

The flag of Libya is visible in the top right corner, featuring horizontal stripes of red, black, and green, with a white crescent and a seven-pointed star in the center.

Resolving real property disputes
in post-Gaddafi Libya, in the context
of transitional justice

**Final report of a Libyan-Dutch
collaborative research project**

The Centre for Law and Society Studies, Benghazi University and
Van Vollenhoven Institute for Law, Governance and Society, Leiden University.

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Colophon

Report of the project Resolving Real Property Disputes in Post-Gaddafi Libya, in the Context of Transitional Justice

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Libyan Flag flying over a building in Benghazi.
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In 2015 an opportunity arose to study not only Law 4 related disputes, but also other disputes caused by an earlier, and less known but no less problematic law on agricultural land, i.e., Law No. 123 of 1970 on the Disposal of State-Owned Agricultural and Reclaimed Lands (Law 123).

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Acronyms and Abbreviations

ARPR	Authority for Real Property Registration
AST	Authority for State Property
CDA	Constitution Drafting Assembly
CLSS	Centre for Law and Society Studies
CoM	Council of Ministers
FFRC	Fact-Finding and Reconciliation Commission
GNA	Government of National Accord
GNC	General National Congress
HoR	House of Representatives
NTC	National Transitional Council
The 2006 Committee	The Law 4/1978 Compensation Committee
UNSMIL	United Nations Support Mission in Libya
Law 123	Law No. 123 of the year 1970 on the Disposal of State-Owned Agricultural and Reclaimed Lands
Law 142	Law No. 142 of the year 1970 on Tribal Lands and Wells
Law 4	Law No. 4 of the year 1978 on Special Regulations on Real Property Ownership
Law 29	Law No. 29 of the year 2013 on Transitional Justice
Law 16	Law No. 16 of the year 2015 on Abolishing Some Laws
Law 20	Law No. 20 of the year 2015 on the Establishment of Special Regulations on the Treatment of the Effects of Ending Law No. 4 of the Year 1978
Resolution 108	Resolution No. 108 of the year 2006 on the Procedures, Foundations and Safeguards of Completing the Compensation of Real Properties Subject to the Provisions of Law 4 of the Year 1978

Executive Summary

The research project *Resolving Real Property Disputes in Post-Gaddafi Libya, in the Context of Transitional Justice* examined existing mechanisms for resolving disputes caused mainly by Gaddafi era laws severely limiting private ownership of real property, i.e. Law 4 of 1978 (Law 4) which applies to houses, other buildings, and related plots, and Law 123 of 1970 (Law 123) which applies to agricultural land. While prioritising Libyan views and experiences, the project developed policy and legislative suggestions on how to integrate such mechanisms into Libya's efforts towards transitional justice. These suggestions anticipate a return to unified government along the lines of the Libyan Political Agreement (LPA).

The project focused on two mechanisms. The first is a committee formally established in 2006 to address 'misapplications' of Law 4. The second, more informal, mechanism is that of traditional leaders to whom those affected by Law 123 have often resorted. Law 123 was used by the former regime to redistribute agricultural land that was appropriated primarily from tribes.

Findings show that property disputes have become widespread in the post-Gaddafi era. Law 4 is estimated to have resulted in the expropriation of 56,000 to 75,000 properties, but only 25,148 applications were submitted to the 2006 Committee. Many former owners are still waiting for a more satisfactory legislative response. Even amongst those who applied and succeeded in getting compensation decisions, there are those who now demand restitution instead. Those who already received compensation may well submit new demands. Hence, a considerable number of actual and potential disputes about properties affected by Law 4 remains. Political division and armed conflict have perpetuated these disputes, or even aggravated them. In Benghazi, fights have resulted in large-scale property destruction. While the state is expected to rebuild, former owners are contesting this. If the expropriated house is no longer there, the former owner claims full rights to the valuable vacant land. In that case, the state could build a new house for the occupant elsewhere. This obviously will have an impact on cases thought to have already been settled.

Law 123 applied mostly to unclearly divided tribal lands; therefore it is unclear how many properties it affected. Still, it is possible to obtain clear indications of how many distinct individual holdings resulted from this law in particular regions. For example, the Al-Jabal Al-Akhdar Agricultural Project in the eastern region includes 4,104 model farms. Disputes in this area, in particular, have at times taken violent forms and resulted in casualties.

Generally, government responses have been inadequate. A revolutionary fervour in the immediate aftermath of the February 2011 revolution resulted in calls for 'cleansing' the legal system of the former regime's laws, institutions and personnel. The former owners, presenting themselves as victims of this regime, lobbied for a law addressing the legacy of Laws 4 and 123. This resulted in three draft laws. One of these drafts did not propose to end Law 4 retrospectively, but this made little difference as to the details of addressing the consequences of this law. The drafts adopted restitution as the preferred remedy, and fair compensation in the exceptional cases where restitution would be unattainable. In case of restitution, the drafts proposed to give the occupant monetary or in-kind compensation. They envisaged a place for a committee similar to the 2006 Committee. One draft also addressed Law 123. It proposed to end it retrospectively, and return the land to the former owner while allowing the occupant to stay in the dwelling attached to the land and a small piece of land surrounding it. Here, the draft adopted arrangements tribal leaders in Al-Marj had already reached and enforced. In fact, such arrangements are forbidden by Law 123 but this did not, it seems, concern them. In Bani Walid, closer to the central government, however, traditional leaders have not been involved in resolving such disputes realizing, apparently, that Law 123 is still in force.

However, the subsequent political changes affected these responses. The General National Congress (GNC) failed to enact any of the three drafts in time. When it enacted in late 2015 Laws 16 and 20 to end Law 4 and deal with its consequences, this came rather late as the GNC's term had then already expired. The changes have also affected the solutions that tribal leaders concluded in Al-Marj. In September 2015, the Speaker of the House of Representatives (HoR) issued a circular stating that Law 123 was still in force. Subsequently, the Commander-in-Chief of the National Army warned against any transgressions over public and private land. Since then, tribal leaders have stopped concluding such arrangements, and the ones already concluded were struck down by courts in Al-Marj.

Yet, these changes can contribute to a better redress of the disputes at hand. A new environment, in which the revolutionary fervour is less dominant can allow for a more objective, hence sustainable, approach; one to which both the former owners and occupants contribute, under the state's direction.

The starting point would be to put solving grievances ex Law 4 and Law 123 among the government top priorities. Then Laws 16 and 20 should be deemed non-existent for lacking a legal basis, and, perhaps more importantly, being influenced by the former owners in the complete absence of occupants, and, hence, largely favouring those owners' interests. These laws also fail to situate the redress of Law 4 grievances within a transitional justice framework.

Also, the HoR should build on the experience of the 2006 Committee. Against a background of an initially restrictive mandate, the Committee succeeded in getting restitution cases increased, and the occupants given limited space to submit applications. Facing the consequences of the 1985 burning of real property registration records, the Committee showed great pragmatism and flexibility by accepting proof methods such as testimony. The alternative would have been to reject all claims. The 2006 Committee corroborated such methods by resorting to state records which was tricky as they are not fully reliable.

In the future law, the Committee, or a similar body, would need to be situated within a Transitional Justice (TJ) framework for the following reasons:

- The state cannot afford the cost of full compensation according to the present market value of the property and lost earnings.
- There are many other human rights atrocities awaiting remedy as well.
- A society where basic services are lacking, may call for other priorities.
- Reparation in a TJ context includes partial monetary compensation, and other forms of in-kind compensation.

The new law will not have to start from scratch as Law 29/2013 on Transitional Justice already applies to Law 4 grievances, notably its provisions about reparations, and the role of the Fact-Finding and Reconciliation Commission (FFRC). While Law 29 repeals legislation on the 2006 Committee, it allows for a similar specialized body dealing with Law 4 disputes under the direct supervision of the FFRC. The new law should establish such a committee.

As for Law 123 related disputes, any redress should start with deciding whether this law should be abolished or retained. This project advises against ending it. Firstly, it would be difficult to restore the pre-Law 123 situation. This law replaced tribal land tenure with distinct individual holdings, and decades of urbanisation and individualisation cannot be undone. Secondly, Law 123 resulted in transforming lands into productive farms, and abolishing it would risk losing them.

Still, there have been misapplications of Law 123 that need to be addressed. While traditional leaders should not have the final say on real property disputes involving the state, they should be incorporated in state-led efforts to solve such disputes. Libya could build upon its experience with the committees established in the Monarchy era (1951–1969) to solve disputes over tribal lands and wells. These committees were regulated by the state, but they involved tribal leaders as members. Law 29 paves the way for a similar solution by instructing the FFRC to solicit the help of tribal leaders and wise men known to be influential in resolving local disputes via customary methods.

1. Introduction

1.1. About this report

This report* presents the results of a research project entitled ‘Resolving Real Property Disputes in Post-Gaddafi Libya, in the Context of Transitional Justice’. The project was a joint undertaking by the Van Vollenhoven Institute for Law, Governance and Society (VVI), Leiden University, and the Centre for Law and Society Studies (CLSS), Benghazi University. It was conducted between December 2015 and July 2017 and funded by the Netherlands Embassy in Tripoli.

Laws introduced by the Gaddafi regime in the 1970s resulted in large-scale expropriation and redistribution of private real property, e.g., land, dwellings, and commercial and craft premises. The most important amongst these laws are known in Libya as Law No. 123 of the year 1970 on the Disposal of State-Owned Agricultural and Reclaimed Lands (Law 123), and Law No. 4 of the year 1978 on Special Regulations on Real Property Ownership (Law 4). Although the laws referred to compensation, in reality few claimants received any, and the practical implementation of these laws involved what even the Gaddafi regime termed ‘misapplications’. In order to redress misapplications related to Law 4, the Gaddafi regime established in 2006, during its period of reform, a formal mechanism, i.e. the national Compensation Committee (the 2006 Committee), which handled thousands of requests for compensation or restitution. In spite of these efforts, dissatisfaction continued to be widespread.

After the 2011 revolution and the end of Gaddafi’s regime, former owners started demanding their property back. Once again, property disputes came to the forefront. While some former owners resorted to violent means, many others made use of the 2006 Committee, or, notably in disputes related to Law 123, of traditional leaders, or of other formal or informal dispute resolution mechanisms. A number of former owners grouped themselves as civil society organizations to lobby subsequent governments for laws addressing the Gaddafi legacy of real property reforms and perceived injustices. However, the troubled political and security environment made it ever more difficult to solve disputes in an organised legal way.

The research team first looked at the respective laws and their impact, discussed their present pros and cons with a view to determining how they should be dealt with. Secondly, the team investigated whether, in order to solve the dispute at hand, ‘restitution’ or rather ‘compensation’ would be the adequate point of departure. Thirdly, the team studied the workings of the different dispute resolution mechanisms, the reasons behind their success or failure, to better understand how policy and legislative initiatives may address the disputes at hand. In doing so, it has employed a socio-legal approach that looks not only at the relevant laws ‘in the books’, but also considers laws ‘in action’. To facilitate that, it has made use of interviews and focus group discussions with former owners, occupants, members of the central 2006 Committee and its local branch committees, and relevant persons in state institutions. The field work was carried out by Libyan researchers, each in their geographic area: Obari and Sabha (in the south), Al-Marj and Benghazi (in the east), and Bani Walid and Tripoli (in the west).

* There is a more extensive Arabic version of this report.

1.2. In the name of justice

Social justice was the pronounced aim of a number of policies, laws and measures that the Gaddafi regime introduced from its very beginning in September 1969. The Constitutional Declaration of December of the same year bears testimony to that. There, the aim of the state was “achieving socialism through the application of social justice that bans any form of exploitation”, and the state was to work “on achieving sufficiency in production and justice in distribution, with the aim of dissolving peacefully gaps between classes and reaching a welfare society inspired by socialism with an Arab Islamic heritage, human values and the circumstances of Libyan society.”¹ The Declaration made public ownership the basis of promoting society, developing it and achieving sufficiency in production, and though it emphasized the protection of private ownership, it made it conditional on such ownership not being exploitative.²

To achieve social justice, the state first introduced Law 123. According to this law, the state would manage and reclaim its lands. Such lands included both the lands it already owned and those it would later acquire, and distribute amongst qualified citizens. The latter were Libyans who lacked the necessities for a dignified life, and worked in agriculture or were capable of doing so. The law gave priority to those with bigger families and less money.

Law 123 cannot be understood in isolation from Law No. 142 of the same year, 1970, on Tribal Lands and Wells (Law 142). Law 142 was basically the means by which the state expropriated tribal land, and then reclaimed and distributed it according to Law 123. It was also the law that enabled Gaddafi’s regime to weaken powerful tribes that were thought to support the preceding monarchic system. These were found, especially in the eastern region where tribal land constituted mostly of agricultural or reclaimable land.³

Attempts to deprive tribes of their land were not new. Under Ottoman rule, a Land Law was introduced in 1858 that deemed tribal land amiri land, i.e., land owned by the state, and tribes only had the right to usufruct. While the Ottomans were unable to implement this law, it provided a basis for their Italian successors. When Italy invaded Libya in 1911 and became the new colonial rulers, they claimed ownership of Libya’s lands as the legal successor of the Ottoman Empire. It was only the monarchic system (1951-1969) that finally recognized tribal ownership. It allowed tribes to register their land in the real property registration, and formed committees to resolve real property disputes between them.⁴ In this way the Monarchy satisfied its support bases. When Gaddafi rose to power, he began to weaken these bases by abolishing tribal land ownership.

The regime, though, did that gradually. Law 142 recognized registered tribal lands and wells, but very few tribal lands were in fact registered. Unregistered tribal lands were deemed property of the state. Furthermore, Law 142 invalidated registration based on the decisions of adjudication committees. Later, Law No. 38 of the year 1977 invalidated any ownership of land, regardless of it being registered, if it was based on possession irrespective of how long this possession had lasted; such possession was the main legal cause for tribal ownership of land. When there was no dispute over the land or well, Law 142 allowed tribes using it at that time, to continue doing so subject to state laws. It also provided for dividing such lands amongst current occupants. The compensation offered when lands and wells were taken was limited to expenses incurred in utilizing lands and wells and did not extend to the loss of right to use per se. If there was a dispute over land, Law 142 stated that it would be taken from its possessors, and then distributed amongst citizens living in the area while ensuring that its use would not be exclusively enjoyed by one group.

The detailed provisions on such division and distribution of tribal lands and wells were laid down in Law 123. The implementation of that law, however, varied from one area to another. It was strictly applied in the eastern region, and less strictly in areas in the west such as Bani Walid.⁵ The regime, as previously said, intended to weaken powerful tribes in the east, since they were, unlike those in the west, supporters of the pre-Gaddafi Monarchy.

