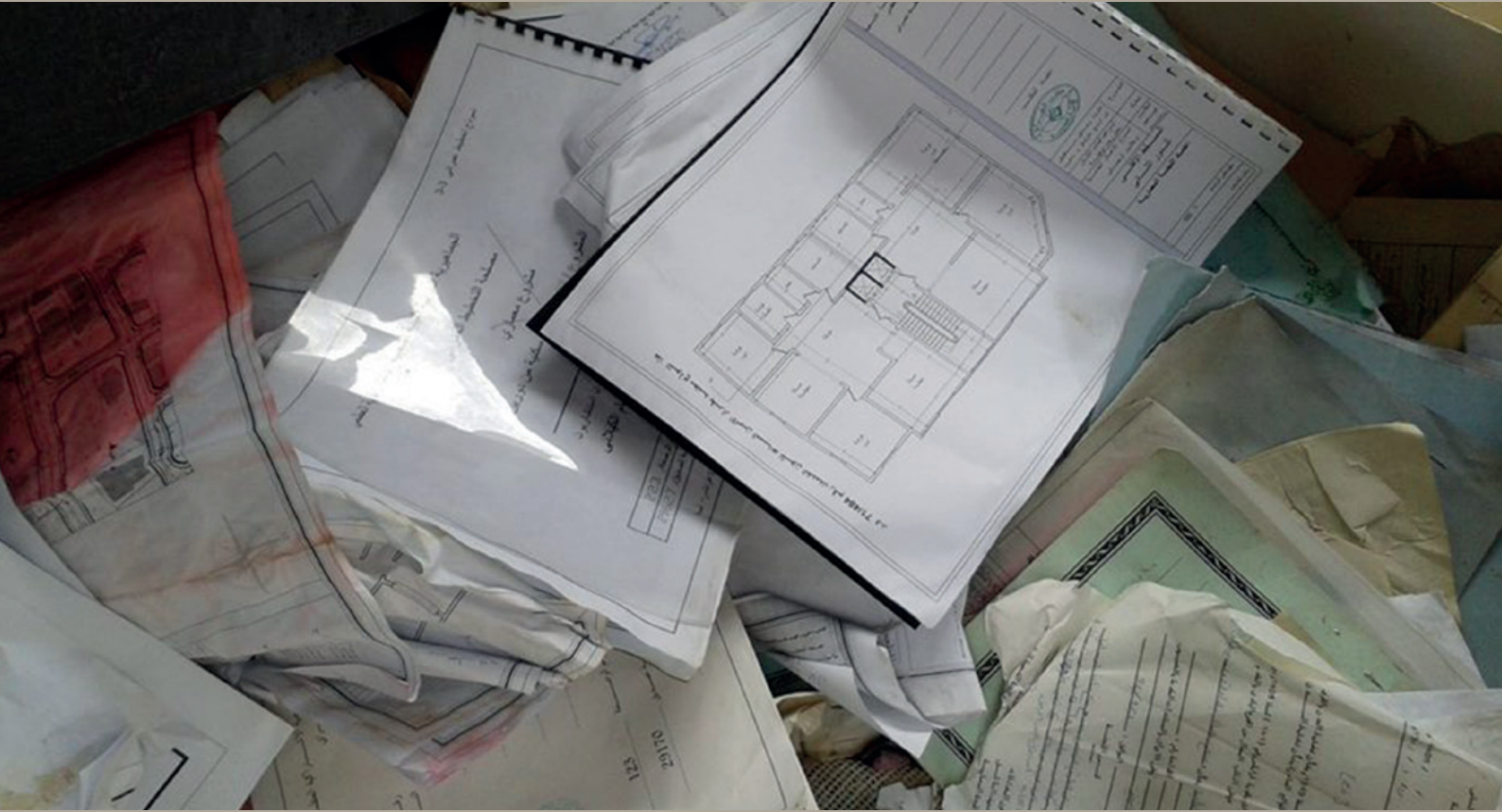
Qaddafi and the RCC quickly annulled the monarchical constitution, and did not establish new legislative institutions. The new revolutionary leadership instead began to rule by decree, issuing edicts such as that of 3 September, which expelled American and British personnel from local military bases. Because Nasser's revolutionary radio station, The Voice of Arabia, had been denouncing the Libyan king as a traitor for his deals with Western powers, this decree sealed Qaddafi's status as a 'nationalist' in the eyes of the people.

He and his RCC consolidated their power in the two subsequent years. On 13 November 1969, they nationalised all foreign banks. On 5 July 1970, they nationalised the import, export and distribution of petroleum products, and on 7 December they took the installations of British Petroleum.³ On 21 July 1970, all remaining Italians and Jewish-Libyan citizens were expelled from the country. That act showed the world how the new regime planned to treat the rights and property of all its citizens.

It also quickly became clear that Qaddafi saw land, and indeed all private property, as a tool to build support for himself and to weaken his rivals. This use of land as a political tool was not new. The Italian colonial regime (1911 – 1943) had previously claimed ownership over the vast majority of Libya's arable and steppe land. In the western province of Tripolitania, control over the foundation of most Libyans' livelihoods had helped the colonial administration dominate the local population. In the eastern province of Cyrenaica, colonial leaders restricted tribal movement overland and tribal access to land in order to control and pacify resistance to Italian rule. More than 110,000 people, about two-thirds of the population in eastern Libya, were forcibly removed from their land and sent to concentration camps, where 40-70,000 of them died.⁴

When Libya achieved independence after the Second World War, UN General Assembly Resolution 388 awarded Libya all property owned “directly or indirectly by the Italian state” but secured property rights of individual Italian citizens.⁵ Italian farmers were allowed to purchase land that they had previously leased or farmed without title. Nevertheless, by 1964, Italian owners had sold about 40 percent of the land that they had owned in Tripolitania in 1942, and almost all of their land in Cyrenaica.⁶

The Libyan government of King Idris thus inherited thousands of hectares of destitute and neglected farmland in what was then one of the poorest countries in the world. Although government programmes encouraged Libyans to buy formerly Italian land and put it to work, only a few had the means to purchase the colonial estates. Corruption meant that large tracts of land were secured by those close to the King's Court. Repeated droughts and associated famines throughout the 1950s made life harsh for many in the newly independent Libya, and the inequality between various social groups created resentment that was aggravated by rumours of corruption.



Above: Records pertaining to the property of Libyan-Italians and Libyan Jews found after the revolution. By 1970, all remaining Italians and Jewish-Libyan citizens were expelled from the country. The NGO that found these records doesn't trust officials with their safe-keeping for now.

(Photo courtesy of the *Rabitat al-Mulak al-Mutadarariyn min Hukm al-Taghyat*)

The Qaddafi regime capitalised on this discontent. Applying both socialist and Ottoman-era Islamic principles, they declared land a public resource. In the Constitutional Proclamation of 11 December 1969, they then declared that public ownership was the basis for social development.⁷ Thus did Qaddafi recast the relationship between people and land to serve his political purposes.

After confiscating all property that had belonged either to Westerners or to ex-colonial Italians, Libyan Jews and other groups that were politically expedient to persecute,⁸ Qaddafi then turned towards the rest of the country. Over the next decade, in radical contrast to his stated "socialist" goals, he introduced an array of reforms designed to rebuild Libya in his own image.

On 14 November 1970, the regime began to formalise the legal and administrative chaos in which it had thus far been operating. On 28 October 1972, specific committees were set up to investigate how best to "Islamise" the legal system. The work produced by these committees was then selectively recycled to underpin the implementation of Qaddafi's 'third international theory' announced in a pivotal speech in Zuwara on 15 April 1973. In this speech, Qaddafi reinforced his deliberately

ambiguous legal system by annulling old laws, which were declared incompatible with sharia, and establishing 'people's committees'. Notably, he singled out new 'politically sick' segments of Libyan society, such as the 'capitalists' who would later suffer most from his reforms. Qaddafi's political coup was finalised over the next five years. In 1975, he removed the technocratic class that anchored the civil service after a failed coup attempt. A year later the revolutionary committees that would eventually implement Qaddafi's policies were put in place. The stage was set for him to reshape the social and economic landscape of his country.