Gaddafi’s regime maintained social justice as a declared objective throughout its time in power; still, a significant change took place with the pronouncement of Gaddafi’s Third Universal Theory, his alternative to capitalism and communism. While the Green Book that outlined this Theory was first published in 1975, the issuing of the Declaration on the Establishment of the Authority of the People on 2 March 1977 signalled the beginning of transforming the theory into law. An important proposition of this theory is the statement that an individual cannot be free unless he ‘controls’ his own basic needs, namely: a house, an income, and a vehicle. Law 4/1978 (Law 4) came to translate this statement into law. As the Supreme Court phrased it, Law 4 is: “a law [that] aims to prevent exploitation by providing housing to those who do not own private houses, and protecting craftsmen and workers who practice their crafts and work in premises owned by others”.⁶ While Law 4 gave every citizen the right to own one house or a plot of land on which to build one, and deemed this right sacred, it prohibited owning anything beyond that limit save in exceptional cases and for limited periods. The state would seize any property in excess, assign it to citizens in need of housing, allocate it to public interest purposes, e.g., as the premises of a state institution, or manage it on behalf of the people through, for example, renting it out to non-Libyan nationals. As such, the state could play different roles, e.g., a seller, occupant, and lessor.

1 Except when otherwise stated, the translation from Arabic into English is done by Suliman Ibrahim.

2 *Al-Jaridat Al-Rasmia* [Official Gazette]. Special Issue. 15 December 1969.

3 Mohammed, Abduljawad Mohammed (1974) *Milkiat Al-aradi fi Libya. (Land ownership in Libya)*. Cairo: Dar Al-Itihad Al-Arabi. p 455.

4 Ibid, pp. 455, 483-486.

5 Abu Raas, Ali (2017) *Nadarat fi daur Al- qiyadat Al-taqlidia fi hal Al-munazaat Al-qabalia, Bani Walid nomothajan*

(*Views on the Role of Traditional Leaders in Resolving Tribal Land Disputes, the Case of Bani Walid*) in Arabic. Unpublished paper.

6 Civil Appeal No. 101/25, dated 22 December 1981. The Supreme Court Journal. Issue 18. Part 1. p. 35.

1.3. The prominent and overlapping roles of the state

When it comes to real property disputes in Libya, it is worth noting that the state plays an important role and that disputes do not necessarily primarily take place between two private parties. Our research shows that this has significant consequences for the success and durability of any resolution of these disputes.

During Gaddafi's rule, the state first enacted and enforced the laws, notably Law 123 and Law 4, which severely limited private ownership of real property. Moreover, the state itself became the owner of this type of property with very few exceptions, namely, one's only dwelling, one's only plot of land on which to build a dwelling, one's only commercial, craft or industrial premises, productive farms, and embassy-owned property.⁷ What the state owned, it could keep for its own use, sell to citizens deemed in need, or rent out. When the government admitted at a later stage that there had been a misapplication of Law 4, and allowed the victims to claim compensation or restitution, it established committees for this purpose, and did not leave it to courts. It regulated when and how to provide redress.⁸

When addressing past 'misapplications' of Law 4, in principle the state acknowledged the previous owners but largely ignored those who benefited from those laws, i.e. the occupants. In the procedures of the 2006 Committee there is no place for the occupant. It is just the former owner who may lodge a claim, and once verified, the 2006 Committee grants him either compensation or restitution. As such, the occupant would only know the claim when he would receive the committee's decision, which might order to evict him from the property. Our research shows that this happened in practice.

Another misconception concerns the state itself. As our research shows, tribal leaders in the eastern region, notably in the area of Al-Marj, treated disputes over lands subject to Law 123 as ones between former owners and occupants. Accordingly, they concluded reconciliation agreements between these two parties with complete disregard for the state; this later resulted in the state invalidating these agreements.⁹

The lesson to learn here is that Law 123 and Law 4 created legal relationships involving the state, the former owners and the occupants. For the success and durability of any dispute resolution, it is paramount to consider the interests of all three, and to strike a balance between them. Maintaining this balance is not an easy task, as the property legacy of East Germany shows; some even argue that any property restorative policy will end up with winners and losers.¹⁰ Still, while some level of inequality may be unavoidable, every effort should be made to avoid the situation whereby there are absolute winners and absolute losers. This is essential for the sustainability of any solution.

⁷ Judge Youssef El-Hanesh, head of the 2006 Committee, succinctly stated this in a letter dated 23 January 2010 which he addressed to the *Katib Al-'am of the Lajnah Al-Sha'bia Al-'ma*.

⁸ Ibid.

⁹ See 8.

¹⁰ Verberne, Jelte (2017) "Property Restitution & Transitional Justice, Post-Communist Lessons for Post-Gaddafi Libya." Internship Report. Wageningen University, pp 30-31.

2. Impact of Law 123

As previously mentioned, in addition to the pronounced aim of social justice, Law 123 had another aim, namely, disempowering tribes perceived to be pro-Monarchy. The law gained relative success on both fronts, and both should be considered in any assessment of Law 123.

On one hand, the state obtained through Law 142 the ownership of most tribal lands, and this ownership was even further expanded when Law 38 was enacted (see 1.2). Still, state ownership can also be just nominal, which is what had happened under Ottoman rule (see 8). However, in Gaddafi's Libya Law 123, which enabled the government to exercise its powers as the owner of these lands, and, accordingly, redistribute them amongst new beneficiaries, was actually implemented. This happened especially in the eastern region where the targeted tribes lived.¹¹

As a result, Law 123 had a profound effect on tribes. Many members of targeted tribes lost their lands and received no compensation.¹² The status of tribe men had given them no preference when the lands were distributed. Even if they possessed the land individually, and so satisfied the Supreme Court's interpretation, Law 123 required that such possession must also concern land that was equivalent in size or bigger than the model farm; hence, those with smaller lands were excluded. Still, Law 123 was not consistently applied. In Bani Walid, the state established several agricultural projects: Wadi Al-Mardoom, Wadi Ghbain and Mimoon, Souf Al-Jeen, and Wadi Nafd, and seized, in order to establish these projects, both tribal land and individual private properties. In the first stage of the Wadi Al-Mardoom Project, the allocation of land took place without consideration of who had been the former owners. As a result, most of the land that was owned by a certain tribe was assigned to individuals belonging to other tribes. In contrast, in later stages, the Secretary of Agriculture in Bani Walid took this factor into account. It distributed lands amongst members of tribes who previously owned them. It even delegated to tribes the selection of new beneficiaries from amongst their members. The effect of that change is clear. While the former way of distribution caused many disputes in the aftermath of the 2011 uprising, this did not happen in the latter case.¹³ Whatever the redistribution method was, Law 123 had considerable effect on tribal land tenure. It replaced it with distinct individual holdings.

On the other hand, Law 123 enabled the Gaddafi regime to deliver on its promises of development and social justice. The government reclaimed the newly acquired lands, and redistributed them, often justly and efficiently. Law 123 assigned the task of reclaiming and managing rural land to the Public Authority for Agricultural Reclamation and Land Development (Article 2). It established for the redistribution of agricultural lands, barren and desert lands after reclaiming, developing, and dividing them into productive agricultural units (Articles 3 & 4). Those entitled to receive these units had to be: Libyan citizens, who reached the age of maturity, farmers or able to be so, and lacking the means for a dignified life. If more than one person satisfied these conditions, priority would be given to those with bigger families and less money (Article 7). The law also gave preference to those renting the land or possessing it, provided they would meet the other conditions (Article 16). In theory, this article could have been used to accommodate members of tribes from whom the land was taken. However, the Supreme Court interpreted 'possession' as 'exercised by the individual himself',¹⁴ and so excluded possession exercised by tribes. Economic and social research committees were established to ensure that beneficiaries actually met the conditions (Article 14 of Law 123 Executive Regulation).

¹¹ Bushheua, M. (1986). *The role of the military in traditional societies: the impact of military rule on Libya's modernization and political development*. Los Angeles, California: University of Southern California, p. 276.

¹² While Law 142 established for compensating those who had lost their lands for what they had spent on them, Law 21/1984 concerning Special Regulations on Public Utility and the Disposal of Land ended this retrospectively. Official Gazette, Issue No. 29, 8/11/1984.

¹³ Abu Raas (2017).

¹⁴ Administrative Appeal No. 10/28. 25 December 1983. The Supreme Court Journal. Issue 21. Part 2, p 24. See also Mousa, Fathi (2017) *Munazaat Al-aradi Al-ziraia fi mantiqat Al-habal Al-akhdar (agricultural land disputes in the Al-Jabal Al-Akhdar area)*. Unpublished paper.

By way of example, we take a closer look at the Al-Jabal Al-Akhdar (lit. the Green Mountain) Area Agricultural Project in the eastern region. This project assigned to 4104 beneficiaries – out of 8724 applicants – new model farms. Most of these farms, to be precise 3904, were equipped with houses for the farmers and their families. All farms were connected to wells and equipped with various agriculture tools, fruit trees, and farm animals (e.g. cows, sheep, and chicken). The project gradually achieved higher levels of production. For example, wheat production went up to 55,590 tons in 1989/1990 from 40,694 tons in 1973/1974.¹⁵

However, even if this was the case in the Al-Jabal Al-Akhdar Project, the general picture of agricultural development projects in the country was not as promising. Admittedly, during the first Three-Year Plan of 1973-1975, agricultural production increased. For example, wheat increased to 107,000 tons from 73,000 tons after the Plan; barley increased from 188,000 before the Plan to 216,000 tons; and vegetable production increased to 620,000 tons from 485,000 before the Plan.¹⁶ These achievements gave hope that Libya would soon be agriculturally self-sufficient. Yet, this hope disappeared with the failure to achieve the target in the first Five-Year Plan,¹⁷ 1976-1980 (see Table 1).¹⁸ The 1980-1984 Plan was not successful either.¹⁹ The dependency on the import of food, as a result, did not change much between 1970 and 1983 (see Table 2).²⁰

Now that there are demands to rethink Law 123 and, possibly abolish it, the effect of this law on tribal tenure, on one hand, and its success as a means to achieve agricultural development goals, on the other, need to be carefully assessed. As previously mentioned, this law replaced tribal land tenure with distinct individual holdings, and even if the new owners were members of the tribes who formerly owned the land, it would be difficult to restore the pre-Law 123 situation. Since the 1970s Libya has seen a significant expansion in urban development that resulted in many Libyans moving to cities and becoming state employees. Hence, deeming the land to be communally owned by tribes may have become an anachronism.

Still, addressing the legacy of Law 123 is difficult not only because of the question concerning tribal tenure; another, and probably more important question is whether this law has really achieved its development goals. We have already shown that the answer is contested. This is important since the ‘development argument’ is used by occupants against abolishing Law 123. To them, the former owners or their heirs are not farmers, and so returning the lands to them would probably change their use from agriculture to mainly housing. Agricultural development, one of the pronounced aims of Law 123 would then be heavily negatively affected.²¹ While our research did not focus on assessing the success of agricultural development efforts, it would be sufficient to say that there is consensus that, unlike Law 4, Law 123 should be kept. It has resulted in transforming lands into productive farms, and abolishing it would risk losing them. Yes, there were misapplications associated with the implementation of the law that need to be addressed; the redress, however, does not necessarily entail abolishing the law altogether.²²

¹⁵ Bugzeal, Mohamed (2017) Aafaq Al-tanmia Al-zira'ia bi mashai'Al-hiya Al-tanfithia li mantiqat Al-jabal Al-akhdar (Prospects of Agricultural Development in the Projects of the Executive Institute for the Al-Jabal Al-Akhdar Area, Factors and Obstacles. Unpublished paper.

¹⁶ Socialist People's Libyan Arab Jamahiriya, The Economic and Social Transformation Plan, 1976-1980 (Tripoli: Secretariat of Planning; no date), p. 6. As cited by Bushheua (1986), pp 276, 277.

¹⁷ Bushheua (1986), p. 279.

¹⁸ Socialist People's Libyan Arab Jamahiriya, the Economic and Social Transformation Plan, 1981-1985 (Tripoli: Secretariat of Planning, Date not available), p. 43. As cited by: Bushheua (1986), p. 280.

¹⁹ Bushheua (1986), p. 279.

²⁰ Socialist People's Libyan Arab Jamahiriya, Socioeconomic Indicators, 1970-1983 (Tripoli: Secretariat of Planning, 1984), pp. 42-44. As cited by: Bushheua (1986), p. 283.

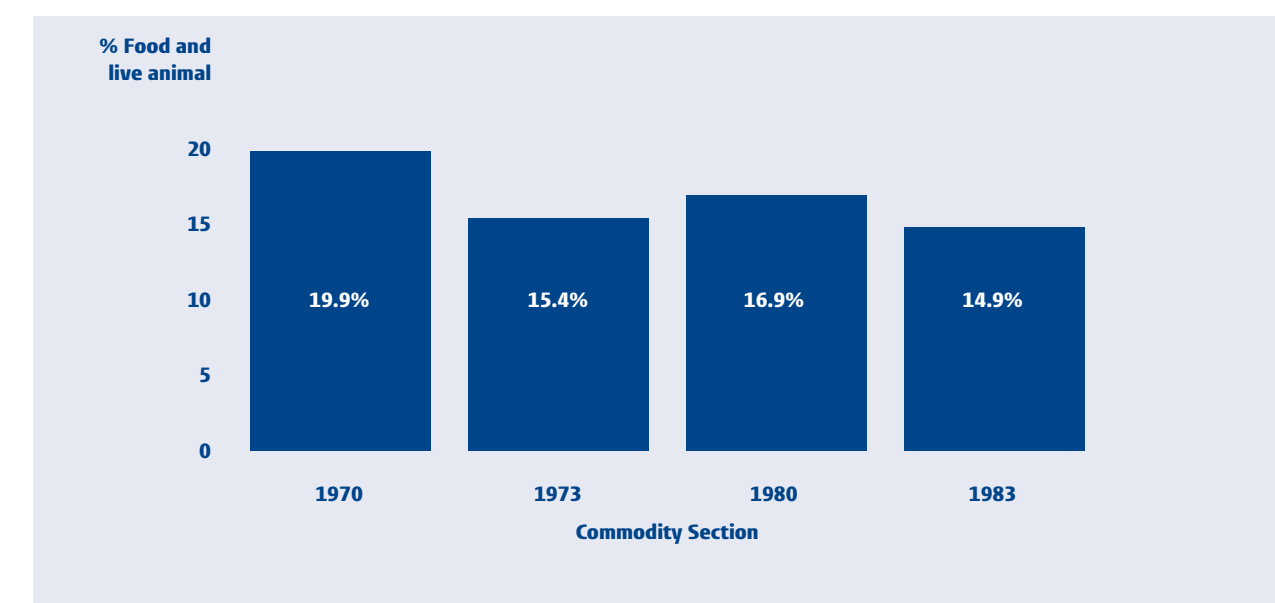
²¹ Bugzeal (2017).

²² See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

Table 1: Production of Important Agricultural Commodities During the Development Plan, 1976-1980

Commodity	Base Year (1975)		Target 1980	Achievement 1980	Implementation Ratio
	Original	Revised			
Wheat	107.00	75.00	336.00	122.40	36.30
Barley	216.00	192.00	245.00	82.00	33.50
Fruits	130.00	128.00	255.00	160.00	62.70
Vegetables	620.00	564.00	825.00	564.00	68.40
Legumes & Nuts	24.00	19.00	42.00	12.60	33.00
Olive oil	18.00	18.00	37.00	27.90	75.40
Fodders	616.00	351.00	1,321.00	450.00	34.10
Meat	46.00	38.00	98.00	53.70	54.80
Milk	85.00	87.00	290.00	110.00	37.90
Eggs	9.00	10.30	25.00	15.70	62.80
Honey	0.35	0.235	0.60	0.36	60.00
Fisheries	4.70	4.70	11.00	4.00	36.40

Table 2: Value and Percentage of Selected Commodity Imports, 1970-1983



3. Impact of Law 4

Like Law 123, Law 4 also aimed at social justice, and it provided clear provisions on both the expropriation and redistribution of property including compensation and appeal procedures. Yet, the practice was not as clear, and ‘misapplications’ were not uncommon. But harmed persons were not really given a fair chance to get misapplications addressed.

Law 4 required owners to submit statements listing their properties, and allowed them in case they had multiple ones to choose what to retain, within the boundaries set by the law. As for the redistribution of the property found in excess, the law also stated the conditions and criteria. It required the new owner to be a Libyan citizen; married, or single with no one providing for him; not already an owner of a dwelling or a plot of land to build a dwelling; and in case the property was a commercial, craft, or industrial premises, the new owner had to practice a suitable craft or industry; and not already own a suitable property.

The Executive Regulation of Law 4 established two committees in each municipality. The first committee was to identify the properties subject to Law 4; it would, for this purpose, receive the statements that all property owners were required to complete providing a detailed account of the number of real properties, the names of tenants and the purpose of the tenancy. This committee was also to determine what the state would do with buildings owned by foreigners. One option was to retain the building and manage it to satisfy ‘the people’s interest’. The second committee was responsible for assigning properties to their new owners.²³

When more than one person met the conditions, the priority in terms of dwellings was as follows: (1) the owner of the property and his married sons or sons that would marry within a year, if they did not already own a dwelling or a plot of land; (2) the tenant; (3) the owner’s divorced wife if she was not remarried, and had the custody of their children; (4) divorced and widowed women who provided for their children; (5) veterans of the resistance against the Italian occupation; (6) heirs of martyrs; (7) holders of bravery, military start, ... badges; (8) holders of good work or good citizen badges; (9) state employees when transferred to a new working location; and (10) those who had a bigger family. In properties other than dwellings, the priority was to be given to the tenant, next to cooperative associations, to public entities, and then to craftsmen.

The value of the property would be estimated based on the price of the land, and the installations thereon. Then, the new owners would have to pay that value either at once, or, if they were unable to do so, in monthly instalments over twenty years. As for the former owners, the Secretary of Housing would pay them the value of the property, as compensation, at once if they had a limited income or depended in their living on the revenue of their property. As for other former owners, the value was to be paid at once if it did not exceed ten thousand Libyan dinars; if it exceeded this amount, only that amount would be immediately paid and the rest would be paid in the form of bonds that would not exceed the value of ten thousand dinars a year.

²³ Law 4/1978 Enforcement Regulations. See the *Al-Jarida Al-Rasmi* (Official Gazette) No. 4, 31/5/1978. These Enforcement Regulations were later amended by a Resolution of the General People’s Committee issued on 27 September 1979. Under the amendments the sub-committees were abolished and their role was assigned to the real property registration directorates and offices. This decision was published in Muzughy, Abd Al-Salam Ali *Musuw’at Tashriyy’at Mahkamat Al-Sha’ab wa Maktab Al-Id’aa’ Al-Sha’abi* Part 1 Tripoli: Al- Markaz Al-’Alami li-Dirasat wa-Abhath Al-Kitab Al-Akhdar No Date: 437-39.

Law 4 was applied nationwide, but the exact figure of properties affected is uncertain. According to the ASP’s recent figures, 75,000 properties were subject to Law 4. According to figures also attributed to the ASP by the Head of the 2006 Committee, the number is 56,000 properties. Only in Tripoli and the surrounding area, we were informed, the number is 50,000.²⁴ Despite these discrepancies, even the lowest of these figures indicates how widespread the effect of Law 4 was.

This was the law in the books; the implementation of this law saw, as the regime itself later admitted, many misapplications. As early as less than five months after the issuing of Law 4, the Minister of Justice warned the heads of public prosecution offices against what he called the phenomenon of citizens entering vacant dwellings without any authorization and by force.²⁵ Apparently, these were dwellings given up by the owners as a result of Law 4. It was not only citizens; the Public Administrative Control Authority published a report in 1986 detailing misapplications committed by state officials. They included assigning ownership of a property to more than one person, or more than one property to one person, or to one who occupied it by force, or without satisfying the required conditions, or based on favouritism and personal connections.²⁶ Gaddafi himself admitted these misapplications though he made clear that such admission did not signal any departure from the Third Universal Theory. On the contrary, as he made known, the transposing of this Theory into law was going as planned although some misapplications of revolutionary legislation had been unavoidable, and should be corrected. The correction was to be done by the then newly established people’s courts.²⁷

Deviation from the law also occurred in regard to the compensation to former owners. In many cases, the state did not pay it, or did not pay in full. Many former owners also refused to take it because they found it too low. The regime later tried to address this by establishing a committee to ‘complete’ the compensation that Law 4 provided for, the 2006 Committee.²⁸

Based on whether Law 4 was correctly applied, we can distinguish four different scenarios. In the case of former owners, there are those who accepted the compensation and received it, - though the validity of their consent can be questioned -, and those who only received partial compensation or none at all. In terms of the occupants, there are those whose occupancy is based on the correct application of Law 4 such as former tenants of the property concerned. There are also those who lack such a basis, and in this category we can distinguish between bona fide occupants and those who acted in bad faith. Bona fide occupants include those who were assigned the ownership of someone else’s only dwelling without being aware of that, and those who purchased the property from those to whom the government had assigned ownership. No good faith could be assumed in, for example, the cases listed in the abovementioned report of the Public Administrative Control Authority. Any redress of the effects of Law 4 as well as Law 123 should take into account these different categories.

²⁴ El-Zirgani, Faraj, Representative of the ASP in the 2006 Central Committee. Interview by Ibrahim, Suliman. Tripoli. 7 August 2016.

²⁵ Circular No. 5/1978 dated 14 October 1978.

²⁶ See the Inspector General’s Circular No. 2/1986. Published in Muzughy 470-472.

²⁷ Gaddafi’ speech in a meeting with the people’s court and the people’s prosecution office on 10 October 1988. Published in Muzughy, pp 27-28.

²⁸ See [The 2006 Compensation Committee](#) below.

4. Dealing with Law 4 Legacy

4.1. Three phases

The establishment of the 2006 Committee in order to provide remedies for ‘misapplications’ of Law 4 was not the only attempt of the regime to repair previous erroneous applications of Law 4. From 2000 until the 2011 uprising the regime attempted, under the auspices of Saif Al-Islam, Gaddafi’s son and presumptive heir, to solve problematic issues internationally and domestically. In 2003, the regime agreed to pay compensation for the Pan Am and Air France bombings, and for the Berlin night club bombing. At the domestic level, it tried to solve issues such as the 1996 Abu Salim Massacre, the case of HIV-infected children at Benghazi’s paediatric hospital, and, what has concerned us in this research, the property grievances caused by laws such as Law 4. In all cases, the regime’s main approach was to solve the issues by paying compensation without fully admitting its guilt.²⁹

Since 2011, after ousting Gaddafi’s regime, the new authorities faced the legislative legacy of Law 123 and Law 4. Since Gaddafi’s regime had already started the process of reviewing the effects of Law 4 in particular, the authorities did not need to start from scratch. The revolutionary fervour encouraged previous owners to present their claims as undoing the injustices committed by ‘the tyrant’ and to increase political pressure. As a result, from 2011 until 2014 subsequent governments undertook efforts to address this complex issue, but with limited results as we will see below.

During 2013 the sense of national reform and unity gave way to political divisions and stagnation. This negative trend came to a head in mid-2014 when armed groups invaded Tripoli and revived the already ended General National Congress while the newly elected House of Representatives had to convene in Tobruk, in the far east of the country. Since then political authority has been effectively split between two or even three governments, which has made it impossible to solve complex issues such as the Law 4 legacy. With the 2015 Libyan Political Agreement, a roadmap towards unity and stability was set up, but the main political actors have not been able to agree about its implementation. This is not to say that nothing relevant has happened since 2014. Apart from the Political Agreement, the Constitution Drafting Assembly (CDA) has continued to work, and has produced several drafts which address real property grievances.³⁰

4.2. Limited compensation by the regime without admission of guilt: 2000-2011

In this period there were two main initiatives to deal with the legacy of Law 4. The first came from a committee, which had been established to review Libya’s 1953 Civil Code. This committee recommended abolishing Law 4 with immediate effect. After concluding that five decades of legal practices based on the Code revealed no need to introduce major amendments, the committee did notice that the 1970s and 1980s had witnessed the enactment of laws which – contrary to the Code – restricted real property ownership. Those laws, the committee argued, had been intended to address temporary situations and circumstances, and were therefore to end once these situations and circumstances changed. Amongst these laws was Law 4. Furthermore, the committee noted that circumstances had indeed changed, that these laws were no longer suitable for Libyan society and should be ended with immediate effect albeit not retrospectively to ensure that the law’s achievements would not be touched. The regime, however, did not accept the committee’s recommendation.

The second initiative was the creation of the 2006 Committee to ‘complete’ the compensation that Law 4 provided for. Implied in the creation of this committee was the idea that Law 4 per se was not wrong; it was simply misapplied, notably by not paying compensation to former owners. The committee received and decided on thousands of cases. Yet, it was constrained not only because of the limitations of its mandate, but also because of the resistance of the regime’s hardliners to any initiative to review laws that had been implemented to further the regime’s core ideology, i.e., socialism as explained in the Green Book. Obviously, the end of Gaddafi’s regime gave rise to new efforts to seek redress.

4.3. The former owners’ comeback: 2011-2014

In the immediate aftermath of the February 2011 uprising, when the revolutionary fervour was at its highest, calls were made to cleanse the legal system of whatever was perceived as the marked expressions of Gaddafi’s regime: its laws, its institutions and its people. Some called for a new system based on democracy and human rights, whilst others were in favour of a system based on Sharia. Such calls resonated with the new authorities, and, tactically, the former owners made use of that. While presenting themselves as victims of Gaddafi’s regime, they accused the occupants of being Gaddafi loyalists. They also maintained that Law 4 violated Sharia, which supposedly recognizes private property as ‘sacred’; Law 4 should, therefore, be abolished. This narrative is evident in the name the former owners gave to their most prominent organization, i.e., the Association of Owners Harmed by the Ruling of the Tyrant, and the discourse they employed in their lobbying.

Their efforts resulted in three draft laws to address Law 4 and Law 123; these draft laws will be discussed below (see 7), but for now it suffices to say that these drafts largely protect the former owners’ interests. Furthermore, when the government established the so-called Follow-Up Committee entrusted with overseeing the work of the compensation committees, the former owners succeeded in having two members appointed to that committee. Their attempts to have representatives in the committees themselves, however, did not succeed. Moreover, when they brought a case before the Supreme Court to declare Law 4 unconstitutional, they lost it. And most importantly, none of the three draft laws was in the end enacted by the GNC. This was in part due to the deterioration of the political situation after August 2014, and the subsequent political and military divisions.

4.4. Towards a more balanced approach? 2014-present

In June 2014, after the HoR was elected to succeed the GNC as Libya’s national legislature, armed groups opposing the HoR took control of Tripoli. The HoR and the government led by PM Thinni fled from Tripoli to the east. The political vacuum in the capital was filled by the unexpected resurrection of the GNC, which declared itself to be the legitimate legislature, and supported the establishment of a parallel government, under Ghwell in Tripoli, the so-called Government of National Salvation. Meanwhile two distinct armed groups rose, each backing one of the camps. In the east General Hafter and his proclaimed ‘Libyan National Army’ positioned themselves as the only force that would defeat the militant Islamist groups that controlled parts of Benghazi. After some time, the Thinni government, hesitantly, formalized Hafter’s military leadership. In Tripoli, the coalition of anti-HoR (and anti-Hafter) armed groups, many of them originating from Misrata, initially remained in control.

²⁹ Gebril, Jazia and El-Tobuli, Mohammed. (2013), “Compensation for Unlawful Detention under Gaddafi’s Regime.” In: Otto J.M., Carlisle J., Ibrahim S. (Eds.) Searching for Justice in Post-Gaddafi Libya. A Socio-Legal Exploration of People’s Concerns and Institutional Responses at Home and From Abroad. Leiden: Van Vollenhoven Institute, Leiden University. pp. 130-141; p. 137.

³⁰ See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

As a result, from the autumn of 2014 two legislative bodies were competing for legitimacy, each with its own government, ‘army’, national oil cooperation, and national investment authority. The GNC camp claimed to be the protector of the February revolution against Gaddafi loyalists, or *azlaam*, as is the term used in Libya. On the other hand, the HoR camp claimed to represent democracy and the rule of law – the HoR had been democratically elected. In addition, the HoR camp claimed to protect Libya from control by extremist Islamists who refused to accept the results of the elections and were backed by Misratan armed groups viewed as Islamist. Thus, political dynamics between the HoR and GNC developed around the four dichotomic frames of West vs East, revolutionaries vs Gaddafi loyalists, Islamic extremists vs -moderates, and brutal force against democracy and rule of law.