Ballooning oil revenues funded Qaddafi's vision. But the primary vehicle for change would be land: property rights, land-based capital gains, and land development investment all became his political tools. In 1977, Law Number 38 retroactively removed the mechanism that had permitted users of land to acquire ownership-type rights over it. Although not fully realised until a complementary law was introduced in 1986, this was the first step towards Qaddafi's vision of turning tribal or community lands into individual properties with sedentary inhabitants.

In the *Green Book Part Two*, published in 1978, he declared there was "no freedom for a man who lives in another's house, whether he pays rent or not",⁹ and that every person had an inherent right to the resources necessary for their material needs.¹⁰ Expanded upon, this made a home, car and salary the right of every Libyan but simultaneously outlawed renting as a form of exploitation. In May 1978, he issued the infamous Law Number 4, which paved the way for tenants to acquire ownership of their rented accommodation. Suliman Ibrahim from Benghazi University and Jessica Carlisle from Leiden University explain its central tenets as follows:

"Article 1 of Law 4/1978 states that every citizen has the right to own a house or a plot of land on which to construct a house and that this "ownership of the house is sacred." The law prescribes that anyone in possession of an amount of property in excess of this should choose which house or plot of land they wish to retain (Article 2); all additional properties, unless required to run a business, and land fit for construction (Article 3) should be transferred to the ownership of the state. Excess properties are then to be assigned to citizens in need of housing, although the law allows for properties to be kept by the state in order to serve the purposes of public interest (Article 7). The law entitles those whose property is expropriated to compensation (Article 8), however it refers to implementing regulation for determination of the methods of payments. Today, most property claimants say that this compensation was never paid."¹¹

After the shock of Law Number 4, Qaddafi continued his assault on the 'politically sick'. On 3 July, he confronted Libya's influential religious leaders (the *ulama*) in a debate at the Moulay Mohammed Mosque after confiscating their *waqf* properties (land held in trust by a religious institution). Soon after, in a speech given on the anniversary of his coup, he exhorted workers to seize their employers' businesses and convert them into collectives—with the notable exception of the banking and hydrocarbon sectors. Having lost its property assets, and now its enterprises, Libya's once influential entrepreneurial class was relegated to obscurity. In 1980, in a final equalising measure, Qaddafi introduced reforms that abolished savings accounts, reissued the currency and allowed tight state surveillance on the capital flows of its citizenry. In 1984, he created state supermarkets and a state import/export corporation to manage product flows.

Qaddafi spent most of the 1980s consolidating his control over the state and trying to counter fallout from his sweeping reforms. As a result of centralised bureaucracy and work opportunities, rapid

urbanisation followed. At the same time, Libya's population grew from 2 million to 3.6 million between 1969 and 1984.¹² This created large slums around Tripoli, Benghazi and other major population centres. Housing demand vastly outstripped supply. Moreover, as educated, entrepreneurial Libyans emigrated *en masse*, Gaddafi was forced to rely on foreign workers—who themselves needed housing and quickly filled vacated properties.

In 1986, the land registry, and all its property records, burned to the ground. Though some described this as an accident many believed it was intentional, seeing it as either as Qaddafi's solution to tribal quarrels over land or an important reminder that his whims superseded the law. In 1988, his 'Socialist Real Estate Registry' compounded the effects of Law Number 4 with a poorly implemented attempt to force the population to re-register their property. Newly formed 'People's Courts' were given the power to restore illegally confiscated property and grant compensation. But the balancing act proved impossible and the court's powers soon drained away.

By the early 1990s, the failure of Qaddafi's reforms was evident: unemployment was rising, housing programmes failed to meet demand and state supermarkets exhibited ever more empty shelves. Although his land reforms had increased the ownership base amongst Libyans, boosted his popularity and ironically fulfilled King Idris's wish to empower some of the 'peasantry', all economic activity was reliant on a malfunctioning state bureaucracy.

In February 1987 public dissent appeared for the first time during the annual meeting of the largely ceremonial General People's Congress. Forced to react, Qaddafi distanced himself from the flaws of his previous reforms and embarked on a period of liberalisation. The 'Great Green Charter of Human Rights' in 1988 marked a shift in Qaddafi's attitude towards property. It declared that "land is the property of no one" and that members of society were "free from any rental fees". Meanwhile, the regime copied Egyptian attempts to attract foreign direct investment: article 11 of the charter described private property as "sacred", with the caveat that ownership was subordinated to the public interest.¹³

PROPERTY, POLITICS AND IDEOLOGY

Property reform was in many ways the *raison d'être* of Qaddafi's revolution. He exploited the inequality between those close to the former king in eastern Libya (who had secured the large Italian colonial estates on independence), capitalists in Tripoli and the population at large. His ideology can be explained as an attempt to gain popular support by empowering the disenfranchised within a tightly regulated environment. As he put it in a speech in 1973, "it must be clear that the Jamahiriya [or 'state of the masses' system] represents the people's power and that no opposition can exist outside the system in which, naturally, every individual has the right to express himself and defend his opinion".¹⁴ Moreover, a system such as the Jamahiriya relied on a high level of public participation, a demand that could be met only by younger, unencumbered elements of the population. Everything rested on the regime's ability to mobilise politicised youth.

Qaddafi hailed from a small town and a historically unimportant tribe, the Qaddadfa, which meant that his political ambitions depended on supplanting the wider tribal hierarchy and influential families in large cities. By offering property and other benefits, he was able to mobilise supporters and dismantle opposition. But, over time, the lack of employment, opportunity, and development in Libya meant that his political power became increasingly tied to his patronage rather than the ideology he initially espoused. Likewise, the injustices created by Law Number 4 and other 'equalising' reforms created disenfranchised groups whose resentment led to worsening unrest.

Qaddafi's policy of constant upheaval, reflected in his disdain for institutions and his attempts to dismantle them, made it impossible for Libya to develop a codified, structured system of law. Instead, power rested with temporary bodies such as the revolutionary committees, whose members he enriched. Yet even these were weakened by internal divisions. Up to a point, this weakness was deliberate, Qaddafi wanted to prevent any challenge to his cult of personality. Constitutional and legal chaos enabled him to ignore red tape. Office-holders were loyal to him—and if they weren't, their committees could be abolished by a new set of ad-hoc measures. The result was a culture of deadlock and corruption that exacerbated regional rivalries.

THE SOCIO-ECONOMIC IMPACT

In his quest for complete control of Libya, Qaddafi sought to erase the strong tribal and regional identities of the country. He did not try to abolish the tribes, but instead used their land claims to divide them and create bastions of loyalty to himself.

For example, he granted one community, the Tawergha, rights to prime agricultural land. The Tawergha traced their ancestry to slaves brought to the Libya before the Italian colonisation. Having traditionally lived in Misrata's coastal hinterland, they found favour with Qaddafi who helped develop their town, which is called Tawergha. He also installed many Tawergha in the public sector and security forces. This reawakened historical tensions between the Tawergha and other communities in the region, some of which was rooted in racial animus towards the predominantly black minority.

As Libya went through rapid urbanisation and nomads abandoned their pastoral lifestyles, Qaddafi made sure that the new tribal landscape would be favourable to his ambitions. In 1972, for example, the Mishashiya tribe, who had historically occupied lands that ranged from the Western mountains to the south, depending on the season, were relocated en masse to land in the Al-Awiniya region of the Western mountains—land which was also claimed by other communities. The tribe received infrastructural investment while neighbouring communities lost political influence and saw their towns slide into dilapidation. Other tribes in the region, including the Zintanis, were given far fewer favours and were resentful.