Regardless of how accurate these frames and claims are, what is certain is that in 2015 the GNC issued several laws and measures directly affecting the laws restricting real property including Law 4. Later, we will assess the legal status of the legislation enacted by the GNC after the formal end of its term in 2014.³¹ On 24 May 2015 the GNC amended the 2011 Constitutional Declaration, for the ninth time, providing that Sharia became the source of all legislation, and that legislation, decisions or actions issued in violation of the provisions and objectives of Sharia would be void.³² Immediately, on May 28 the former owners’ association issued a statement, emphasizing that there was no longer an excuse for the GNC not to address Law 4’s consequences, and that the association would submit a statement requesting redress. Indeed, on 1 June 2015, the association submitted a statement asking for the enactment of a law, which would abolish Law 4. As will be elaborated below, there was already a suitable draft available for that purpose that had been composed by the Head of the 2006 Committee, Judge El-Hanesh.³³

The GNC indeed granted this request. On 14 October 2015, it issued Law No 16/2015 abolishing, in its own words, “twelve laws that were unjust and did not comply with Sharia”, including Law 4. On 17 December 2015, the GNC issued Law No 20/2015 that is almost identical to Judge El-Hanesh’s draft.³⁴ In a statement entitled “a statement on the efforts of the GNC to apply Islamic Sharia and enact laws compatible with its provisions”, the GNC extensively explained how the new laws, including Laws 16 and 20, were based on Sharia, and, more specifically, on the recommendations of an expert committee headed by the Deputy Mufti.³⁵ Meanwhile, it is important to mention that the practical effect of both laws was limited. This is not only because the GNC had no control over more than half of the country, but also because the executive regulations that Law 20 was supposed to be accompanied by were never issued.³⁶

For the HoR, addressing the legacy of Law 4 was not a priority. Unlike the GNC, it did not present itself as terminator of Gaddafi’s legacy, c.q. defender of the February revolution, and supporter of Sharia-compliant law. To the contrary, the HoR questioned and reviewed policies and legislation enacted during the early years of the 2011 February revolution. For example, it abolished the controversial Political Isolation Law,³⁷ announced plans to review Law 29/2013 on Transitional Justice,³⁸ and enacted an amnesty law pardoning many of the former regime’s men.³⁹ With the failure of Libya’s post-2011 governments to deliver on their promises of a better life, and with the deterioration in security, many Libyans began to have second thoughts about the benefits of the revolution. This also created a space for openness in some cases to appreciate the former regime’s positions, policies and legislation.

This can be observed in a changing attitude towards Law 123. In the first years after the 2011 February revolution, former owners in the area of Al-Marj, with the help of the area’s ‘wise men’ council,⁴⁰ successfully reached agreements with occupants to get back their lands; in return, the occupants would keep the farm houses. The ‘wise men’ council gave itself the right to “address the issues of citizens harmed by the unjust Law No. 123/1970 that expropriated their properties and incorrectly assigned them to other citizens”, and to accordingly form “customary committees at the levels of tribes and families to amicably restore rights to their subjects”. “It has been agreed”, it continued, “that the decisions of these committees will obligate all parties”.⁴¹

However, later, when the revolutionary momentum declined, the Speaker of the HoR issued a circular emphasizing that Law 123 was still in force; the Assembly, he stated, would discuss a draft of an alternative law. Interestingly enough, he pointed out that the fact that Law 123 was still in force would not affect customary solutions concluded through committees formed by wise men councils in the area.⁴² Additionally, the General Commander of the National Army, Khalifa Haftar, issued a circular on 28 September 2016 warning against any attack on public or private properties, and threatening any transgressor with severe legal penalties.⁴³ Despite what the Speaker of the HoR said about the validity of customary agreements, the occupants found encouragements in the new developments, and challenged those agreements in court for violating Law 123. They argued that they had been forced on them. Indeed, courts accepted their argument and declared the agreements void. Even the city wise men council changed its position, and requested the Military Governor of the area to remove legal violations including the division of farms in violation of Law 123. It also demanded protection of the occupants.⁴⁴

31 See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

32 Al-Jarida Al-Rasmia (Official Gazette). Issue 1. 1 October 2015.

33 See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

34 See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

35 This GNC statement is published on the Facebook page of the Libyan (religious) Scholarly Institute [Hiyat Ulama Libya]: https://www.facebook.com/permalink.php?story_fbid=1185708528145100&id=233722960010333.

36 See [Legislative Responses to the Legacy of Law 4 and Law 123](#) below.

37 Law No. 2/2015 on Abolishing Law No. 13/2013 on the Political and Administrative Isolation. Official Gazette. Issue 6. Year 4. 12 September 2015.

38 An interview with Agela Saleh, Speaker of the House of Representatives. Al-Awsat. Issue 13115. 25 October 2014. Available online: <http://www.aawsat.com>.

39 *Majlis Al-Nowab Yoswet al Iqar Qanwn Al-ḍfw Al-ām* (the HoR votes on issuing the general amnesty law). Libya Channel. 28 July 2015: <https://libyaschannel.com>.

40 The post-February 2011 era has witnessed the birth of many ‘wise men’ councils; started as self-appointed bodies in the immediate aftermath of the revolution, these councils developed to be state-regulated. According to Ibrahim Al-Sahati, head of the Benghazi Wise Men Council, this council was the first to be voluntarily formed after the February revolution to maintain security at a time when the judiciary and police institutions were dysfunctional. The council included representatives of 110 Benghazi-based tribes; amongst them, there were tribal leaders, experts, and intellectuals. Al-Fsee, Sharifa (2014), *Al-Daor Al-Siyasi lil Qabila fi Libya (The Political Role of the Tribe in Libya)*. Fasanea. Issue 117. Available at: <https://www.facebook.com/fasanealy/posts/664030083690384>. Many other councils have been formed since, and to regulate them, the GNC issued Resolution No. 37/2015 on the Mechanism of Approving the Councils of Wise Men and Notables and the Determination of their Powers. Al-Jarida Al-Rasmia (Official Gazette). Issue 4. Year 4. 1 October 2015.

41 Letter of the Al-Marj Wise Men Council No. 2/1/2013 dated 1 June 2013. As cited by Mousa (2017).

42 Letter of the Speaker of the HoR No. 109/2015 dated 17 September 2015. As cited by Mousa (2017).

43 Letter of the General Commander of the National Army No. 167/1722 dated 28 September 2016. Available at: <https://Al-ain.com/article/hfter-warns-aggressors-on-public-and-private-property-in-libya>.

44 Mousa (2017).

The decline in the revolutionary momentum is not *per se* a bad thing. The revolutionary fervour that featured in the early years of the revolution sometimes led to unbalanced political decision-making. While great attention was given to the concerns and demands of the former owners, little room was given to the occupants, and to the public interest at large, as represented by the state and its agencies. This is illustrated by the abovementioned draft laws. Now that this fervour has somewhat disappeared, we can make a more balanced assessment of Law 123 and Law 4; how they affected the interests of owners, occupants and the state, and what an appropriate redress may look like.

Still, in order for any redress to be effective and implementable, the political divide first needs to end. The Libya Political Agreement (LPA) is a step, though still incomplete, towards that. Under the auspices of the UN Support Mission in Libya (UNSMIL), a dialogue between the different rivals led to the signing of the LPA on 17 December 2015. It provided for an extended transitional period with four bodies: (1) a National Accord Government (GNA), (2) a Legislative Authority, which is the HoR, (3) a High State Council, which would include most of the GNC members, and (4) a Constitution Drafting Assembly. Members of the HoR who had boycotted its sessions since the beginning of the political divided were supposed to re-join it after the signing of the agreement. The GNA, as *per* Article 62 of the LPA, would form an expert committee to review the laws and decisions taken in the period between 4 August 2014 and 17 December 2015 with a view to finding suitable solutions to them. As such, the LPA provided for a more encouraging environment to deal with the real property legislation legacy; the GNA would review Laws 16 and 20, and the HoR would uphold its recommendations concerning whether to maintain these laws.

Yet, the LPA has not been fully implemented yet, and the political divide is still prevalent in today's Libya. The GNA has indeed been established, but so far the HoR has failed to give the required approval to the cabinet. The High State Council has also been formed; still, not all GNC members have joined it. The LPA rejecters are still upholding the old GNC, which has resulted in a third rival. It should come as no surprise then that the GNA has not conducted the promised review yet. No change is expected from the end of the HoR either. This does not mean the end of the LPA. In fact, all efforts to end the political divide in Libya start from this agreement albeit with various proposed amendments. When it is fully approved and implemented, the LPA will help to better address many pending important questions including those on Laws 123 and 4. Our report intends to contribute to this better redress by examining and presenting some exemplary Libyan as well as comparative experiences. In this respect, we first have to take a closer look at the 2006 Committee, which gained a vast experience in addressing the consequences of Law 4 through dealing with thousands of individual cases.

5. The 2006 Compensation Committee

As previously mentioned, the Gaddafi regime tried to address the harmful consequences of Law 4 by creating, in 2006, a committee to 'complete the compensation that should have been paid when the law was implemented'. This Committee did not have an easy job, not only because of the large number and complexity of the cases involved, but also because of the resistance to both its establishment and practices.

5.1. Mandate

If only judged by its mandate as stated in the Decision, which establishes the Committee,⁴⁵ the 2006 Committee's job is restricted to 'completing' the compensation which the former owners did not receive when Law 4 was implemented. Apparently, the drafters of Resolution No. 108/2006 establishing the committee wanted to convey the message that it did not signal any departure from the regime's core ideology; it was only about finishing something that the revolutionary law itself, Law 4, provided for.⁴⁶ Yet, a read of Resolution 108 reveals that the committee can, under certain conditions, order the restitution of property subject to Law 4.

At first, these conditions were quite limited, but thanks to the 2006 Committee's efforts, they were extended.⁴⁷ One such condition is that a dwelling – or a plot of land on which to build a dwelling – is used by a legal entity, such as a public company; such dwelling can be given back to the former owner and his children, one property each. If the dwelling is already registered in the name of a Libyan citizen, no restitution can be ordered *except* if the property concerned was the only dwelling of the former owner; the occupant will in this case be compensated. The 2006 Committee can also return commercial, craft and industrial premises to the former owner and his/her children or heirs - one property each.⁴⁸ In other cases, the Committee can only order compensation. Still, there is one other way to obtain restitution, namely when the former owner and occupant agree on that. The Committee is entitled to ratify their agreement, and the compensation due to the former owner will then be paid to the occupant.

⁴⁵ The full title of Resolution No. 108/2006 is 'Resolution... on Procedures, Foundations and Safeguards of Completing the Compensation of Real Properties Subject to the Provisions of Law 4 of the Year 1978 ...'.

⁴⁶ El-Hanesh, Youssef. Interview by Ibrahim, Suliman. Leiden. 10 January 2017.

⁴⁷ See, for example, Resolutions 195/2006 and 752/2007 issued by the Council of Ministers; both referred in their preambles to suggestions made by the head of the 2006 Committee. In a workshop organized in Leiden on 17-23 October 2016 as part of this research project, Judge El-Hanesh stated that: "the powers of the Committee as per legislation were very limited, so it could not return all properties subject to Law 4; it could only return one dwelling or one plot of land or one commercial, industrial or craft premise if the owner was practicing his trade, industry or craft in it. This caused the Committee to widely interpret the provisions in favour of the owner as much as it could, and make one recommendation after another to amend the resolutions regulating its work to achieve that, and it received from the relevant entities assistance and help in the form of approving most of the recommendations, so the Committee started to expand ... the restitution cases".

⁴⁸ Resolution 108 used the term 'children' without any distinction between males and females; yet, some branch committees made this distinction and restricted restitution to male children (Omar Kara, head of the Branch Committee of Abu Salim, a written intervention in a workshop that *Dar El-Ifta* organized in Tripoli on 5 March 2014). His statement concerned commercial premises; still, Resolution 108 consistently used the term children without any qualification; so, his interpretation is inaccurate as the head of the 2006 Committee, Judge El-Hanesh, said (interview by Ibrahim, Suliman, Leiden, 10 January 2017).

Obviously, the applicants usually had properties, which had been subject to Law 4, i.e. the former owners. Yet, there were cases where the occupants needed to submit applications too; for example, if a court ordered the eviction of an occupant, he might apply to the committee for compensation. The Committee indeed received such applications. In a letter to the Minister of Justice dated 16 April 2013, Judge El-Hanesh listed three conditions for the Committee to accept such applications, viz., that the application concerns a property subject to Law 4, the occupant has been evicted as a result of the Committee's decision, and the occupant provides a certificate from the relevant authority that he has no dwelling.⁴⁹ Still, a look at the composition and organization of the Committee confirms that it is based on a conception of it being a case between the former owner and the state; there is no place for the occupant in such a conception.

5.2. Composition and Organization

The 2006 Committee consists of one central committee based in Tripoli with nineteen branch committees all over the country. Each has the same structure: headed by a judge and composed of representatives of government institutions, namely of the Ministry of Finance, the Ministry of Defence, the Ministry of Agriculture, the Ministry of Urban Planning, the Authority for State Property (ASP), and the Authority for Real Property Registration (ARPR). Hence, the 2006 Committee is in essence an administrative committee.

The fact that the 2006 Committee is headed by a judge does not make it a quasi-judicial committee. A study of both its regulations and practices shows that it does not really adjudicate disputes. It receives applications submitted by former owners for restitution and/or compensation, and decides on them, in the absence of the occupants. Admittedly, Resolution 108 provides for a visit to the property concerned by the committee as part of the process. There is a possibility that the occupant will be there, which means there may be an opportunity for the occupant to express his or her demands. The visit is not mandatory, though, and based on the committee's data, sometimes when the visit was made the occupant was not in; the committee simply made note of that. The head of the committee himself found that the committee does not exactly 'adjudicate' its cases.⁵⁰

Since it is an administrative committee, Law 4 'victims' ultimately also resort to courts. Had the committee been a quasi-judicial committee, this would have been different. Under Gaddafi's regime, for those affected by Law 4 resorting to courts was not really an option. The regime simply prevented courts from even accepting cases concerning Law 4. That was why many former owners resorted to the 2006 Committee despite their reservation about its limited mandate.

49 Hanesh, Youssef (2017) *Lajnat Al-Ta'widat an Al-Aqarat Al-Khadiá li Ahkam Al-Qanwn Raqam 4 li Sanat 1978* (the Committee for Compensation of Real Properties Subject to Law 4 of the Year 1978, Establishment, Performance, Vision, Challenges and Future). Unpublished paper.