As tribal unrest grew, the regime passed a 'Code of Honour' in 1997 that held families, towns or municipalities responsible for any anti-regime agitators among them. This code enabled the regime to inflict collective punishment and deny communities government services.

In Tripoli, Qaddafi gave favoured tribes and families homes in desirable areas of the city. The social cost of this policy was high: living in an unstable environment where personal wealth and accomplishment could disappear overnight, many Libyans withdrew into traditional support structures of community and tribe.

Law Number 4, the appropriation of private businesses by 'people's committees' and the eradication of private savings meant that merchants, business owners, professionals and landed families all lost power. Not surprisingly, this sparked an exodus of Libyans who had the means to re-locate themselves. Libya lost expertise in many fields and acquired a strong opposition in exile. Qaddafi was able to mitigate the economic impact of these policies by using Libya's oil revenue (he quickly renegotiated the country's oil concessions), which had the added political benefit of making people economically dependent on the regime.

Eventually it became impossible for anyone to operate outside the public sector. The 'revolutionary initiatives' advanced in Qaddafi's 1977 Sebha declaration clearly linked the regime's economic and political goals by abolishing the "administrative, regulatory and legal institutions that were needed to

establish markets internally”.¹⁵ Libya was left with an industrial sector that served no foreign markets and simply saturated the domestic one. The agricultural sector also wilted without any strategic investment. Instead, \$27 billion was spent on the Great Manmade River project intended to irrigate the entire north.

The crash in oil prices and the sanctions levied as punishment for the Lockerbie bombing combined to reduce Libya’s revenues from \$21 billion in 1985 to just over \$6 billion in 1986.¹⁶ Qaddafi had to resort to international borrowing for the first time and lost the liquidity he needed for his large-scale patronage. The housing drive stopped in its tracks as a result of the cutbacks. All this demonstrated how little was left of Libya’s market economy and how dependent Qaddafi was on external capital inflows. It also highlighted the short-sightedness of his patronage system, as the public sector grew increasingly unable to support the weight of the salaries it was feeding.

SAIF AL-ISLAM AND THE LIBYAN ‘INFITAH’

In the late 1990s, Qaddafi attempted to buy off many groups aggrieved by his regime, including the victims of the Lockerbie bombing and Abu-Slim prison massacre. As part of this policy, Qaddafi’s son, Saif al-Islam, also launched an amnesty. This allowed Libyans living abroad to return to the country and to receive financial compensation for the confiscation of their land and property. But this was done without any “formal apology, disclosure of information that could shed light on the events, or concession of responsibility”.¹⁷

This amnesty coincided with another residential housing drive. By the early 2000s, home owners were once again permitted to rent out their property, although only on an informal basis. But because Law Number 4 remained on the books, many Libyans were wary about renting property to other Libyans, as tenants were still legally allowed to claim ownership of their rented homes in the event of any dispute with their landlords.

In 2006, Saif al-Islam turned the amnesty into a more thorough attempt to address widespread discontent with his father’s distributive reforms. In 2006, Libya created a High Committee for the Compensation of Properties, along with district offices in various population centres. A token monetary compensation or the promise of a new flat was offered to those who had lost their property. However the committee itself was perceived as corrupt and moved slowly. Its presiding judge, Yusuf Hnesh, argues that “in the relatively few cases where people were offered compensation, it was a fraction of the current value, and most people refused to take it.”¹⁸ By the time of the revolution the processing of claims had “barely started”.

II. THE QUESTION OF PROPERTY AFTER THE 2011 UPRISING AND THE CHALLENGE OF REFORM

"I really hate when people say that we should take some lessons from the ex-Communist countries to see how they fixed their problem of confiscated property. I studied how this issue affected Eastern Europe country by country—they did not have a Muslim/Bedouin/tribal community like ours in Libya where people can kill each other over a tiny piece of land or a car and that [to retake what has been taken from them by force] is completely justified by our religion."

Property rights activist in Tripoli, February 2015

Anger at Qaddafi's confiscation of property helped fuel the uprising against him, and in the immediate aftermath of the revolution property rights were one of the first grievances to surface. Several prominent revolutionaries, both from within the armed factions as well as the interim National Transitional Council (NTC) which was recognised internationally as the legitimate authority from March 2011, came from families who had lost property and land. These included members of the diaspora who returned during the uprising.

The NTC drew up a constitutional declaration that declared property rights inviolable and guaranteed owners the right to dispose of their property within the limits of the law. This declaration, issued in August 2011, was designed to serve as the temporary basic law in Libya until a full constitution was ratified. A constitutional assembly was elected by a national ballot in February 2014 and is expected to produce a draft constitution for referendum in 2015. Many Libyans believe—and expect—that the new constitution should refer explicitly to the sanctity of private ownership as the basis for a new framework for property rights. A preliminary draft of the new constitution, published for public review and consideration in December 2014, made several references to property. Chapter Six of the draft, which relates to rights and liberties, included the following article:

"Private Property

1. Private property shall be inviolable.
2. Commitment to utilisation of private property shall be in accordance with the requirements of public interest.
3. Private property may be utilised whenever necessary in return for a fair compensation paid in full.
4. Private property may be expropriated for public benefit [in return for] fair and advance compensation.
5. General confiscation of properties shall be prohibited.
6. Imposition of custodianship shall be prohibited unless by an agreement or order by the competent judge."¹⁹

In another part of the preliminary draft, in a chapter headed 'Transitional Measures Roadmap', the following was included in a section on the right to compensation:

"The State shall also be committed to:

Guaranteeing the rights of persons whose property or movable assets have been illegally taken away. In the case of property, the elements that should be taken into account are the rights of the original owner, the financial position of the person who has illegally taken the property, the constructions added to the property and the previous administrative and judicial procedures."²⁰

"Qaddafi's property laws sowed seeds of hate and resentment. People are very bitter about these laws and this will complicate reconciliation efforts. Mass restitution is impossible and I think mass compensation could lead to all kinds of corruption. There are no easy ways of tackling this issue."

Property owner in Tripoli, February 2015

The NTC, in existence until August 2012, was aware of the high emotions surrounding the question of confiscated property. NTC officials, included chairman Mustafa Abdeljalil, who as Qaddafi's former justice minister was familiar with the legal complexities, publicly urged patience on property issues. But the transitional authorities were often reminded that any such efforts could easily be overtaken by developments on the ground, where armed elements are willing to take the law into their own hands. Disputes over property were a major contributing factor to the instability of the post-revolutionary period.

Following the overthrow of Qaddafi and Libya's formal declaration of 'liberation' in October 2011, the number of violent confrontations over disputed property immediately began to grow. In Tripoli and Benghazi, former owners laid claim to properties by writing on the walls that they were the rightful owners. Others used threats and violence to evict current occupants.

"How did I get my property back? How does anyone get anything done in the new Libya? I arranged for some men with guns to do it for me."

Property owner in Tripoli, September 2014

Revolutionary armed groups and political factions also took over land and property to use as camps or offices, adding a further layer of complexity to an already tangled trail of claims to ownership. Many of those properties are still retained by armed groups and remain an additional source of grievance.

In Benghazi, which experienced a construction boom after the uprising, some individuals perceived to have the tacit backing of local militias took control of disputed land and built houses or businesses on it. A number of post-revolutionary killings were anecdotally ascribed to disagreements over property. Social tensions were exacerbated by post-revolutionary migration into Libya's main urban centres, much of it related to localised conflicts that erupted during and after 2011.

One of these conflicts emerged in Tawergha, whose residents were driven from their town by Misratan fighters in the latter months of the uprising. The Misratans were driven by revenge. They accused



Tawerghans of various crimes while fighting with Qaddafi's forces in Misrata. Tawerghans are now dispersed throughout Libya, with some 30,000 living in IDP camps and private accommodation in Tripoli and Benghazi. The Tawergha issue is one of the biggest challenges to reconciliation. Efforts to resolve it have so far proved fruitless in the absence of a proper transitional justice and reconciliation framework.

"You might get a court order to reclaim a property after much effort but who will implement it? There is no one to enforce the law"

Owner of high-value properties in central Tripoli, October 2014

Libya's justice sector, already flawed under Gaddafi, has found itself severely constrained since 2011.²¹ Efforts to reconstruct the army and police have made little progress, leaving the state without a monopoly on the legitimate use of force. This has allowed the armed groups that proliferated during and after the uprising to operate with complete impunity. In many cases, they have threatened

Above: After the 2011 uprising, former owners laid claim to properties by writing on the walls that they were the rightful owners.

(Photo courtesy of Valerie Stocker)

and cowed those working in the justice sector. Judges and lawyers have been assassinated, particularly in the East. All this has allowed armed groups and individuals to take justice into their own hands.

Thanks to a fragmented security sector and a barely functioning justice system, the task of arbitrating property-related disputes and ensuring they did not become violent fell largely on informal actors, particularly in rural areas. These included tribal and other community elders, reconciliation committees, militia leaders and religious figures. Such disputes often proved very difficult to resolve, given that many were anchored in social and political cleavages that dated back to the Qaddafi era and in some cases before it. These localised conflict resolution initiatives, while laudable, were naturally limited without credible state laws and institutions to back them up.²² Civil society organisations were crucial in lobbying for such a legislative framework.

The post-revolutionary period saw a flourishing of civil society groups. While some played an active role in Libya's democratic transition, often acting as intermediaries between officialdom and citizens, the concept of civil society remains weak. Organisations that criticise armed groups have been threatened and a growing number of activists assassinated.²³ While campaigners for property rights proved more effective in negotiating with Libya's new centres of power than many other civil society groups, they have not yet made any firm progress.

The Association of the Owners Harmed by the Ruling of the Tyrant (*Rabitat al-Mulak al-Mutadarariyn min Hukm al-Taghyat*, known as the Rabitat), set up by Libyans whose families had their properties confiscated by Qaddafi, was the largest of the groups focusing specifically on property rights. Several of its members were from the returned diaspora. Libyans with dual citizenship who returned after the revolution were often labelled pejoratively as "double *shafra*s [a pun meaning double SIM cards]" and viewed with suspicion or resentment by those who had lived through the Qaddafi era. While not all returned diaspora Libyans were well-off, many of those who stayed perceived them as such and this in turn affected the debate about property rights.

"Those who want their properties back tend to be wealthier so while the issue was seen as important in relation to long-term economic stability, very often it was not considered so urgent compared with other challenges," said one international observer.²⁴

Set up within months of Qaddafi's demise, the Rabitat issued membership cards to its 8,000 core members (many of who represented extended families or tribes) and held public demonstrations in Tripoli and other cities. It also maintained a Facebook page to highlight individual cases.²⁵

"The main purpose of our organisation is to raise the voice of the victims of Qaddafi's property laws and to change the unjust laws of property confiscation and restitution which are still functional till now," said Ahmed Traina, who sits on the Rabitat board.²⁶ "We try to establish contact between our members and policy makers, law makers, other NGOs and the media to explain these issues and to try together to figure out how to find the proper solutions."

The Rabitat lobbied first the NTC's Abdeljalil, then the first interim prime minister Abdurrahim el-Keab and his successor Ali Zeidan. Members also consulted government officials and members of the general national congress formed after Libya's first post-Qaddafi elections in July 2012. The Rabitat eventually worked with the congress's legislative committee in drafting a bill that sought to address the issue. They also tried to retrieve and archive ownership documents, at one point finding a trawl of such papers in a rubbish dump. "We cleaned and organized the files and kept them in a safe place,"

said Traina, explaining that Rabitat had resisted requests to hand over the files, as they did not trust officials with their safekeeping.

The scale of the challenge of drafting a law soon became apparent. International organisations, including the UN, expressed concerns that a comprehensive restitution process could risk creating a whole new layer of internally displaced people, not to mention fuelling fresh resentments.

"If property is just given back to its rightful owners, a lot of people would lose their homes and land, including powerful politicians and militiamen. We are already close to civil war. This would make it much worse. In my view the best solution is a compensation programme."

Property owner in Tripoli, October 2014

Several lawmakers worried that a blanket compensation scheme would make a major dent in the country's finances: the market value of properties, particularly in urban areas, had rocketed after the revolution. According to some estimates, property and land prices increased by 50 percent yearly from 2012 before levelling out in 2014. Several reasons are given for the rise, including the fact that armed groups and warlords flush with cash decided to plough their money into property and land. In 2012, Shaker Dakhil, one of the founders of the Rabitat, estimated that it would cost at least \$15 billion to compensate Libyans whose property was confiscated.²⁷

The question of compensation more generally was a contentious one after 2011. Public opposition to a law allowing for compensation of former political prisoners was so strong that the legislation has not been implemented. Some observers raised concerns that full compensation for large property owners, or complete restitution of their property, would "reinstate an extremely wealthy property owning elite... and the political sustainability of such a policy is questionable".²⁸

Official efforts were also complicated by ambiguities surrounding ownership. In fact, the full scale of property confiscation under Qaddafi remains unclear. The High Committee for the Compensation of Properties states that it had gathered 25,000 claims by the time it stopped accepting applications in 2010, of which 8,000 had been processed before the 2011 revolution began.

In addition to the immediate fallout from Law Number 4 of 1978, many properties had changed hands several times over the regime's lifetime. Property seized by the regime, particularly housing, was redistributed to Libyans who, by 2011, had been residing there for decades and may also have a legal claim to the property due to use rights granted under Qaddafi's laws and sometimes formally documented. Some current occupants are third parties who legally acquired use rights, either through buying the property or receiving it as a gift, from the secondary party.

According to one Libyan lawyer's estimate, as much as three quarters of Tripoli's population are living in or using confiscated property. As many as 1.5 million people could be displaced in the capital alone if seized property is simply returned to its original owners.²⁹ Most Libyans working on this issue, including those involved in lobby groups founded by former property owners, acknowledge that mass restitution is unrealistic.

The destruction of official property documents in the 1980s made it even harder to ascertain ownership. The number of forged deeds soared in the aftermath of the revolution as people saw opportunity in the collapse of the old order.



Above: The Rabitat-maintained Facebook page, with over 25,000 'likes', highlights individual cases

"There is a huge problem with forged claims... The challenge many people have faced is when they put in a claim, they discover there are three or four others also claiming ownership of the same property."

Property owner in Tripoli, October 2014

The ministry of justice under prime minister Abdurrahim el-Keab laid the groundwork for what later became a proposed amendment to Law Number 4.³⁰ It was submitted by Ali Zeidan's justice minister, Salah Marghani, in March 2013: "The issue was considered high priority in the early post-revolutionary stage because it was thought much of the root of the problems we were experiencing lay in grievances over what had happened under Qaddafi," Marghani explained.³¹

The draft addressed restitution and compensation issues arising from the implementation of Law Number 4 and subsequent laws which had allowed the state to seize private property. It was put before the national congress and published on the website of the ministry of justice for comment. The draft law included a framework whereby occupiers of residential properties would be given one year

in which to relocate using a loan from the government or else would be allowed to negotiate with the owner to buy the property outright, using the same loan. It allowed a timeframe of six months for the occupiers of commercial properties to negotiate with the owners after ownership had been established through a legal process. The draft law was received badly by the Rabitat and other groups, who criticised it because it did not propose to completely rescind Law Number 4.