50 Ibid.

5.3. Performance

According to Regulation 108 which established the 2006 Committee, it is only the former owner who can submit an application to the Committee, and when verifying the application's merit, the Committee does so by checking state records and files without involving the occupant concerned. The assumption here, perhaps, was that the occupant will not be affected since the Committee will only grant compensation to the former owner, and so the occupant can stay in the property. However, if the property was the former owner's only dwelling, the Committee is required to order restitution, even if the property is registered in the name of the occupant; in such case the occupant is to be evicted. He or she is offered the compensation that would otherwise have been due to the former owner. However, this is all decided in his or her absence, which is a deficiency in the process.⁵¹

The first step of this process is the application by the former owner or his/her heir(s) for compensation or restitution to a Branch Committee. This is the committee in which geographical jurisdiction the property concerned is located. Then, the Committee's member from the ASP is to visit the Authority's local office to check two things: that the property was actually subject to Law 4, and whether the former owner has received full, partial or no compensation at all. Following that, the Committee's member from the ARPR is to visit his Authority's local office to view the property's file, and the record of transactions, if any. After that, the Committee can – but it does not have to – visit the property itself to document its state, see the occupant, check whatever documents he or she has, and estimate the value of the property.

The assumption is that the Committee will then be able to decide on the application. Yet, its task is far from easy when it comes to verifying the validity of the applications it receives. By law, any claims related to real property cannot be accepted unless proved via the records of the Real Property Registration office. The problem is that these records were destroyed in 1985 when the Gaddafi regime ordered the burning of the registers to erase evidence of any pre-revolutionary property relation. Through Law No. 11/1988 on Socialist Real Property Registration the regime deprived any certificate based on older registration of its legal value. As the Ministry of Justice's Directorate of Law stated in 2012, "the real property certificates issued prior to the burning of the real registration records have, after burning the files on which they are founded, lost their legal value".⁵²

Had the Committee adhered to this legal requirement for proving real property-related claims, it would have rejected most, if not all of them, hence aborting the reconciliation project, the head of the 2006 Committee said.⁵³ Instead, the Committee showed great flexibility and accepted as proof not only certificates based on the old registration's records, but also testimonies.⁵⁴ This flexibility enabled the Committee to decide on more than 40% of the applications received. Between 2006 and 2015, the Committee received 25,148 applications and 10,526 of them were concluded.⁵⁵ Very roughly one could say that a third of the cases resulted in restitution, another third in compensation, while a little less than one third was rejected or withdrawn. In about 1% of the cases the Committee ratified reconciliation agreements (see Table 3).

51 As the Committee's data show, there were cases where the Committee made decisions in the absence of the occupants; the Committee was content with noting that the occupant was 'unknown' or 'unavailable' at the time when the property was visited.

52 Letter of the head of the Directorate of Law addressed to the Secretary of the Minister of Justice No. 14.115 dated 31 May 2012.

53 Letter of El-Hanesh, addressed to the *Katib Al-'am of the Lajnah Al-Sha'bia Al-'ma*. No. 1-1/25 dated 23 January 2010.

54 El-Hanesh (2017).

55 Letter of El-Hanesh, addressed to the Minister of Justice. Dated 11 February 2015.

Table 3: Outcomes of the 2006 Committee's decisions (2006-2015)

Restitution	3812
Monetary compensation	3943
Rejection and lack of jurisdiction	1695
Ratifying reconciliation agreements	98
Withdrawal and amendment of previous decisions	905
Withdrawal	73
Total	10,526

The Committee's flexibility also increased the risk of it upholding false claims. There have indeed been cases where the Committee granted the claimant restitution or compensation to discover later that he had already sold the property before the application of Law 4.⁵⁶ The fact that over the years 5,495 cases were appealed may partly be explained by such problem (see Table 4).⁵⁷

Table 4: Number of appeals against the 2006 Committee's decision (2008-2015)

2008	999
2009	1191
2010	1140
2011	343
2012	220
2013	1061
2014	483
2015	58
Total	5495

Whatever decision was taken by the Branch Committee, it still needed the approval of the Central Committee in Tripoli. Our research shows that the Central Committee enjoyed great discretion when reviewing the Branch Committees' decisions. For example, it could reject them; change them from restitution into compensation or vice versa; lower or increase the compensation awarded; and it did not have to report back to the Branch Committee concerned. Unsurprisingly, Branch Committees were not always happy with this process and the members we interviewed in Benghazi and Sabha made that clear.⁵⁸

The Central Committee's approval was not the end of the story. Its decisions needed to be approved by the so-called Follow-up Committee, headed by the Minister of Justice.⁵⁹ The Head of the 2006 Committee saw

the Follow-up Committee as an obstacle. He demanded ending it and considering the committee's decisions final and enforceable with no further requirement for approval; in his view only courts should have the power to review the Committee's decisions.⁶⁰ His demand, however, was not granted.

Yet, not all of the Central Committee's decisions were forwarded to the Follow-Up Committee. In practice, the Central Committee distinguished between compensation and restitution decisions, referring compensation cases to the Follow-up Committee for approval while taking the liberty to send the restitution cases directly for enforcement. This was, according to the Head and Secretary of the 2006 Committee, based on the right legal interpretation.⁶¹ The Follow-up Committee, according to its secretary, disagreed with this practice, and required the 2006 Committee to clarify why it did not also send the restitution decisions for approval.⁶²

5.4. Enforcement

Whether the 2006 Committee's decisions regarded compensation or restitution, there was clearly a serious problem with their enforcement. For some reason, the Committee sent few compensation decisions for enforcement, despite approving them. According to statistics collected by the Committee (dated 11 February 2015), only 3,728 out of 10,111 decisions were sent for enforcement. And even these decisions were either executed late, not fully or not at all. In total, the decisions, which were sent for enforcement (3,728 decisions), added up to LYD 846,694,601 while only LYD 461,767,104 was paid.⁶³ The Committee estimated the amount needed to cover the compensation decisions that were not sent to be 1.5 billion LYD.⁶⁴ The received compensation decisions could not be enforced, a member of the Expenditure Committee informed us, simply because the state budget for this purpose had already been spent. Although the 2013 state budget allocated LYD 588,176,914 for the payment of compensations including those related to Law 4, this amount was never actually made available.⁶⁵

Restitution decisions met with similar problems. Returning a property to the former owner was difficult, if the property concerned was occupied and there was no alternative property available – regardless even of whom the occupant was. A telling example is that of the premises of the 2006 Committee itself. The Central Committee in Tripoli and the Tripoli Branch Committees were located in a building that was subject to Law 4. Though the former owner successfully applied for restitution, the sympathetic Committee could not leave the building as there was no alternative. It was only in 2015 that the Committee handed over the building.⁶⁶ Restitution could also be complicated in cases where the occupant was not a state entity. In many cases, the occupant would be entitled to compensation only, and would need to leave the property; yet, because of the problem in compensation payment, the occupant would often refuse to leave. In addition, there was a problem with returning dwellings even if the former owner had no other property. The Committee, as said earlier, would have to order

⁵⁶ For example, in a letter by the director of the ASP addressed to the head of the 2006 Committee on 22 August 2016, the former referred to three decisions the Committee made in 2007 and 2008 retuning a property to a woman and her children to be discovered later that her father had already sold the property on 7 December 1975. The restitution decisions, the director concluded, were issued in favour of a non-owner, and the Committee should revoke them.

⁵⁷ Letter of El-Hanesh, addressed to the Minister of Justice. Dated 11 February 2015.

⁵⁸ Ali, Moussa (2017) *Dirasa Lajnat 2006 lil Ta'weed an Al-Qanwn 4/1978, Lajnat Al-Ta'weedat Sabha (A Study of the 2006 Committee for Law 4 Compensations, the Case of the Sabha Branch Committee)*. Unpublished paper.

⁵⁹ The Follow-Up Committee was established by Resolution No. 30 issued on 5 June 2006, less than two months after the issuing of Resolution 108 that established the 2006 Committee, to "follow up the work of the compensation committees, direct them, and remove obstacles facing them in performing their tasks" (Article 2).

⁶⁰ El-Hanesh's letter to the Prime Minister, dated 27 June 2010.

⁶¹ El-Hanesh, Yousef, an interview by Ibrahim, Suliman. Leiden, 10 January 2017. Faituri, Ali, Secretary of the 2006 Committee, an interview by Ibrahim, Suliman. Tripoli, 27 July 2016.

⁶² Al-Khumri, Khalid, an interview by Ibrahim, Suliman. Tripoli, 3 August 2016.

⁶³ According to the official exchange rate announced by Libya's Central Bank, one American dollar can be changed for 1.3729 LYD (see the Bank's official page: <https://cbl.gov.ly/en/العملات-أسعار>). This is the exchange rate as of 29 July 2017; still, unlike the 'black market' rate, the official one has not significantly changed over the last few years. See Market News (10 April 2017). Libyan dinar drops to record lows on black market. Reuters. Retrieved from <http://www.reuters.com/article/libya-currency-idUSL8N1HI486>, last accessed 29 July 2017.

⁶⁴ Letter of El-Hanesh, addressed to the Minister of Justice. Dated 11 February 2015.

⁶⁵ Addkhila, Faraj, Member of the Expenditure Committee, an interview by Ibrahim, Suliman, 2 August 2016.

⁶⁶ Faituri, Ali, Secretary of the 2006 Committee, an interview by Ibrahim, Suliman. Tripoli, 27 July 2016.

restitution in such a case even if the property was registered in the name of the occupant. Yet, such decisions could not be enforced as the law requires a court ruling for cancelling a real property registration record, and the Committee's decision did not qualify as such. The Head of the Committee reported this problem in a letter to the Prime Minister and asked for a legislative solution; however, no legislative intervention took place.⁶⁷

5.5. Perceptions

There are three parties to the relationships created by Law 4: former owners, occupants and the state. What are the perceptions of these parties regarding the performance of the 2006 Committee so far? Answering this question helps to determine how to address Law 4's consequences.

Firstly, although former owners' views on the Committee differed, many of those we interviewed complained about the time they had to wait for the Committee's decision and the low compensation it offered. Low compensations were not only the result of the regulation of the Committee, the method the Committee followed in estimating the value of properties also contributed to that.⁶⁸ Some former owners refused to take the compensation when it was awarded because it was, in their opinion, too low.⁶⁹ Many former owners expressed their dissatisfaction with the speed at which the Committee decided on the applications it received.⁷⁰ Some said that it took the Committee until 2015 to decide on an application submitted in 2006.⁷¹ Others said that the Committee at the time of the interviews had not yet decided on the application.⁷² As a result, many applicants considered resorting to courts,⁷³ and some of them actually did so.⁷⁴ Some former owners told us that they were optimistic when the Committee was established in 2006, and submitted their applications;⁷⁵ others were suspicious of the regime's intentions behind establishing the Committee and saw it only as a cosmetic measure.⁷⁶ This could be the reason why, as the Head of the Committee implied in his letter to the Prime Minister on 23 August 2007, only 11,000 applications were submitted to the Committee while 56,260 properties were affected by Law 4. He mentioned that when witnessing how serious the Committee was, former owners were encouraged to submit an application.⁷⁷ Indeed, the number of applicants increased to 25,000 just before the outbreak of the February revolution;⁷⁸ still, this number is significantly below the number of affected property owners.

67 Letter of El-Hanesh addressed to the Minister of Justice, dated 6 February 2011.

68 A.M. An interview by Ali, Moussa, Sabha, 29 June 2016. S.B. An interview by Yousuf, Mohammed, Benghazi, 11 October 2016. B.H. An interview by Ali, Moussa, Sabha, 27 June 2016. U.H. said that the Committee ordered compensation for properties in *Al-Hadba* area in Tripoli to be LYD 600 per one square meter while the market value was LYD 10,000 (U.H. An interview by Ibrahim, Suliman, Tripoli, 30 June 2016).

69 According to N.M. (an interview by Esaade, Kholood, Tripoli, 8 October 2016), the Committee ordered LYD 488,000 for a property which market value was LYD 15000,000; thus, he refused to take it.

70 A.L. an interview by Yousuf, Mohammed, Benghazi, 8 October 2016. S.H. An interview by Esaade, Kholood, Tripoli, 7 October 2016. W.T. An interview by Esaade, Kholood, Tripoli, 7 October 2016.

71 S.H. An interview by Esaade, Kholood, Tripoli, 7 October 2016.

72 W.T. An interview by Esaade, Kholood, Tripoli, 7 October 2016. A.M. made the same complaint (A.M. An interview by Ali, Moussa, Sabha, 29 June 2016).

73 A.A. An interview by Esaade, Kholood, Tripoli, 12 October 2016. A.M. An interview by Ali, Moussa, Sabha, 29 June 2016.

74 A.A. An interview by Esaade, Kholood, Tripoli, 12 October 2016. L.Kh. An interview by Esaade, Kholood, Tripoli, 13 October 2016.

75 S.H. An interview by Esaade, Kholood, Tripoli, 7 October 2016. A.A. An interview by Yousuf, Mohammed, Benghazi, 12 October 2016. A.S. An interview by Yousuf, Mohammed, Benghazi, 12 October 2016. A.L. an interview by Yousuf, Mohammed, Benghazi, 8 October 2016. S.B. An interview by Yousuf, Mohammed, Benghazi, 11 October 2016. A.M. An interview by Ali, Moussa, Sabha, 29 June 2016. T.A. An interview by Ali, Moussa, Sabha, 28 June 2016. B. H. An interview by Ali, Moussa, Sabha, 27 June 2016.

76 N.M. An interview by Esaade, Kholood, Tripoli, 8 October 2016.

77 He explained that in his letter to the Prime Minister dated 23 August 2007.

78 El-Hanesh's letter to the Prime Minister on 8 December 2011.

When the opportunity came in the aftermath of the 2011 February revolution, the association of former owners tried to improve, from their perspective, the 2006 Committee. Their efforts to sit on the Committee as members were unsuccessful, but they managed to extend the period within which applications could be submitted to the Committee. They proposed to increase the compensation limits. Most importantly, they lobbied the GNC, in 2015, to adopt a draft law made by the head of the 2006 Committee. According to this draft law, the Committee would decide on applications for restitution and compensation without being restricted by the parameters set in Resolution 108.

As for the occupants, though the Committee was supposed to provide them with sufficient protection, in their view, the Committee failed to do so. Its main point of departure was that no restitution would be awarded but that former owners were to be compensated. As such, the occupants seemed to be well protected. Even when restitution was possible as was the case with commercial, craft and industrial premises, Resolution 108 provided that the former owner would replace the state in the tenancy contract, and prevented any premature termination of the contract. In the case of a former owner having only one dwelling, the Committee would order restitution, and was required to compensate the occupant. However, in reality, once the premise was formally returned, the former owner would, in many cases, try to evict the occupant, whereas the compensation formally awarded to the occupant would in many cases not materialize as we previously explained. Arguably, it seems unfair to attribute these shortcomings to the Committee. However, the fact that the Committee could decide on matters closely related to the occupants without allowing them an opportunity to defend their interests remains problematic.

About the state's perception of the 2006 Committee, we have focused on the ASP since it is responsible for administering all state property. As mentioned above, the state, former owners and occupants are the three parties whose interests need to be balanced, when addressing Law 4 consequences.