A legal review commissioned by USAID described the law as “an important first step to the resolution of long-standing conflicts over housing, land, and other property in Libya”.³² However, the review found that while the draft law laid out many of the difficult policy decisions required for any programme of restitution, it did not state its objectives, making it difficult to design an appropriate approach to restitution. “The draft law is broad with insufficient detail to accomplish restitution, to create certainty and land tenure security for Libyans, and to protect, as much as possible, all innocent parties,” it noted.³³

Another draft bill was submitted by the legislative committee of the national congress. It addressed both Law Number 4 and Law Number 120 of 1971, under which tribal lands had been seized and redistributed to regime supporters. But the legislative committee experienced difficulties with the latter element, particularly in relation to tribal land in western Libya. “We found it difficult to find a solution which satisfied the parties that seized the land and the original owners,” said one committee member.³⁵ Constituents in those regions pressed their representatives in the congress to oppose the entire bill on those grounds. In fact, several congress members reported that the question of property was one of the most common issues raised by constituents. The legislative committee concluded any future draft would have to decouple Law Number 4 from Law Number 120.

Efforts within the congress to address the property issue were stymied for a number of reasons, not least the inexperience of its neophyte lawmakers and the increasingly difficult environment in which they were working. Apart from the lack of political experience shared by all congress members, a number were returned diaspora Libyans who admitted their knowledge of the country was limited. “Many of us felt overwhelmed by the challenges we faced,” said one.³⁶

Political infighting prompted some members to boycott sessions for extended periods, slowing down decision-making. The congress itself was stormed by armed groups on several occasions. In addition to deteriorating security, congress members were faced with perhaps their most serious challenge in July 2013, when armed protesters shut down oil ports in eastern Libya, slashing the country’s main source of revenue for almost a year. “The reason the law did not go anywhere had little to do with the law,” said one congress member. “Internal strife together with the continuous attacks on congress plus the financial impact of the oil blockade all ensured it fell through the cracks and way down the priority list.”³⁷

Some congress members balked at the anticipated cost of any national compensation or restitution programme. In June 2013, the government’s commitment to the construction of housing and the infrastructure was estimated at \$100 billion.³⁸

Many others believed the timing was not right, given that Libya was still in a transitional period.

“They felt it is best to leave the matter to the permanent legislative authority after the constitution is instated,” said Ahmed Langhi, a member of the legislative committee involved in drafting the bill.³⁹ In a congress riven by factionalism, it was noteworthy that the bill failed to gain support across the political spectrum, from Islamist to more liberal-leaning currents. The Rabitat and some congress members whose

families had lost property as a result of Qaddafi's policies believed much of the political opposition came from members of the congress who had themselves benefited from those policies—some were living in confiscated properties—and would lose out if such a law was passed. "We have a black list of those members and we're planning to prosecute them in the future once they lose their immunity as parliamentarians," said Traina of the Rabitat. "I think that was the main reason congress couldn't pass the law."

The organisation also claimed that documents they had submitted to the land and property registry office in Tripoli were destroyed just before congress began debating the issue. This fed a perception within the Rabitat that vested interests were determined to block any effort to resolve the issue. Relations between the Rabitat and congress became increasingly strained.

On 16 June 2013 the congress issued a statement urging patience from claimants and pledging to draft legislation to rescind unjust laws and solve the problems that sprang from these laws. However, it did not mention anything specific about the draft property law already submitted to congress. Three days later, the Rabitat issued a blunt statement in response. They said they had already given congress the time it was requesting, only to see more abuse of former owners' properties. After expressing concern over the state's weakness in both legislative and executive roles, the Rabitat ended their statement on an ominous note, saying they would hold congress and the council of ministers "responsible for any drop of blood that may be shed as a result of their complacency".

As their frustration with conventional political and legal avenues grew, the Rabitat and other civil society organisations approached Libya's highest religious authority, the grand mufti Sheikh Sadiq al-Gheriani. They believed that framing their cause in terms of religious precepts—sharia law offers almost inviolable protection to private property—would help expedite their campaign. Furthermore, Article 1 of the 2011 constitutional declaration provides that sharia is the principle source of legislation.

Gheriani, an ultra-conservative whose frequent interventions in political matters often prompted controversy, wielded significant influence within the Islamist-dominated national congress. Gheriani took up the matter of property rights, discussing it on his television show and calling on the congress to swiftly address long-standing grievances through legislation. He also warned against attempts to reclaim property by force, explaining that such behaviour was religiously prohibited due to the communal tensions it caused. Gheriani issued several fatwas regarding Law Number 4, several of which were in response to public queries about individual cases. The entire Fatwa Council, which is headed by Gheriani, issued a fatwa in November 2012 urging the government to legislate for the return of properties to their original owners. It warned that "many of the original owners want to regain their property by force or arms. This is a serious matter and could lead the country into a spiral of violence".⁴⁰

Many property owners considered Gheriani's role key in highlighting their case, even if they deplored his views on other matters. His calls for segregated education and workplaces and his support for Islamist-leaning armed factions made him one of the most polarising figures in post-Qaddafi Libya. In fact, the property issue was perhaps the only one on which more liberal-leaning Libyans found common ground with the mufti. Ahmed Traina of the Rabitat argued that Gheriani did more to support them than the government.

Largely missing from the debate on laws related to housing, land and property rights are the opinions and experiences of the occupants of contested properties. They have not organised as the former owners have done and they have not lobbied regarding the proposed legislation.

"The voice of the occupants has not been heard. Their lack of organisation can be explained by the fear of being accused of being Gaddafi loyalists," said Dr Suliman Ibrahim, director of the Centre for Law and

Challenges to Reconciliation: The Political Isolation Law

Libya's experiment with democracy has been marked not only by militia politics, but also the politics of exclusion. Various factions have pushed for the exclusion of their political opponents while fearing that those opponents will in turn exclude them if given the chance.

The sweeping lustration law passed under pressure from armed groups in 2013, known in Libya as the Political Isolation Law, had far-reaching consequences. Barring Qaddafi-era officials from holding positions in the new Libya, the law resulted in a hollowing out of expertise and a slowing of what was already going to be a challenging transition. It also served to shut down the debate on reconciliation to a great extent and fed fears among the general public of being labelled pro-Qaddafi.

This affected the discourse on property rights as occupants did not feel comfortable enough to air their views, let alone mobilise to defend their position. "No one wants to be accused of being against the revolution," as one put it. Some of the original proponents of the 2013 lustration law now admit it went too far.

The law was also viewed as a political tactic favouring Islamists within the congress, to the detriment of their rivals. Today, some of Libya's anti-Islamists have adopted exclusionary tactics of their own. Khalifa Haftar, a renegade general who launched Operation Dignity and was recently appointed army chief to the elected parliament based in Tobruk, has vowed to purge Libya of all Islamists—even those who engage in politics.

Society Studies at Benghazi University.⁴¹ In a paper he co-authored on the issue, Dr Ibrahim noted: "We have had particular difficulty interviewing occupants of disputed properties; people have told us that they would be too ashamed to talk to us, that they came from "outside" Tripoli (such as from Tarhouna) and that they have acted against Sharia, a view that was supported by a recent fatwa from the Grand Mufti al-Gheriani." ⁴²

Even if legislation addressing the subject of property rights had been passed during the lifetime of the congress, there is the question of how such a law could be implemented without a wider reconciliation framework or even enforced without a fully functioning judiciary and state monopoly of force. The country's atomised security sector—a hybrid of units from the uniformed armed forces and armed groups that emerged during and after the 2011 uprising—increasingly reflects the bitter factionalism of its politics. As Salah Marghani, who submitted the draft property bill as justice minister in 2013, observed: "Until the security situation is addressed, I don't think any law can be implemented."⁴³

All of this damages Libya's chances of obtaining the investment required to bolster economic growth and build proper infrastructure that will help ensure development is sustained. Bank loans are limited, as property cannot be accepted as collateral when clear title is not easily proven. "Deteriorating security, pervasive corruption, the lack of an independent and transparent regulatory framework and dispute settlement venues, ambiguous interpretation of laws regarding private ownership and property rights, and an opaque and difficult to navigate regulatory system limited potential foreign investment in Libya," noted the US State Department in June 2014.⁴⁴ Prospective investors cannot be sure who owns what. Some infrastructural contracts agreed pre-2011 have been affected by post-revolutionary land claims.

III. POLICY RECOMMENDATIONS

The post-revolutionary moment when it was still possible to debate housing, land, and property rights has now given way in Libya to conflict and chaos. Simply put, there is no government with the capacity to either enact or enforce any laws in this regard. This means that a whole new layer of complex grievances and widespread displacement will be added to the already toxic issue of property rights when the situation stabilises enough to begin seriously thinking about legal remedies. Because the problem will not go away, and will only get worse, it is vital to use this time to consider future resolution processes. By providing some faith in the possibility of a solution, perhaps the debate about property rights could even become part of Libya's recovery.

SHORT-TERM POLICY RECOMMENDATIONS

Despite the ongoing violence and political turmoil, some steps can now be made towards establishing the foundations for a future resolution process: through collecting and verifying claimants' documentation, raising awareness, and establishing the principles of this future process. Any effort must aim to satisfy all levels of aggrieved claimants, instead of prioritising any one set of the dispossessed over another.

1 Collecting Documentation

Attempts to collect factual evidence can continue and will prove vital in the future. This should build on the work done by Libyan organisations in previous attempts at a resolution. There are four sources of invaluable information regarding this process:

- » **The Committee started by Saif al-Islam in 2006.** Although poor in its implementation, it gathered a large amount of case work, copies of land titles, and other paper work associated with the mass of claims.
- » **Libyan Institutions:** The case files of the people's courts starting in 1988, as well as the registration documents in the 'Socialist Real Estate Registry', could prove useful in tracking the changing title and character of properties over the years.
- » **Claimants:** Many families still retain their documentation from both the pre-1969 and pre-1978 eras. Because many dispossessed families refused to take part in Qaddafi's amnesty, copying and verifying these documents could fill in important holes in the paperwork collated by the 2006 commission.
- » **Libyan civil society organisations:** Since the 2011 revolution a number of Libyan civil society organisations have been documenting claims related to property grievances. In some cases these claims are backed up by records retrieved from places including rubbish dumps. These claims could be cross-referenced with existing official documentation.

It is important to note here that all documents collected must be verified due to repeated claims of fraud that have blighted the two previous attempts at restitution enacted by the Qaddafi regime. Libyan notaries are an important asset in this endeavour as they have worked largely unhindered from the 1970s to the present day drafting, notarising and documenting all manner of property-related contracts.

2 Raising Awareness

Our research showed that there is little public awareness of the draft law written by the GNC and its implications. Since redressing property rights affects individuals and communities across current political divides, international agencies like the UN or civil society organisations could launch a campaign to increase public understanding of housing, land and property rights and provide information on the legal frameworks under consideration.

This campaign could also include nationwide public meetings which could be linked to future dialogue in which grievances could be aired and ideas shared. Furthermore, raising awareness about efforts to resolve this issue could yield further documentation.

3 Establishing Principles

The current constitutional drafting process offers an opportunity to highlight and reinforce the principles of personal property and more broadly human rights and the rule of law. The Constitutional Assembly enjoys broader legitimacy than any other institution and such discussions could foster trust in the wider political system.

The neutrality of the Assembly is an important asset. Libyans displaced by the 2011 revolution and those aggrieved by Gaddafi's redistribution policies have not been working together, even though both groups share a common interest in clearly defining rights related to housing, land and property. In fact, many recently displaced people are unwitting caught up in a cycle of revenge that began with Qaddafi's reforms and any true attempt at justice will need to satisfy both claimants and occupants to avoid a repeat scenario in future. It is not the role of a constitutional body to legislate for crimes of the past, but it can determine the principles that will underpin future rights and pave the way for legislation and resolution processes. Because it is still broadly perceived as politically neutral, the Constitutional Assembly could be a forum for discussions untainted by the power dynamics affecting the rest of the country.

But although constitutional principles can act as an umbrella for the rest of the process, Libyan actors should be wary of overly constrictive clauses sealed at the constitutional stage. Moreover, as a constitution is a social contract, those debating the issue should think about the wider relationship between land, the resources beneath it, and the people living above it.

MEDIUM TO LONG-TERM POLICY RECOMMENDATIONS

According to a lawyer interviewed in the UNHCR report, "the full restitution alone in Tripoli... could result in the need to evict and rehouse as many as three quarters of the city's 2.2 million residents".⁴⁵ Many properties, initially confiscated, were later bought in good faith by people who proceeded to make it their home and hence are entitled to various rights. Some land was divided into multiple buildings, or some villas into apartment complexes, all changes to the character of the land under claim and, by extension, any future restitution.

The multitude of perspectives, grievances, and interests which make up this issue suggests that Libya will need to explore other ways of addressing this issue, going beyond the simple return of original properties or financial compensation. Resolution is likely to be a long, difficult process that will need to proceed alongside seemingly more pressing reforms.

1 Dialogue Process

The sharia principle of ensuring social harmony could be a useful one for any resolution process. Hastily crafted legal remedies could trigger new violence due to the overlapping layers of grievances. A targeted dialogue process conducted across the nation, and incorporating owners, occupants and other stakeholders, could give Libya its best chance to tailor a solution that satisfies more people than it harms.

Once the current violence is over and a government is in place that most Libyans recognise, a high level statement from the State acknowledging the wrongs that were done could act as an opening for such a dialogue, as would a move by the State to accept all responsibility for addressing the confiscations of the past.

This dialogue could also include an international conference on housing, land and property rights to which representatives of all relevant entities would be invited, as well as experts who have worked on restitution mechanisms in other countries. Such a meeting could issue a declaration at the end, outlining key principles to be pursued in any eventual resolution process in Libya.

2 Establish a Purpose-Built Institution

Creating a central body composed of officials and specialists from various ministries and agencies would help streamline efforts to tackle the issue, as well as enabling any process to proceed smoothly without hindering the day-to-day workings of the over-burdened judiciary and transitional authorities.

Given the poor quality of existing cataloguing systems, such an institution could oversee the claims registry, lodge and assess claims, and also house a computerised database of records. Furthermore, given the breadth of cases that cover family homes as well as agricultural, commercial and industrial property, a typology of common cases and specialisations could be useful in organising the process.

Officials could also benefit from research trips to other post-conflict and post-socialist states to learn from their experiences in addressing property restitution and compensation. Programmes to train the staff who will prepare and implement any resolution process will open up the process to more ideas.

CONCLUSION

Qaddafi's distributive reforms of the 1970s and 1980s dramatically reshaped Libya, and their destructive legacy still haunts the country today. The post-2011 authorities and their international partners have so far failed to contain the fallout. Although policymakers are focused on the present violence, understanding the context and the impact of Qaddafi's policies will be key to peacetime stability and progress.

Trust and the Rule of Law

The creation of extraordinary legal bodies (such as revolutionary courts) to implement reforms, the confusion caused by enacting conflicting statutes, and the proliferation of institutions without a hierarchy stripped the legal system of the people's trust.