In principle, the Authority did not object to the 2006 Committee; after all, the Authority was represented in both the Central and Branch Committees. In practice, however, senior staff of the Authority expressed dissatisfaction with some of the Committee's decisions in the aftermath of the February revolution in 2011. Since then, in the view of the Authority's director, public interests were sacrificed for the sake of the former owners. The state, he said, was treated as if it were Gaddafi himself. A considerable number of the decisions made since then were, in his view problematic, and so the Authority had to refer them back to the Committee. Consequently, in a meeting with the head of the 2006 Committee, it was agreed that several measures would be taken to strengthen the role of the Authority in the 2006 Committee's decision making.

6. Transitional Justice and Real Property Grievances

There are several reasons to treat the grievances related to Law 123 and Law 4 as problems of transitional justice. Doing so would enable the resolution of a large number of cases in a comprehensive way, instead of leaving them as individual cases to the courts that are already exhausted. In addition, the relevant grievances would then be regarded as part of – and in relation to – the legacy of human rights atrocities that the former regime committed. Moreover, in the context of transitional justice it is not uncommon that reparations offered are neither complete nor only monetary.

Libya's transitional justice laws have indeed addressed real property grievances. This was true of the former Law No. 17/2012 on the Establishment of the Rules of National Reconciliation and Transitional Justice and is also true of the current Law No. 29/2013 (Law 29) on Transitional Justice. In fact, GNC contemplated accompanying Law 29 with another law on real property grievances entitled 'Law on the Restitution of Real Property'. The idea was that while the former would address transitional justice in general, the latter would focus on transitional justice concerns related to real property, such as those relating to Law 123 and Law 4. Indeed, this draft law on the restitution of real property contained detailed provisions ranging from abolishing retrospectively Law 4 and Law 123 to establishing a commission to address the effects thereof. This commission in particular shows the linkage between the two envisaged laws. Law 29 provided for the establishment of this commission, so it would function side by side with the 'general' Fact Finding Commission established by Law 29. The envisaged 'accompanying' law on real property would actually establish and regulate it. The GNC, however, did not pass the draft law on real property. Hence, we are left with a situation in which real property grievances are subject to Law 29 while this law is not detailed enough to address these grievances properly.

Still, as general as it is, Law 29 should have considerable effect on the treatment of real property grievances and related disputes.⁷⁹ First, it is the Fact-Finding and Reconciliation Commission (FFRC) that is now responsible for dealing with these grievances, and courts can no longer be resorted to unless this FFRC itself chooses to refer the matter to them.⁸⁰ Second, when addressing real property disputes, the Commission has to comply with the rules of Law 29 concerning fact finding, hearing all parties involved, types of remedies, and not necessarily awarding reparation commensurate with the harm sustained. Thirdly, strictly legally speaking, the 2006 Committee has been abolished, and replaced by the Commission.⁸¹ Yet, given the general nature of Law 29, there needs to be a specialized law to spell out how real property disputes can be resolved within, of course, the framework of Law 29.

⁷⁹ In practice, so far Law 29 has not had a tangible effect. For example, the Fact-Finding Commission is still awaiting the appointment of its board of directors; neither the GNC nor its successor, the HoR, made such a decision. In fact, the latter expressed an intention to rethink Law 29 altogether (see 4.4)

⁸⁰ Kuni 2017.

⁸¹ El-Hanesh 2017.

7. Legislative Responses to the Legacy of Law 4 and Law 123

Since 2011 Libya's political institutions have made efforts to address the problems of Law 123 and Law 4 through new legislative provisions. The Interim Constitutional Declaration of 2011 had no provisions on real property grievances but it contained a reference in the preamble to 'restoration of all rights taken by Gaddafi and his collapsed regime'. It also emphasized the state's duty to protect private and individual ownership. The ongoing drafting work for a permanent constitution by the Constitutional Drafting Assembly established in 2014 has been more specific. The draft constitution of April 2016, which was supposed to be the final draft, contained rather detailed provisions on transitional justice with an explicit reference to real property grievances. Article 197 emphasized the former owners' right to restitution or compensation without prioritizing one over the other. Rather, it mentioned the need to consider the occupants' financial ability. It also referred to the previously taken administrative and judicial measures, suggesting that any solution should build thereupon.

Additionally, this Article underlined the state's obligation to preserve national memory through uncovering and documenting human rights violations including those committed during military operations and armed conflicts at individual and regional levels, and criminally prosecute those responsible for such violations. Obviously, the draft applies not only to conflicts that took place during the February revolution, but also those that occurred in the aftermath of the revolution, including the armed conflict in the east between the Libyan National Army (LNA) led by General Hafter and the Benghazi Revolutionary Shura Council. Suspecting that Article 197 could be used to implicate the leaders of the LNA, some eastern members of the CDA demanded that this article be removed.⁸² As a result, the new draft approved in July 2017 only briefly calls upon the state to issue a transitional justice law, and establish a transitional justice and reconciliation commission. It mentions none of the other details on real property grievances or state obligations concerning human rights atrocities and their perpetrators.

Since the regime change in 2011, subsequent cabinets and legislatures have also tried to formulate legislative responses to the problems at hand. Judge El-Hanesh, Head of the 2006 Committee, made the first draft in late 2011, and upon receiving it, the Prime Minister formed a committee headed by the Minister of Justice to review it. This committee presented a new draft that was submitted to the GNC. Unlike Judge El-Hanesh's draft, the new version did not propose to end Law 4. The application of Law 4 over a period of more than three decades led, in the drafting committee's opinion, to established rights for many bona fide citizens, and it would be legally unacceptable to end these rights through a retrospective abolishment of the law. What was needed was to address the effects of Law 4 on a case-by-case basis, and make a distinction between cases where restitution would be possible and others where only compensation would be awarded.⁸³

The association of former owners tried to influence the making of the draft law with some degree of success, but it was not completely satisfied with the end result, notably because the draft submitted to the GNC did not propose to end Law 4.⁸⁴ So, it lobbied the GNC for yet another draft. Several GNC committees prepared, in close

⁸² H.A. (CDA member), personal communication with Ibrahim, Suliman, 29 April 2017.

⁸³ The draft law and the accompanying explanatory memorandum are available on the webpage of the Ministry of Justice: <http://aladel.gov.ly/home/?p=1439>.

⁸⁴ See the letter that the head of the owners' association, Shakir Dakheel, sent on 17 May 2012 to the Minister of Justice explaining the association's position on the draft law.

contact with the former owners, the third draft.⁸⁵ Finally, the GNC issued on 17 December 2015 Law No. 20 of 2015 ‘on the Establishment of Special Regulations on the Treatment of the Effects of Ending Law 4’ (Law 20). Remarkably, the GNC justified Law 20 as part of a package of pro-Sharia legislation. Another closely connected part of this package was Law No. 16 (Law 16) that abolished a number of laws related to real property including Law 4. Law 16, however, did not abolish Law 123. Laws 16 and 20 brought the 2011 draft of Judge El-Hanesh to life. Law 20 differed only in limited aspects from that draft, and overall it strengthened the position of former property owners.

While both El-Hanesh’s draft and Law 20 deemed restitution of property to former owners as the default principle, and would only resort to compensation in exceptional cases, they slightly differed on the specifics of these cases. Both agreed that only compensation would be awarded in the following cases: (1) if the former owner or their heir(s) chose for compensation, in writing, (2) if the former owner or their heir(s) transferred the property to others, (3) if the bona fide occupant had erected installations on the property making it difficult to restore it to the former owner, unless the latter chose to regain property and compensate the former, (4) if the property was used as a pledge and the former owner refused to take back the property with the pledge still in place, (5) if the former owner and occupant agreed on a different arrangement, (6) if the property was designated to serve an essential public interest. However, while El-Hanesh’s draft added the scenario whereby the occupant had previously transferred ownership of the property to others, Law 20 did not. This omission strengthened the position of former owners.

The other difference concerns the treatment of the occupants of dwellings. El-Hanesh’s draft proposed that if the occupants did not own another dwelling, they should be allocated a state-owned property with the obligation to pay a mortgage on it. Alternatively, the occupants could be given adequate compensation. Law 20, however, required for compensating not only the occupant who did not own another property, but also the occupant that was financially unable to purchase or rent one. Obviously, renting a house is not as difficult as purchasing one, and so Law 20 was expected to result in many occupants being deprived of compensation.

In practise, however, Laws 16 and 20 had limited effect. First, because it was the GNC in Tripoli that issued them at a time when its legitimacy was seriously questioned. To most observers the legitimate legislature was its rival, i.e., the House of Representatives in Tobruk. Factually, the GNC had control over parts of the western region, and only in those areas it could enforce the new laws. The enforcement, additionally, was conditional on the issuing of executive regulations that were never issued. Still, the two laws added to the uncertainty that the occupants felt since 2011. Some courts in Tripoli even relied on the GNC’s laws, despite the absence of the executive regulations, to order to evict occupants. This explains why these laws are now being challenged for unconstitutionality before the Supreme Court.

Since the Political Agreement, which was concluded on 17 December 2015 under the auspices of the UN, provides for a mechanism to review laws such as Law 16 and Law 20, we may already anticipate such review. How to assess the GNC’s Laws 16 and 20 of 2015? To start with, these laws are largely based on the draft of Judge El-Hanesh, and so take into consideration the experience of the 2006 Committee without the limitations this committee faced. Law 4 would now be abolished, and so the committee’s task would not be limited to ‘correcting’ cases of misapplication.

⁸⁵ This draft responded more favourably to the former owners’ demands. Like El-Hanesh’s draft, it proposed to end Law 4 retrospectively, and deemed restitution of lost property as the preferred remedy. If restitution would be unattainable, a fair compensation would need to be paid. It, however, envisaged only three cases where compensation rather than restitution would be chosen, namely, (1) if the former owner or their heir(s) chose for compensation, (2) if the former owner or their heir(s) consented to the occupant keeping the property, for example, by accepting the compensation the state offered if it was equivalent to the property’s real value, and (3) if the former owner was fairly compensated according to local administration laws.

Still, there seems to be a need for change. First, deeming restitution as the default rule might not always be the preferred solution in cases other than those envisaged by Law 20. The most important one of these is the case when the property is a dwelling that has, because of the long-term occupancy, become the occupant’s home, while it is the former owner’s property. For example, a tenant in the old city in Tripoli who was assigned in 1978 the ownership of an apartment in application of Law 4, and has since then lived there, might have a stronger claim to stay in the apartment than that of the former owner – or his heir – who lost this ‘home’ connection with this property. It seems unfair if only compensation would be awarded to such occupants. A similar position was taken by the European Court of Human Rights in its 2010 decision on *Demopoulos v. Turkey*.⁸⁶ While Libya, obviously, is not a party to the Court’s treaty, there are legal bases to adopt a similar position under Libyan law.⁸⁷

Second, alternatives to direct monetary compensation should be sought. For example, in Hungary, former owners received compensation vouchers by which they could purchase privatized state property.⁸⁸ There is a proposal to compensate the former owners via shares in public companies,⁸⁹ a proposal that some former owners agree with.⁹⁰

Third, the procedures in seeing and deciding on cases that involve both the former owner and occupant should be more even-handed, i.e. the committee should act as a semi-judicial committee, rather than as an administrative committee. This should have no effect on the interests of the state as the committee would still have representatives of state institutions amongst its members.⁹¹

Finally, a review of Law 16 and Law 20 should also be undertaken in the framework of Law 29 on Transitional Justice. The 2006 Committee could then become one of the committees that the FFRC is allowed to establish. The new Committee would then be a full-fledged institution which forms part of the transitional justice mechanisms, and be bound by Law 29’s rules notably those concerning fact finding, variety and extent of reparation.

⁸⁶ Fitzgerald M, Megerisi T (2015) Libya: whose land is it?. the Legatum Institute, London. Williams, R. C., & Gürel, A. (2011). The European Court of Human Rights and the Cyprus Property Issue. PRIO Cyprus Centre Paper.

⁸⁷ In explaining the similarity between Article 8 of the European Convention on Human Rights, which is the basis for the right to home, and Articles 11 and 12 of the 2011 Libyan Constitutional Declaration, see section 7 of the Arabic, detailed, version of this report.

⁸⁸ Verberne (2017), p 47.

⁸⁹ Benkato, Omar (2012) Expropriated Property, Businesses and Industrial and Agricultural Lands, Methods of Evaluation and Compensation, the Case of Libya. Unpublished paper.

⁹⁰ U.H. Member of the Management of the Association of the Former Owners. An interview by Ibrahim, Suliman, Tripoli, 30 July 2016

⁹¹ Examples of a quasi-judicial committee are the committees that Law No. 13/1080 on Social Security has established. According to Article 44, quasi-judicial committees are formed in municipalities to resolve disputes between, the insured, employers, and the popular committees for social security. Each committee is to be headed by a judge, and have as members representatives of the popular committee for justice, the popular committee for social security, an employer, and an insured employee in the relevant municipality.

8. Traditional Leaders

In Libya traditional leaders, of various sorts, have often played important roles in dispute resolution. This role, which can be informal and formal, has varied throughout Libya's modern history. Since the February revolution it has generally increased. In recognition of their role, the legislature, in Law 29/2013 on Transitional Justice, requires the FFRC to involve them when addressing transitional justice grievances.

Traditional leaders include tribal leaders as well as notables.⁹² Tribal leaders enjoyed recognition by the Ottoman as well as the Italian authorities, a recognition that the Monarchy (1951-1969) maintained. As such tribal leaders were part of the state apparatus; among other tasks, they used to sit on commissions entrusted with resolving disputes over tribal lands and wells. When Gaddafi came to power in 1969, his regime withdrew the formal recognition. Legally, tribal leaders were no longer state functionaries. Instead, Gaddafi's regime divided tribal areas, as other areas, into localities, mahalat, and replaced the tribal leader by a local secretary, *mukhtary Al-mahalat*, as their head.

The regime, as said before, aimed at weakening tribal leaders especially in the eastern region for their known support of the ousted King. Later especially in the 1990s the regime, in order to broaden its power base, changed its position. Aiming at incorporating tribal leaders and other local powerholders it created what became known as the Socialist Popular Leaderships, and attributed them significant powers in a.o. maintaining security and representing the regime. They were to become even stronger when they became part of the plan for Saif Al-Islam to succeed his father. Saif was appointed as the head of these leaderships, and the draft constitution written at the time gave these leaderships supervisory powers over both the executive and legislature. The 2011 February revolution aborted this plan. Since then, traditional leaders have played a significant role in resolving disputes, often at the request of the government. It is in recognition of this role that Law 29 requires the FFRC to seek the assistance of tribal leaders and wise men in resolving disputes amicably.