The ruthless methods employed by Qaddafi to impose his system and penalise his opposition distorted the concept of justice, rendering it in zero sum terms. This was repeated in the aftermath of the revolution as the victors punished those accused of supporting Qaddafi's regime. And because there was no way of resolving conflicts apart from the notion of 'might is right', conflicting parties after the revolution believed they could secure what they wanted without having to compromise.

To break this cycle of violence, Libyans must once again believe in the rule of law. This can only happen when the law is applied to all transgressors, rather than just those on the losing side of the latest conflict, and when people believe that the system can work for them as well as against them. The process of addressing the property rights dilemma in Libya could be an opportunity to create an early, positive, experience of this.

Private Sector Development

Qaddafi's redistribution reforms, the state's control over all economic activity and the subsequent flight of the landed and entrepreneurial classes destroyed the private sector and created a textbook rentier economy. The reforms also led to a severe housing crisis, a climate of unpredictability that scared off foreign direct investment, and a gap in local expertise rendering the state reliant on foreign firms for development projects.

The continuous conflict in Libya in the aftermath of the revolution has exacerbated its economic problems. Any housing, land and property resolution process will be an important step in creating trust in the long-term security of property and other investments. Additional reforms will be needed to improve the poor economic conditions in the country, conditions that were central to sparking the 2011 revolution and which continue to fester. Encouraging private-sector growth would take some of the burden off the old cumbersome state enterprises and help decentralise the country.

Furthermore, demand-driven training programmes could be implemented to increase the technical capacity of Libyans in both the public and private sectors. Previous ambitious projects suffered from a lack of follow-through and engagement. Tying a training programme to a complex public project such as the resolution of housing, land and property rights could help assuage the greatest fear of interviewees for this study: that Libyan institutions do not have the technical capacity to institute a resolution process.

Ownership over the Political Process

If one looks at Qaddafi's redistribution reforms as simply a mechanism for exerting control, the political disorganisation in the country after his fall becomes more understandable. Qaddafi's legitimacy as a ruler derived from patronage: institutions were often created merely to employ his supporters, with parallel institutions set up to implement his policies.

Fixing the legacy of Qaddafi's bloated public sector will not be easy. As a system, it cannot be swiftly dismantled, as the vast majority of the Libyan population live off the salaries it pays. If the crux of Qaddafi's system was patronage, then the crux of the current conflict is the question of how Libyans can access the source of that patronage: Libya's hydrocarbon wealth. There is little feeling that citizens have much ownership of the political process, despite the democratic principles invoked at the start of the revolution.

But that is why a constructive first experience of ordinary citizens sharing ownership over a political process is so important. By addressing past actions done in the name of the state, and by including victims and transgressors in finding a solution, a land, housing and property rights process could be a step in the right direction.

Transitional Justice

Finally, the rivalries created by Qaddafi's policies created patterns of resentment and cycles of revenge which still exist. Many of the tribal conflicts that broke out towards the end of the 2011 revolution have their roots in the policies of preferential treatment for Qaddafi's allies. Many acts of revenge and alleged war crimes, perpetrated since the revolution show the hallmarks of Qaddafi's own procedures. Enemies are deemed traitorous and have their homes confiscated. At times, their communities suffer collective punishment and forced relocation.

Moreover, the regional competition to secure funding for developmental projects in place of any national strategy still reflects the culture embedded by Qaddafi's land-based policies.

Ultimately, the question of housing, land and property rights is so difficult—and so important—because it touches on the fundamental question facing post-2011 Libya: what do Libyans want the new Libya to look like? That the answer to this question now seems more elusive than ever points to the most tragic mistake of the post-revolutionary period, namely that there was no discussion. There was no serious transitional justice process and no dialogue between the winners and the losers of Libya's revolution about how to move forward and live constructively side by side. Housing, land, and property rights issues are inextricably linked to the broader issue of transitional justice and, ultimately, of Libya's national identity.

Of course Libyans need safety, security and a political resolution to the conflict. But there will be no long-term stability until Libya finds a way to deal with its past, and talk about its future.

ANNEX

Annex 1: How Far Back Should Claims Go? Lessons from Iraq

by Peter Van der Auweraert

In contexts like Libya where land and property rights violations occurred over protracted periods of time, one key question will be how far back in time a program providing remedies for these violations needs to go. In the context of regime change, the most obvious cut-off period will be the time when that regime came to power and when, presumably, the land and property rights violations started.

This option was, for example, chosen in Iraq where in 2004 a property claims commission was established to undo land and property violations committed by the Baath Party regime. The mandate of the commission included politically-motivated land and property takings that occurred between 1968, the year when the Baath party came to power, and 2003, the year when Saddam Hussein fell following the US-led invasion.

The experience of the commission points, however, to some potential pitfalls of trying to undo land and property violations that occurred many years or even decades ago. Originally, claimants were given the right to claim full restitution of the land and property they lost. Subsequent implementation taught, however, that it was frequently impossible for the affected land and property to be returned to the original titleholders, for example when multiple sales had occurred or when the use of the land and property had been fundamentally altered in the intervening period. As a result, an amendment to the Commission's mandate was introduced allowing it to override the claimants' restitution claims in cases where restitution was materially impossible or too difficult and elect to provide financial compensation instead.

Moreover, it also became clear that, at least in certain parts of Iraq, the outcome of large-scale land restitution resulted in increased levels of land concentration, an uncomfortable situation given the proclaimed move towards a more democratic Iraq with an open economy providing opportunities for all. This itself was related to the skewed land distribution that existed in Iraq prior to the ascent to power of the Ba'ath Party, where, for example in the Kirkuk and Ninewa governorates, rural land was held by a limited number of powerful families. Indeed, the initial agenda of the new regime included socialist-inspired land reforms, which gradually became politicized and led to large-scale abuses. Following the fall of the Ba'ath Party regime, many of those former landowning families filed claims with the Commission, raising the specter of a return to high levels of land inequalities.

This experience underscores the need to ensure that, in addition to considerations of justice to victims, a policy to redress historical land and property rights violations should also consider the future and the type of socio-economic system the new political order would like to pursue, as well as an analysis of whether or not the earlier situation was indeed a desirable one to return to.

Finally, the question about how far back remedies should go also needs to be informed by practicability concerns, including institutional capacity for implementation and, of course, the funding likely to be available for a reparations effort.

Annex 2: Transitional Justice: Definition, Aims and Mechanisms

By Rhodri C. Williams

From the outset, rule of law and transitional justice were highlighted as key areas for international support to Libya's National Transitional Council (NTC) in 2011.⁴⁶ This emphasis was based on the perception that transitional justice ideas and practices had helped other countries in Latin America, Southern Africa and Europe to secure stability and democracy by addressing the legacies of authoritarian rule and human rights violations.

Transitional justice has been a central plank of international support to rebuilding post-conflict countries since 2004, when then-UN Secretary General Kofi Annan issued a report on transitional justice and the rule of law.⁴⁷ Transitional justice subsequently came to play a key role in the UN's rule of law assistance activities.⁴⁸ Although there is still no single authoritative definition of transitional justice, many observers endorse the version propounded by the Secretary-General in 2004, which entails:

... the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.⁴⁹

The aims of transitional justice are generally defined as twofold: first, the "justice" component involves a retrospective and legal process of providing remedies to victims of systematic abuses. Second, and equally important, the "transition" component involves a forward-looking and more openly political process meant to foster the achievement of democracy based on the rule of law. Under this understanding, justice for victims is meant to rebuild their trust in political institutions, paving the way for a viable democratic system that itself will allow for the peaceful resolution of future societal disputes, minimizing the risk of a relapse into mass abuses.

The four traditional mechanisms for achieving transitional justice described by the UN Secretary-General are truth-seeking, prosecution of individuals responsible for abuses, reparations to victims, and institutional reform to address structural factors that allowed abuses to happen. Recent analysis suggests that successful transitional justice programs must be seen to seriously pursue all four mechanisms, rather than selecting those deemed most expedient or easily fulfilled, in order to rebuild trust in institutions and contribute to long-term reconciliation.⁵⁰

Annex 3: Reparations as a Transitional Justice Mechanism

By Rhodri C. Williams

The terminology of reparations is confusing and remains subject to definitional debates. However, reparations themselves are best understood as part of a legal remedy, or that which is legally owed to the victim of a breach of the law from the party deemed responsible.

International human rights law includes a longstanding rule that states are required to provide effective legal remedies to persons who claim that their rights have been violated. However, this “right to a domestic remedy” traditionally focused on “procedural” remedies—that is, access to an impartial adjudicator such as a court.⁵¹ By contrast, human rights law was largely silent on the issue of “substantive” remedies, meaning the actual type of reparation that victims should receive once the existence of a human rights violation was established. This understanding has changed over time, and in 2005 the UN General Assembly adopted a set of principles affirming rights to both procedural remedies (a fair hearing) and substantive remedies (reparations) for serious violations.⁵²

Within the framework of substantive reparations, there are several solutions that are frequently proposed for redressing harms such as the confiscation of property in Libya. The most stringent of these measures is restitution, which involves, at a minimum, the physical return of wrongfully taken assets, and frequently also entails claims for compensation for lost profit or income from such assets during the time they were wrongfully usurped.

A common alternative to restitution is compensation, which can be provided either in cash (e.g. through payment equivalent to the value of the lost assets) or in kind (through equivalent assets of equal value). Other forms of reparation applicable in human rights cases include satisfaction (including official recognition and apologies), rehabilitation (for persons that suffered physical or psychological harm as a result of violations), and guarantees of non-repetition (of the underlying violations).

Cases involving property confiscation often involve violations of rights to property and the home. Given the serious impact these types of violations have on their victims, international standards on reparations developed in response to ethnic cleansing during the 1990s tended to promote restitution of lost property over compensation, in order to give victims of usurpation a full opportunity to return home if they wished.⁵³ However, more recent developments have complicated this understanding. However, as discussed below, in Annex 4, more recent developments in cases such as those involving property claims in Cyprus have complicated this understanding.

Annex 4: Adjudicating Property Claims in the Cyprus Conflict

By Rhodri C. Williams

Beyond the geographical proximity between Libya and Cyprus, a number of common features exist that may make the Cyprus case a useful one in considering a solution to the Libyan restitution dilemma. Most notably, the Cyprus case is characterized by a sweeping and wrongful taking of property that occurred as the result of a 1974 invasion by neighbouring Turkey, virtually at the same time as Gaddafi's economic policies began to result in large-scale dispossession in Libya. As with Libya, the Cyprus property claims remained essentially unaddressed for decades, resulting in a situation in which a contemporary adjudication of claims is complicated by the fact that others have found themselves in longstanding possession of the properties at stake.

No less significant, however, is a key distinction between Cyprus and Libya. Despite the failure to fully resolve either their conflict or the related property issues, both Cyprus and Turkey acceded to the Council of Europe in the early 1990s, ratifying the European Convention on Human Rights (ECHR) and accepting the jurisdiction of the European Court of Human Rights. This means that in Cyprus, unlike Libya, there has been an opportunity to seek authoritative judicial guidance on what human rights standards imply in situations of protracted wrongful usurpation.

After independence from the UK in 1960, tensions rose between the Greek Cypriot majority and the Turkish Cypriot minority on the island. When a 1974 coup by nationalist Greek Cypriot forces posed a threat to Turkish Cypriots, Turkey responded by invading and occupying the northern one-third of the island, an act that resulted in the displacement of one-third of the Greek Cypriot community and the eventual ethnic unmixing of the island. In 1983, Turkey sponsored the creation of an unrecognized "Turkish

Republic of Northern Cyprus" (TRNC), which proceeded to confiscate property left behind in the north by Greek Cypriots and allocate them to displaced Turkish Cypriots as permanent homes.

While the Turkish Cypriots sought to entrench the post-invasion status quo by proposing a global exchange of abandoned property, the Greek Cypriot-dominated Republic of Cyprus (RoC) in the south has sought a reversal of the effects of the Turkish occupation, encouraging displaced Greek Cypriots to seek the unconditional return of their properties in the north by all peaceful means, including claims to the European Court. In 1996, the Court issued the first in a long line of decisions finding Turkey responsible for human rights violations in northern Cyprus, and ordering compensation to the victims in the absence of any remedy offered by the Turkish or TRNC authorities.⁵⁴

Crucially, the Court tended to find violations of both the ECHR-protected right to property and to the home. The right to property under the ECHR protects legal title whether or not the property in question was used as a home by the owner, and remains strong, in principle, even after the passage of time. However, the right to the home performs the opposite function, protecting the rights of individuals and families to privacy in their own residence even if they do not own it, but weakening with prolonged absence from such homes. Observers have noted that restitution claims are at their strongest where they involve recognized violations of both these rights.⁵⁵

In April 2004, referendums were held on a UN-brokered peace plan (the "Annan plan") that would have allowed Greek Cypriot return and restitution in some areas of the north, but limited legal remedies to compensation

in other areas. The plan was rejected by Greek Cypriots, in part based on the conviction that continued litigation before the European Court would result in full restitution of all their property.⁵⁶ However, in a series of decisions on whether property commissions set up by the TRNC could provide legal remedies, the court's case law took a new turn. Although the Court ruled in 2005 that such remedies could not exclude any possibility of restitution,⁵⁷ it nevertheless went on in the much-discussed Demopoulos decision five years later to endorse a system based primarily on compensation and property exchanges.⁵⁸

In some significant respects, the Court's decision in Demopoulos can be distinguished from scenarios such as Libya. The fact that the parties to the Cyprus conflict had nearly reached a major UN-brokered peace settlement but failed clearly frustrated the Court, which has faced pressure to reduce its growing backlog of cases by encouraging Council of Europe member-states to resolve human rights issues on their own. Under such circumstances, the Court voiced its unwillingness to continue "to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation—both of which should be the domain of domestic jurisdictions."⁵⁹

However, in a series of holdings relevant to Libya and other cases of protracted usurpation of property, the Court noted that it could not be blind to the effects of the passage of time since the original confiscations. While property rights were upheld, the Court implied that the passage of four decades since the Turkish invasion had ended the connection between Greek Cypriots and their former homes while giving rise to residential rights on the part of longstanding Turkish Cypriot occupants.⁶⁰ In describing the Annan Plan for instance, the Court notes approvingly the balance it struck

between "the property rights of Greek Cypriots [and] the rights of those now living in the homes or using the land..."⁶¹ Later, in rejecting the Greek Cypriot claim that restitution must be prioritized over alternative remedies such as compensation, the Court implies that two wrongs will not make a right:

It cannot be within the Court's task in interpreting and applying the Convention to impose an unconditional obligation to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.⁶²

In sum, a reasonable interpretation of the European Court of Human Rights' ruling in the Cyprus cases is that remedies focused overwhelmingly on restitution risk violating the rights of long-term occupants of claimed properties in cases of protracted displacement. The Court is nevertheless prepared to endorse even large-scale evictions and rehousing of occupants in cases where all parties have agreed upon negotiated human rights safeguards, as was proposed in the Annan Plan. However, failing any guarantees that the rights acquired by occupants even to wrongfully confiscated properties will be conscientiously balanced with the rights of owners, the Court found that a remedy based primarily on compensation had to be ruled sufficient.

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