Even in the period that they lacked the state's recognition, traditional leaders especially tribal leaders continued to play an important role in resolving disputes. Their ways of doing so, however, vary from one region to another. In Bani Walid, in the western region, tribal leaders as well as other notables, especially those knowledgeable of Islamic jurisprudence and the rules of its *Maliki* School practice alternative dispute resolution as regulated by state law. For example, the disputants in Bani Walid choose traditional leaders and/or notables as arbiters, and those arbiters then apply a combination of Sharia-based and customary rules. Their decisions, however, are subject to courts' approval, and so, they can get rejected if they violate state laws. This explains why in the western region those leaders and notables have not been involved in resolving disputes over lands taken in application to Law 123. The law is still in force, and it prohibits any agreements to restore lands to former owners.

⁹² The term notables refers to tribal leaders as well as others enjoying the highest social status because of their claimed descent from a saint, *waliy*, their previous important posts, or for being known for religious education (see Abu Raas 2017). The term notables, however, is much less used in the eastern part of Libya.

Tribal leaders in the eastern region, however, have functioned differently. In the early years of the 2011 February revolution, they took the initiative to address Law 123's consequences, and came with a solution: restoring land to the former owner while allowing the occupant to stay in the dwelling attached to the land and a small piece of land surrounding it. The fact that such arrangements violated Law 123 did not, it seems, concern them until the Commander-in-Chief of the National Army in the east made them aware of this. Since then, they have stopped concluding such arrangements, and the ones already concluded were struck down by courts in Al-Marj.

This illustrates why, when resolving real property disputes, all parties' interests including those of the state should be taken into account. Only then, resolutions can be sustainable. Whereas tribal leaders can have an important role in maintaining provisional peace, resorting solely to them for solutions might not be the right approach. Here, the experience of the committees established in the Monarchy era (1951–1969) to solve disputes over tribal lands and wells could be helpful. While these committees were established and regulated by the state, they involved tribal leaders as members. Law No. 29/2013 on Transitional Justice paves the way for a similar solution by instructing the FFRC to solicit the help from tribal leaders and wise men known to be influential in resolving local disputes via customary methods.

9. Conclusions

9.1. General Conclusions

9.1.1. Two main dispute resolution mechanisms, and an analysis of legislation

The project aimed to study and assess existing and proposed mechanisms for solving real property related disputes, and provide recommendations on how such mechanisms should be integrated into any future efforts towards transitional justice. To do that, two main existing dispute resolution mechanisms were investigated, i.e. the 2006 Committee established by Gaddafi's regime 'to correct misapplications of Law 4', and traditional leaders, to whom victims of Law 123 frequently resort. We also examined drafts of a new Constitution, Law 29 on Transitional Justice, as well as draft laws addressing Law 4 and 123 in order to assess any mechanisms that these laws may propose.

9.1.2. Researching in an instable setting

9.1.2.1. The 2006 Central Committee and Branch Committees

In researching the 2006 Committee, we focused on the Central Committee in Tripoli, and the branch committees in Tripoli, Benghazi and Sabha. Local researchers from the areas concerned interviewed the committees' members, former owners, occupants and other relevant persons. We also had the head of the Central Committee, Judge Yousef El-Hanesh, as an advisor to the project. In this capacity, he attended all the workshops and conferences we organised, which enabled us to test our findings on a regular basis. His participation facilitated access to other members of the Central and Branch Committees. Through him, we were able to interview the Secretary of the Central Committee, Ali Faitouri, who, otherwise, could not be convinced to come to Tripoli; he lives in the city of Al-Zawiya which is only about 44 km from Tripoli, but, as the road was unsafe, he was unable to come to Tripoli via car, and had to come by boat guarded by militia men. It is through Faitouri that we were able to access the Committee's data on decisions taken since 2007 up to 2015. Yet, we could not access the actual files of the Committee as they were still stored in its old building that, ironically being subject to Law 4, had been returned to its former owner. This aborted our plan to select, after examining these files, cases representing all dimensions of Law 4 disputes.

We tried to compensate for this by accessing the Branch Committee's files; yet, while we gained relative success in Tripoli and Sabha, we could not access those held by Benghazi's two Branch Committees; both were located in the city centre that until very recently witnessed an intense fight between the Libya National Army (LNA) and the Benghazi Revolutionaries Shura Council. The project made use of the archive of the Ministry of Justice on the 2006 Committee; the former Minister Mr. Salah el-Marghani generously enabled us to obtain a copy of this archive when we were doing exploratory research on the issue in 2012-2013.

9.1.2.2. Traditional leaders

With regard to traditional leaders, we studied their role in three areas: Bani Walid, in the western region, Al-Marj, in the eastern region and Obari in the southern region, to see whether, and how they tackled disputes related to Law 123. In addition to traditional leaders, we interviewed former owners and occupants. We also had focus group discussions with them and other relevant persons. The case study in Obari was unique as the disputes there, being mainly between Tuareg and Tebu, took an ethnic angle unknown in the other two areas, but, unfortunately, the research was limited as the fight there forced important traditional leaders to flee the area making it difficult for the local researcher to interview them.

9.1.3. Including policy-makers

To ensure policy relevance, throughout the project we established and maintained contacts with relevant key persons, viz., the director of the Authority for State Property (ASP), director of the Authority for Real Property Registration (ARPR), head of the Fact-Finding and Reconciliation Commission (FFRC), head of the Agricultural Development in the Al-Jabal Al-Akhdar Agricultural Project. In addition, the head of the 2006 Committee joined the research project as an advisor. Amongst our interviewees were the head and members of the former GNC's Legislative Committee and the deputy Mufti. Recently we have also been in contact with the GNA's minister of justice to organize a workshop by the end of 2017 to present and discuss the findings of our research project with representatives of several state institutions.

9.2. Conclusions on the 2006 Committee

As for our findings on the 2006 Committee, we will start with Law 4, since the Committee was established to address the misapplications of this very law. Then we will address the Committee's formation and performance, and end with the proposed mechanisms.

9.2.1. Law 4, impact and future

Law 4 has had a significant impact on private real property ownership. It has limited it, and resulted in depriving thousands of their land, dwellings, and commercial, industrial and craft premises. The exact figure of properties affected is uncertain. According to the ASP's recent figures, 75,000 properties nationwide were subject to Law 4. According to figures also attributed to the ASP by the head of the 2006 Committee, the number is 56,000 properties. Only in Tripoli and the surrounding area, we were informed, the number is 50,000 (see 3). Regardless of the exact numbers, the figures show the level of impact that Law 4 has had.

The number of properties affected does not equate with the number of disputes. Yet, a considerable part of this number has resulted in disputes: 25,148 were submitted to the 2006 Committee for restitution or compensation. While possibly some of the remaining cases were already solved via, for example, reconciliation agreements between the former owners and occupants, our research shows that many former owners have not applied because of their dissatisfaction with the remedies offered; they are still waiting for a legislative response that addresses their concerns more satisfactorily. Even amongst the former owners who already made use of the 2006 Committee and succeeded in getting compensation decisions, there are now those who, in the aftermath of the 2011 revolution, have demanded restitution instead. There is no guarantee that those who already received compensation will not submit new demands, once a new law providing for a better protection of former owners' interests is enacted. It is fair therefore to conclude that a considerable number of properties affected by Law 4 is subject to actual or potential disputes.

The armed conflicts and the political division in today's Libya have perpetuated the real property disputes, and in part aggravated them. The divided state institutions have been unable to enact the legislation which is required to address Law 4 grievances, or to enforce Law No. 29/2013 on Transitional Justice which is applicable to these grievances. Admittedly, the GNC did enact such legislation, but this was problematic. In October 2015, the GNC enacted Law 16 ending a number of laws including Law 4, and later, specifically, in December 2015, when our project started, it enacted Law 20 addressing the consequences of abolishing Law 4. However, the HoR had already been elected in 2014 and the GNC lacked the legitimacy to do so due to the expiry of its term. Moreover, the 'law' required an executive regulation that was never issued. Hence important provisions of Law 20, notably those concerning the treatment of occupants in case of restitution, could not be enforced. Still, in a number of cases courts in Tripoli applied Law 20 to deem Law 4 invalid and order the eviction of occupants, which has created an atmosphere of fear amongst them.

In Benghazi, the fight between the Libyan National Army (LNA) and the Benghazi Revolutionaries Shura Council resulted in the destruction of many properties especially in the city centre and the surrounding area where Law 4 was mainly applied. It is expected that the state will rebuild such properties, but now former owners have raised the question whether it should. They argue that the expropriated house is no longer there, and, unless the land is destined for a matter of public interest the former owner is entitled, more than the occupant, to get the vacant land. For the occupant the state can arguably build a new house elsewhere. Given the high value of plots of land located in the centre of the city, and in anticipation of a solution favouring them, some former owners, our project was informed, even paid members of the LNA to destroy their previous properties. The fact that some former owners resort to such practices is indicative of what the Association of Former Owners repeatedly stated: in the absence of adequate responses to their grievances, former owners are left with no choice but to resort to violence to get their demands fulfilled.

One adequate response, recommended by our research, is ending Law 4. This will not lead to restoring the pre-1978 situation but at least it acknowledges the general sense of injustice brought about by this law and the suffering of its victims. Abolishing Law 4 would constitute the type of reparation known in the context of transitional justice as satisfaction (see 6). As there are thousands of victims among former owners, there are also, perhaps even bigger numbers of occupants some of whom are vulnerable bone fide persons who need, and deserve, to be protected. Also in this respect the 2006 Committee does provide an appropriate model for the new mechanism that should accompany the ending of Law 4.

9.2.2. The 2006 Committee, formation and performance

Resolution 108 of 2006, which constituted the legal act of establishing the 2006 Committee implied the acknowledgment of misapplications associated with Law 4, but it did not, mean any admission of this law's unjustness. Reforms introduced in the 2000s were presented in a way that suggested no rolling-back from the regime's core socialist policies and laws (see 4.2). As such, the Committee's mandate was restricted to 'completing' the type of compensation Law 4 already provided for, but which was not fully or partially paid. The Central Committee and its Branches were composed in a way suitable to such end. The members – apart from the chairman – were representatives of the executive whose role was to ensure that the concerned property was actually subject to Law 4, that the applicant had been the owner at that time, that s/he had received no, or no full, compensation, and estimate the compensation deserved. Since it was mainly about compensation of former owners by the state, there was no place for the occupant in the Committee's procedures; what would be the need since his/her occupancy of the property would not be interrupted? The Committee, therefore, acted by and large as an administrative body and did not adjudicate disputes involving the occupants. So, it was based on a conception of Law 4 relationships as being limited to the state and the former owner (see 5).

This conception of the 2006 Committee and its consequences could have caused no concerns had the Committee's mandate actually been limited to compensation. The mandate, however, involved restitution as well. Despite its title, Resolution 108 allowed the Committee to order the restitution of vacant plots, of industrial, commercial and craft premises, and of buildings occupied by legal entities. Upon the Committee's recommendations, Resolution 108 was amended to allow for more restitution cases. It became possible for the Committee to even order the restitution of a dwelling to its former owner once it had merely been proven that he/she had no other one. Because restitution, unlike compensation, directly affects the occupant, he/she would need to be involved in the Committee's procedures. Yet, Resolution 108 did not provide for such involvement; it only allowed, but did not require, the Committee to visit the property concerned where it could meet the occupant and hear his/her concerns and demands.

Yet, the Resolution provided some protection for occupants in case of returning commercial, industrial and craft premises to their original owners. The latter would replace the state in the lease contracts concluded with the occupants, and would not be allowed to terminate them before their term. In the case of the restitution of the former owner's only dwelling, the occupant would be compensated.

Still, the exclusion of the occupant from the 2006 Committee's procedures remains a serious limitation in its work especially when it comes to dwellings. Vulnerable bone fide occupants of these dwellings are likely to have a stronger right to them than the former owners. For example, an occupant who owned, as a result of the state's act, a dwelling s/he had been renting in 1978, or the one who purchased this dwelling from such an occupant, and lived in the property ever since could have a stronger claim to this dwelling, being her/his 'home', than a former owner who left it decades ago or his/her heirs who never lived there. The former owner should only be given compensation in such a case. A similar position was taken by the European Court of Human Rights in its 2010 decision on *Demopoulos v. Turkey*, and while Libya, obviously, is not a party to the Court's treaty, there are legal bases to adopt a similar position under Libyan law (see 7).

This is not to say that opting for compensation rather than restitution to remedy the injustices the former owners suffered would be a perfect solution; compensation has its problems too. In a meeting we had in late 2012 as part of our Access to Justice project with Salah El-Mirghani, then the Minister of Justice, he explained the dilemma he was facing: as a lawyer he was convinced that former owners ought to be compensated, but as a cabinet minister he was well aware that such huge compensations would be financially impossible to bear.⁹³ In addition to Law 4 grievances, there are many other injustices committed by both the former regime and the subsequent one. There are also lawsuits brought against the Libyan state some of which have already ended in obligating it to pay hundreds of millions of dollars in compensation. Besides, in a state where basic services for the wider society are lacking, full compensation of former property owners might not be a top priority. In fact, there have already been problems with enforcing the Committee's compensation decisions due to the lack of budget (see 5.4).

Are there any alternatives if monetary compensation cannot be achieved? As our research on comparative experiences in central and east European countries shows, compensation can take forms other than direct cash payments (see 7). Dealing with Law 4 grievances as part of transitional justice, which is both what, in our opinion, ought to happen and what Law 29 actually says, can help lessen the problems associated with monetary compensation. Reparation in the context of transitional justice is not restricted to monetary compensation; there are other methods such as restitution, satisfaction, and guarantee of no repetition. Other forms of in-kind compensation can also be encouraged, e.g., shares in public companies, alternative properties in state housing projects, or alternative state-owned land plots. Besides, monetary compensation in this context does not have to be in full. Law 4 grievances will then be seen alongside other human rights atrocities as well as other needs of society, and so should be accorded no treatment in absolute or preferential terms.

93 To compensate Libyans whose property was appropriated, one of the founders of the Rabitat estimated that at least \$15 billion would be needed. See Robert F. Worth, 'Thousands of Libyans Struggle With Recovery of Property Confiscated by Qaddafi,' The New York Times, 13 May 2012, available online: <http://www.nytimes.com/2012/05/14/world/africa/libyans-consider-recovery-of-property-confiscated-by-qaddafi.html>, last accessed 2 July 2015.

The Committee, praiseworthily, tried to provide as much protection as possible to the occupants. In addition to the cases in which Resolution 108 provided for compensating them, the Committee added other cases when the occupants were evicted from properties subject to Law 4 via court decisions (see 5). But, as the head of the Committee admitted, the occupants lacked the space needed to hear and be heard about the former owners' demands, and, perhaps, refute whatever claims these owners made. Providing an opportunity to be heard could also help with one of most difficult issues associated with addressing Law 4 disputes, i.e., the issue of proof. Verifying claims related to properties subject to Law 4 is no easy task; still, the 2006 Committee did a remarkable albeit tricky job performing this task. The difficulty involved can be traced to the nationwide burning of real property registration records that the Gaddafi regime ordered in 1985. Subsequently, the regime enacted laws depriving pre-1985 records of any legal value. As a result, no resort could be made to pre-1985 ownership certificates, which is, obviously, the case of Law 4 related claims (see 5). Faced with this challenge, the 2006 Committee showed great flexibility by accepting as valid proof methods such as testimony. The alternative, the head of the Committee said, would have been to reject all claims. Such flexibility was not without downsides, namely, the risk of granting false claims. Still, the benefit has outweighed the harm, which would have been to deprive former owners completely of claiming their past property.

The 2006 Committee tried to corroborate methods such as testimony by resorting to state records. This should have been conveniently attainable given that the Committee was composed of representatives of state institutions closely involved in the application of Law 4, i.e., the AST and ARPR. Indeed, the Committee's procedures involved visits to the relevant offices of both institutions to verify the former owners' claims. Yet, such records are not fully reliable. We already mentioned the ASP's conflicting figures, but the problem is not limited to that; conflicting data received from the ARPR was also reported. The directors of both authorities, the AST and ARPR, acknowledged this problem in the conferences we had in Tunisia and the Netherlands.

According to the ASP, the problem could be traced to the huge number of state property files held by the authority: more than 100,000 files altogether containing millions of documents, on one hand, and the negligence in documentation shown by subsequent administration of the authority, on the other. A related reason could be the institutional instability, and the impact it might have on institutional memory. The ASP was not always an autonomous state body. It was first established as such in 1956; before becoming an office under the Ministry of Housing in 1975; then an autonomous state property authority in 1993; to be disbanded in 1998; its powers were then divided between municipalities; it was restored as an autonomous body in 2004; before being merged into the ARPR in 2008; and, once again, became an autonomous body in 2012. These changes, the ASP rightly pointed out, contributed to the problem at hand.

It is not only a problem of documentation and archiving; sharing information between state institutions is also an issue. The solution cannot, however, be to completely deprive former owners of compensation; the state cannot benefit from its negligence in maintaining good and reliable records, and it has to prove that it has already compensated them; otherwise, it is not relieved of its obligation. The Committee, therefore, made the right choice when it opted for less restrictive proof methods despite the risk involved in such an approach.

We have already mentioned the Committee's two main limitations, e.g., being an administrative committee that did not adjudicate disputes, and offering the former owners what they saw as largely too little compensation. In view of these limitations, we started our project with a relatively negative assessment of the Committee. However, the 18-month research into the Central and Branch Committees has provided us with a more positive appraisal of its work. In spite of being born and having to function in a difficult environment, the Committee

negotiated its way, and managed to solve a considerable number of the cases it received: 10,526 out of 25,148 cases as of 2015. Largely due to its persistence and constructive pragmatism the restitution cases were increased, occupants were allowed to lodge claims and receive compensation, and former owners were allowed to prove their claims via flexible methods. Hence, the limitations did not, and should not, lead to ending the work of the 2006 Committee outright. Yet, the legal shortcomings need to be removed so the Committee, or a similar body, can function properly.

9.2.3. Laws, drafts and their alternative mechanism/s for dispute resolution

Largely due to the efforts of the former owners, the aftermath of the February revolution saw three draft laws to address the legacy of Law 4. Judge El-Hanesh, head of the 2006 Committee, drafted the first one, and a committee headed by the minister of justice drafted an amended version of El-Hanesh's draft. The GNC, via its various committees, ended with a third draft. The first and third drafts proposed to end Law 4 retrospectively. All three adopted restitution as the preferred remedy with various exceptions. When restitution would be unattainable, El-Hanesh's draft proposed to pay the former owner fair compensation determined in light of the property's market value when the new law would enter into force, and any loss the former owner had encountered because of the expropriation. The drafts referred to an executive regulation in determining the bases and criteria for compensation. In case of restitution, all drafts proposed to give the occupant monetary or in-kind compensation. All drafts envisaged a place for committees similar to the 2006 Committee in applying the proposed law. Additionally, the draft of the GNC's committees proposed to have what it called 'the Public Commission for the Restitution of Real Property Grievances' under which there would be a committee to deal with Law 4 grievances. However, the GNC did not enact any of these drafts when it had the mandate, and the legitimacy, to do so. The enactment of El-Hanesh's draft as Law 20 in late 2015 came too late, as previously mentioned.

Still, there has been a number of more general legislative responses to Law 4 grievances. Initially, the CDA devoted lengthy provisions on transitional justice explicitly referring to the need to address past real property grievances. Later, however, and for reasons closely connected to the armed and political conflict, this reference was omitted (see 7). Law 29/2013 on Transitional Justice applies to them, as our research shows. Accordingly, its provisions concerning the diversification of reparations apply, i.e. not restricting them to monetary compensation, nor necessarily paying this compensation in full. Law 29 assigns to the Fact-Finding and Reconciliation Commission (FFRC) the task of dealing with human rights violations, which applies also to Law 4 grievances.

Interestingly, Law 29 refers to the already mentioned 'Public Commission for the Restitution of Real Property Grievances'. The assumption was, apparently, that the GNC would enact the draft proposing this commission, and that it would work as a specialized commission alongside the FFRC. This, fortunately, did not happen, since having three institutions to deal with Law 4 grievances – a specialized committee like the 2006 Committee, the Real property Grievances Commission, and the FFRC – would have complicated and prolonged the process. It is preferable to have a specialized committee working under the direct supervision of the FFRC. Presently, the FFRC itself is, like the rest of Law 29 provisions, awaiting implementation measures. Notably, there is a need to appoint the board of directors of the FFRC, which both the former GNC and the HoR have so far declined to do. Realizing the importance of this appointment for the implementation of Law 29, the Libyan Political Agreement requires the parties to the Agreement to appoint the board within ninety (90) days of its entry into force. This has not taken place yet, unfortunately.

9.3. Conclusions on traditional leaders

9.3.1. Law 123, impact and future

Law 123 of 1970, which deals with expropriation of agricultural land, had pronounced and hidden goals. It explicitly aimed at agricultural development and social justice, while in fact it was also meant to disempower tribes perceived to be pro-Monarchy. It gained relative success on both fronts. The state owned through Laws 142 and 38 most tribal lands, and Law 123 enabled it to exercise its powers as the owner of these lands, and, accordingly, redistribute them amongst new beneficiaries. This happened especially in the eastern region where the targeted tribes lived. In other regions, the law was less strictly applied. In Bani Walid, where the state established several agricultural projects, the state distributed lands amongst members of tribes who previously owned them. It even delegated to tribes the selection of new beneficiaries from amongst their members. However, whatever the redistribution method was, Law 123 had considerable effect on tribal land tenure in general as it replaced it with distinct individual holdings.

On the other hand, Law 123 enabled the Gaddafi regime to deliver on its promises of development and social justice. The government reclaimed the newly acquired lands, and redistributed them, often justly and efficiently. It established for the redistribution of agricultural lands, barren and desert lands after reclaiming, developing, and dividing them into productive agricultural units. Those entitled to receive these units had to be: Libyan citizens, who reached the age of maturity, farmers or able to be so, and lacking other means for a dignified life. If more than one person satisfied these conditions, priority would be given to those with bigger families and less money. The law also gave preference to those renting the land or possessing it, provided they would meet the other conditions. Economic and social research committees were established to ensure that beneficiaries actually met the conditions. While projects such as the Al-Jabal Al-Akhdar Project in the east gained relative success, the general picture in the entire country was not as promising (see 2).

In deciding on the future of Law 123 – whether it should be ended, or not –, the effect of this law on tribal tenure and its effectiveness in achieving agricultural development goals needs careful assessment. First, this law replaced tribal land tenure with distinct individual holdings, and even if the new owners were members of the tribes who formerly owned the land, it would be difficult to restore the pre-Law 123 situation of collective ownership by the tribe. Since the 1970s Libya has seen a significant expansion in urban development that resulted in many Libyans moving to cities and becoming state employees. Hence, deeming the land to be communally owned by tribes may have become an anachronism. Second, whereas our research did not focus on assessing the success of agricultural development efforts, it would be sufficient to say that it has resulted in transforming lands into productive farms, and abolishing it would risk losing them. Hence, there is consensus that, unlike Law 4, Law 123 should be kept. Since there were also misapplications associated with the implementation of law 123, they need to be addressed. The redress, however, does not necessarily entail abolishing the law altogether.

9.3.2. Traditional leaders, composition and performance

Traditional leaders in Libya include tribal leaders and notables. Termed ‘traditional’ seems to imply an informal status. Yet, under the Ottoman, Italian and Monarchy regimes, tribal leaders enjoyed official recognition, were assigned specific tasks, and received state salaries. At the beginning of Gaddafi’s regime, it withdrew such legal recognition, but at later stages it attributed traditional leaders a semi-formal status, under the umbrella of ‘Popular Socialist Leadership’. Similarly, the post February 2011 era has witnessed the birth of many so-called ‘commissions of wise men’. Whereas they had started as self-appointed in the immediate aftermath of the revolution, they developed to be state-regulated.⁹⁴

Even when during Gaddafi’s regime they lacked the state’s recognition, traditional leaders continued to play an important role in resolving disputes. Their ways of doing so, however, vary from one region to another. In Bani Walid, in the western region, tribal leaders as well as other notables, especially those knowledgeable of Islamic jurisprudence and the rules of its Maliki School practice alternative dispute resolution as regulated by state law. Their decisions, thus, are subject to courts’ approval, and so, they can get rejected if they violate state laws. This explains why in the western region those leaders and notables have not been involved in resolving disputes over lands taken in application to Law 123. The law is still in force, and it prohibits any agreements to restore lands to former owners.

Tribal leaders in the eastern region, however, have functioned differently. In the early years of the 2011 February revolution, they took the initiative to address Law 123’s consequences, and came with a solution: restoring land to the former owner while allowing the occupant to stay in the dwelling attached to the land and a small piece of land surrounding it. The fact that such arrangements violated Law 123 did not, it seems, concern them until the Commander-in-Chief of the National Army in the east made them aware of this. Since then, they have stopped concluding such arrangements, and the ones already concluded were struck down by courts in Al-Marj.

9.3.3. Alternatives to traditional leaders

While tribal leaders can have an important role in maintaining provisional peace, resorting solely to them to resolve real property disputes involving the state might not be the right approach. All parties’ interests including those of the state should be taken into account. Only then, dispute resolution can be sustainable. Here, the experience of the committees established in the Monarchy era (1951–1969) to solve disputes over tribal lands and wells could be helpful. While these committees were established and regulated by the state, they involved tribal leaders as members. Law 29 has already paved the way for a similar solution by explicitly instructing the FFRC to solicit the help from tribal leaders and wise men known to be influential in resolving local disputes via customary methods. A similar committee can be formed to address misapplications associated with Law 123.

⁹⁴ The GNC issued Resolution No. 37/2015 on the Mechanism of Approving the Councils of Wise Men and Notables and the Determination of their Powers. Al-Jarida Al-Rasmia (Official Gazette). Issue 4. Year 4. 1 October 2015.

10. Policy and Legislative Suggestions

1. These suggestions for policy and legislation anticipate a return to a unified government along the lines of the Libyan Political Agreement. They seek to provide solutions for a number of interrelated and complex law and policy issues, based on a research which has prioritised Libyan views and experiences, and within Libya's legal context.
2. The Government of National Accord (GNA), House of Representatives (HoR), and High State Council (HSC) should put the solving of grievances ex Law 4 and Law 123 among their top priorities and address these grievances as part of the wider mechanisms for Transitional Justice.
3. The GNA should include both Law 16 and Law 20 of the year 2015 in the review of laws and regulations, which is mandated by the Libyan Political Agreement (LPA) (Article 62). The review should conclude that these two 'laws', being enacted by the GNC after the end of its term, lacked legal basis, and should thus be deemed non-existent.
4. The HoR should enact a 'Law on the Abolition and Consequences of Law 4' ('Law ACL4'). This law should end Law 4 and address the consequences thereof within the framework of Transitional Justice. As for the contents of this law, see Rec. 5.
5. For the best possible settlement of Law 4-related disputes and grievances, the HoR should base the Law on ACL4 (see Rec. 4) on balanced dialogues it sponsors between the former owners and occupants. Based on our research with representatives of both groups, we tentatively recommend that the new law:
 - 5.1. opts for the restitution of property to former owners as the preferred remedy, unless the property concerned is a dwelling occupied by a bone fide person; the latter should not be evicted;
 - 5.2. provides when restitution is unattainable, for forms of reparation including but not limited to monetary compensation, e.g., alternative property, shares in public companies;
 - 5.3. permits using proof methods beyond those based on state real property registration records, such as testimony; state institutions should also be obligated to allow access to its records and data to prove Law 4 related claims.
6. The HoR should activate the Fact Finding and Reconciliation Commission (FFRC) by appointing its board and allocating enough budget so it can start performing its tasks in accordance with Law 29/2013 on Transitional Justice including those related to real property grievances.
7. The HoR should establish a special quasi-judicial committee to work under the FFRC on addressing disputes caused by Law 4. This committee should:
 - 7.1. work under the FFRC as a specialized committee;
 - 7.2. no resort to courts should be made concerning Law 4 disputes save after applying to the committee;
 - 7.3. include enough branch committees with considerable autonomy supervised by a central committee;
 - 7.4. build on the work already done by the 2006 Committee;
8. The GNA and HoR should allocate enough budget to pay for compensation awarded by the 2006 Committee and still pending before the Expenditure Committee.
9. The HoR should not end Law 123 (see Rec. 10).
10. The HoR should establish by law a quasi-judicial committee to address any misapplications associated with Law 123, and include amongst its members traditional leaders.
11. The GNA and HoR should provide the financial means, and the International Community should provide expertise-based technical assistance, to the Authority for State Property (ASP) and the Authority for Real Property Registration (ARPR) and other relevant state institutions to obtain and use new technology in documentation and archiving, and develop information sharing mechanisms.
12. Legal and socio-legal research institutions should provide research-based suggestions on how to address issues concerning the role of the state in agricultural development, and tribal land tenure in, e.g., what it entails, what status it has, and should have in the formal legal system and customary norms.

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